EVIDENTIARY HEARING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:	)	
	)	
Application for Certification for	)	Docket No.
the Chula Vista Energy Upgrade	)	07-AFC-4
Project	)	
_____	)	

CHULA VISTA CITY HALL

COUNCIL CHAMBERS

276 4TH AVENUE

CHULA VISTA, CALIFORNIA 91940

THURSDAY, OCTOBER 2, 2008

10:08 a.m.

Reported by:
Troy A. Ray
Contract No. 170-07-001

COMMITTEE MEMBERS PRESENT

Jackalyne Pfannenstiel, Presiding Member

James D. Boyd, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Raoul Renaud, Hearing Officer

Timothy Tutt, Advisor

Susan Brown, Advisor

STAFF AND CONSULTANTS PRESENT

Christopher Meyer, Project Manager

Kevin Bell, Staff Counsel

Obed Odoemelam

William Walters

Matthew Layton

Susan Sanders

Negar Vahidi

Steve Baker

Jacob Hawkins

Alvin Greenberg

PUBLIC ADVISER

Elena Miller

APPLICANT

Jane E. Luckhardt, Attorney
Nick Pohlen
Downey Brand Attorneys, LLP

Fatuma Yusuf

APPLICANT

Douglas M. Davy, Senior Project Manager
Sarah Madams
CH2MHILL

John Lowe (via teleconference)

Gregory Darvin

David Baker (via teleconference)

Harry Scarborough
Mike Hamilton
MMC Energy

Steve Blue
Worley Parsons

Matthew Frank

Ben Haddad

Josie Calderon

INTERVENORS

Scott Tulloch, Assistant City Manager
Michael Meacham, Director
City of Chula Vista

Kevin Bundy, Attorney
Shute, Mihaly and Weinberger, LLP
Leo Miras
Joy Williams
Diane Takvorian
Diana Vera
Bill Powers
Environmental Health Coalition

ALSO PRESENT

Steve Castaneda, City Councilmember
City of Chula Vista

John Annicchiarico
Arthur Carbonell
San Diego Air Pollution Control District

ALSO PRESENT

Cindy Davies, Attorney (via teleconference)
Ilena Green, Project Engineer (via teleconference)
California Independent System Operator

Theresa Acerro
Southwest Chula Vista Civic Association

Sharon Ward

Ashley Campos

Jessica Gomez
on behalf of Congressman Bob Filner

Carina Lopez

Maria Montes

Robert G. Boyd

Rudy Ramirez, Councilmember

Carolina Ramos

Francisco Bautista

Isabel Tutiven-Shogren

Lisa Cohen, CEO
Chula Vista Chamber of Commerce

Carlos F. Lopez
Hugo Ivan Salazar
Gissell Reyes
Communities Taking Action

Joselin Fuller

Alissa Calderon

Jaime Cueva

Cindy Gompper Graves
South County Economic Development Council

Jose Preciado, President
South Bay Forum

ALSO PRESENT

Gary Sallis
on behalf of Tomm Lemmon
San Diego Construction and Building Trades Council

Josh Bakh

Ricardo Montoya

Juan Diaz

Earl Jeatz

Jenny Huerta, Community Organizer
Environmental Health Coalition

Javier Saunders
Mexican-American Business and Professional
Association

Kevin O'Neill

Elizabeth West

Margaret Lopez

Robert Borboa

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Independent Interpreter

Stephanie Miguel

Steve Palma

Yasmin

Monique Cornejo

Itzel Nuno

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

2 10:08 a.m.

3 PRESIDING MEMBER PFANNENSTIEL: Good

4 morning. I think we're ready to begin. This is

5 an Energy Commission hearing, an evidentiary

6 hearing, to consider the Chula Vista Energy

7 Upgrade project.

8 I'm Jackie Pfannenstiel; I'm the Chair

9 of the California Energy Commission. And I am the

10 Presiding Commissioner on a two-person Committee

11 that will consider this project and make

12 recommendations to the full Commission.

13 Second to my left is Commissioner Jim

14 Boyd, who is the other member of the Energy

15 Commission's Committee to consider Chula Vista

16 Upgrade.

17 To my immediate left is Raoul Renaud,

18 who is the Hearing Officer for this proceeding,

19 and who will conduct today's evidentiary hearing.

20 Let me just comment that as we said in the notice

21 of hearing that went out to all parties, we will

22 conduct the evidentiary part of the hearing as

23 long as it takes today, followed by public

24 comment.

25 But we did make sure that -- in the

1 notice that we said that if, in fact, the
2 evidentiary hearing completed before 5:30 we would
3 still make sure that public comment would not end
4 before 5:30. So we'll make sure that there is an
5 opportunity for public comment thereafter.
6 So, with that, I will turn the
7 proceeding over to the Hearing Officer.
8 HEARING OFFICER RENAUD: Good morning
9 and thank you, Madam Chair. I am Raoul Renaud,
10 the Hearing Officer. And before I say anything
11 further I'd like to have further introductions
12 from the parties at the table.
13 Starting to my far right, Mr. Meacham,
14 could you introduce yourself and the people you
15 have here from your group. And let me remind --
16 by the way, before we hear anything, those of us
17 who are here and speaking into these microphones,
18 a couple of pointers.
19 First, on the screen in front of you,
20 lower right, there's a place to turn the
21 microphone on. So make sure that's on. And
22 second, the mikes need to be spoken into directly.
23 You need to almost have it in your mouth. So,
24 lean right over, get it right in your face and
25 that way everyone will be able to hear you.

1 All right, please go ahead.
2 MR. TULLOCH: If I might, I'm Scott
3 Tulloch; I'm the City of Chula Vista Interim City
4 Manager. I want to introduce Michael Meacham, who
5 is one of our Directors, who's also up here with
6 me. And we also wanted to welcome the Commission
7 to our facility today and express our thanks for
8 you holding these kinds of hearings in our
9 community. Thank you.
10 HEARING OFFICER RENAUD: Thank you.
11 Next, Mr. Bell, would you introduce yourself and
12 your staff.
13 MR. BELL: Thank you, Mr. Renaud. Good
14 morning, Madam Chairman, Commissioner Boyd. My
15 name is Kevin Bell. I am Staff Counsel for the
16 California Energy Commission.
17 Seated to my left is our Project
18 Manager, Chris Meyer. We have several staff
19 present here today. We have Susan Sanders present
20 in the audience, along with Matt Layton. We have
21 Negar Vahidi joining us, along with Steve Baker,
22 Dr. Obed Odoemelam, Jacob Hawkins, Dr. Alvin
23 Greenberg. And also joining us today, observing,
24 is Dale Edwards.
25 HEARING OFFICER RENAUD: Thank you very

much. Let's see, now to my left. Let's start with Mr. Bundy.

MR. BUNDY: Kevin Bundy, --

HEARING OFFICER RENAUD: Microphone on, please. Thank you.

MR. BUNDY: My name is Kevin Bundy with Shute, Mihaly and Weinberger, representing the Environmental Health Coalition. Leo Miras is up here with me. And in the audience we have Joy Williams and Diane Takvorian, both with the Environmental Health Coalition. Diana Vera, who lives in the neighborhood that's near the power plant. And Bill Powers will also be offering testimony today.

HEARING OFFICER RENAUD: Thank you. And before we go further I overlooked introducing the Commissioners' Advisors. To Chairman Pfannenstiel's right is Tim Tutt, her Advisor. To Commissioner Boyd's left is his Advisor, Susan Brown.

All right. Now, Ms. Luckhardt, if you would proceed.

MS. LUCKHARDT: Okay. My name is Jane Luckhardt and I'm from Downey Brand in Sacramento. I'm Project Counsel. To my left is Gregory

1 Darvin, our witness on public health and air
2 quality. To his left is Doug Davy from CH2MHILL.
3 Also in the audience we have Harry
4 Scarborough and Mike Hamilton from MMC. We have
5 Fatima Yusuf from CH2MHILL; Steve Blue from Worley
6 Parsons; Sarah Madams from CH2MHILL. We also have
7 Ben Haddad and Josie Calderon. And behind me Nick
8 Pohlen from Downey Brand, as well.
9 And we will have other folks joining us
10 as the day proceeds.
11 HEARING OFFICER RENAUD: Thank you very
12 much. Do we have any representative from
13 California Unions for Reliable Energy? All right.
14 Elected officials in the audience.
15 Would you please come to the microphone and
16 introduce yourself.
17 COUNCILMEMBER CASTANEDA: Thank you, Mr.
18 Renaud, Madam Chair, Commissioner Boyd, interested
19 parties, city staff and folks from our community.
20 My name is Steve Castaneda; I'm a City
21 Councilmember here in Chula Vista. And I would
22 like to also welcome you and thank you for making
23 your meeting here in Chula Vista, and speaking
24 with our residents and other folks that work and
25 live here each and every day.

1 If you can indulge me just for a couple
2 of seconds, because I am going to come back for
3 the public comment period. But when I was elected
4 almost four years ago, the City Council appointed
5 me as the point person for the City Council on
6 energy issues, not only facing Chula Vista, but
7 facing the region, as a whole.
8 And at that point I was appointed to the
9 SANDAG's energy working group. And I have been
10 working, at least for the last few years, on
11 energy matters that not only affect Chula Vista,
12 but, as I said, San Diego County, as a whole, and
13 making sure that environmental justice is a
14 primary concern. But also knowing that reliable
15 and reasonably priced energy is a primary
16 foundation of an economy that we must all support,
17 and we must all take part in.
18 With that, it has been a primary
19 interest that the City of Chula Vista make its
20 position known that we are vehemently opposed to
21 further operation of the South Bay Power Plant.
22 And there have been a number of efforts by the
23 city to work to ways to insure that we have enough
24 electricity, enough energy, both from transmission
25 outside of the region and also inside of region to

1 insure that the RMR is removed from that
2 facility. And we continue to work on that.
3 With respect to MMC, and respect to the
4 proposed power plant that you will all be
5 considering, there are a couple of factors, I
6 believe, and questions that need to be answered
7 officially and need to be put on the record with
8 respect to if, in fact, this plant is not
9 successful, if, in fact, this permit is not
10 granted to the applicant, what are we left with.
11 Are we left with an old, outdated,
12 inefficient and smog-emitting plant that we see
13 every day when we drive down the I-5, which is the
14 South Bay Power Plant.
15 And, in fact, if this plant is not
16 permitted and we do have that plant still in
17 southwestern Chula Vista, would this Commission
18 authorize the City of Chula Vista to dismantle
19 that plant, to ask the owners to dismantle that
20 plant. That is something that's fundamental.
21 Because I believe, as we start to work
22 towards clean and renewable energy, and we start
23 to look at other options other than fossil fuel,
24 you know, we're going to be looking to removing
25 some of these old plants. And removing that old

1 plant, I think, is extremely necessary.
2 So that's what I think the primary
3 interest of myself is. And, in fact, has an
4 analysis been done if this plant, this old plant
5 that exists today, is not removed, will the load
6 that's generated by this region and this city
7 require that plant to run even more.
8 And what, in fact, would that mean for
9 not only the residents in that neighborhood, but
10 the residents downwind and the ratepayers that
11 must pay for the electricity that's generated
12 there, when we know that it's far more costly.
13 So, I think that I would like this
14 Commission to, if in fact they choose to not allow
15 that new plant to be built, that they grant the
16 City of Chula Vista the authorization to remove
17 the old one. And if that is not possible, then we
18 really need to look at what the impacts are of
19 having that old plant continue to remain in
20 service and being called on more and more to
21 provide energy to this region.
22 Thank you very much. And I really
23 appreciate it, and I'll see you in a few hours.
24 HEARING OFFICER RENAUD: Thank you for
25 your remarks. I should say at this point also

that I want to introduce Elena Miller, the Public Adviser. She has been out in the lobby and has just come in the back. She is the person who interacts with members of the public who want to learn about the proceeding and how they can participate in an effective manner.

Anyone who wants to speak during the public comment period should see Elena; fill out a blue card and that'll help facilitate the process today. Thank you.

Today's proceeding is being televised on the local cable network, to my understanding. We also have Spanish translation available. Anybody can pick up a headset from Elena and hear a Spanish translation of the proceedings.

This hearing is different than the hearings that have been held so far in this case. This is the evidentiary hearing. Why is it different? This is almost like a trial; this is a judicial process.

The California Energy Commission must make decisions about power plant sitings based upon a legally sufficient evidentiary record. That means that we need to hold a formal evidentiary hearing, such as this one, to receive

1 evidence into the record in a legally sufficient
2 manner that satisfies California law.
3 Today, unlike in previous hearings, you
4 will see witnesses being sworn, that their
5 testimony will be true. There will be cross-
6 examination by attorneys. There will be formal
7 marking of exhibits. It will be very much like
8 the procedures that are followed in a courtroom,
9 except this isn't a courtroom. And this
10 proceeding is really considered, by law, to be an
11 administrative law proceeding as opposed to a
12 civil law proceeding.
13 For that reason I need to stress the
14 importance of respecting the need to be formal in
15 these proceedings, allowing witnesses to speak,
16 keeping the room quiet and orderly so that all
17 witnesses can be heard. And most importantly,
18 allowing the record to be complete and clear so
19 that it can form the basis for a well-supported,
20 legally sufficient decision by the Energy
21 Commission.
22 Only the parties, that is the applicant,
23 the Energy Commission Staff and the intervenors,
24 may present evidence for introduction into the
25 formal evidentiary record.

1 The public, members of the public who
2 are not parties, we are pleased to hear from and
3 we have set aside a period at the end of the
4 hearing for public comment.
5 The technical rules of evidence are
6 generally followed. However, any relevant and
7 noncumulative evidence may be admitted. By
8 noncumulative I mean evidence that is not
9 repetitious. That is, we don't need to keep
10 hearing the same thing over and over again from
11 different people. As long as we have some
12 evidence of that opinion, we don't need more.
13 Each party has a right to cross-examine
14 the other parties' witnesses, to introduce
15 exhibits and to submit rebuttal testimony, as
16 well.
17 The Committee will decide questions of
18 relevance that may arise. Relevance basically is
19 a question of whether or not evidence pertains to
20 the issues in the proceeding.
21 We will also rule on any motions or
22 objections that may be made by the parties during
23 the hearing. And the rulings will appear, as will
24 everything else, in the written record.
25 Now, about the written record. Not only

1 is this proceeding being televised, it is also
2 being recorded by a certified court reporter, who
3 is sitting down here in front.
4 For that reason it's important that
5 everybody who speaks speak into a microphone so
6 that their words will get onto the recording. At
7 the end the recording will then be transcribed
8 into a written or typed booklet, which will
9 contain every word that was said here today. And
10 that publication will be posted on the
11 Commission's website, and is also available in
12 paper format.
13 The Committee may take administrative
14 notice of matters within the Energy Commission's
15 field of competence, and of any fact that may be
16 judicially noticed by California courts.
17 I can't stress enough the Committee's
18 decision will be based solely on the record of
19 competent evidence in order to determine whether
20 the project complies with applicable law. So the
21 Committee cannot use any material from outside the
22 record to make its decision. And that's why this
23 day is so important, is to make sure that we get
24 everything into that formal evidentiary record
25 that the Committee needs to make its decision.

1 During the public comment period,
2 depending on the number of people who want to
3 speak, we may impose a time limit. We will await
4 decision on that to when we get to the public
5 comment period and see how many people there are.
6 The public comment period is not viewed
7 as an opportunity to present written or recorded
8 or documentary materials. It is intended as an
9 opportunity for members of the public to come in
10 person and speak to the Commissioners in person.
11 We're happy to receive materials in any other
12 format. Those will be placed in the public
13 record; will be reviewed by the Committee; and
14 will become part of the record of the proceeding.
15 But the public comment period is intended for
16 live, in-person, face-to-face comment and
17 communication.
18 The parties each have a witness list and
19 an exhibit list. The witness list was revised as
20 of last night, and I've tried to distribute that
21 to all parties. But if you don't have one, I've
22 got some more copies here.
23 And I believe all parties have the
24 latest and greatest version of the exhibit list.
25 The addition of exhibits has been going on right

1 up till the last moment, but I think we've got a
2 pretty complete list at this point.
3 There are a number of topics in the
4 proceeding that are used in analyzing the
5 environmental impacts of a proposed project. In
6 fact, I believe there are 22, if I'm not mistaken.
7 As the proceeding has gone on over the
8 past many months, it's been determined which of
9 those topics are uncontested. That is, as to
10 which everyone is in agreement about them.
11 And we will start today's evidentiary
12 proceeding by going through those topics. All the
13 parties have agreed that the evidence on those
14 topics may be simply submitted on paper, by
15 declaration, and will become part of the
16 evidentiary record in that fashion. There will
17 not be a need for live witness testimony as to
18 those topics.
19 After we've completed the listed
20 uncontested topics, I will inquire as to whether,
21 in the period since the last hearing, which was
22 the prehearing conference two weeks ago, the
23 parties have been able to come to agreement on any
24 further topics. And if so, we will add those in,
25 as well. We will then proceed with the topics a

1 to which the parties have disputed issues.
2 The undisputed topics, to my
3 understanding, are executive summary and project
4 description, cultural resources, hazardous
5 materials management, soil and water resources,
6 traffic and transportation, transmission line
7 safety and nuisance, waste management, facility
8 design, geology and paleontology, power plant
9 efficiency, general conditions, compliance
10 monitoring and facility closure. Those last three
11 are all one topic.
12 Does any party wish to state anything
13 that differs from that list? All right. Yes,
14 city, please. Please identify yourself for the
15 record before you speak.
16 MR. TULLOCH: I'm Scott Tulloch, Interim
17 City Manager with the City of Chula Vista. I just
18 wanted to -- we've been working with staff on a
19 couple of issues, and I just wanted to go on
20 record on two of these items.
21 One of them is topic number 4, and I
22 wanted to draw the group's attention to exhibits
23 803 and 21, where we identify -- the applicant has
24 expressed their willingness to provide mitigation
25 for different issues. And there are six of them.

1 And without going into detail on what
2 those are, the mitigation that's offered on those
3 exhibits, number 4, actually is one that would
4 apply to topic number 4. And it's our
5 understanding that staff has agreed to that. Has
6 to do with a weather monitoring system.
7 HEARING OFFICER RENAUD: Let me
8 interrupt you, if I may, momentarily. My
9 understanding, that topic is undisputed. Is it
10 still undisputed, or are you moving it into the
11 disputed column?
12 MR. TULLOCH: No. I believe -- it's my
13 understanding that we're in agreement.
14 HEARING OFFICER RENAUD: All right. So
15 that's -- we all agree with that. So I'm not sure
16 there's a need for further explanation unless
17 there's really something that's changed. But if
18 we're in agreement, we're in agreement, and we'll
19 proceed with that topic with the others by
20 declaration.
21 ASSOCIATE MEMBER BOYD: Question.
22 HEARING OFFICER RENAUD: Yes.
23 ASSOCIATE MEMBER BOYD: The agreement or
24 the agreements that you reference, are they
25 reflected in documents already on the record?

1 MR. TULLOCH: Yes. And that was the two
2 exhibits that I mentioned.
3 ASSOCIATE MEMBER BOYD: All right.
4 MR. TULLOCH: And it's my understanding
5 on that one that staff has agreed on that
6 particular issue.
7 HEARING OFFICER RENAUD: All right, well
8 one --
9 MR. TULLOCH: So, I apologize. I'm new
10 to this process, so --
11 HEARING OFFICER RENAUD: That's fine.
12 MR. TULLOCH: -- if I, you know, say
13 things that are obvious, I apologize in advance.
14 But the second one I'm not that certain of, and
15 that has to do with topic number 11. And we had
16 something that we have the applicant's support on
17 is including as a condition of the permit that has
18 to do with the applicant's willingness to not
19 expand the plant further in the future.
20 And we've asked that that be included as
21 a condition. And I don't know that we've gotten
22 concurrence on that.
23 HEARING OFFICER RENAUD: Okay.
24 MS. LUCKHARDT: I believe that
25 Commission Staff has offered an additional

1 condition -- this is Jane Luckhardt. I believe
2 the Commission Staff has offered a condition in
3 response to that request in the testimony that
4 they provided yesterday. I think there is a new
5 general condition that describes removal of the
6 old facility.
7 I'm sorry, I'm addressing --
8 HEARING OFFICER RENAUD: Not expanding
9 the future one, not expanding it in the future is
10 what --
11 MS. LUCKHARDT: Okay, okay, all right.
12 HEARING OFFICER RENAUD: -- he's
13 referring to.
14 MS. LUCKHARDT: I'm sorry, I was on the
15 wrong one.
16 HEARING OFFICER RENAUD: Do we need to
17 take that off the undisputed list? Could I hear
18 from counsel on that?
19 MS. LUCKHARDT: We have no dispute with
20 the city regarding their request that the project
21 not be expanded further beyond what is being
22 approved, or what MMC is requesting that the
23 Commission approve with this application.
24 So, we don't have a dispute with that.
25 I believe that the city had requested that that be

1 included as a condition of certification of the
2 project. If such a condition were drafted, MMC
3 would not object to that condition. And, in fact,
4 I believe we proposed one in one of the filings
5 that we've made recently. I think it was the
6 prehearing conference statement is what it was
7 attached to.
8 HEARING OFFICER RENAUD: That's making
9 sense to all of us. Mr. Bell, anything to add?
10 MR. BELL: No, it's just I'm not sure
11 we're all exactly on the same page here. Rather
12 than moving this from the uncontested to
13 contested, would you be willing to pass this where
14 we can discuss this maybe on a break? Would that
15 be acceptable?
16 HEARING OFFICER RENAUD: I mean, from
17 what I'm hearing it sounds like the city is
18 interested in there being a provision that the
19 plant not be expanded in the future. Applicant is
20 willing to agree to that. I'm not sure why it
21 would be necessary for the Commission to -- or
22 staff to have any concerns over that. But if you
23 feel there might be and you need to discuss it,
24 I'm certainly willing. But at this point I'm
25 having a hard time seeing where you even would fit

in there, frankly.

MR. BELL: And that's my point. If we don't fit into that agreement, that side agreement, then it probably shouldn't be a condition of certification. However, it's something that I just want to discuss --

HEARING OFFICER RENAUD: I see, yeah --

MR. BELL: -- and the city -- we can have a side discussion. We don't have to make this --

HEARING OFFICER RENAUD: All right, let's then put that one to the side for the moment and we'll come back to it then.

Mr. Meyer. Turn on your mike.

MR. MEYER: Oh, okay. Just in case it wasn't clear from the previous concern on soil and water, the condition that was being referred to is in the FSA as soil and water-7, where we address the concerns from the city about the additional water use and conservation.

HEARING OFFICER RENAUD: All right. Good. Okay, I think what we'll do now is ask the parties to move their evidence with respect to the undisputed topics except for facility closure, right -- I mean facility design.

1 MR. BELL: Facility design, that's
2 correct.
3 HEARING OFFICER RENAUD: Into the
4 record. And I'd like to do that topic-by-topic
5 and party-by-party. And in all cases today, we
6 will have the applicant go first, since the burden
7 rests with the applicant. We'll then go to staff,
8 and then we'll go to the intervenors.
9 Ms. Luckhardt, can you begin with moving
10 your evidence on topic 1, executive summary and
11 project description, into the record. And you'll
12 need to specify which exhibits apply to that.
13 MS. LUCKHARDT: Okay, you want the
14 executive summary and project description. In
15 regards to the executive summary, the exhibits are
16 the executive summary section 1 of exhibit 1,
17 which is the application for certification. It is
18 the executive summary responses on exhibit 2 to
19 the response to data adequacy review. It is
20 exhibit 10 and the executive summary declaration
21 by Harry Scarborough of exhibit 23.
22 And then let me get to project
23 description. For project description it is
24 section 2 of exhibit 1; it is the section 2 of the
25 response to the data adequacy review, exhibit 2.

1 It is data request 1 through 47 and workshop
2 request 42 through 47 of exhibit 3.
3 It is data response 35 of exhibit 5;
4 data response 45 through 47 of exhibit 7; exhibit
5 9; exhibit 10; exhibit 11; exhibit 17; exhibit 18
6 regarding project description. Those are comments
7 on the preliminary staff assessment.
8 Final comments on the preliminary staff
9 assessment regarding project description portion
10 of exhibit 19; exhibit 20; and exhibit 23.
11 I just realized that I misspoke
12 regarding exhibit 3. It should be data responses
13 42 through 47 of exhibit 3.
14 Also in response to executive summary,
15 that should include exhibit number 21.
16 HEARING OFFICER RENAUD: All right,
17 thank you. And are you moving those into evidence
18 at this time?
19 MS. LUCKHARDT: Yes.
20 HEARING OFFICER RENAUD: Is there any
21 objection to those exhibits being received into
22 evidence? All right.
23 Mr. Bundy.
24 MR. BUNDY: Just to make clear, I've
25 been trying to follow along as she was going

1 through. I know a number of these exhibits are
2 addressing multiple topics, and you're just
3 talking about the sections that address executive
4 summary and project description at this point, is
5 that correct?
6 MS. LUCKHARDT: That is correct.
7 MR. BUNDY: All right, I have no
8 objection.
9 HEARING OFFICER RENAUD: Hearing no
10 objection, those will be admitted.
11 All right. Staff. Your exhibits on
12 that topic, please.
13 MR. BELL: Yes, thank you. As to staff
14 exhibit 200, chapters 1, executive summary 2,
15 introduction, 3 project description. Chapter 4.3,
16 cultural resources. Chapter 4.4, hazardous
17 materials. Chapter 4.9, soil and water resources.
18 Chapter 4.10, traffic and transportation. Chapter
19 4.11, transmission line safety and nuisance.
20 Chapter 4.12, visual resources. Chapter 4.13,
21 waste management. And chapter 5.2, geology and
22 paleontology.
23 Staff would move those sections of
24 exhibit 200 into evidence.
25 HEARING OFFICER RENAUD: Okay, now, just

1 so I'm clear, we are only dealing with executive
2 summary and project description at this point.
3 Did you intend to move references to those
4 sections from that topic, or --
5 MR. BELL: I'm sorry, I jumped ahead.
6 HEARING OFFICER RENAUD: It sounds like
7 it. So, maybe you want to retract and give us the
8 narrower list.
9 MR. BELL: I will. As to staff exhibit
10 200, chapters 1, executive summary; and chapter 3,
11 project description.
12 HEARING OFFICER RENAUD: All right.
13 MR. BELL: Staff would move those into
14 evidence.
15 HEARING OFFICER RENAUD: Thank you. Is
16 there any objection to those being received in
17 evidence? They are received.
18 MS. LUCKHARDT: I'm sorry. I noticed
19 that we did not include the appendices from the
20 application for certification that relate to the
21 executive summary and the project description.
22 That would be, the executive summary appendix is
23 appendix 1 from exhibit 1. And the project
24 description appendix is appendix 2 of exhibit 1.
25 HEARING OFFICER RENAUD: Okay. Is there

1 any objection to those being received in evidence?
2 MR. BELL: None.
3 HEARING OFFICER RENAUD: They'll be
4 received.
5 EHC.
6 MR. BUNDY: We're not offering evidence
7 on this.
8 HEARING OFFICER RENAUD: All right. Any
9 other party? No. All right.
10 Let's move on to the next uncontested
11 topic which is cultural resources. Applicant,
12 your exhibits, please.
13 MS. LUCKHARDT: Okay. Cultural
14 resources, our exhibits are section 5.3 of exhibit
15 1, and appendix 5.3 of exhibit 1. It is the
16 cultural resources response to the data adequacy
17 review included in exhibit 2. It is data
18 responses 30 through 37 of exhibit 3.
19 Data responses 52 and 53 of exhibit 7.
20 Exhibit 14. Exhibit 15. Exhibit 18. The
21 cultural resources comments on the preliminary
22 staff assessment portion of exhibit 19. Exhibit
23 22. And the cultural resources declaration of
24 Clint Helton in exhibit 23. And I think that's
25 it.

1 HEARING OFFICER RENAUD: And you move
2 those into evidence?
3 MS. LUCKHARDT: Yes.
4 HEARING OFFICER RENAUD: Is there any
5 objection to those being received?
6 MR. BELL: None.
7 MR. BUNDY: None.
8 HEARING OFFICER RENAUD: Those will be
9 received in evidence.
10 Staff.
11 MR. BELL: As to exhibit 200, chapter
12 4.3, cultural resources, staff moves that into
13 evidence.
14 HEARING OFFICER RENAUD: Any objection?
15 MR. BUNDY: None.
16 HEARING OFFICER RENAUD: That will be
17 received.
18 EHC.
19 MR. BUNDY: We have no evidence on
20 cultural resources.
21 HEARING OFFICER RENAUD: Any other
22 party? All right.
23 Hazardous materials management.
24 Applicant. While Ms. Luckhardt's getting her
25 papers gathered there, let me just say that all of

these numbers and titles you're hearing are documents that are in the public record and have been docketed, and can be viewed by anyone on the Commission website. All right.

MS. LUCKHARDT: Okay, in regards to hazardous materials, applicant moves section 5.5 of exhibit 1, and appendix 5.5 of exhibit 1. WSQ-1 data response, WSQ-1 of exhibit 3. Responses 14 through 18 of exhibit 5. Exhibit 18. The hazardous materials comments on the preliminary staff assessment, that portion of exhibit 19. And the declaration of Sarah Madams regarding hazardous materials included in exhibit 23.

HEARING OFFICER RENAUD: All right.

MS. LUCKHARDT: The applicant moves those.

HEARING OFFICER RENAUD: Is there any objection to those being received in evidence?

MR. BELL: None.

MR. BUNDY: No.

HEARING OFFICER RENAUD: They will be received.

Staff.

MR. BELL: Staff exhibit 200, chapter 4.4 concerning hazardous materials. Staff would

1 move that into evidence.
2 HEARING OFFICER RENAUD: Is there any
3 objection? That will be received.
4 EHC?
5 MR. BUNDY: We're not offering evidence
6 on this topic.
7 HEARING OFFICER RENAUD: Very well. Any
8 other party? All right.
9 Let's move on to soil and water
10 resources. Applicant.
11 MS. LUCKHARDT: Okay. For soils and
12 water resources, applicant moves section 5.11 and
13 section 5.15 of exhibit 1. I'm checking for -- in
14 addition, applicant moves appendix 5.15 of exhibit
15 1.
16 Applicant moves the water resources
17 response to the data adequacy review portion of
18 exhibit 2. Data responses 38 through 41 of
19 exhibit 3. Data responses 23 through 32 of
20 exhibit 5. Response 54 of exhibit 7. The soil
21 and water comments on the preliminary staff
22 assessment included in exhibit 19.
23 Exhibit 21, which I believe we've
24 already moved, so we probably don't need to move
25 that again. And the portions, the declarations

regarding soil and water resources included in exhibit 23.

HEARING OFFICER RENAUD: All right. Is there any objection to those being received in evidence?

MR. BELL: None.

MR. BUNDY: None.

HEARING OFFICER RENAUD: No objection, those are received or admitted into evidence.

All right, staff.

MR. BELL: As to staff exhibit 200, chapter 4.9, soil and water resources, staff would move that into evidence.

HEARING OFFICER RENAUD: Is there any objection?

MR. BUNDY: None.

HEARING OFFICER RENAUD: All right, that will be received in evidence.

Any other party? Yes.

MR. TULLOCH: The city would move city exhibit number 803.

HEARING OFFICER RENAUD: All right. Is there any objection? That will be admitted.

Traffic and transportation. Applicant.

MS. LUCKHARDT: Okay. In the area of

1 traffic and transportation, applicant moves
2 section 512 of exhibit 1. The traffic and
3 transportation responses included in exhibit 2.
4 The traffic and transportation comments on the
5 preliminary staff assessment included in exhibit
6 18. The traffic and transportation comments,
7 final comments on the preliminary staff assessment
8 included in exhibit 19. And we've already moved
9 exhibit 21.
10 HEARING OFFICER RENAUD: Is there any
11 objection?
12 MR. BELL: None.
13 MR. BUNDY: No.
14 HEARING OFFICER RENAUD: Those will be
15 admitted.
16 Staff.
17 MR. BELL: As to staff exhibit 200,
18 chapter 4.10, traffic and transportation, staff
19 moves that into evidence.
20 HEARING OFFICER RENAUD: Any objection?
21 That's admitted.
22 EHC?
23 MR. BUNDY: We have no evidence on this
24 topic.
25 HEARING OFFICER RENAUD: Any other

1 party? All right, let's move on.
2 Transmission line safety and nuisance,
3 otherwise known as TLSN.
4 Applicant.
5 MS. LUCKHARDT: I'm trying to find the
6 correct page here. Okay.
7 The only additional exhibit that we need
8 to -- all of our comments on transmission line
9 safety and nuisance were included in our testimony
10 on project description, so they have already been
11 moved.
12 HEARING OFFICER RENAUD: All right.
13 Thank you.
14 Staff.
15 MR. BELL: As to staff exhibit 200,
16 chapter 4.11 TLSN, staff would move that into
17 evidence.
18 HEARING OFFICER RENAUD: Is there any
19 objection?
20 MR. BUNDY: No.
21 HEARING OFFICER RENAUD: Okay. EHC.
22 MR. BUNDY: We're not offering evidence
23 on this topic.
24 HEARING OFFICER RENAUD: Any other
25 party? All right.

1 Waste Management.
2 Applicant.
3 MS. LUCKHARDT: Okay, finding the page.
4 In the area of waste management, applicant moves
5 section 5.14 and appendix 5.14 of exhibit 1. The
6 rest of the exhibits have already been moved into
7 evidence under previous topics.
8 HEARING OFFICER RENAUD: Thank you. Is
9 there any objection?
10 MR. BELL: None.
11 HEARING OFFICER RENAUD: Those will be
12 admitted.
13 Staff.
14 MR. BELL: As to staff exhibit 200,
15 chapter 4.13, waste management, staff would move
16 that into evidence.
17 HEARING OFFICER RENAUD: Is there any
18 objection?
19 MR. BUNDY: No.
20 HEARING OFFICER RENAUD: Okay. That
21 will be admitted.
22 EHC?
23 MR. BUNDY: We have no evidence on this
24 topic.
25 Any other party? No, all right.

1 MR. BELL: Mr. Renaud, before you go on
2 to the next one, is visual resources listed as a
3 contested topic? I noticed that was next in order
4 prior to waste management.
5 HEARING OFFICER RENAUD: I have that as
6 contested topic number 19.
7 MR. BELL: Okay, thank you.
8 HEARING OFFICER RENAUD: All right.
9 Facility design, I believe we're skipping. Is
10 that the one we're skipping? Kevin?
11 MR. BELL: That's correct, I believe
12 that is a --
13 HEARING OFFICER RENAUD: We have two
14 Kevins, I just realized, okay. Mr. Bell, is that
15 the one we're putting to the foot for awhile?
16 MR. BELL: Yes, facility design is
17 contested, I believe.
18 HEARING OFFICER RENAUD: All right,
19 thank you.
20 Okay, let's move to geology and
21 paleontology.
22 Applicant.
23 MS. LUCKHARDT: Okay, I'm just checking.
24 Applicant moves section 5.4 and appendix 5.4 of
25 exhibit 1. The geology comments on the

1 preliminary staff assessment portion of exhibit
2 18. The geologic hazards comments included in the
3 final comments on the preliminary staff
4 assessment, exhibit 19. And the geology
5 declarations included in exhibit 23.
6 HEARING OFFICER RENAUD: All right. And
7 is there any objection to those being received in
8 evidence?
9 MR. BELL: None.
10 MR. BUNDY: None.
11 HEARING OFFICER RENAUD: Those will be
12 admitted.
13 Staff.
14 MS. LUCKHARDT: Oh, okay, I'm sorry --
15 HEARING OFFICER RENAUD: One more?
16 MS. LUCKHARDT: -- I have just been
17 informed that paleontology is separated for us;
18 it's not in the same section. So the sections
19 that address paleontological resources are section
20 5.8 and appendix 5.8 of exhibit 1. The
21 paleontological comments included in the
22 preliminary staff assessment comments included in
23 exhibit 18. Our paleontological resources
24 comments included in exhibit 19. And the
25 declarations regarding paleontological resources

1 included in exhibit 23.
2 HEARING OFFICER RENAUD: Is there any
3 objection to those being received in evidence?
4 MR. BELL: None.
5 MR. BUNDY: No.
6 HEARING OFFICER RENAUD: All right,
7 they'll be admitted.
8 Staff.
9 MR. BELL: As to staff exhibit 200,
10 chapter 5.2, geology and paleontology, staff moves
11 that into evidence.
12 HEARING OFFICER RENAUD: Is there any
13 objection? That will be admitted.
14 EHC.
15 MR. BUNDY: We're not offering evidence
16 on this topic.
17 HEARING OFFICER RENAUD: City? No. All
18 right.
19 Power plant efficiency.
20 Applicant.
21 MS. LUCKHARDT: Our exhibits on this
22 subject have already been entered under project
23 description.
24 HEARING OFFICER RENAUD: All right,
25 thank you.

1 Staff.
2 MR. BELL: Can I have just a moment, I'm
3 sorry.
4 HEARING OFFICER RENAUD: Yes.
5 MR. BELL: Thank you. As to staff
6 exhibit 200, chapter 5.3, power plant efficiency,
7 staff moves that into evidence.
8 HEARING OFFICER RENAUD: Is there any
9 objection?
10 All right, that will be admitted.
11 The group topic of general conditions,
12 compliance monitoring and facility closure.
13 Applicant.
14 MS. LUCKHARDT: Our exhibits regarding
15 this subject area were all entered under project
16 description.
17 HEARING OFFICER RENAUD: All right.
18 Staff.
19 MR. BELL: That is general conditions.
20 As to exhibit 200, chapter 7, general conditions,
21 staff moves that into evidence.
22 HEARING OFFICER RENAUD: Is there any
23 objection?
24 That will be admitted.
25 EHC?

1 MR. BUNDY: We have no evidence on this
2 topic.
3 HEARING OFFICER RENAUD: All right.
4 City?
5 MR. TULLOCH: Our exhibit's already been
6 moved into evidence.
7 HEARING OFFICER RENAUD: All right,
8 thank you.
9 That concludes the listed undisputed
10 topics. Now, do any of the parties have some good
11 news for us that you've managed to move other
12 topics onto the undisputed list? Hello? Yes,
13 please. No? All right. Okay.
14 Let's move then to the disputed topics.
15 And I would ask, Mr. Bell and Mr. Meyer, that you
16 remind me about facility design, which we skipped
17 so that we don't forget that at the end of the
18 day. I know you're going to talk about it during
19 a break, and maybe remind me after that break and
20 we'll go back to that.
21 I'm sorry?
22 MR. BELL: I'm sorry, that wasn't
23 facility design, that was the compliance
24 monitoring.
25 HEARING OFFICER RENAUD: This is on the

1 issue of expanding the -- prohibition on expanding
2 the plant in the future, right?
3 MR. BELL: Correct. Yeah, I believe
4 that was item number 11 under general conditions.
5 HEARING OFFICER RENAUD: All right,
6 well, then let's go back to facility design.
7 Applicant, do you have any exhibits on
8 facility design, item 8.
9 MS. LUCKHARDT: All of our comments on
10 facility design are included in the project
11 description exhibits.
12 HEARING OFFICER RENAUD: Okay.
13 MS. LUCKHARDT: We don't separate that
14 out.
15 HEARING OFFICER RENAUD: Staff, do you
16 have exhibits on facility design, topic 8?
17 MR. BELL: We do, yes. And that will be
18 exhibit 200, chapter 5.1.
19 HEARING OFFICER RENAUD: Any objection
20 to those being received in evidence?
21 MS. LUCKHARDT: No.
22 HEARING OFFICER RENAUD: All right,
23 they'll be admitted.
24 EHC?
25 MR. BELL: I'm sorry, that does remain

disputed. We do need to take testimony on that.

HEARING OFFICER RENAUD: Which one?

MR. BELL: Facility design.

HEARING OFFICER RENAUD: Well, I'm not sure why we're doing it under the undisputed topics. Can you explain that?

MR. BELL: Staff has additional testimony they need to provide.

HEARING OFFICER RENAUD: And can you just briefly tell us what that's about?

MR. BELL: Yes, it has to do with EHC's proposal to eliminate -- I'm sorry, the applicant's proposal to eliminate a portion of their design.

MS. LUCKHARDT: We understand that staff has requested that we include two gas compressors instead of one gas compressor for redundancy purposes. We're in agreement with that.

MR. BELL: The original design called for three, and the reduction was by two. So there's only one gas compressor that's included in the design at this point.

MS. LUCKHARDT: Okay, I guess we've agreed to make it two gas compressors to address staff's concern. I don't know if that addresses

1 staff's concern or not. But if it does, we're in
2 agreement with that.
3 MR. BELL: And there was also the
4 deletion of at least two conditions that staff had
5 concerns with, and are not in agreement with.
6 This may be something that, again, if we
7 could pass this and discuss it, we may be able to
8 revisit this later in today's hearing.
9 MS. LUCKHARDT: Yes.
10 HEARING OFFICER RENAUD: It certainly
11 sounds like something as to which taking testimony
12 under oath would not be productive. So, I think
13 you can work this out.
14 MS. LUCKHARDT: Yeah, we just learned of
15 this this morning, so we're just trying to --
16 HEARING OFFICER RENAUD: All right. As
17 we had been planning, and we'll continue to stick
18 with plan A, we will skip that topic.
19 As to the issue of the promise not to
20 expand the plant in the future, I guess that will
21 hold under compliance monitoring. And we will
22 again, what, await discussions?
23 MR. BELL: We just need to have a
24 discussion.
25 HEARING OFFICER RENAUD: All right.

1 Very good. We'll come back to those two things.
2 Next we move to the disputed topics.
3 And this is where we will actually receive sworn
4 testimony from witnesses.
5 We have organized the topics in order,
6 which was on the evidentiary hearing order that
7 was distributed to the parties.
8 And the first topic would be air
9 quality. I believe there's been some discussion
10 of possibly combining that with public health and
11 having a panel of witnesses. I have no objection
12 to panels, whatever the parties want to do is
13 fine.
14 Can I hear from applicant first, how
15 would you like to proceed?
16 MS. LUCKHARDT: We can proceed. We have
17 the same witness for air quality and public
18 health. We just need to get John Lowe on the
19 phone, who's an additional witness on public
20 health. But we are working right now to see if we
21 can arrange that.
22 HEARING OFFICER RENAUD: All right.
23 Staff, would you like to combine air quality and
24 public health, or keep those separate?
25 MR. BELL: I believe that would be

helpful.

HEARING OFFICER RENAUD: All right.

MR. BELL: We have three staff available to testify between the two areas.

HEARING OFFICER RENAUD: All right. EHC, would you care to -- do you have any comment on combining those two?

MR. BUNDY: Well, I do have some specific questions related to air quality in particular. But I have no objection to combining the two if that's the way the --

HEARING OFFICER RENAUD: Yeah. I think the witness you need will be there. And, city? No objection.

All right, let's do it that way. I guess the first order of business is to get Mr. Lowe on the phone.

MS. LUCKHARDT: Okay, I understand that we are trying to reach him, so why don't we begin with Mr. Darvin for now. And then as soon as he is able to join us, we can bring him in. And, in order to keep things moving.

HEARING OFFICER RENAUD: Very good. Mr. Darvin, are you here?

MS. LUCKHARDT: Yes.

1 MR. DARVIN: Right here.
2 MS. LUCKHARDT: He's right here.
3 HEARING OFFICER RENAUD: Okay. Court
4 reporter, will you be swearing the witnesses, or
5 would you like me to do it? I'll do it, all
6 right.
7 Would you raise your right hand.
8 Whereupon,
9 GREGORY DARVIN
10 was called as a witness herein, and after first
11 having been duly sworn, was examined and testified
12 as follows:
13 HEARING OFFICER RENAUD: Thank you.
14 Please state your name for the record.
15 MR. DARVIN: Gregory Darvin.
16 MS. LUCKHARDT: Okay, and Mr. Darvin's
17 qualifications and his declaration were attached
18 to his testimony. Would you at this time like me
19 to go through and read the exhibits that he is
20 sponsoring into the record?
21 HEARING OFFICER RENAUD: I think that
22 would be helpful, yes.
23 MS. LUCKHARDT: Okay, so --
24 HEARING OFFICER RENAUD: Read the
25 numbers, not the whole exhibit.

1 MS. LUCKHARDT: Right.
2 HEARING OFFICER RENAUD: Thank you.
3 MS. LUCKHARDT: Absolutely. Mr. Darvin
4 is sponsoring section 5.1 and appendix 5.1 of
5 exhibit 1. He is sponsoring the air quality
6 responses to -- and am I entering both air quality
7 and public health at this time?
8 HEARING OFFICER RENAUD: Well, it looks
9 like Mr. Darvin's testimony is in both topics, so
10 I think that would be a good idea.
11 MS. LUCKHARDT: Okay. I'm going to
12 start with air quality and then I'll shift to the
13 page of public health.
14 Okay, so I have the air quality
15 responses included in exhibit 2. Data responses 1
16 through 29 included in exhibit 3. Data responses
17 2 through 5 and 25 of exhibit 4. No, I think it's
18 just 25 of exhibit 4. Data responses 1 through 13
19 of exhibit 5. Exhibit 6. Data responses 36
20 through 44 of exhibit 7. Exhibit 12. Exhibit 18.
21 The air quality comments on the preliminary staff
22 assessment, exhibit 19. Mr. Darvin's declaration
23 on air quality included in exhibit 23.
24 And then I'll shift to public health.
25 In addition, under the subject of public health we

1 have section 5.9 of exhibit 1. And Mr. Darvin's
2 declaration on public health included in exhibit
3 23.
4 HEARING OFFICER RENAUD: Is there any
5 objection to those exhibits being admitted?
6 MR. BELL: None.
7 HEARING OFFICER RENAUD: All right, they
8 will be received in evidence. And would you wish
9 to present testimony?
10 MS. LUCKHARDT: At this point, since
11 we're not doing testimony summaries, I just have a
12 few questions to ask Mr. Darvin. In following the
13 direction that you gave us at the prehearing
14 conference, to make sure that we responded to all
15 of the -- directly responded to comments made by
16 other parties.
17 DIRECT EXAMINATION
18 BY MS. LUCKHARDT:
19 Q I would ask Mr. Darvin, there was a
20 comment made by the Environmental Health Coalition
21 regarding the difference in emission impacts
22 between the -- these were comments on the PSA, but
23 it would also apply to the FSA -- the final staff
24 assessment and the application for certification.
25 Can you explain those differences?

1 MR. DARVIN: Yes. The primary
2 difference was when we first filed the AFC we had
3 a emergency generator, a blackstart generator,
4 included in both the emission calculations and the
5 modeling analysis.
6 Subsequently the emergency generator was
7 pulled from further consideration. The project
8 was remodeled. And the difference in air quality
9 concentrations is primarily due to that small
10 emergency generator driving both the one-hour and
11 CO, NOx and eight-hour CO impacts.
12 So there was a net decrease in overall
13 ambient air quality concentrations from removing
14 the generator.
15 MS. LUCKHARDT: And when the blackstart
16 generator was included in the modeling, did it
17 show any violations of air quality standards?
18 MR. DARVIN: No. It complied with all
19 ambient air quality standards.
20 MS. LUCKHARDT: And why is that?
21 MR. DARVIN: Why did it show compliance
22 with the ambient air quality standards?
23 MS. LUCKHARDT: Why did it not have a
24 major impact on the modeling?
25 MR. DARVIN: Well, it did for the --

1 when it was included primarily because of small
2 stacks. They're under the influence of what's
3 known as downwash, or aerodynamic effects. So the
4 stack height was such that it was in proximity to
5 taller structures.
6 Those taller structures, under certain
7 atmospheric conditions, can produce low pressure
8 cavities which then drive the one-hour
9 concentrations.
10 So removing that engine removed those
11 downwash effects.
12 MS. LUCKHARDT: How many hours did you
13 model for the blackstart generator?
14 MR. DARVIN: Fifty-two hours a year.
15 MS. LUCKHARDT: And also there were
16 comments made by the Environmental Health
17 Coalition regarding the addition of liquified
18 natural gas into pipeline gas.
19 Can you explain whether that was taken
20 into account in your modeling?
21 MR. DARVIN: We had revised the amount
22 of fuel-bound sulfur in the natural gas, not
23 necessarily to reflect the LNG portion that may
24 exist in the future, but just to conservatively
25 calculate what the maximum SO2 amounts would be

from using that fuel source in the combustion turbines.

Liquified natural gas has the capacity to have higher quantities of fuel-bound sulfur, but regardless of where the fuel source comes from, it still needs to meet the definition of pipeline spec gas.

We boosted the sulfur content up to that limit and revised the SO2 modeling to reflect that.

MS. LUCKHARDT: Okay. And then there were also comments by the Environmental Health Coalition regarding whether the impacts of the project have been examined when operating at its full permitted capacity.

Did you model it at its full permitted capacity?

MR. DARVIN: Yes, we did. We modeled it at approximately 4400 hours a year of operation. that's 4000 hours of baseload and approximately 200 cold starts and 200 warm starts.

MS. LUCKHARDT: And there were comments about the mitigation proposal using the Carl Moyer program. In your opinion, does it provide measurable and enforceable emission reductions?

1 MR. DARVIN: Yes, it does. The Carl
2 Moyer program has been in place for quite awhile.
3 And it has shown wonderful benefits to cleaning up
4 existing dirtier sources.
5 MS. LUCKHARDT: The Environmental Health
6 Coalition has also raised a concern about emission
7 reductions in the area affected by the project
8 emissions.
9 Do you have any comments in response to
10 that?
11 MR. DARVIN: Well, one of the ideas that
12 we're looking at for this project with Carl Moyer
13 was to actually earmark the mitigation money,
14 approximately $200,000, I believe, in such a way
15 that projects within the area of Chula Vista would
16 have first access to that money up to a period of
17 two years.
18 The San Diego APCD did a similar
19 project, I believe, with the Escondido plant. I
20 don't know the outcome of that, but basically it
21 sets aside the money for people to use in this
22 region sort of on a first-come/first-served basis.
23 MS. LUCKHARDT: And then in regards to
24 -- how does this project impacts compare to the
25 significance levels?

1 MR. DARVIN: The project's impacts are
2 below all established air quality significance
3 levels. So far below that -- I mean the idea of a
4 significance level is it's the minimum level at
5 which you could actually go out there and measure
6 the concentration from the project.
7 If you're below then theoretically you
8 cannot measure the project's impacts. This
9 project's impacts were far below all applicable
10 significant impact levels.
11 MS. LUCKHARDT: And once this project is
12 up and running, do you expect actual emission
13 levels to be below those you show in your
14 modeling?
15 MR. DARVIN: Yes. When we do modeling
16 for new projects we use what are called potential
17 emissions, which are the highest guaranteed
18 emission rates that the turbine vendor provides.
19 Along with a few other assumptions that we use
20 when setting things up.
21 In all actuality, based on source test
22 data from numerous LM6000s, the emission factors
23 that we used, the potential emission factors that
24 we used are often higher than the actual emissions
25 that would come out of a similar plant.

1 So, based on its operation at a future
2 date, the actual emissions from this project will
3 be less than what we modeled.
4 MS. LUCKHARDT: And in your modeling how
5 many hours of operation did you include in your
6 modeling?
7 MR. DARVIN: Forty-four-hundred hours.
8 MS. LUCKHARDT: Okay, I have nothing
9 further for Mr. Darvin. He's available for cross-
10 examination.
11 HEARING OFFICER RENAUD: Staff, do you
12 wish to cross-examine?
13 MR. BELL: No questions on behalf of
14 staff.
15 HEARING OFFICER RENAUD: Environmental
16 Health Coalition.
17 MR. BUNDY: I do have a few questions
18 for --
19 HEARING OFFICER RENAUD: Please proceed.
20 MR. BUNDY: -- Mr. Darvin.
21 CROSS-EXAMINATION
22 BY MR. BUNDY:
23 Q To address the maximum operating hours
24 and the permitted level, the permit does allow for
25 4400 hours of operation, correct?

1 MR. DARVIN: Correct.
2 MR. BUNDY: And I'd like to draw your
3 attention to exhibit 5, this is the response to
4 Environmental Health Coalition's data request 9.
5 I believe that's on page 11 -- 13 of exhibit 5.
6 On page 11 it states, let's see if I can
7 find it, that the 4400 hour -- I'm paraphrasing a
8 little bit, but the 4400 hour permitted level is
9 based on the worst case potential emergency needs
10 for a peaking power plant over an entire year.
11 Is that --
12 MS. LUCKHARDT: Now, could you refer us
13 back to the correct page number there, your --
14 MR. BUNDY: I did.
15 MS. LUCKHARDT: -- response number 9.
16 MR. BUNDY: It's response number 9, --
17 MS. LUCKHARDT: Got.
18 MR. BUNDY: -- exhibit 5, page 11, the
19 bottom -- it's the first paragraph of the response
20 to number 9, about halfway through the paragraph.
21 This is based on agreements with San
22 Diego Gas and Electric, based on a power purchase
23 agreement.
24 MR. DARVIN: I don't recall the exact
25 derivation of the number, but that was the

1 uppermost bounds that this project could
2 conceivably operate at, so.
3 MR. BUNDY: Okay. And you do refer to
4 this as the worst case potential emergency needs
5 for a peaking power plant over a year?
6 MR. DARVIN: Right.
7 MR. BUNDY: That's correct? Okay.
8 On page 12 you discuss the -- I believe
9 you discuss the mitigation proposal. This is in
10 the first full paragraph on page 12. And your
11 testimony is that you will intentionally over-
12 mitigate by offering offset fees based on 1000
13 hours of operation, is that correct?
14 MR. DARVIN: That's partly correct. The
15 idea was that, you know, trying to come up with a
16 more normal operating scenario, not necessarily
17 the worst case of 4400 hours, we came up with the
18 idea that 1000 hours would still represent a worst
19 case analysis for mitigation simply because of
20 past experience with other similar peaker power
21 plants. They don't necessarily run the entire
22 full length of time that they're permitted for.
23 Nevertheless, the idea of the mitigation
24 is that for any hours that it does run it'll be
25 mitigated. So, in other words, if they run 1001

1 hours then they would provide extra mitigation
2 over that limit.
3 So the idea is kind of coming up with a
4 realistic idea of how much this will actually
5 operate. This 4000 hours was considered
6 potentially the worst case. The idea was that in
7 reality it probably would run closer to 500.
8 Let's put 1000 hours in as the first cut.
9 If we go over that 1000 hours, then more
10 mitigation money would be provided to cover any
11 existing hours of operation.
12 MR. BUNDY: Okay, I have a couple of
13 followup question on that. I do want to clarify
14 that on page 11 -- well, on page 12 you call 1000
15 hours the worst case scenario. And you just
16 confirmed that and --
17 MR. DARVIN: For mitigation. For the
18 mitigation that's being proposed, yes.
19 MR. BUNDY: But it's not the worst case
20 scenario in terms of how much this plant actually
21 could run? On page 11 you call the worst case
22 scenario 4400 hours, is that correct?
23 MR. DARVIN: That's right. For modeling
24 purposes, emission calculations, everything.
25 MR. BUNDY: Okay. And you stated that

1 there will be additional mitigation provided if
2 the plant runs over, I believe -- I'll ask it this
3 way.
4 You're familiar with condition air
5 quality SC-6 that's been proposed in the final
6 staff assessment. And I believe you can confirm,
7 and from what I know this hasn't been offered into
8 evidence yet, but I'll just ask, based on your
9 familiarity with that, that the mitigation fees
10 proposed in that condition are based on 1200 hours
11 per year running time, is that correct?
12 MR. DARVIN: I'd have to double check
13 that number again.
14 MR. BUNDY: Okay. Assuming it's -- but
15 you are familiar with the condition, right?
16 MR. DARVIN: I'm familiar with the
17 condition, yes.
18 MR. BUNDY: All right. Is there
19 anything in that condition, as it's written, that
20 permits MMC to pay fees for operation of the plant
21 above 1200 hours a year?
22 You take a minute to look at it; I might
23 look back at it, too, because --
24 HEARING OFFICER RENAUD: The staff
25 issued an addendum to the FSA a day or two ago,

1 and that's probably the version we should be
2 looking at.
3 MR. BUNDY: Oh, okay, my --
4 HEARING OFFICER RENAUD: -- sure we have
5 the latest --
6 MR. BUNDY: -- understanding is that
7 there was no change to the actual language of the
8 condition. It was just a change to the reference
9 to the condition in the FSA, is that correct?
10 HEARING OFFICER RENAUD: I think that's
11 correct, yes, Mr. Bundy. Thank you.
12 MR. DARVIN: One thing I'd like to
13 clarify, actually, on the 4400 hours on that, was
14 that the reason we chose that number was the San
15 Diego Gas and Electric RFO required those number
16 of hours.
17 Getting back to your question, the idea
18 of the mitigation program is to fund it based on
19 expected operations. So I did not write SC-6, but
20 the idea of the mitigation program, regardless of
21 the number of hours of operation, is that every
22 hour will be mitigated.
23 MR. BUNDY: But can you point to
24 anything in -- maybe I'll ask -- I don't know if I
25 should ask staff. Okay. I'll ask staff about

1 that, but --
2 MR. DARVIN: But the intent of the
3 mitigation was just that, cover every hour of
4 operation realistically. And if we go over the
5 block of 1000, then provide that next level of
6 offsets.
7 MR. BUNDY: All right, let me get back
8 to -- but in your testimony, in your data response
9 number 9, the mitigation was offered on the basis
10 of 1000 hours per year, is that --
11 MR. DARVIN: Correct.
12 MR. BUNDY: Okay. Thanks for bearing
13 with me. Also, I don't know what the right time
14 to do it, you made a comment about the Carl Moyer
15 program, and I have -- there's an exhibit that
16 we've provided, which is a copy of the Carl Moyer
17 program guidelines.
18 And I don't know -- it's actually
19 attached, it's referenced in our request for
20 official notice. I don't know whether it would be
21 an appropriate time to see if there's any -- I
22 mean it's clearly --
23 HEARING OFFICER RENAUD: I don't think
24 there's any concern over taking notice of the Carl
25 Moyer program guidelines. That's --

1 MR. BUNDY: Thank you.
2 HEARING OFFICER RENAUD: -- government
3 record.
4 MR. BUNDY: Do you have a copy of that
5 exhibit? It's labeled as exhibit 618.
6 MR. DARVIN: Yes.
7 MR. BUNDY: Okay.
8 MR. DARVIN: Yes, I do.
9 MR. BUNDY: I know it's a rather fat
10 exhibit. I apologize for the length of it, but if
11 you could look at page Roman numeral II-1.
12 MR. DARVIN: I'm there.
13 MR. BUNDY: It's sub (c) under general
14 Carl Moyer program criteria.
15 Now, this provision of the guidelines
16 says that no emissions reductions generated by the
17 Carl Moyer program shall be used as marketable
18 emission reduction credits or to offset any
19 emission reduction obligation of any person or
20 entity. Is that correct?
21 MR. DARVIN: Well, I think it's taken a
22 little out of context with what we're discussing
23 here. In other words, we're proposing to fund the
24 Carl Moyer program for then others to get access
25 to those monies to provide various mitigations by

1 cleaning up existing sources.
2 MR. BUNDY: I understand the -- so, is
3 it your position that the applicant has no
4 emission reduction obligation in this instance?
5 MR. DARVIN: The applicant has
6 mitigation obligations that will be met through
7 funding of the Carl Moyer program.
8 MR. BUNDY: But you wouldn't call those
9 mitigation measures emission reduction
10 obligations?
11 MR. DARVIN: Yeah, under CEC mitigation
12 requirements, or CEQA mitigation requirements,
13 yes.
14 MR. BUNDY: They would be. Okay, thank
15 you. And just briefly I have a couple of
16 questions on greenhouse gas emissions from the
17 project.
18 Let's draw your attention to exhibit 2,
19 draw my own attention to exhibit 2, bear with me
20 for a second.
21 MS. LUCKHARDT: Our exhibit 2?
22 MR. BUNDY: Well, exhibit 2 is numbered
23 as your exhibit, yeah. That's the data adequacy
24 review responses. Page D-A-9. Table D-A-5.1-3.
25 I'm sorry, you're still --

1 MS. LUCKHARDT: Still trying to find it.
2 MR. BUNDY: All right. It's the
3 response to the data adequacy review. D-A-9, this
4 is table D-A-5.1-3.
5 MR. DARVIN: Okay.
6 MR. BUNDY: Okay. And this table
7 estimates that the greenhouse gas emissions and
8 CO2 equivalent for both turbines could be up to
9 250,039 metric tons per year, correct?
10 MR. DARVIN: Correct.
11 MR. BUNDY: And then I'd like to draw
12 your attention to exhibit 7 -- don't lose that
13 page, but exhibit 7, which is responses to EHC's
14 data requests. This is response number 36, it's
15 on page 3 of exhibit 7.
16 MS. LUCKHARDT: I'm sorry, it's number?
17 MR. BUNDY: It's the response to
18 question 36; it's on page 3. Do you have that
19 one?
20 MR. DARVIN: Yes.
21 MR. BUNDY: Here in this exhibit you
22 state that the greenhouse gas emissions and CO2
23 equivalent for each of the two turbines could be
24 up to 99,285 metric tons per year, is that
25 correct? That's in the first full paragraph of

1 the response.
2 MR. DARVIN: Yes.
3 MR. BUNDY: Okay. Now, using this
4 figure, I just multiplied that number by 2,
5 myself, because the response doesn't do it. But
6 the emissions from both turbines would equal
7 198,570 metric tons per year. Does that --
8 MR. DARVIN: Probably, yeah.
9 MR. BUNDY: 99,285 times 2, okay. I
10 checked it a couple times.
11 MR. DARVIN: Yeah, the easy one.
12 MR. BUNDY: Okay, yeah, that's an easy
13 one. Even lawyers can handle that.
14 So, which is the correct total figure?
15 The 198,570 metric tons per year in exhibit 7, or
16 the 250,039 metric tons per year in exhibit 2?
17 MR. DARVIN: I would have to go back and
18 check the original calculations, which I don't
19 have with me, but I could do that within the next
20 20 minutes or so.
21 MR. BUNDY: Okay, are those original
22 calculations somewhere in the record or --
23 MR. DARVIN: Either in the application
24 or in the response to comments. So, one of those
25 two numbers is correct.

1 MR. BUNDY: Okay. Now, going back to
2 exhibit 7, page 3, response 36, this says that the
3 existing Chula Vista peaker plant has the
4 potential to generate 168,821 metric tons of
5 greenhouse gases and CO2 equivalent, right? Okay.
6 So, whichever figure is correct, exhibit
7 2 or exhibit 7, for the new facility, does this
8 project have the potential to increase greenhouse
9 gas emissions as compared to the old facility?
10 MR. DARVIN: The existing facility, yes.
11 MR. BUNDY: Okay, thank you. Let me
12 just check and see if I have any other questions.
13 I believe that's all. I had a question about
14 construction emissions, but I think I can ask
15 staff about that. So, thank you.
16 HEARING OFFICER RENAUD: Cross-
17 examination by staff?
18 MR. BELL: No.
19 HEARING OFFICER RENAUD: I may have
20 already asked you that. City?
21 All right, redirect?
22 MS. LUCKHARDT: Yes.
23 REDIRECT EXAMINATION
24 BY MS. LUCKHARDT:
25 Q Okay, Mr. Darvin, you were asked a

1 couple of questions about the difference in the
2 emissions at 4400 hours and at 1000 hours. Can
3 you explain why you believe mitigating 1000 hours
4 would be sufficient for this facility?
5 MR. DARVIN: Well, it was partly based
6 on reviewing past record of operation of similar
7 facilities around the state, what total number of
8 hours that a typical peaking plant would operate.
9 And based on the data which, I believe,
10 went back about two to three years, the average
11 number of hours were around 5 to 600 hours.
12 So the idea with 1000 was to sort of add
13 a little added safety of margin for mitigation
14 such that it would certainly cover most of the
15 likely operating scenarios that the plant would
16 operate under during normal operations.
17 MS. LUCKHARDT: And you were asked a
18 question about the Carl Moyer program and referred
19 to a point in the Carl Moyer program where there
20 are guidelines regarding use of the program for
21 mitigation.
22 Is the Carl Moyer program publicly
23 funded?
24 MR. DARVIN: Yes, it is.
25 MS. LUCKHARDT: In this instance can you

1 explain then the proposal for this project, and
2 how that is different from the public funding that
3 is provided under the Carl Moyer program?
4 MR. DARVIN: Yes. First of all, what
5 we're doing with this program it is not to meet
6 any obligations of emission reduction credits as
7 San Diego APCD, since our emissions for this
8 project is explicitly exempt from that.
9 However, under CEQA, to mitigate any
10 increase in nonattainment pollutants, the idea was
11 to fund, through the Carl Moyer program, the
12 monies needed such that sources local to Chula
13 Vista could apply for those funds. Then apply, or
14 to add a certain control technology, reduce
15 emissions of their operations, what-have-you, Carl
16 Moyer provides a variety of mechanisms to clean up
17 let's say old dirty diesel engines.
18 And the money is used just as that.
19 It's publicly funded. However, there have been
20 past projects that have provided funds to that
21 program such that then the public can then access
22 those funds to clean up various sources.
23 MS. LUCKHARDT: And will any public fund
24 out of the Carl Moyer program be used for
25 mitigation of this project?

1 MR. DARVIN: If a project is identified
2 that needs substantially more money than what
3 we've initially offered, certainly the Carl Moyer
4 program would, I imagine, kick in the extra funds
5 to cover that.
6 The idea is to put the money in to give
7 incentive locally such that people could apply for
8 those reductions.
9 MS. LUCKHARDT: Will the project get any
10 credit for any additional funds that come out of
11 the public Carl Moyer funds?
12 MR. DARVIN: No.
13 MS. LUCKHARDT: Therefore, in your
14 opinion, does the project's proposed use of the
15 Carl Moyer program for mitigation violate the
16 policy that was pointed out to you in the Carl
17 Moyer guidelines?
18 MR. BUNDY: I don't know if I can object
19 to this, it's essentially calling for a legal
20 conclusion.
21 HEARING OFFICER RENAUD: We'll let the
22 witness answer. That will just go to the weight.
23 Thank you.
24 MR. BUNDY: Thank you.
25 MR. DARVIN: No. The idea of that is

1 that MMC could not access funds from the Carl
2 Moyer program as mitigation for this project. The
3 idea is that we do the opposite, that we actually
4 fund the program for others to use those monies.
5 MS. LUCKHARDT: And then you were also
6 asked some questions about the greenhouse gas
7 emissions, potential emissions from this project.
8 Were those calculations based upon the
9 4400 hours?
10 MR. DARVIN: Yes, they were.
11 MS. LUCKHARDT: Okay, I have nothing
12 further.
13 HEARING OFFICER RENAUD: Any recross-
14 examination?
15 MR. BUNDY: No, I don't believe so,
16 thank you.
17 HEARING OFFICER RENAUD: All right,
18 thank you.
19 Now, we also have -- oh, I'm sorry, let
20 me ask if there are questions from the Committee.
21 Yes.
22 ASSOCIATE MEMBER BOYD: Yes. First
23 question is about the 1000 hours, 1200 hours, the
24 4400 hours. I guess a question of -- is there an
25 hours cap in either any permit or any of the

1 proposed conditions, hours of operation cap? And
2 if so, what's the level of that cap on hours?
3 MR. DARVIN: The operational cap is 4400
4 hours. And that's based on both CEC and San Diego
5 Air Pollution Control District requirements.
6 ASSOCIATE MEMBER BOYD: All right,
7 second question. Do I infer from the direct and
8 redirect with regard to the mitigation funds in
9 the Carl Moyer program, to put it in lay terms,
10 that you're using the Carl Moyer program in effect
11 as a vehicle, a locally available vehicle, to fund
12 mitigation and thus it's not using public funds in
13 the traditional sense of the Carl Moyer program?
14 MR. DARVIN: That's correct.
15 ASSOCIATE MEMBER BOYD: Thank you.
16 Well, a third question. The greenhouse gas
17 emissions, are they basically linear? If you
18 predicated your number, whatever you decide it is,
19 on 4400 hours, and we started talking about 1000
20 or 1200 hours, is it just a linear extrapolation?
21 MR. DARVIN: It is.
22 ASSOCIATE MEMBER BOYD: Thank you.
23 HEARING OFFICER RENAUD: All right, any
24 further questions for Mr. Darvin on air quality?
25 Now, Ms. Luckhardt, you have Mr. Darvin

1 also on public health. Would you care to present
2 his testimony on that at this point, or shall we
3 complete the air quality witnesses? I'm up for
4 going either way. I'll hear anything from any
5 party.
6 MR. BELL: My recommendation, if I may,
7 as long as one witness has already been sworn as
8 already on a roll, I think for efficiency's sake
9 it would help if that witness could continue on
10 the testimony, especially the testimony
11 anticipated as next in order. That would have
12 been my request with my witnesses, as well.
13 HEARING OFFICER RENAUD: Ms. Luckhardt,
14 what do you have to say?
15 MS. LUCKHARDT: Okay, we can proceed
16 with Mr. Darvin, and if Mr. Lowe becomes available
17 we'll add him in when he calls in. Otherwise,
18 we'll proceed with Mr. Darvin on public health.
19 When I introduced Mr. Darvin I
20 introduced the exhibits for public health, as
21 well. And so I don't have any additional
22 questions for him that are separate from the
23 questions that I asked him earlier.
24 HEARING OFFICER RENAUD: All right. You
25 have no further testimony on public health, then,

1 from Mr. Darvin?
2 MS. LUCKHARDT: No, I do not.
3 HEARING OFFICER RENAUD: All right.
4 Does any party care to cross-examine on the public
5 health questions?
6 MR. BELL: No cross on behalf of staff.
7 HEARING OFFICER RENAUD: All right. Any
8 questions from the Committee --
9 MR. BUNDY: A moment --
10 HEARING OFFICER RENAUD: Go ahead, Mr.
11 Bundy.
12 MR. BUNDY: Could I reserve the
13 opportunity to ask a couple of questions after we
14 hear testimony from Ms. Williams?
15 HEARING OFFICER RENAUD: Yes, yes, you
16 may.
17 MR. BUNDY: Okay, since the same panel
18 will be up.
19 HEARING OFFICER RENAUD: The witness may
20 be recalled, yes.
21 MR. BUNDY: Okay, thank you.
22 HEARING OFFICER RENAUD: All right.
23 Applicant, it looks like your other witness in
24 these two areas would be John Lowe. Any luck yet?
25 No. Okay.

1 MS. LUCKHARDT: I don't have any word or
2 luck on that at this point.
3 HEARING OFFICER RENAUD: All right.
4 MS. LUCKHARDT: But if we're going to
5 retain Mr. Darvin on public health, we can bring
6 in John Lowe at that time.
7 HEARING OFFICER RENAUD: All right,
8 fine. Then next we would ask for staff testimony.
9 Are you prepared to proceed?
10 MR. BELL: Staff is prepared to proceed.
11 HEARING OFFICER RENAUD: All right, call
12 your first witness.
13 MR. BELL: Would you like me to call the
14 witnesses in order or in panel form?
15 HEARING OFFICER RENAUD: Whatever works
16 best for you.
17 MR. BELL: I'll call our two witnesses
18 in the area of air quality at this time. William
19 Walters and Matthew Layton.
20 HEARING OFFICER RENAUD: I think it
21 might be best -- you're going to the podium? I
22 think that's probably the best place for you. We
23 can get you both to a mike that way.
24 All right, let's swear you both in
25 first. Raise your right hand.

1 Whereupon,
2 WILLIAM WALTERS and MATTHEW LAYTON
3 were called as witnesses herein, and after first
4 having been duly sworn, were examined and
5 testified as follows:
6 HEARING OFFICER RENAUD: State your
7 names for the record.
8 MR. WALTERS: William Walters.
9 MR. LAYTON: Matthew Layton.
10 HEARING OFFICER RENAUD: Thank you.
11 DIRECT EXAMINATION
12 BY MR. BELL:
13 Q Mr. Walters, did you file previously
14 written testimony in the matter of the Chula Vista
15 Energy Upgrade project that has been incorporated
16 in the final staff assessment?
17 MR. WALTERS: Yes, I have.
18 MR. BELL: And, Mr. Layton, have you
19 also filed written testimony in this matter that's
20 been included in either the final staff assessment
21 or in the final staff addendum?
22 MR. LAYTON: Yes, I have.
23 HEARING OFFICER RENAUD: It might be
24 less awkward if you want to try that mike. I
25 think that one would work. That might be easier

1 for you both. If you want to stand next to him
2 and share a mike, that's fine. Whatever you want
3 to do.
4 MR. BELL: Are there any changes or
5 additions to your testimony at this time that you
6 previously filed?
7 MR. WALTERS: No, sir.
8 MR. BELL: And, Mr. Layton?
9 MR. LAYTON: No, sir.
10 MR. BELL: At this time, Mr. Renaud,
11 staff would move staff exhibit 200, section 4.1
12 with respect to air quality, into evidence.
13 HEARING OFFICER RENAUD: All right. Is
14 there any objection?
15 MS. LUCKHARDT: No.
16 HEARING OFFICER RENAUD: All right, that
17 will be admitted.
18 MR. BELL: Staff would further move
19 exhibit 205, final staff addendum section
20 pertaining to air quality, into evidence.
21 HEARING OFFICER RENAUD: All right. Is
22 there any objection?
23 MS. LUCKHARDT: No.
24 HEARING OFFICER RENAUD: That's
25 admitted, then.

1 MR. BELL: At this time the witnesses
2 are available for cross-examination.
3 HEARING OFFICER RENAUD: All right.
4 Applicant?
5 MS. LUCKHARDT: We have no cross.
6 HEARING OFFICER RENAUD: EHC?
7 MR. BUNDY: I do have a few questions.
8 These were written to address to Mr. Walters, but
9 I imagine, since you're both here, either of you
10 can feel free to jump in.
11 CROSS-EXAMINATION
12 BY MR. BUNDY:
13 Q Following up on I think you heard the
14 questions that I asked Mr. Darvin about mitigation
15 for air quality impacts, is that right?
16 MR. WALTERS: Yes, that's correct.
17 MR. BUNDY: Okay. And just turning your
18 attention to condition of certification AQSC-6, as
19 it appears in the final staff assessment, I'll ask
20 you the question that I asked him.
21 Is there anything in this condition, as
22 drafted, that requires the applicant to mitigate
23 emissions if they end up running over 1200 hours a
24 year?
25 MR. WALTERS: No, based on the

1 expectation that they won't. And to be more
2 clear, the mitigation isn't based on 1200 hours
3 per year; it's based on a tonnage of emissions,
4 which is based on the permitted levels that are
5 based on the 1200 hours per year, with 1000 of
6 those hours being at full load, 100 hours being on
7 startup, 100 hours being on shutdown.
8 The expectation is the actual emissions
9 will be considerably less for many of the
10 pollutants than the permitted emission levels,
11 which are the basis of the total tonnage numbers
12 that are used for the mitigation.
13 MR. BUNDY: Just to clarify, you said
14 that these tonnage numbers in AQSC-6 are based on
15 the permitted level?
16 MR. WALTERS: They're based on the
17 permitted emission levels, with the exception of
18 the sulfur, which we use a 0.25 or 0.20, I can't
19 remember exactly, although I could figure it out
20 by quickly looking back.
21 Right, lower loading to deal with the
22 fact that in reality the loading is probably more
23 like .1 rather than the .75 PUC limit for this
24 area.
25 MR. BUNDY: My questions is really,

1 though, when you refer to permitted level, do you
2 mean 4400 hours a year or do you mean 1200 hours a
3 year?
4 MR. WALTERS: I mean the emissions in
5 terms of the permitted emission levels, in terms
6 of how many pounds per hour emission rates that
7 are allowed.
8 So, for example, --
9 MR. BUNDY: So, not the permitted level
10 in terms of --
11 MR. WALTERS: Right.
12 MR. BUNDY: -- how many hours a year
13 this can run, but -- okay.
14 MR. WALTERS: But the permitted emission
15 rates on an hourly basis for each of those
16 startup, shutdown and the full load for 1000
17 hours.
18 MR. BUNDY: And just so the record is
19 clear, the tons per year discussed in the air
20 quality condition AQSC-6, are based on those
21 permitted levels of pounds per year, running 1000
22 hours per year at full load, 100 hours in startup,
23 for a total of 1200 hours per year. That's how
24 you get the tons per year figure, correct?
25 MR. WALTERS: Right, minus the existing

1 emissions for the facility, which was a very small
2 amount.
3 MR. BUNDY: Those are net, a net
4 increase, --
5 MR. WALTERS: Right.
6 MR. BUNDY: -- 1200 hours a year. Okay.
7 And then the funding level is based on the Carl
8 Moyer program cost effectiveness standards, right?
9 MR. WALTERS: Right. The assumption
10 being that we'll probably do a lot better than
11 that and come up with more mitigation with that
12 money than the 16,000 level. The 16,000 is a
13 ceiling level. You expect some projects to be
14 well below that in terms of their effectiveness.
15 That's certainly our hope so that there's even
16 more net benefit to the community.
17 MR. BUNDY: Okay. Since we're on the
18 topic of the Carl Moyer program, I just want to
19 ask the question, now I can't point to a specific
20 place in the record, but I think it's all over,
21 that the expected life of the power plant is 30
22 years, right?
23 MR. WALTERS: That's not really in my
24 general field.
25 MR. BUNDY: Okay. Can I ask, I don't

1 know if Mr. Darvin is here, but someone can
2 stipulate that?
3 MS. LUCKHARDT: Yeah, that's a general
4 number that is kind of thrown around often, a 30-
5 year life of a power plant. So we have no
6 objection to --
7 MR. BUNDY: No objection, all right.
8 MS. LUCKHARDT: -- saying that it may
9 run for 30 years.
10 MR. BUNDY: Thank you. I appreciate
11 that.
12 Now, the primary mitigation strategy or
13 the most specific one offered in AQSC-6 is a one-
14 time payment to the Carl Moyer Fund based on the
15 things we were discussing, correct? The total
16 tons per year at the upper end of the cost
17 effective?
18 MR. WALTERS: Well, it's a one-time
19 payment. It may be used for Carl Moyer or any
20 other fund as controlled by the CEC to make sure
21 that the mitigation, the tonnage essentially is
22 being met.
23 Certain options would include the city
24 taking over as the program lead. And, in fact, we
25 know that they would like to, and so we've written

1 that possibility in, as well.
2 So it doesn't have to be Carl Moyer, but
3 the funds, in essence, or the derivation of the
4 amount was based on the upper bound from the Carl
5 Moyer.
6 MR. BUNDY: And are you pretty familiar
7 with the Carl Moyer program guidelines?
8 MR. WALTERS: I'm generally familiar
9 with them.
10 MR. BUNDY: Generally familiar, okay.
11 Under those guidelines are you aware of any -- I'm
12 going to put -- you know the guidelines set out
13 specific criteria for certain kinds of emissions
14 reduction projects, right?
15 MR. WALTERS: But, again --
16 MR. BUNDY: That depend --
17 MR. WALTERS: -- I guess the key is,
18 while the Carl Moyer may be one of the ways in
19 which the funding will happen, this isn't the Carl
20 Moyer Fund. This is funding for emission levels
21 that meet the table in AQSC-6.
22 MR. BUNDY: Under --
23 MR. WALTERS: -- will be administered,
24 you know, through compliance with the CEC as the
25 ultimate arbiter of whether or not a particular

1 project, emission reduction project, will be
2 funded or not.
3 MR. BUNDY: Assuming that some of the
4 funding will flow through the Carl Moyer program
5 as Mr. Darvin indicated, are you aware of any
6 projects under the Carl Moyer program that have a
7 project life of 30 years?
8 MR. WALTERS: I haven't researched it.
9 I think it depends on how you consider emission
10 reductions, in terms of whether or not that's
11 relative or not.
12 MR. BUNDY: Okay, let me --
13 (Parties speaking simultaneously.)
14 MR. LAYTON: Two projects here in San
15 Diego, the Otay Mesa project and the Palomar
16 project relied on Carl Moyer and/or emission
17 reductions from mobile diesels similar to what
18 you're talking about in the Moyer program.
19 The water taxis and some of the water
20 craft that were being retrofit had been on the
21 water since 1945. So they do have a life that can
22 exceed a power plant, say, of 30 years.
23 MR. BUNDY: Let me go back to -- I'd
24 like to ask a question about construction
25 emissions. I don't know which one of you is the

1 person to talk to about them.
2 I'd like to -- do you have the various
3 exhibits in front of you?
4 MR. WALTERS: I have a good chunk of
5 them.
6 MR. BUNDY: Okay. Exhibit 200, the FSA,
7 page 4.1-26, and this is under method and
8 thresholds for determining significance.
9 You state here that all project
10 emissions of nonattainment criteria pollutants and
11 their precursors are considered significant and
12 must be mitigated, correct?
13 MR. WALTERS: That's correct.
14 MR. BUNDY: Okay. And those would
15 include NOx, VOC, PM10 and SO2?
16 MR. WALTERS: Yes, that's correct.
17 MR. BUNDY: And when you refer to PM10
18 there, do you include PM2.5 as a component of PM10
19 just to be --
20 MR. WALTERS: This project, I'm not sure
21 that -- I'd have to take a look and see if PM2.5
22 is --
23 MR. BUNDY: Okay, that was just a point
24 of clarification.
25 MR. WALTERS: It basically is PM.

1 MR. BUNDY: Basically PM, all right.
2 And is it correct that using this threshold you
3 concluded that the applicant's modeling results
4 showed significant impacts in light of the
5 nonattainment status for PM in the area? That
6 would be on page 4.1-34. The paragraph just above
7 startup and shutdown.
8 MR. WALTERS: Right, prior to the added
9 mitigation.
10 MR. BUNDY: Okay. And that significant
11 impact was identified in the modeling analysis
12 using the maximum permitted -- I'm sorry. Oh, I'm
13 sorry, missed a point, excuse me.
14 If you could turn to page --
15 MR. WALTERS: Table 20 is not
16 construction.
17 MR. BUNDY: I just lost my page, I'm
18 sorry. My page flipped over, that's why I was --
19 let me gather my wits a second, sorry.
20 Okay. I lost my page. If I could draw
21 your attention to table 19, which, I believe, is
22 construction. That's at 4.1-29.
23 Did table 19 model impacts from onsite
24 construction emissions based on table 11 and table
25 12?

MR. WALTERS: Yes, I believe so.

MR. BUNDY: Okay. And tables 11 and 12 set forth mitigated construction emissions, is that correct?

MR. WALTERS: No, not with staff's mitigation.

MR. BUNDY: Not with staff's mitigations, but with -- it says maximum mitigated daily emissions.

MR. WALTERS: I believe that's based on the applicant's levels of mitigation. And primarily that meant the fugitive dust proposals from the applicant.

MR. BUNDY: So using the mitigation that applicant proposed, in table 19 the project alone produces a 24-hour PM10 concentration of I believe it's a 101 mcg/cubic meter, is that correct?

MR. WALTERS: Right on fenceline.

MR. BUNDY: Right on the fenceline in terms of what?

MR. WALTERS: In terms of the location of where that impact is.

MR. BUNDY: Oh, right on the fenceline of the property. Okay. I'm thinking of the fenceline of a standard.

1 And, again, with the background, 24-hour
2 PM10 concentrations are 154 mcg/cubic meter?
3 MR. WALTERS: Yeah, with the
4 understanding that the model concentrations in the
5 backgrounds aren't truly additive because they
6 don't necessarily happen at the same time.
7 MR. BUNDY: But in either case, either
8 of those figures would exceed the standard of 50
9 mcg/cubic meter?
10 MR. WALTERS: Right, because the area
11 already exceeds, as it does for ozone.
12 MR. BUNDY: And the national air quality
13 standard is 150 mcg, so added together it would
14 exceed the national air quality standard, as well?
15 MR. WALTERS: Yes. And, again, the
16 number prior to the project exceeds.
17 MR. BUNDY: Okay. So you conclude then
18 that the additional mitigation measures proposed
19 by staff, AQSC-3 to AQSC-5, will reduce those
20 impacts to less than significant, is that correct?
21 MR. WALTERS: That's the general basis
22 for how construction significance and mitigation
23 is determined through the CEC's procedures.
24 MR. BUNDY: Okay.
25 MR. WALTERS: All feasible mitigation

1 essentially results in a less than significant --
2 MR. BUNDY: In a less than significant
3 impact.
4 So which of the -- I did notice that
5 there were -- are there mitigation measures that
6 were proposed by the applicant that were also --
7 were all of the applicant's mitigation measures
8 included in the staff's mitigation --
9 MR. WALTERS: If not word-by-word, in
10 general concept for the fugitive dust ones they
11 were. Certainly we went well beyond anything they
12 proposed for engine emission standards. The use
13 of tier three, -- certainly beyond anything they
14 proposed. So we did increase that, and added a
15 few other items for fugitive dust, as well.
16 MR. BUNDY: Okay. Could I turn your
17 attention to page 4.1-31 of exhibit 200; the
18 heading, adequacy of proposed mitigation.
19 You state that the applicant's fugitive
20 dust emission estimate assumed a 91 percent
21 efficiency factor, is that correct?
22 MR. WALTERS: Yes, I did.
23 MR. BUNDY: And what is the fugitive
24 dust control factor for staff's total package of
25 mitigation measures? Do you have a number for

1 that?
2 MR. WALTERS: No, it hasn't been
3 determined.
4 MR. BUNDY: Hasn't been calculated.
5 Okay. So can you say in quantitative terms how
6 much emissions reduction will be achieved through
7 compliance with all of staff's additional
8 measures?
9 MR. WALTERS: Not with any reliance.
10 MR. BUNDY: Okay. So there haven't been
11 any new quantitative estimates of construction
12 emissions based on the total package of mitigation
13 measures?
14 MR. WALTERS: No. The assumption is
15 things will be mitigated to the extent feasible.
16 MR. BUNDY: but -- okay. To the extent
17 feasible, all right.
18 So there is a possibility at least that
19 even applying all of the measures that are
20 feasible, there could be some increment that still
21 exceeds one of the standards and remains
22 significant?
23 MR. WALTERS: The standards are exceeded
24 without the project. There is no other --
25 MR. BUNDY: Well, let me rephrase that.

1 Is there still a possibility that construction
2 emissions from this project could contribute to
3 that standard which is already in exceedance?
4 Even after all the feasible mitigation measures
5 are applied.
6 MR. WALTERS: I don't think there's any
7 argument that there will be some contribution
8 because there will be a number over zero. So,
9 it's just the level of how much that is and the
10 fact that we are mitigating to the extent
11 feasible, which is essentially, you know, all we
12 can do.
13 MR. BUNDY: Right. Okay, thank you.
14 Let me just make sure I don't have anything else
15 here.
16 All right, I have no further questions,
17 thank you.
18 HEARING OFFICER RENAUD: Any other
19 cross-examination of these witnesses?
20 MR. BUNDY: I'm sorry to interrupt. I
21 would, again, as I said with Mr. Darvin, I might
22 have a couple of questions after Ms. Williams
23 gives her testimony. Is that acceptable?
24 HEARING OFFICER RENAUD: That's fine.
25 MR. BUNDY: All right.

1 HEARING OFFICER RENAUD: That's fine.
2 MR. BELL: I believe the city has some
3 questions.
4 HEARING OFFICER RENAUD: Yes, go ahead,
5 city, please.
6 CROSS-EXAMINATION
7 BY MR. TULLOCH:
8 Q If I could draw your attention to the
9 CEC Staff exhibit 203. And that's the Chula Vista
10 Elementary School District independent air quality
11 analysis. And ask if you took that into
12 consideration in any of your analysis for this
13 project?
14 MR. WALTERS: Let me see if I can find
15 that one, but I'm pretty sure that that exhibit
16 has to do with public health rather than the air
17 quality section. I think you need to ask that
18 question when public health is --
19 I did, however, you know, --
20 HEARING OFFICER RENAUD: Mr. Bell, will
21 you have any direct examination on public health
22 for these witnesses, or will it simply be to
23 introduce their FSA?
24 MR. BELL: It's to introduce their FSA
25 testimony. We do have a public health witness

1 I'll be calling.
2 HEARING OFFICER RENAUD: All right.
3 MR. BELL: At the appropriate time.
4 HEARING OFFICER RENAUD: I think why
5 don't you go ahead now and answer the public
6 health questions that the city may have, as well,
7 just in the interests that you're here.
8 MR. BELL: Should I call the public
9 health witness? He's present in the audience.
10 HEARING OFFICER RENAUD: Okay, this is
11 not the right witness for that question basically?
12 MR. BELL: No.
13 HEARING OFFICER RENAUD: All right.
14 Fine. Let me --
15 MR. TULLOCH: Did you conclude that this
16 would be more appropriate for this particular
17 document to be addressed during another phase, the
18 public health, or -- with another witness?
19 I mean I'm fine with that, I just don't
20 want to go past this if this is the time to talk
21 about it.
22 HEARING OFFICER RENAUD: The witness has
23 stated that it is really a public health document
24 that you're referring to. And I think he's
25 correct, frankly. And we're also hearing from the

1 proponent of the evidence that the -- or the
2 witness, that they have another witness who will
3 be better able to testify on that. So I think
4 that's what we should do.
5 MR. TULLOCH: Okay. And then we had
6 another area. This has to do with exhibit 21.
7 Exhibit 21 is a letter from the applicant where
8 they're agreeing to six mitigation measures that
9 the city had requested.
10 And one of those is number 2 that's been
11 addressed somewhat so far. And I wanted to know
12 if you were aware of that. You seem to be
13 generally aware of it; I wanted to know if you
14 were specifically aware of that mitigation measure
15 that the applicant had agreed to.
16 MR. WALTERS: Yeah, I have seen this
17 one.
18 MR. TULLOCH: And this particular
19 mitigation measure talks about giving the city an
20 opportunity for the first two years to propose
21 projects to the CEC Staff to use that $210,000,
22 with the idea that if it met the CEC criteria then
23 that project would be the one proposed by the city
24 staff.
25 And then at the end of that two years if

1 we hadn't proposed something, then the money could
2 then go into the Carl Moyer fund. And I just
3 wondered if you were aware that that was a
4 condition that the applicant was supporting be
5 included in the permit.
6 MR. WALTERS: I did understand how this
7 was written. However, I wanted to leave a little
8 more, at least in our condition, a little more
9 latitude. Because we do want the mitigation to
10 happen as soon as possible. And if they find
11 something outside the city that is a local project
12 that we consider will do a very good job of
13 reducing emissions for the money, we would like to
14 see that go forward, you know, as soon as
15 possible.
16 So, the condition provides the ability
17 for them to work with you directly. And if that's
18 what they want to do instead of providing funds to
19 any other measure, then they are, you know, quite
20 able to do that.
21 MR. TULLOCH: But you're aware that the
22 goal of the applicant and the city is to try to
23 find a project in that timeframe that would, in
24 fact, be done in that portion of Chula Vista
25 that's closest to the plant?

1 MR. WALTERS: Absolutely. And the
2 condition is written, you know, to that degree of
3 finding projects as close to the project site,
4 finding emission reduction projects as close to
5 the facility as possible.
6 MR. MEACHAM: I'm Michael Meacham, the
7 Director of Conservation and Environmental
8 Services for the City of Chula Vista.
9 CROSS-EXAMINATION
10 BY MR. MEACHAM:
11 Q Were you aware in your discussions with
12 the Air Pollution Control District officers that
13 submitted the report that they were comfortable
14 and agreed that the city could administer the
15 program if a project was identified in the city,
16 and particularly in that neighborhood, as opposed
17 to the Air Pollution Control District
18 administering the program?
19 MR. WALTERS: I talked to the Air
20 Pollution Control District specifically about
21 administering through Carl Moyer or through a
22 separate function that would be essentially under
23 their administration.
24 However, as I noted, the condition does
25 not require the program for the emission reduction

1 funding to go through, specifically through the
2 district. So it provides a latitude if that is
3 desired by the applicant and obviously yourselves,
4 that the funding would go specifically to projects
5 that you find.
6 Of course, as I noted before, the Energy
7 Commission will be the final arbiter on the
8 projects to make sure that they are meeting the
9 emission reduction goals.
10 MR. MEACHAM: I guess the question is
11 you seem to be creating an option for the
12 applicant, but you are aware that the written
13 statement by the applicant and by the city
14 requests that the city have the opportunity to
15 administer the program for the first two years if
16 a project can be identified for that community
17 that meets the Energy Commission standards, as a
18 priority.
19 MR. WALTERS: Yes, I'm aware of that. I
20 just didn't feel I needed to change the condition
21 since the condition provides that latitude.
22 MR. MEACHAM: Thank you.
23 HEARING OFFICER RENAUD: All right,
24 thank you. Is there any redirect?
25 MR. BELL: No redirect.

1 HEARING OFFICER RENAUD: All right. Any
2 further questions of these witnesses by anybody,
3 including the Committee?
4 All right, you may step down, but remain
5 available for public health.
6 MS. LUCKHARDT: Okay, I understand that
7 Mr. Lowe is on the phone at this time.
8 HEARING OFFICER RENAUD: All right.
9 MS. LUCKHARDT: So if you would like to
10 take him at this point I only have a couple
11 questions for him.
12 HEARING OFFICER RENAUD: That's fine. I
13 think we have to turn on something here.
14 (Pause.)
15 HEARING OFFICER RENAUD: Mr. Lowe, are
16 you there?
17 MR. LOWE: Yes, I am.
18 HEARING OFFICER RENAUD: All right.
19 We'll set up the sound system here so you can be
20 heard throughout the room. And I'm going to swear
21 you over the phone.
22 MR. LOWE: Okay.
23 HEARING OFFICER RENAUD: If you would
24 raise your right hand.
25 //

1 Whereupon,

2 JOHN LOWE

3 was called as a witness herein, and after first

4 having been duly sworn, was examined and testified

5 as follows:

6 HEARING OFFICER RENAUD: Please state

7 your name for the record.

8 MR. LOWE: My name is John Lowe.

9 MS. LUCKHARDT: Okay, hello, John; this

10 is Jane Luckhardt talking at this point. And I

11 will be asking people to please identify

12 yourselves as you speak, because unlike folks who

13 are here in the room it's impossible when you're

14 on the phone to understand who's talking at any

15 particular time.

16 And Mr. Lowe's qualifications have been

17 previously submitted, so I'm not going to go

18 through any of that.

19 DIRECT EXAMINATION

20 BY MS. LUCKHARDT:

21 Q Mr. Lowe, can you explain how the

22 standards are set for the -- the public health

23 standards are set?

24 MR. LOWE: Yes. The public health

25 standards fall into two categories as whether

1 you're discussing criteria pollutants, which have
2 national ambient air quality standards associated
3 with them, or if you have noncriteria pollutants
4 which are principally what are called toxic air
5 contaminants.
6 The criteria pollutants are set with
7 national ambient air quality standards. National
8 ambient air quality standards, or the state
9 parallels, California ambient air quality
10 standards, are set with the intent of protecting
11 the general public with a wide margin of safety.
12 And that's the language that's in the Clean Air
13 Act.
14 What EPA discusses in terms of a wide
15 margin of safety also means being able to address
16 health effects which aren't well recognized at
17 this point for health effects that may be below
18 the threshold of the standards that are set at the
19 time.
20 These standards are updated on a fairly
21 regular basis. The national ambient air quality
22 standards for fine particulate matter, or PM2.5
23 were updated just a few years ago. And currently
24 the EPA is going through a process to reevaluate
25 the data and possibly do further updates of those

in the future. So they're continually incorporating the best scientific information.

Noncriteria pollutants or toxic air contaminants are assessed using a human health risk assessment; and a human health risk assessment must be done before the toxics emissions from this proposed project.

The human health risk assessment uses guidelines that are developed by California Environmental Protection Agency. They evaluate potential cancer risks, noncancer effects, chronic, long-term exposure or noncancer effects from acute and short-term exposure.

They incorporate the results from the ambient air quality analysis to estimate the maximum impacts at the ground level associated with the maximum emissions from the facility.

The cancer risks are assessed using conservative methods that provide an upper bound estimate of the cancer risks. The noncancer effects are assessed by comparison with thresholds that are intended to be protective of a wide range of individuals, putting sensitive individuals who may receive daily exposure throughout a lifetime.

MS. LUCKHARDT: Okay, thank you. Have

1 you reviewed the testimony that will be presented
2 later today, the prefiled testimony of Ms. Joy
3 Williams?
4 MR. LOWE: Yes, I have.
5 MR. BUNDY: Is it appropriate to object
6 to that? I mean that testimony hasn't been --
7 could we stipulate to offer that testimony into
8 evidence right now?
9 MS. LUCKHARDT: Well, in order to
10 conduct the hearing in any kind of an expedited
11 fashion, unless we want to call John Lowe back
12 after Joy Williams testifies, I don't -- you know,
13 we can wait and try and call him back after Joy
14 Williams testifies, or we can have him respond to
15 her now.
16 HEARING OFFICER RENAUD: Let me ask Mr.
17 Bundy a question. Mr. Bundy, Joy Williams did
18 prefile testimony, correct?
19 MR. BUNDY: She did.
20 HEARING OFFICER RENAUD: And you intend
21 to offer that in evidence, correct?
22 MR. BUNDY: -- offer into evidence.
23 HEARING OFFICER RENAUD: All right. And
24 if you have an objection to John Lowe being
25 examined about that prefiled testimony at this

1 point, I'd like to know the basis of it.
2 MR. BUNDY: Well, the basis of the
3 objection would be that if he is giving his
4 opinion as to the substance of Ms. Williams'
5 testimony, the testimony is not in evidence yet.
6 I would just ask if the other parties would go
7 ahead and stipulate to her testimony and written
8 exhibits. I believe it's, from memory, exhibit
9 601 to 606. Just go ahead and admit, and if
10 you're willing to stipulate to that, I have no --
11 HEARING OFFICER RENAUD: I thank you for
12 that proposal, and I think that's a reasonable
13 proposal, that everybody stipulate that the
14 testimony John Lowe is about to testify about is
15 the prefiled testimony of Joy Williams, which will
16 be subsequently moved into evidence.
17 MS. LUCKHARDT: And we have no objection
18 to the testimony that she's offering coming into
19 evidence. I don't have any objection to that.
20 HEARING OFFICER RENAUD: Okay, thank
21 you.
22 MS. LUCKHARDT: So, I don't object to
23 that.
24 MR. BUNDY: Sorry to hold things up.
25 HEARING OFFICER RENAUD: That's fine,

1 thank you.
2 MR. BELL: Staff would have no objection
3 provided that Joy Williams will be available and
4 subject to cross-examination.
5 MS. LUCKHARDT: Right.
6 MR. BUNDY: And she will be. She's here
7 and I think she's ready, so, thank you.
8 HEARING OFFICER RENAUD: All right.
9 MS. LUCKHARDT: Okay, so, John, I had
10 just asked you whether you had reviewed her
11 testimony.
12 MR. LOWE: Yes, I have.
13 MS. LUCKHARDT: And do you have any
14 reaction to that testimony?
15 MR. LOWE: Well, I'll preface that by my
16 understanding of the testimony that Ms. Williams
17 provided is that she concluded that the air
18 quality analysis presented in the FSA inadequately
19 addressed public health impacts for three reasons.
20 First, it did not comprehensively
21 address the impacts from diesel emissions during
22 construction. Specifically impacts from diesel
23 emissions we not compared with the chronic
24 reference exposure level developed by Cal-EPA.
25 Second, she concluded that the air

1 quality analysis and the public health analysis
2 understated the severity of asthma in the
3 community. And did not take into consideration
4 other respiratory effects such as associated with
5 such as particulate matter in air.
6 And third, that the air quality analysis
7 and the public health analyses lack the
8 precautionary perspective of the potential public
9 health impacts of exposure to particulate matter.
10 Unless there's any questions I can talk
11 a little bit about my observations regarding those
12 three points.
13 MS. LUCKHARDT: If you would, thank you.
14 MR. LOWE: Okay. With regard to diesel
15 emissions, the Cal-EPA Office of Environmental
16 Health and Hazard Assessment prepared a risk
17 assessment for diesel particulate emissions.
18 They developed a reference exposure
19 level in that risk assessment which is the same
20 value as EPA's reference concentration. These are
21 essentially identical in concept. Both the REL
22 and the RFC, the reference concentration, are
23 protective of humans, including sensitive
24 populations, based on daily exposure over a
25 lifetime.

1 Now, the REL and the RFC for diesel
2 emissions, these are the chronic noncancer levels
3 protective of diesel emissions in air, these were
4 both derived from a laboratory study of chronic
5 inhalation exposure in rats. In other words, long
6 term inhalation exposure over most of the animals'
7 lifetimes.
8 When you take into consideration the
9 short duration of diesel emissions during
10 construction, those are clearly less than a
11 lifetime, comparisons to the diesel impacts to the
12 chronic reference exposure level, would be an
13 inappropriate way of characterizing the risks for
14 diesel emissions during construction.
15 And so I concluded from that that the
16 analysis that the staff presented in the PFS is
17 the more appropriate way to characterize potential
18 risks from diesel emissions.
19 With regard to considerations of asthma
20 and other respiratory effects for exposure to
21 particulate matter, EPA acknowledges, and there's
22 no question, that exposure to particulate matter
23 can aggravate asthma symptoms.
24 And a substantial fraction of the U.S.
25 population has been diagnosed with asthma or other

1 respiratory diseases. And in developing the
2 ambient air quality standards for particulate
3 matter, EPA concludes that small changes in
4 particulate matter concentrations and the risk
5 would result in large public health impacts. Had
6 the importance that EPA places on incorporating
7 the best science in regulating particulate matter
8 standards.
9 In addition, Ms. Williams pointed out
10 the concern that the analysis that staff prepared
11 focused on asthma. However, EPA, in its most
12 recent development of the particulate matter
13 ambient air quality standard, has considered a
14 range of health end-points including
15 cardiovascular effects. And these are documented
16 in its most recent update of the ambient air
17 quality criteria document of 2004. And that's the
18 basis for the most recent national ambient air
19 quality standard for PM.
20 The standards that the staff has used as
21 a basis for determining project significance are
22 health-based; they are based, you know, on the
23 USEPA and the ARB level. They're set at levels to
24 adequately protect the health of all members of
25 the public, including the most sensitive -- air

1 quality impacts. And that includes the aged,
2 people with existing illnesses, children. And
3 includes the margin of safety as I discussed
4 before.
5 Again, in defining an adequate margin of
6 safety, the EPA strives not only to prevent
7 pollution levels that are demonstrated to be
8 harmful, but to prevent lower pollution levels
9 that might pose an unacceptable risk, even if that
10 risk hasn't been well defined yet.
11 The nature of the risk and the severity
12 of the effect, the size of the population, the
13 kinds of uncertainty and the scientific evidence
14 are all factors that are considered in setting
15 these standards.
16 In assessing these health impacts it
17 should be noted that the model's impacts from the
18 project emissions were estimated at the point of
19 maximum air quality impact. And also incorporated
20 the highest ambient background concentration.
21 So, these impacts were estimated in a
22 conservative manner and then compared with air
23 quality standards that incorporated a margin of
24 safety.
25 Are there any questions before I move on

1 to my last point?

2 MS. LUCKHARDT: No. Please proceed.

3 MR. LOWE: Okay. With regard to

4 incorporation of the precautionary principle, Ms.

5 Williams cited a definition of the precautionary

6 approach for public health that Cal-EPA has

7 developed. And I'll quote this as: Taking

8 anticipatory action to protect public health or

9 the environment if a reasonable threat of serious

10 harm exists, based on the best scientific evidence

11 and other relevant information, even if absolute

12 and undisputed scientific evidence is not

13 available to assess the exact nature and extent of

14 risk."

15 In my examination of the staff's

16 analysis the analysis of air quality impacts,

17 standards used to evaluate public health risks and

18 particulate matter, and the mitigation measures

19 identified in response to results of the analysis

20 which identifies significant impacts, are

21 consistent with this definition and could be

22 considered a precautionary approach.

23 Again, the impact analysis was conducted

24 with conservative assumptions and was compared

25 with air quality standards based on the best

1 available science and incorporating a margin of
2 safety.
3 When the conservatively projected
4 impacts exceeded the standards, mitigation
5 measures were required to reduce these project
6 impacts.
7 That concludes what I have to say about
8 Ms. Williams' testimony. I can take any other
9 questions now.
10 MS. LUCKHARDT: Okay. Thank you very
11 much, Mr. Lowe.
12 I have no further questions of him, so
13 Mr. Lowe is available, at this point, for cross-
14 examination.
15 HEARING OFFICER RENAUD: Okay, staff,
16 any cross-examination?
17 MR. BELL: No cross.
18 HEARING OFFICER RENAUD: Environmental
19 Health Coalition.
20 MR. BUNDY: Just a couple questions.
21 CROSS-EXAMINATION
22 BY MR. BUNDY:
23 Q My name is Kevin Bundy; I'm representing
24 Environmental Health Coalition in this proceeding.
25 And your testimony is that these standards that

1 you were just speaking specifically about the
2 national air quality standards developed by EPA
3 are health-based, is that correct?
4 MR. LOWE: Yeah.
5 MR. BUNDY: Okay. Would you agree that
6 the California air quality standards are also
7 health-based?
8 MR. LOWE: I know less about the
9 California standards, but my understanding is,
10 yes, they are health-based.
11 MR. BUNDY: Okay. And are you aware
12 that the air quality analysis prepared by staff
13 for this proceeding found that there would be
14 potentially significant air quality impacts
15 related to particulate matter from this project?
16 MS. LUCKHARDT: Is that the --
17 MR. LOWE: I'm sorry, repeat that
18 question, please. Which impacts, which analysis
19 are you speaking of?
20 MR. BUNDY: I'm speaking about the air
21 quality analysis -- just asking if you're aware
22 that there was a finding of at least potential
23 significant, and I'll say, before mitigation of
24 this, that this could be -- that the project's
25 impacts added to the existing background violation

1 of at least the California standards, would be a
2 significant impact. Are you just aware of that
3 analysis?
4 MS. LUCKHARDT: And are you relating --
5 MR. LOWE: Yes, that --
6 MS. LUCKHARDT: -- to construction?
7 Construction impacts --
8 MR. BUNDY: I'm talking about
9 operational, I'm sorry. Well, both impacts
10 really, because there are exceedances in both.
11 MR. LOWE: That's my understanding is
12 that the staff had identified significant impacts
13 both for construction and operational impacts.
14 And had recommended mitigation measures for both.
15 MR. BUNDY: So, in your opinion, if
16 those mitigation measures were not sufficient
17 essentially to reduce the net particulate matter
18 emissions from this project to zero, in your
19 judgment would that contribute to a public health
20 problem?
21 MR. LOWE: I can't conclude based on the
22 information given me as to whether reducing those
23 to zero would completely -- would be more than
24 enough to mitigate the impact. What I can say is
25 that the analysis was conducted in accordance with

the appropriate regulatory procedures, compared with conservative ambient air quality standards.

There's some exceedances in those standards, and that mitigation was recommended. And that following what the staff concluded was that with implementation of those mitigation measures, the impacts would be reduced to less than significant.

MR. BUNDY: All right, thank you. I think that covers it.

HEARING OFFICER RENAUD: City, any questions? All right. Any redirect?

MS. LUCKHARDT: No redirect.

HEARING OFFICER RENAUD: All right, anybody have any questions of Mr. Lowe? All right.

MS. LUCKHARDT: So, now can we excuse Mr. Lowe at this point?

HEARING OFFICER RENAUD: Yes. Although, is there any possibility that someone will want him back? We might just ask that he remain available.

MS. LUCKHARDT: Okay. We will try and reach him again if you want. I just am not -- it takes some time to reach him, so we may -- it may

take us some time if we need to reach him again.

But at this point we can let him get off the phone?

HEARING OFFICER RENAUD: Yes.

MS. LUCKHARDT: Okay,.

HEARING OFFICER RENAUD: Thank you.

MS. LUCKHARDT: Thank you, John, that means you can hang up.

MR. LOWE: Great, thank you very much.

HEARING OFFICER RENAUD: Thank you.

MR. LOWE: Bye.

HEARING OFFICER RENAUD: Bye bye.

MR. BELL: Mr. Renaud, if I may?

HEARING OFFICER RENAUD: Mr. Bell, yes.

MR. BELL: I know that we've been doing some cross-over testimony here between air quality and public health. But we do have two representatives from the San Diego Air Pollution Control District present, here in chambers today.

This may be a good time, with your permission, for staff to move exhibit 202 into evidence, which is the FDOC, since these gentlemen are present.

HEARING OFFICER RENAUD: I think that's a good idea. Anybody object to that?

1 MS. LUCKHARDT: No objection.
2 MR. BUNDY: No objection.
3 HEARING OFFICER RENAUD: All right,
4 let's do it that way. 201 I have is the PDOC and
5 202 is the FDOC. Or did you want to move both or
6 just the FDOC?
7 MR. BELL: Staff is merely moving
8 exhibit 202 into evidence, the FDOC.
9 HEARING OFFICER RENAUD: Any objection?
10 All right, that will be admitted.
11 Do you wish to call those witnesses?
12 MR. BELL: I don't have them on my
13 witness list as witnesses. I'm not sure if
14 anybody else has any questions for them. The
15 Committee, possibly, but they are present and
16 available for --
17 MS. LUCKHARDT: I think we'd asked --
18 either the city had asked or someone had asked
19 that they be present. And so they're here and
20 available.
21 HEARING OFFICER RENAUD: Okay. This is
22 the opportunity for questioning, so if any party
23 or the Committee has questions, we can call them
24 up here. I'm not seeing any questioners.
25 MR. BUNDY: We have one question.

1 HEARING OFFICER RENAUD: All right,
2 please -- did you say there's more than one
3 witness, Mr. Bell?
4 MR. BELL: Yes, there are two gentlemen
5 present representing the District.
6 HEARING OFFICER RENAUD: Could you both
7 come forward, please. Okay, I'll swear you and
8 then you can state your names for the record. And
9 then we'll hear the question and we'll determine
10 who's the best one to answer it.
11 Whereupon,
12 JOHN ANNICCHIARICO and ARTHUR CARBONELL
13 were called as witnesses herein, and after first
14 having been duly sworn, were examined and
15 testified as follows:
16 HEARING OFFICER RENAUD: Please state
17 your names for the record.
18 MR. ANNICCHIARICO: John Annicchiarico,
19 San Diego County Air Pollution Control District.
20 HEARING OFFICER RENAUD: Can you spell
21 your last name, please.
22 MR. ANNICCHIARICO: A-n-n-i-c-c-h-i-a-r-
23 i-c-o.
24 HEARING OFFICER RENAUD: All right. And
25 you, sir.

1 MR. CARBONELL: Arthur Carbonell.
2 HEARING OFFICER RENAUD: Spell the last
3 name.
4 MR. CARBONELL: C-a-r-b-o-n-e-l-l.
5 HEARING OFFICER RENAUD: Thank you. All
6 right, proceed.
7 CROSS-EXAMINATION
8 BY MR. BUNDY:
9 Q It's my understanding that you are
10 comfortable with the concept with respect to the
11 mitigation for the air pollution increases, that
12 the city would have some period of time to develop
13 projects and propose those to the CEC. And then
14 if we couldn't do that in that two-year period of
15 time, then those funds would go into Carl Moyer.
16 But my understanding is you're
17 comfortable with us having a first opportunity, is
18 that correct?
19 MR. ANNICCHIARICO: I'm not sure. I
20 can't really answer that question. Our department
21 reviewed for the permit and we have a different
22 department that handles Carl Moyer. So,
23 unfortunately, I wasn't aware we were going to
24 discuss Carl Moyer.
25 MR. BUNDY: Okay, thank you.

1 HEARING OFFICER RENAUD: Any further
2 questions? All right. Just one -- okay, go
3 ahead, Mr. Bundy, please.
4 MR. BUNDY: One clarification on the
5 exhibits. Am I correct in understanding that
6 staff is not moving exhibit 201, the preliminary
7 determination of compliance?
8 MR. BELL: That's correct.
9 MR. BUNDY: Is there any objection to
10 that being part of the evidentiary record, or --
11 MR. BELL: Staff doesn't believe it's
12 necessary since we have the FDOC. Mr. Bundy, if
13 it would make you happy staff could move exhibit
14 201 into evidence as well.
15 MR. BUNDY: We're just curious about
16 that. I saw that you'd offered it earlier and
17 you're pulling it back. So I just was --
18 MR. BELL: I would allow you to offer
19 it, Mr. Bundy, if that's what you want.
20 MR. BUNDY: Sure, I would offer it into
21 evidence.
22 MR. BELL: No objection.
23 HEARING OFFICER RENAUD: Any objection?
24 MS. LUCKHARDT: No objection.
25 HEARING OFFICER RENAUD: All right, it's

1 admitted. Thank you.
2 Mr. Bell, let me just make sure. I
3 think typically a question or two is asked of
4 these representatives concerning their authorship
5 of the FDOC. Do you feel that's been covered
6 adequately in the written testimony, or would you
7 like to lay a foundation.
8 MR. BELL: No, I do believe that it has
9 been already covered. Those documents have been
10 received into evidence absent objection. So, any
11 dispute, I believe, as to the authenticity of the
12 documents or a foundation for the documents have
13 already been waived.
14 HEARING OFFICER RENAUD: All right.
15 Very good, thank you. So this is last call,
16 anybody have questions of these witnesses before
17 we let them go?
18 All right. Thank you, gentlemen.
19 Applicant, that looks like all of your
20 witnesses in air and public health, right?
21 MS. LUCKHARDT: That's correct.
22 HEARING OFFICER RENAUD: All right.
23 MS. LUCKHARDT: And we did, just as a
24 point of clarification, we did contact and attempt
25 to get the author of the school district study to

1 attend today's hearing. And although we did not
2 meet with him purposefully, because I did not want
3 to have any influence over what he might say, we
4 did offer to pay for his time. Because he works
5 for a consulting firm.
6 But he never got back to us that he had
7 received permission to attend today. And so I'm
8 assuming that he is not here today. And if he is,
9 speak now. Okay.
10 HEARING OFFICER RENAUD: Has that
11 exhibit, I know that was appended to one of the
12 prehearing conference statements by the city. Has
13 that been offered in evidence, or does anybody
14 wish to offer it in evidence, if it hasn't been?
15 MR. TULLOCH: We have planned on doing
16 that earlier, but the suggestion was that we talk
17 about it during public health. And we thought it
18 would be best to do that when the CEC Staff person
19 was up.
20 HEARING OFFICER RENAUD: All right,
21 that's fine. We'll do it then.
22 Well, since we've heard all of
23 applicant's witnesses in these two areas, I think
24 we'll move to staff. Do you have any further
25 witnesses?

1 MR. BELL: Yes, we do. We would call
2 Dr. Obed Odoemelam.
3 HEARING OFFICER RENAUD: All right,
4 please come forward, sir.
5 MR. BELL: This is in the area of public
6 health. Staff has already concluded our testimony
7 in the area of air quality.
8 HEARING OFFICER RENAUD: Good afternoon.
9 I'll swear you first, sir. Raise your right hand.
10 Whereupon,
11 OBED ODOEMELAM
12 was called as a witness herein, and after first
13 having been duly sworn, was examined and testified
14 as follows:
15 HEARING OFFICER RENAUD: All right.
16 State your name for the record and please spell
17 your name.
18 DR. ODOEMELAM: My name is Obed
19 Odoemelam.
20 HEARING OFFICER RENAUD: And can you
21 spell your last name, please.
22 DR. ODOEMELAM: O-d-o-e-m-e-l-a-m.
23 HEARING OFFICER RENAUD: All right,
24 thank you. And let me remind you to speak right
25 into that microphone so we'll make sure everybody

1 hears your every word.
2 Proceed.
3 MR. BELL: Thank you.
4 DIRECT EXAMINATION
5 BY MR. BELL:
6 Q Dr. Odoemelam, did you file previously
7 written testimony in the area of public health in
8 the matter of the Chula Vista Energy Upgrade
9 project?
10 DR. ODOEMELAM: Yes, I did.
11 MR. BELL: Do you have any changes or
12 additions to that original testimony?
13 DR. ODOEMELAM: No, I do not.
14 MR. BELL: At this time I would move
15 staff exhibit 200, section 4.7 concerning public
16 health into evidence.
17 HEARING OFFICER RENAUD: All right, is
18 there any objection?
19 MR. BUNDY: No.
20 HEARING OFFICER RENAUD: That's admitted
21 then, thank you.
22 Further questions?
23 MR. BELL: Yes. Doctor, did you have an
24 opportunity to read a statement that was prepared
25 by an individual by the name of Joy Williams?

1 DR. ODOEMELAM: Yes, I read most of
2 it -- stuff what's in it.
3 MR. BELL: After reading through that
4 statement, that prepared testimony, does any of
5 that change your analysis in the area of public
6 health for this project?
7 DR. ODOEMELAM: No, it does not.
8 MR. BELL: Do you have any comments that
9 you would like to make regarding that statement
10 that you read?
11 DR. ODOEMELAM: Yeah. The first comment
12 is about the assumption regarding asthma in the
13 community. There are lots of uncertainties about
14 asthma, not only in the community, but the
15 country, itself, all throughout the country. And
16 we did address that in our analysis.
17 And there are no specific measures that
18 can be applied in all cases to determine exposure
19 that will cause asthma, what kinds of pollutants,
20 and the susceptibility between population groups.
21 So, in the absence of -- in the present
22 uncertainty, the health agencies have made some
23 determinations about how to assess the possibility
24 of exposure. And so we have some reference
25 exposure levels that have been provided by the Air

1 Resources Board that we can use to assess the
2 possibility of asthma from exposure at different
3 levels.
4 MR. BELL: Thank you. Did you have
5 occasion to review a item of correspondence that
6 has been identified as staff exhibit 203, the
7 Chula Vista Elementary School District's
8 independent air quality analysis as it relates to
9 public health?
10 DR. ODOEMELAM: Yes. I believe it's the
11 one that deals with sensitivity of children in the
12 nearby schools. And from what I have seen there
13 are two letters.
14 The first letter of July 29th, I think
15 it was, the reviewer pointed to some mistakes in
16 our analysis. But in the second one of August --
17 let me make sure -- August 6th, he changed his
18 mind and said that the analysis had been conducted
19 properly after all.
20 Part of that was because of his
21 misunderstanding of how the sensitive receptor or
22 sensitivity issue was addressed in the analysis.
23 He did go back and review the approach that is
24 used by Cal-EPA. and concluded that he was --
25 that the analysis that staff conducted was correct

1 after all.

2 MR. BELL: Did you, in some way, rely on

3 the information that was contained in that

4 independent analysis and incorporate the thoughts

5 therein into your own analysis?

6 DR. ODOEMELAM: Well, I did not rely on

7 it, I was just aware of it.

8 MR. BELL: Okay. You considered it in

9 your analysis?

10 DR. ODOEMELAM: I considered it.

11 MR. BELL: Okay. I have no further

12 questions.

13 HEARING OFFICER RENAUD: Okay. Any

14 cross-examination? Applicant? No.

15 MS. LUCKHARDT: None.

16 HEARING OFFICER RENAUD: Environmental

17 Health?

18 MR. BUNDY: Yes, bear with me one

19 second. I do want to ask just a couple of

20 questions about the public health section of the

21 FSA, if I could. And I was just switching my

22 exhibits over, so let me make sure and get -- I

23 can direct you to the right page and everything.

24 //

25 //

1 CROSS-EXAMINATION
2 BY MR. BUNDY:
3 Q On page -- this is exhibit 200, page
4 4.7-15. And under potential impacts on background
5 asthma, I didn't mark this and forgive me for --
6 well, you do state that staff gathered a
7 significant amount of data about the incidence of
8 asthma in the country, and the project area in
9 particular, correct?
10 DR. ODOEMELAM: Yes.
11 MR. BUNDY: And you go on to state that
12 this data does not indicate that there are any
13 unusual circumstances with respect to asthma
14 incidents in the area, is that correct?
15 DR. ODOEMELAM: Yes.
16 MR. BUNDY: Did the data gathered by
17 staff include information on asthma emergency
18 discharge rates compiled by the community health
19 statistics unit of the County of San Diego?
20 DR. ODOEMELAM: Yes, we did --
21 MR. BUNDY: You did review those?
22 DR. ODOEMELAM: Yes.
23 MR. BUNDY: And so I don't know if you
24 have in front of you our exhibit 603(b). This
25 might be an appropriate time to put it up on the

1 screen. This was an exhibit we had emailed to the
2 city for --
3 Hopefully the right one will come up.
4 This should be a map showing asthma emergency
5 department discharge rates for fiscal year 05/06.
6 Page 2 actually shows the map.
7 MR. BELL: Counsel, I believe that may
8 be 603(c).
9 MR. BUNDY: No, this is the right one.
10 It's just -- there are two pages in this pdf. If
11 you go to the second page there's a map. I don't
12 know if you can make it full screen so we can see
13 the whole -- okay, there we go. Thanks.
14 And this map shows that asthma emergency
15 department discharge rates for fiscal year 05/06
16 are between 1200 and 1600 per 100,000 residents in
17 the Chula Vista area, the western Chula Vista area
18 specifically. Are you familiar enough with the
19 geography to see where that is? Thanks for
20 whoever's putting the hand over that, thank you.
21 DR. ODOEMELAM: Yes, I do see it.
22 MR. BUNDY: You see that?
23 DR. ODOEMELAM: Yes.
24 MR. BUNDY: Okay. And would you agree
25 just looking at this map that these are among the

1 highest reported rates of asthma emergency
2 department discharges for the County of San Diego?
3 DR. ODOEMELAM: It is, yes.
4 MR. BUNDY: What threshold would be
5 required for you to conclude that there are no
6 unusual circumstances with respect to asthma
7 incidence in the area based on this map?
8 DR. ODOEMELAM: Well, the thing is that
9 this data may not be any different from any other
10 section of the country that reports such
11 discharges, such incidence. So, it wouldn't be
12 that different. I have no reason to think that
13 the causes of asthma would differ in this general
14 area compared with any other general area for
15 which we have discharge information.
16 MR. BUNDY: So, your testimony is
17 essentially that asthma discharge rates in this
18 community are similar to those in other similar
19 communities around the country, is that the --
20 DR. ODOEMELAM: No. I said my
21 testimony, I didn't know that the asthma incidence
22 in this area is similar to those in neighboring
23 counties. But is somewhat lower than the
24 incidence for the state, if the state is
25 considered, in general.

1 So, in the testimony I've indicated, I
2 said the asthma incidence in this area, by itself,
3 compared to neighboring counties and also on a
4 statewide basis.
5 MR. BUNDY: Okay. On 4.77 of your
6 testimony, I believe this is in the first partial
7 paragraph appearing at the top of the page, you
8 state that present area background asthma rates
9 are not higher than staff would expect for
10 communities with the background pollutant levels
11 measured at existing area monitoring stations, is
12 that right?
13 DR. ODOEMELAM: Yes.
14 MR. BUNDY: And would you agree that the
15 existing background PM pollutant levels measured
16 at the Chula Vista station are high?
17 DR. ODOEMELAM: PM10 or PM2.5?
18 MR. BUNDY: I believe -- well, let me
19 look back at air quality table 10, I think that's
20 the staff-recommended background concentrations.
21 Sorry, give me a second.
22 This would be both for PM10 and 2.5,
23 this staff-recommended background concentrations
24 for PM10 background is 53 mcg/cubic meter for the
25 24-hour; the limiting standard is 50. Annual is

1 27 mcg; limiting standard is 20.
2 For PM2.5 24-hour is 33.3; the standard
3 is 35. And for annual the recommended background
4 is 12.2 and the limiting standard is 12.
5 So for three of those would you agree
6 that the background level in Chula Vista exceeds
7 the limiting standard, at least the California air
8 quality?
9 DR. ODOEMELAM: Yes, it does. And
10 actually we have a PM10, a PM2.5 problem
11 throughout the state. So it wouldn't be that
12 different from any kind of major urban area in the
13 state.
14 MR. BUNDY: I believe that's all the
15 questions I have, thank you.
16 HEARING OFFICER RENAUD: City,
17 questions?
18 MR. TULLOCH: Yes.
19 CROSS-EXAMINATION
20 BY MR. TULLOCH:
21 Q I'd like to draw your attention back to
22 the staff exhibit 203, which is the Chula Vista
23 Elementary School District independent air quality
24 analysis.
25 I heard your testimony earlier and I

1 just would ask if you're aware that the consultant
2 for the school district agreed with the conclusion
3 that there was no significant health risk impact
4 anticipated as a result of the proposed project.
5 And if you were in general concurrence with that?
6 DR. ODOEMELAM: Yes, I agree.
7 MR. TULLOCH: Thank you. Would this be
8 an appropriate time to move this into the record,
9 this document 203?
10 HEARING OFFICER RENAUD: Yes, of course,
11 if it hasn't been already.
12 MR. TULLOCH: I'd so move, then.
13 HEARING OFFICER RENAUD: Any objections?
14 MR. BELL: None.
15 MS. LUCKHARDT: No.
16 HEARING OFFICER RENAUD: It's admitted.
17 I'm sorry, go ahead, Mr. Bundy, I --
18 MR. BUNDY: My only concern about the
19 document is, that as it's been recognized by
20 others, this is essentially an addendum to the
21 health risk assessment, or an independent health
22 risk assessment. It does have the kind of
23 characteristics, and I think it's being relied
24 upon as expert testimony.
25 And there really is no -- the person who

1 prepared it is not here to sponsor it, hasn't been
2 sworn. So if it is admitted as an exhibit I would
3 request that it essentially be treated as hearsay.
4 HEARING OFFICER RENAUD: So noted. I
5 don't think anybody has really relied on it, as
6 far as I've heard, in their testimony. People
7 have looked at it. But your objection is noted
8 for the record and will be taken into account.
9 MR. BUNDY: Thank you.
10 HEARING OFFICER RENAUD: Thank you.
11 MR. BELL: And just for clarification,
12 no, it hasn't been relied on, but it has been
13 considered. And I believe that we have a general
14 concurrence with the conclusions are in the
15 document.
16 HEARING OFFICER RENAUD: Yes, that
17 sounds fair to me. All right.
18 Any redirect?
19 MR. BELL: No.
20 HEARING OFFICER RENAUD: All right, any
21 other questions? Committee? Thank you for your
22 testimony.
23 Okay, it looks like, from the witness
24 list, our next witnesses would be the
25 Environmental Health Coalition witnesses.

1 Mr. Bundy, we have been going for quite
2 some time. It would be a good time probably to
3 take our lunch break. But if your witnesses are
4 here and you'd like to get their testimony taken
5 care of and let them go, I think we could look at
6 doing that.
7 MR. BUNDY: I have no objection to
8 taking a lunch break if they're amenable to it.
9 HEARING OFFICER RENAUD: What's the
10 Committee's -- lunch, all right.
11 MR. BUNDY: Fine.
12 HEARING OFFICER RENAUD: We will adjourn
13 for lunch and resume at 1:30. Thank you.
14 (Whereupon, at 12:37 p.m., the hearing
15 was adjourned, to reconvene at 1:30
16 p.m., this same day.)
17 --o0o--
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19
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1 AFTERNOON SESSION

2 1:36 p.m.

3 PRESIDING MEMBER PFANNENSTIEL:

4 Everybody's taking their seat and everybody's

5 ready. Thanks. Hearing Officer Renaud.

6 HEARING OFFICER RENAUD: Thank you.

7 We're still on air quality and public health. And

8 I believe we're now going to hear the testimony of

9 witnesses on behalf of the Environmental Health

10 Coalition.

11 MR. BUNDY: I have one point of

12 clarification.

13 HEARING OFFICER RENAUD: All right.

14 MR. BUNDY: That's Ms. Takvorian, her

15 testimony is really focused on socioeconomic

16 resources and not so much on public health. So,

17 with your permission, we'd like to take her off of

18 the public health panel and just get to her next

19 in socioeconomics, if that's all right.

20 HEARING OFFICER RENAUD: That's fine.

21 MR. BUNDY: Okay. So, Ms. Williams, I

22 guess will you come up to the podium.

23 HEARING OFFICER RENAUD: All right, let

24 me swear you first.

25 //

1 Whereupon,

2 JOY WILLIAMS

3 was called as a witness herein, and after first

4 having been duly sworn, was examined and testified

5 as follows:

6 HEARING OFFICER RENAUD: State your name

7 for the record, please.

8 MS. WILLIAMS: I'm Joy Williams.

9 DIRECT EXAMINATION

10 BY MR. BUNDY:

11 Q All right, Ms. Williams, I believe that

12 your declaration and written testimony and

13 exhibits have already been moved into evidence,

14 but I did have just a couple of clarifying

15 questions about the exhibits I'd like to ask you.

16 Do you have with you some color copies

17 of exhibits, these are labeled 603(b), 603(c),

18 603(l), 605 and 606?

19 MS. WILLIAMS: I don't have a 603(l).

20 MR. BUNDY: Oh, okay. That's the youth

21 asthma map?

22 MS. WILLIAMS: That's correct.

23 MR. BUNDY: You need a copy of that?

24 MS. WILLIAMS: I think I do have one

25 here.

1 MR. BUNDY: You have one, okay. You do
2 have it?
3 MS. WILLIAMS: Yes.
4 MR. BUNDY: All right. With the
5 exception of 603(l), which I want to put aside for
6 a second, are these exhibits correct color copies
7 of the black-and-white exhibits that were so
8 designated in the exhibits that were distributed
9 earlier?
10 MS. WILLIAMS: That's correct.
11 MR. BUNDY: Okay. And with respect to
12 603(l), is it correct that you mentioned youth
13 asthma rates in your written testimony?
14 MS. WILLIAMS: That's correct, I did
15 cite this map in my testimony, but it was
16 inadvertently apparently left out of the listed
17 exhibits.
18 MR. BUNDY: Okay. What I'd like to do
19 is I'd like to have permission to distribute --
20 I'd like to move 603(l) into evidence, first of
21 all.
22 HEARING OFFICER RENAUD: Is there any
23 objection to that being received in evidence?
24 MS. LUCKHARDT: No.
25 HEARING OFFICER RENAUD: All right.

1 MR. BUNDY: Thank you, and I apologize
2 for the omission. And I'd also like to distribute
3 color copies, if I could, of the maps. I've
4 already given color copies to the applicant and
5 staff. And I have a few more sets here. Whenever
6 is convenient, I can give to --
7 (Pause.)
8 MR. BUNDY: And I have a copy here for
9 the city. I don't want to walk over there, but
10 I'll get this to you.
11 Ms. Williams, we've already heard a
12 couple of other witnesses summarize your
13 testimony. I wanted to give you an opportunity if
14 you wanted to, to summarize it in your own words.
15 MS. WILLIAMS: Okay. So, this is my
16 testimony on the public health --
17 MR. BUNDY: Yeah, I'm sorry. There are
18 two pieces of written testimony. Why don't we
19 take the public health testimony first. Thank
20 you.
21 MS. WILLIAMS: Okay. As was stated
22 earlier, I did review the public health FSA and I
23 thought it was flawed in three ways. One was
24 regarding the diesel construction impacts. Diesel
25 is one of the air emissions that's identified as a

1 toxic air contaminant in California. And it does
2 not yet have an acute reference exposure level
3 assigned to it, which might be the most correct
4 way to evaluate short-term exposures to diesel.
5 But we don't have that figure to use.
6 There is a chronic reference exposure
7 level which is 5 mcg/cubic meter. That's been set
8 by OEHHA.
9 Now, looking at the data in table 19, I
10 think, of the air quality section, it appears that
11 the diesel impacts at the most exposed residence
12 and school would be below that 5 mcg/cubic meter
13 level.
14 But as far as I could tell those
15 emissions were modeled based on the mitigated
16 emissions. So I don't think we've seen a true
17 worst case diesel impact level from construction
18 impacts.
19 Also, the analysis failed to note that
20 there's no child-specific reference doses that
21 have been developed for diesel exhaust for either
22 chronic or short-term exposure.
23 So this is an important source of
24 uncertainty about the health impact of the project
25 on children.

1 Then I wanted to go over the situation
2 with regard to asthma, which has already been
3 discussed by a couple of other witnesses so far.
4 MR. BUNDY: Not to interrupt, but would
5 it be helpful to have the maps back up on the
6 screen?
7 MS. WILLIAMS: Sure.
8 MR. BUNDY: Okay.
9 MS. WILLIAMS: Yes, that would be
10 helpful, thank you.
11 MR. BUNDY: We can do 603(b) again.
12 MS. WILLIAMS: In response to the
13 comment in the public health section that
14 indicates the data do not indicate there are any
15 unusual circumstances with respect to asthma
16 incidence in the area.
17 For one thing, I want to clarify that
18 this asthma incidence means the number of people
19 who have been diagnosed with asthma. This is just
20 the rate of people who, at some point in their
21 life, had a doctor tell them that they had asthma.
22 Now, for one thing, we don't have a true
23 incidence statistic for our county or for this
24 community because asthma is not a reportable
25 disease. So when a doctor makes that diagnosis,

1 he or she is not obligated to report that to the
2 state, such as is done with infectious diseases
3 and cancers.
4 So the only information we have on
5 asthma prevalence are estimates that come from
6 health surveys. And the health survey that's
7 being used as the source of information on asthma
8 prevalence in Chula Vista comes from 2003
9 California Health Interview Survey.
10 That's a survey that's done by telephone
11 of all -- of a sample of Californians. And then
12 the data is compiled at the county level. So
13 there is a prevalence level from that survey that
14 applies to the entire County of San Diego.
15 But in a county as large and diverse as
16 this one, that may not be descriptive at all of
17 any particular community within the county. So we
18 don't really know what the true prevalence level
19 is here in Chula Vista.
20 The other issue with focusing only on
21 incidence is that isn't the only measure of asthma
22 that's important for public health. As I
23 mentioned, you know, incidence is just the number
24 of people who have it, but for patients, their
25 families and the public health system and the

1 health care system, it's important also to look at
2 severity of asthma.
3 And that would include, for example, the
4 number of symptom days, lost school and work days,
5 use of medication, visits to emergency departments
6 and inpatient hospitalizations, and of course,
7 deaths.
8 And the information we have on that is
9 more specific by community. And this is the data
10 that we're showing you from these maps that were
11 developed by the County of San Diego, where they
12 were looking at emergency department visits for
13 asthma and for another respiratory illness, which
14 is chronic obstructive pulmonary disease.
15 MR. BUNDY: And, Ms. Williams, just to
16 interrupt, that would be map 603(c), correct?
17 MS. WILLIAMS: That's correct, the COPD
18 map?
19 MR. BUNDY: Right.
20 MS. WILLIAMS: Okay. So emergency
21 department visits could mean that more people have
22 the disease in this community. It could mean that
23 more people don't have a regular source of health
24 care to manage the disease, or both. But in any
25 case, these rates mean that there's a greater

1 burden of respiratory disease for patients,
2 families and the health care system in Chula
3 Vista.
4 And then finally, going back to the
5 issues about precaution. This isn't a brand new
6 concept. Public health traditionally is
7 precautionary and it seeks to prevent exposures to
8 harmful substances or pathogens.
9 An example of that would be the use of
10 zoning to separate incompatible land uses, and an
11 example where it's not necessary to provide
12 quantitative evidence in every instance that harm
13 would be caused to public health by not following
14 those zoning codes.
15 In this case there is uncertainty about
16 the magnitude and the exact nature of the health
17 risks. There are published studies which are
18 submitted along with in these exhibits that find
19 health effects of exposure to particulate matters
20 at levels lower than Chula Vista residents are
21 already exposed to.
22 As I've noted, child-specific reference
23 doses or cancer risk factors are not available for
24 the vast majority of substances that children are
25 exposed to, including diesel.

1 In contrast, the FSA notes that there is
2 uncertainty about the health impacts of
3 particulate matter, and that the community is
4 concerned about asthma. But it does not take a
5 precautionary approach.
6 The important elements of precaution, as
7 it's currently understood, are to take action in
8 the face of uncertainty, to explore a wide range
9 of alternatives to possibly harmful actions, and
10 increase public participation in decisionmaking.
11 And that's based on the article from Joel Tickner,
12 who is a noted national writer on precaution. And
13 you have that article in one of the exhibits.
14 The FSA, in contrast, concludes that
15 incremental addition to the risk is insignificant.
16 Going back to the meaning of significance,
17 significance of risk is a policy issue. It's not
18 really a scientific concept. And by stating this
19 as a scientific conclusion, the FSA precludes
20 transparent public discussion of the acceptability
21 of these risks to the people who are bearing the
22 risks. And it precludes discussion of
23 alternatives to this technology in this location.
24 That summarizes my comments.
25 MR. BUNDY: Thank you for that. And you

1 heard -- is it Mr. Lowe or Dr. Lowe, who was on
2 the -- Dr. Lowe --
3 MS. LUCKHARDT: No, I think just Mr.
4 Lowe.
5 MR. BUNDY: Mr. Lowe, okay. You heard
6 Mr. Lowe's discussion of your written testimony,
7 correct?
8 MS. WILLIAMS: That's correct.
9 MR. BUNDY: Did you have anything more
10 you wanted to say about what Mr. Lowe said that
11 you haven't covered in your summary, any response
12 to that, in particular?
13 MS. WILLIAMS: I wanted to respond to
14 his statement that air quality standards are set
15 with a wide margin of error, however best phrased,
16 a wide margin of protectiveness for public health.
17 And whatever the intentions are of those
18 standards, there is evidence that there are health
19 effects occurring to exposures to particulate
20 matter at levels below the current standards.
21 For example, the State Air Resources
22 Board released a draft document in May of this
23 year where they're estimating rates of premature
24 mortality in relation to exposures to particulate
25 matter, to fine particulate matter.

1 According to their information or their
2 best estimations, --
3 MS. LUCKHARDT: Now, I've got an
4 objection here. Is this -- this is a brand new
5 document that we're talking about. We're talking
6 about a brand new study that hasn't been
7 previously referenced in the exhibits or in the
8 discussion so far, is that what this is?
9 MR. BUNDY: This is --
10 HEARING OFFICER RENAUD: Please respond
11 to that.
12 MR. BUNDY: It is correct that this is
13 not -- this was not an exhibit that was --
14 MS. WILLIAMS: Correct.
15 MR. BUNDY: -- attached to your
16 testimony? And is it correct that in responding
17 to Mr. Lowe's testimony it reminded you that you
18 had read this study?
19 MS. WILLIAMS: That's correct.
20 MR. BUNDY: This draft?
21 MS. WILLIAMS: Yeah, that's right.
22 MR. BUNDY: And do you feel familiar
23 enough with what's in that study to describe it
24 accurately for --
25 MS. WILLIAMS: I believe so.

1 MR. BUNDY: And I would offer -- not to
2 keep burdening people with exhibits, but I would
3 offer if the record were held open -- I mean this
4 is something we can obtain and provide.
5 MS. WILLIAMS: Yes, I don't have copies
6 with me today, but it's available online. Or we
7 could supply hard copies.
8 MS. LUCKHARDT: Now, I have an objection
9 to this on one level. This is a draft document,
10 as I understand, as you've described it?
11 MS. WILLIAMS: That's correct.
12 MS. LUCKHARDT: This is a draft
13 document, it hasn't been adopted, we haven't had
14 an opportunity to review it. And so I object to
15 having this come into the record at this time,
16 given those two --
17 HEARING OFFICER RENAUD: I can
18 understand your objection. I think, in the
19 interests of expediting the hearing and
20 efficiency, I'd like to have the questioning
21 proceed. The document can then be introduced
22 later. And the fact that it's a draft is one of
23 the elements that will go to the weight to which
24 that evidence will be given.
25 MS. LUCKHARDT: I would just ask that

1 you clarify, if you can, to the best of your
2 ability, the exact title of that document.
3 MS. WILLIAMS: I don't have the title
4 page with me. The best of my recollection it is
5 Methodology for Estimation of Premature Mortality
6 Linked to Exposure to PM2.5 in California.
7 HEARING OFFICER RENAUD: Okay, thank
8 you. Is there an author we could identify it
9 with?
10 MS. WILLIAMS: California Air Resources
11 Board.
12 HEARING OFFICER RENAUD: Okay, thank
13 you.
14 MS. WILLIAMS: So the summary statistic
15 from this methodology states that for each 10
16 mcg/cubic meter increment of PM2.5 there would be
17 a corresponding increase of 10 percent in the all-
18 cause mortality rate.
19 So that was the central statistic of the
20 study. They have also, in this study, made
21 estimates of the number of deaths that would be
22 prevented by meeting certain air quality
23 standards. And they've done that by each county.
24 Now, they estimate that for San Diego
25 County there would be an estimated 320 deaths

1 avoided each year if we met the PM2.5 standard of
2 12 mcg/cubic meter. And that's the annual
3 average.
4 However, if you suppose that there might
5 be a threshold effect of say, 7, as the level
6 below which it's uncertain if there would be
7 additional increases in mortality below that. So,
8 if you look at the annual premature deaths that
9 would be avoided if you got the annual average
10 PM2.5 down to 7, it's 870.
11 MR. BUNDY: That's statewide or --
12 MS. WILLIAMS: No. This is for San
13 Diego County --
14 MR. BUNDY: San Diego County.
15 MS. WILLIAMS: -- only. So the
16 difference between those two numbers, between
17 meeting the standard or getting down to 7, is an
18 additional 550 deaths a year.
19 So, this is a draft document, and these
20 exact numbers might not hold on further refinement
21 of their model, but the important point here is
22 that there are deaths occurring at levels below
23 the standards. So that would mean, I think, that
24 the standards have not been set with a wide margin
25 for protection of public health. And I wanted to

respond to that comment of Mr. Lowe's.

MR. BUNDY: Thank you.

HEARING OFFICER RENAUD: May I interject, just for the record, are you referring to a comments regarding a May 22, 2008 CARB draft staff report by Dr. James Enstrom, July 11, 2008, possibly?

MS. WILLIAMS: The date is May -- it's May 2008.

HEARING OFFICER RENAUD: The May is the date of the CARB draft report, right?

MS. WILLIAMS: That's correct.

HEARING OFFICER RENAUD: And the comments are from July. Does that make -- I've got something up here on the internet and I just want to see if we can get into the record exactly what it is.

MS. WILLIAMS: I'm not positive the date of the comments.

HEARING OFFICER RENAUD: All right, thank you.

MR. BUNDY: Thanks.

MR. TUTT: Hearing Officer Renaud.

HEARING OFFICER RENAUD: Yes.

MR. TUTT: I do have the report up on my

1 screen on the internet. Would you like me to read
2 the title?
3 HEARING OFFICER RENAUD: That would be
4 good. For purposes of the record, if we have it
5 in the record exactly what the document is, that
6 will make it much clearer for everybody.
7 MR. TUTT: The title is, Methodology for
8 Estimating Premature Deaths Associated with Long-
9 Term Exposures to Fine Airborne Particulate Matter
10 in California, draft staff report May 22, 2008.
11 HEARING OFFICER RENAUD: Thank you.
12 Does that appear to be the document?
13 MS. WILLIAMS: Yes, it does.
14 HEARING OFFICER RENAUD: Thank you.
15 MR. BUNDY: Thank you. Moving on, you
16 heard Dr. Odoemelam's response to your testimony,
17 as well. And did you have any brief responses to
18 what he said, particularly about asthma, that you
19 didn't already cover in your summary?
20 MS. WILLIAMS: Again, I think that he
21 was referring to asthma incidence. And that the
22 information I presented takes a broader look at
23 the burden of asthma, in terms of severity.
24 MR. BUNDY: And in your judgment, is
25 there an unusual circumstance with respect to

1 asthma and chronic obstructive pulmonary disease
2 in the area immediately surrounding this project
3 site?
4 MS. WILLIAMS: According to the county
5 data, the west Chula Vista community has a high
6 level of emergency department visits for the two
7 respiratory disorders for which they have this
8 information available that would point to an
9 unusual rate of prevalence or access to health
10 care or both.
11 MR. BUNDY: And I want to note for the
12 record that Ms. Williams also offered testimony
13 regarding a couple of maps showing the
14 distribution of generation, megawatts of fossil
15 fuel generation in various parts of San Diego
16 County by 10,000 population, and also broken down
17 by minority population.
18 Unless there are -- those have already
19 been admitted into the record, so unless there are
20 further -- I don't have any direct questions on
21 those.
22 HEARING OFFICER RENAUD: Are you through
23 with your questioning then? All right.
24 Applicant, do you wish to cross-examine?
25 MS. LUCKHARDT: I have just a few

1 questions. And I will say that given that I
2 haven't had an opportunity to review the report
3 that Ms. Williams testified on, we may have
4 further concerns once we've had a chance to review
5 that. But I'm not going to be able to do it here,
6 so we would express those concerns in briefing --
7 HEARING OFFICER RENAUD: We would be
8 inclined toward reopening the record with respect
9 to that matter if the need arose.
10 MS. LUCKHARDT: Okay.
11 CROSS-EXAMINATION
12 BY MS. LUCKHARDT:
13 Q Ms. Williams, you recognized in the
14 testimony that you gave just a moment ago that the
15 only exposure level that's available for diesel
16 particulate is a chronic exposure, is that
17 correct?
18 MS. WILLIAMS: That's correct.
19 MS. LUCKHARDT: And chronic exposures
20 are typically long-term exposures?
21 MS. WILLIAMS: That's typical, but I
22 don't believe there's an exact definition of what
23 would constitute long term.
24 MS. LUCKHARDT: Isn't it true that
25 construction emissions would be limited in

duration?

MS. WILLIAMS: Relative to the entire operation of the plant, I mean that would be true.

MS. LUCKHARDT: Okay, I'm going to move off of that for a second. One question I have for you, in developing the maps of the amount of number of power plants within an area or the megawatts in an area, did you include South Bay in your analysis?

MS. WILLIAMS: Yes.

MS. LUCKHARDT: And did you include Otay Mesa?

MS. WILLIAMS: Yes.

MS. LUCKHARDT: And did you include Chula Vista, as it exists now, or as it is proposed?

MS. WILLIAMS: As it exists now.

MS. LUCKHARDT: And you created the separate demarcations, the lines that were created on the map, is that correct?

MS. WILLIAMS: No, that's not correct. Those are federal government designations.

MS. LUCKHARDT: The lines of the areas?

MS. WILLIAMS: You're speaking of the metropolitan statistical areas?

MS. LUCKHARDT: Is that the basis for the areas?

MS. WILLIAMS: Yes.

MS. LUCKHARDT: Okay. But you selected which areas to include when you were creating the map, is that correct? I'm not referring to the asthma maps. I believe --

MR. BUNDY: Would it help to have this up on the --

MS. LUCKHARDT: Oh, is that the power plant maps?

MR. BUNDY: These are the power plant maps.

MS. LUCKHARDT: Yes, yeah.

MR. BUNDY: These are -- I'm sorry to interrupt you --

MS. LUCKHARDT: No, no, no, that's fine. It would be helpful to have those --

MR. BUNDY: 605 and 606 are the power plant maps.

MS. LUCKHARDT: So, 605, are those maps based on government boundaries?

MS. WILLIAMS: Yes. Metropolitan statistical areas are core urban areas that are designed to be used with census data.

1 MS. LUCKHARDT: Okay, so it's a census
2 data boundary is what it is? A boundary used for
3 census data?
4 MS. WILLIAMS: They're core urban areas
5 as defined by the federal government that jibe
6 with census tract boundaries. So you don't have
7 overlaps between census tracts and these
8 boundaries.
9 MS. LUCKHARDT: Okay, so it was used
10 because it allowed you to use the census tract
11 information on population?
12 MS. WILLIAMS: That's correct.
13 MS. LUCKHARDT: Are you aware of what
14 the construction schedule is for this project?
15 MS. WILLIAMS: As far as the actual
16 start and stop dates?
17 MS. LUCKHARDT: The duration of the
18 construction.
19 MS. WILLIAMS: I know what's in the -- I
20 think it's been estimated at seven to eight
21 months.
22 MS. LUCKHARDT: Okay. And would you
23 consider that to be long term?
24 MS. WILLIAMS: I consider that there's
25 uncertainty about what's long term when you're

1 talking about very young children, for example.
2 MS. LUCKHARDT: Isn't it true that
3 there's a difference between chronic and -- I'm
4 sorry, I don't have the other term in front of
5 me -- in setting the risk exposure levels?
6 There's a short term -- acute, I'm sorry
7 Acute and chronic.
8 MS. WILLIAMS: Yes, there is. I mean an
9 acute level would be the one that's looking at
10 shorter term impacts; and the chronic would be
11 looking at longer term impacts.
12 It's unclear exactly where you would
13 draw those boundaries. And it's particularly
14 unclear in how it applies to children.
15 (Pause.)
16 MS. LUCKHARDT: Are you aware of how
17 health risk assessments are conducted?
18 MS. WILLIAMS: I've read the OEHHA
19 guidance documents on how to conduct them, yes.
20 MS. LUCKHARDT: And are you aware that
21 when evaluating a chronic risk it's over a 70-year
22 exposure period?
23 MS. WILLIAMS: I'm aware that that's
24 stated in the document. It's also in there that
25 it's very unclear as to how the standards apply to

1 children or shorter time period of exposure.
2 MS. LUCKHARDT: Are there any levels
3 adopted that apply to children at this point?
4 MS. WILLIAMS: OEHHA is in the process
5 of developing child-specific reference doses. To
6 this date they've only actually set reference
7 doses for ten compounds. So they haven't gotten
8 very far with that.
9 MS. LUCKHARDT: Okay, thank you. I have
10 nothing further.
11 HEARING OFFICER RENAUD: Staff,
12 questions for the witness? Thank you.
13 CROSS-EXAMINATION
14 BY MR. BELL:
15 Q You know the difference between DPM, or
16 diesel particulate matter, and PM10 and PM2.5,
17 correct?
18 MS. WILLIAMS: Correct.
19 MR. BELL: In your direct testimony you
20 stated that in staff's table 19, air quality,
21 section 4.1-29, and also carrying onto the next
22 page 4.1-30, that DPM impacts are included on
23 those tables, did you not?
24 MS. WILLIAMS: I was making the
25 presumption that most of that PM10 would be from

1 diesel engines, and would therefore be diesel PM.
2 And that's based on the information in table 11
3 where it's partially broken out as to what is
4 combustion sources, and what is fugitive dust.
5 MR. BELL: Correct, but that's not
6 including --
7 MS. WILLIAMS: Although it doesn't
8 completely break that out for the offsite.
9 MR. BELL: No, but that's not included
10 in table 19, is it?
11 MS. WILLIAMS: Excuse me?
12 MR. BELL: DPM is not included in table
13 19 is it?
14 MS. WILLIAMS: Not specifically, no.
15 MR. BELL: Okay. Now, in criticizing
16 Dr. Odoemelam's testimony you brought up that your
17 belief that there's no true incidence statistic
18 for asthma. Do you have any statistics that will
19 contradict any of Dr. Odoemelam's testimony?
20 MS. WILLIAMS: No.
21 MR. BELL: You also brought up
22 precautionary measures. Did you take into
23 consideration mitigation as a precautionary
24 measure? Mitigation imposed on a project prior to
25 the project's construction.

1 MS. WILLIAMS: No. Precaution comes
2 into play more at the level of planning a project,
3 when you're looking at where to put it; you're
4 looking at what technology would be used. You're
5 looking at the input from public participation
6 regarding the project. And that's, I think
7 mitigation is a little more after the fact where
8 you've already decided all that.
9 MR. BELL: So you wouldn't consider
10 mitigation imposed on a project, prior to the
11 project's construction, as part of the licensing
12 of the project, to be precautionary?
13 MS. WILLIAMS: In public health terms it
14 wouldn't be primary prevention. It would be more
15 like secondary.
16 MR. BELL: Thank you. I have no further
17 questions.
18 HEARING OFFICER RENAUD: City,
19 questions? Redirect?
20 MR. BUNDY: Just a couple of -- well,
21 just really one question on that last point.
22 REDIRECT EXAMINATION
23 BY MR. BUNDY:
24 Q Regarding the precautionary principle
25 and mitigation, as you understand it, the

1 mitigation measures associated with this project,
2 would you agree that they're intended to
3 mitigate -- to the extent they do, you know, not
4 conceding that, but to the extent they do, they
5 are intended to mitigate down to the standard for
6 particulate matter that's been set in California
7 air quality standards?
8 MS. WILLIAMS: I think that's true for
9 the operational emissions. I'm not sure if that's
10 true for the construction emissions.
11 MR. BUNDY: The point being that if
12 there is uncertainty about whether there are -- is
13 there uncertainty about whether there are health
14 impacts even at concentrations of PM below the
15 standards set, the state and federal standards?
16 Was that part of your testimony?
17 MS. WILLIAMS: I think the weight of the
18 evidence would say that there are measurable
19 health impacts at levels below the state
20 standards.
21 MR. BUNDY: And how would the
22 precautionary --
23 MR. BELL: Actually I have an objection
24 to the characterization regarding weight of the
25 evidence. If the witness is speaking to the

1 weight of the evidence being taken by the
2 Committee right now, the Committee or the judges
3 that -- the evidence and the weight to be assigned
4 to it.
5 HEARING OFFICER RENAUD: That's not how
6 I took it, but, --
7 MR. BUNDY: Yeah, I took it to mean the
8 weight of the scientific evidence.
9 MR. BELL: Okay.
10 MR. BUNDY: Did you mean something else?
11 MS. WILLIAMS: No, I meant the weight of
12 the scientific evidence --
13 MR. BELL: I'll withdraw my objection.
14 MR. BUNDY: Thank you, I have nothing
15 further.
16 HEARING OFFICER RENAUD: Committee,
17 questions? All right. No further questions. All
18 right, thank you.
19 It would appear to me that concludes air
20 quality and public health. Is there any further
21 evidence in those areas? Does anyone have any
22 further exhibits to move?
23 MR. BELL: No.
24 HEARING OFFICER RENAUD: All right.
25 That concludes air quality and public health

1 except with respect to those areas where we
2 indicated there may be a necessity to reopen with
3 respect to certain issues.
4 Before we move into the next topic on
5 our list, which is socioeconomic resources, I
6 understand from the project manager that we have
7 what, a resolution of issues that were discussed
8 earlier today with respect to facility design and
9 compliance monitoring. Who will speak to that?
10 MR. BELL: I think for that opportunity
11 I'm going to allow Mr. Meyer to outline the
12 agreements with respect to those two areas. We do
13 have additional documents that we will be
14 submitting into evidence that I would be marking
15 as, I believe that's going to be staff 206.
16 I'll include them both as a single
17 document. We will make copies of these, provide
18 them to all the parties, and also have them
19 docketed.
20 I'll turn this over to Mr. Meyer to
21 outline the agreements.
22 (Pause.)
23 MR. BELL: I'm sorry. Thank you, Mr.
24 Renaud. Just to outline the first of these I'll
25 handle this one with respect to worker safety and

1 fire protection.
2 We have been provided with a report
3 provided by the Chula Vista Fire Department with
4 respect to fire protection. And I'm also in
5 possession of an email from Justin Gibson, the
6 Fire Marshal for the Chula Vista Fire Department.
7 The statement that I would read into the
8 record at this time that's contained herein reads
9 as follows: The City of Chula Vista Fire
10 Department declares that the Chula Vista Energy
11 Upgrade project shall meet all fire protection
12 construction and maintenance requirements as set
13 forth in the locally adopted codes and all
14 applicable standards and guidelines.
15 Specifically, these requirements plans shall be
16 submitted to the Chula Vista Fire Department for
17 review."
18 Now, in this agreement staff, of course,
19 is in no way delegating its licensing authority to
20 the Chula Vista Fire Department. We will, of
21 course, consult with them and provide them with
22 all applicable documents for review. However, we
23 still maintain our licensing authority in these
24 proceedings.
25 HEARING OFFICER RENAUD: And you wish to

have that marked as exhibit 206?

MR. BELL: Correct.

HEARING OFFICER RENAUD: And what shall we call it?

MR. BELL: We can call this the Chula Vista Fire Department Fire Marshal review of the CVEUP project.

HEARING OFFICER RENAUD: All right, that's been moved into evidence as exhibit 206. Is there any objection?

MS. LUCKHARDT: We have no objection with the caveat that Mr. Bell expressed that the ultimate arbiter of what meets or doesn't meet those conditions is the California Energy Commission in its compliance role.

HEARING OFFICER RENAUD: Thank you. Any other objection?

MR. BUNDY: No objection.

HEARING OFFICER RENAUD: All right, that will be admitted.

And was there another agreement?

MR. BELL: Yes, there is. I'm going to be asking Steve Baker to come forward and outline the specifics of the agreement with respect to facility design and also noise and vibration.

1 And, Mr. Baker, if there's anything that
2 I left out of there, please fill in the blanks.
3 HEARING OFFICER RENAUD: Mr. Baker, I
4 think we'll swear you, just as a precaution.
5 Whereupon,
6 STEVE BAKER
7 was called as a witness herein, and after first
8 having been duly sworn, was examined and testified
9 as follows:
10 HEARING OFFICER RENAUD: Thank you.
11 Please state your name.
12 MR. BAKER: My name is Steve Baker.
13 DIRECT EXAMINATION
14 MR. BAKER: In their prehearing
15 conference statement the applicant had asked for
16 some changes to some conditions of certification,
17 in staff's FSA in the noise and vibration section,
18 condition noise-7. I agree to the wording change
19 that they proposed. I believe this documentation
20 is already somewhere in our record.
21 And in the subject area of facility
22 design, the applicant had asked for some changes
23 to several of the conditions. We agreed to some
24 of those changes and agreed not to make some of
25 the others.

1 The changes requested to condition gen-1
2 will not occur. The changes to the text portion
3 of gen-2 will not occur. But the changes to gen-
4 2, table 1, will be changed. The changes to gen-4
5 will not occur. The changes to gen-5 will occur.
6 And in condition structural-3, rather
7 than the changes originally suggested by the
8 applicant, we suggest to do only the following.
9 In the first sentence strike the phrase "required
10 by the 2007 CBC."
11 HEARING OFFICER RENAUD: All right,
12 thank you. Anyone wish to ask any questions about
13 that?
14 MR. BELL: What I would like to add to
15 this, Mr. Renaud, --
16 HEARING OFFICER RENAUD: Certainly. I'm
17 sorry.
18 MR. BELL: -- is that following this
19 agreement with respect to these technical areas
20 that Mr. Baker just spoke to, staff will be
21 providing a copy of those changes in the
22 appropriate format with redline, strikeout.
23 HEARING OFFICER RENAUD: Perfect, thank
24 you. Mr. Bundy.
25 MR. BUNDY: No objection at this time.

1 I'd like to -- I haven't reviewed these changes in
2 detail, and would like to be able to address this
3 in briefs, if necessary. I don't think that'll be
4 necessary, but I want to take a look at it before.
5 HEARING OFFICER RENAUD: That's fine.
6 Okay.
7 Now, was there an issue -- city, same?
8 Okay. Wasn't there also an issue about the
9 prohibiting future expansion? Are we addressing
10 that now, too? Or no. We are, all right.
11 MR. MEYER: It's found in exhibit 204
12 for the Energy Commission Staff. There was an
13 agreement between the City of Chula Vista and the
14 applicant to have certain issues addressed that
15 were, some were outside of the Energy Commission's
16 proceeding and jurisdiction.
17 And in the prehearing conference
18 statement from the applicant these were addressed
19 as some proposed changes or additions, as far as
20 new conditions of certification.
21 Energy Commission Staff has spoken with
22 the city and the applicant on two of these
23 changes, which was one was a proposed requirement
24 to underground any future reconductoring on the
25 section of transmission line on Albany.

1 And staff explained to both the
2 applicant and the city that since this project did
3 not include any impacts or any linears, they were
4 all being used from the original project, that it
5 was not an impact that we could condition,
6 although staff does recognize that this proposed
7 condition is consistent with the move the city is
8 making to underground all utilities in that area.
9 The second is the city and the applicant
10 had requested adding into our conditions of
11 certification an agreement that they came with to
12 not expand this project in the future.
13 Staff informed both parties that
14 prohibiting, as far as our understanding we could
15 not condition our final staff analysis to preclude
16 the applicant from filing an AFC or an SPPE in the
17 future. And that that was something that staff
18 does understand and supports the city's concerns,
19 but it's not appropriate for our document.
20 HEARING OFFICER RENAUD: All right.
21 City, do you have a question on that, or a
22 comment?
23 MR. TULLOCH: Again, these are two items
24 that we had talked to -- because of the concerns
25 of the community, we had talked to the applicant.

They were willing and are willing to have them as conditions of the permit.

We understand the CEC Staff's rationale as to why they can't be conditions, but we would ask the Commission to consider at least recognizing them and recording in the permit that there's an agreement on behalf of the applicant to do them, whether they're conditions or not. That's important to the city and the residents of the city.

HEARING OFFICER RENAUD: All right, thank you. I think the Committee will have to consider that request. And I can't tell you the response at this time, but your request has been noted; it's in the record.

MS. LUCKHARDT: And we have no objection to the Committee including those items in the final decision.

HEARING OFFICER RENAUD: All right. Mr. Bundy.

MR. BUNDY: I want to be clear on the record that we do not agree that these conditions, whether they're incorporated into the conditions of approval, or stated elsewhere, make this project consistent with the general plan. I want

1 to be clear that we think it's still inconsistent
2 with the general plan.
3 That being said, we don't have any
4 specific objection to these conditions being set
5 forth in wherever it's appropriate to do that.
6 HEARING OFFICER RENAUD: All right,
7 good. Thank you. Are there any exhibits or
8 documentation on this point?
9 MR. BELL: Well, at this time staff
10 would move staff's 200, chapters 4.14 with respect
11 to worker safety, and chapter 5.1 with respect to
12 facility design into evidence.
13 HEARING OFFICER RENAUD: All right.
14 MR. BELL: And I have one more question
15 before we get back to the taking of evidence again
16 that may help us move things along.
17 HEARING OFFICER RENAUD: All right, let
18 me see if there's any objection to that being
19 admitted? No objection, okay --
20 MS. LUCKHARDT: No objection.
21 HEARING OFFICER RENAUD: -- that's
22 admitted.
23 MR. BELL: There were two other sections
24 with respect to the operations of the plant, noise
25 and vibration, which was chapter 4.6. And also

1 power plant reliability. We've just had an
2 understanding or agreement outlined by Mr. Baker
3 with respect to these two areas.
4 And I just wanted to make sure that we
5 no longer have a dispute in those areas. If,
6 indeed, there is a dispute by the applicant,
7 Environmental Health Coalition or the city, where
8 we need to take testimony, then we'll have Mr.
9 Baker stick around for that.
10 However, if the agreements that we've
11 outlined have done away with any disagreements in
12 these areas, I'd be moving those sections into the
13 record. So if we can inquire of the parties?
14 HEARING OFFICER RENAUD: Certainly.
15 MS. LUCKHARDT: We were a party to the
16 discussion and we have no objection.
17 HEARING OFFICER RENAUD: All right,
18 thank you.
19 MR. BUNDY: We were not a party to the
20 discussion and these are -- I mean I'll
21 characterize them as -- well, I may have a couple
22 of questions on power plant reliability. I think
23 we indicated that we did want to examine, I
24 believe at the time it was Ms. Bright, it could be
25 Mr. Baker. Just had a couple of basic -- a

1 couple of questions on that.
2 And also with noise. We had one exhibit
3 that's in our request for official notice related
4 to that. And with respect to noise, it's similar.
5 We had one exhibit in the request for official
6 notice that's related to noise and vibration.
7 HEARING OFFICER RENAUD: Okay.
8 MR. BUNDY: Related to an additional
9 condition we had identified in our prehearing
10 conference statement.
11 HEARING OFFICER RENAUD: We'll get to
12 those topics shortly.
13 MR. BUNDY: I expect it'll be brief.
14 HEARING OFFICER RENAUD: Good.
15 MR. TULLOCH: We also weren't a party to
16 that discussion, but we do have -- we're not
17 objecting to what was proposed, but we do have
18 other issues for noise and power plant
19 reliability.
20 HEARING OFFICER RENAUD: All right,
21 we'll get to those eventually.
22 MR. BELL: Just to make that clear,
23 everybody knew the discussions were taking place.
24 Nobody was purposely excluded from that
25 conversation. So I wanted to make that clear.

1 HEARING OFFICER RENAUD: I understand.
2 MS. LUCKHARDT: Okay, so based on that
3 discussion is there remaining -- does worker
4 safety and fire protection remain a disputed area,
5 or should we move our testimony on worker safety
6 into the record at this time?
7 MR. BELL: That was my understanding.
8 Staff has already moved their testimony in.
9 HEARING OFFICER RENAUD: Yes, --
10 MS. LUCKHARDT: Okay.
11 HEARING OFFICER RENAUD: -- you should
12 move that into the record at this time.
13 MS. LUCKHARDT: Okay, so at this point
14 applicant moves applicant's testimony on worker
15 safety and fire protection which is section 516,
16 exhibit 1. The comments on worker safety --
17 worker health and safety and fire protection
18 included in exhibit 19. And the declarations on
19 worker health and safety included in exhibit 23.
20 HEARING OFFICER RENAUD: Any objection
21 to admitting those exhibits? They're admitted
22 then. Thank you.
23 Anyone else on that topic to move
24 exhibits or documents? No, okay.
25 Well, let's move on then to

1 socioeconomic resources. Applicant, would you be
2 ready to proceed?
3 MS. LUCKHARDT: Yes. the applicant
4 calls Dr. Fatuma Yusuf. And she needs to be
5 sworn.
6 HEARING OFFICER RENAUD: Right. Is that
7 Dr. Yusuf next to you there? All right. Raise
8 your right hand.
9 Whereupon,
10 FATUMA YUSUF
11 was called as a witness herein, and after first
12 having been duly sworn, was examined and testified
13 as follows:
14 HEARING OFFICER RENAUD: All right.
15 Please state your name.
16 DR. YUSUF: My name is Fatuma Yusuf.
17 And I think in the proceedings my last name has
18 been misspelled. It's Y-u-s-u-f.
19 HEARING OFFICER RENAUD: Thank you.
20 We'll note that.
21 MS. LUCKHARDT: And the exhibits that
22 the applicant proposes to move in this area are,
23 just for the purpose of listing them at this
24 point, section 510 and appendix 510 of exhibit 1;
25 the socioeconomics portion of exhibit 2. And Dr.

1 Yusuf's declaration contained in exhibit 23.
2 HEARING OFFICER RENAUD: All right,
3 thank you. We'll consider admitting those after
4 the testimony's completed.
5 MS. LUCKHARDT: Okay. And we are going
6 to dispense with summaries, therefore I will ask
7 just a couple of questions of Dr. Yusuf.
8 DIRECT EXAMINATION
9 BY MS. LUCKHARDT:
10 Q Are you aware of any new guidelines that
11 have been issued by the California Environmental
12 Protection Agency regarding environmental justice?
13 DR. YUSUF: No.
14 MS. LUCKHARDT: And then have you
15 reviewed the testimony of Diane Takvorian?
16 DR. YUSUF: Yes.
17 MS. LUCKHARDT: And then I have a
18 question here, we've been having folks respond to
19 this initially. If you would prefer we could hold
20 any kind of rebuttal to Ms. Takvorian's testimony
21 until after she provides her testimony.
22 HEARING OFFICER RENAUD: That might be
23 the most --
24 MS. LUCKHARDT: Okay.
25 HEARING OFFICER RENAUD: --

1 comprehensible way to do it, if you like. That
2 sounds --
3 MS. LUCKHARDT: Okay, then --
4 HEARING OFFICER RENAUD: -- fine.
5 MS. LUCKHARDT: -- doing it after her?
6 Okay.
7 HEARING OFFICER RENAUD: Yeah.
8 MS. LUCKHARDT: Then Ms. Yusuf is
9 available for cross.
10 HEARING OFFICER RENAUD: All right.
11 Staff, would you wish to cross-examine?
12 MR. BELL: No.
13 HEARING OFFICER RENAUD: Okay. Mr.
14 Bundy?
15 MR. BUNDY: I don't have any specific
16 questions for the witness.
17 HEARING OFFICER RENAUD: City? No. All
18 right.
19 MS. LUCKHARDT: Okay, then at this point
20 I'd like to move applicant's exhibits on
21 socioeconomics into evidence.
22 HEARING OFFICER RENAUD: Are there any
23 objections?
24 MR. BELL: None.
25 HEARING OFFICER RENAUD: No objection,

they're admitted.

All right, any further witnesses from applicant?

MS. LUCKHARDT: No.

HEARING OFFICER RENAUD: Okay, I think, staff, would you like to go ahead, then.

MR. BELL: Yes. Staff calls Jacob Hawkins.

HEARING OFFICER RENAUD: All right, would you raise your right hand.

Whereupon,

JACOB HAWKINS

was called as a witness herein, and after first having been duly sworn, was examined and testified as follows:

HEARING OFFICER RENAUD: Thank you. Please state your name.

MR. HAWKINS: My name is Jacob Hawkins; las name spelled H-a-w-k-i-n-s.

HEARING OFFICER RENAUD: Thank you.

BY MR. BELL:

Q Mr. Hawkins, did you file previously written testimony in the area of socioeconomics in the Chula Vista Energy Upgrade project?

MR. HAWKINS: Yes, I did.

1 MR. BELL: And that testimony is
2 included in the final staff assessment in this
3 matter?
4 MR. HAWKINS: Yes, it is.
5 MR. BELL: Do you have any changes or
6 additions to that testimony?
7 MR. HAWKINS: No, I do not.
8 MR. BELL: And you also filed additional
9 testimony in the staff's addendum, correct?
10 MR. HAWKINS: That is correct.
11 MR. BELL: And any changes or additions
12 that you may have had from your original testimony
13 are included in the staff addendum, is that true?
14 MR. HAWKINS: That's correct.
15 MR. BELL: Okay. No further questions.
16 With that I would move staff 200 chapter 4.8 into
17 evidence.
18 HEARING OFFICER RENAUD: Okay, and I
19 believe we already have the addendum in evidence.
20 MR. BELL: Correct.
21 HEARING OFFICER RENAUD: Any objection
22 to admitting that in evidence?
23 MR. BUNDY: No.
24 HEARING OFFICER RENAUD: All right, that
25 will be admitted.

1 Cross-examination? Applicant?
2 MS. LUCKHARDT: None.
3 HEARING OFFICER RENAUD: EHC?
4 MR. BUNDY: Yes, just a brief series of
5 questions.
6 CROSS-EXAMINATION
7 BY MR. BUNDY:
8 Q Mr. Hawkins, I'd like to -- is it Mr. or
9 Dr., I'm sorry, I --
10 MR. HAWKINS: Mr. Hawkins.
11 MR. BUNDY: Okay. I'd like to draw your
12 attention to exhibit 200, page 4.9-13. This is a
13 response to comment number 6 from Southwest Chula
14 Vista Civic Association.
15 And is it correct that you conclude that
16 there is no environmental justice issue associated
17 with this project?
18 MR. HAWKINS: That's correct.
19 MR. BUNDY: And is it correct that your
20 conclusion is based on the finding that no
21 significant impacts will occur after mitigation in
22 each technical area?
23 MR. HAWKINS: That's correct.
24 MR. BUNDY: And you're familiar with the
25 impact analyses and mitigation measures proposed

in each technical area?

MR. HAWKINS: I can't say that I'm intimately familiar with them, no. I'm familiar with them from the point of view of the executive summary.

MR. BUNDY: Okay, but you didn't review the individual mitigation measures or impacts in the review?

MR. HAWKINS: No, because the socioeconomic section is not where the environmental justice is analyzed.

MR. BUNDY: Aren't the environmental justice LORS reprinted in the socioeconomic section?

MR. HAWKINS: They are reprinted there, however they are reprinted there at the behest of the EHC.

MR. BUNDY: Okay. Where would we -- if not in the socioeconomic section where would we find analysis of environmental justice issue?

MR. HAWKINS: If there is an environmental justice issue it's addressed in the individual section such as air quality, public health, visual, noise, et cetera.

MR. BUNDY: But you do conclude, your

1 testimony concludes that there is no environmental
2 justice issue in the socioeconomic section, right?
3 MR. HAWKINS: That's correct.
4 MR. BUNDY: Okay. Are you aware that
5 the air quality section found the project's
6 emissions of nonattainment criteria pollutants,
7 including PM10 and PM2.5 to be significant before
8 mitigation?
9 MR. HAWKINS: Before --
10 MR. BELL: Objection, relevance.
11 MR. BUNDY: I'm trying to set up a
12 series of --
13 HEARING OFFICER RENAUD: That will be
14 allowed. Go ahead.
15 MR. BUNDY: Okay, thanks. If the
16 significance of the impact is the determinant of
17 whether there's an environmental justice issue,
18 which I think has been his testimony, I want to
19 talk about significance of --
20 HEARING OFFICER RENAUD: The question
21 was quite clear that it was before mitigation.
22 MR. BUNDY: Okay.
23 MR. HAWKINS: Yes.
24 MR. BUNDY: Okay. And would you say --
25 I mean I'll ask you this because your section does

1 address environmental justice. Is it fair to say
2 that the area of greatest concern for
3 environmental justice issues would be the area
4 closest to the plant?
5 MR. HAWKINS: With what issue area --
6 MR. BUNDY: With respect to air quality.
7 MR. HAWKINS: As I'm not an air quality
8 specialist, I cannot answer that question.
9 MR. BUNDY: Okay. Are you aware that
10 the mitigation for the project's air quality
11 impacts could occur anywhere, ultimately could
12 occur anywhere in the San Diego air basin?
13 MR. HAWKINS: Yes.
14 MR. BUNDY: And if all or part of that
15 mitigation were to occur outside the one-mile or
16 six-mile radius around the plant, would this
17 change your analysis of whether there's an
18 environmental justice issue?
19 MR. HAWKINS: As I said, as I'm not an
20 air quality specialist, I can't address that.
21 MR. BUNDY: Okay, I have no further
22 questions.
23 HEARING OFFICER RENAUD: Any further
24 cross-examination?
25 MR. TULLOCH: Yes.

1 HEARING OFFICER RENAUD: City.
2 CROSS-EXAMINATION
3 BY MR. TULLOCH:
4 Q I'd like to draw your attention to
5 exhibit 21. Exhibit 21 has a list of six
6 mitigation measures which the city has been in
7 discussion with the applicant about, and reflects
8 the applicant's willingness to include those six
9 mitigation measures in the permit as conditions.
10 And I wanted to talk about two of those.
11 Are you familiar with the one that's number one,
12 that has to do with the applicant's willingness to
13 provide $210,000 in direct funds to the city;
14 those funds to be used for the local community for
15 energy efficiency and related improvements that's
16 focused on and to directly benefit the local
17 residents that are potentially most directly
18 affected by the reconstructed plant.
19 MR. HAWKINS: I'm not because I was
20 under the impression that that was for air quality
21 impacts.
22 MR. TULLOCH: No, that's actually the
23 second one. The one that's the $210,000 for air
24 quality is actually number two. I'm talking about
25 number one.

1 MR. HAWKINS: I'm not familiar with the
2 first mitigation you're discussing.
3 MR. TULLOCH: Do you know whether or not
4 there's willingness on the part of the staff to
5 include that as a condition, since the applicant's
6 willing to have it, and the city prefers that it
7 be a condition?
8 MR. BUNDY: Are we talking about --
9 excuse me, I'm talking about exhibit 21, I
10 believe, right?
11 MR. TULLOCH: This is exhibit number 21;
12 it doesn't have to do with air quality. It's
13 meant to provide mitigation of general impacts to
14 the people who live closest to the plant.
15 MR. HAWKINS: I'm attempting to find
16 those.
17 HEARING OFFICER RENAUD: I think maybe
18 what you're looking for would be in the addendum,
19 possibly? The FSA addendum.
20 MR. HAWKINS: Item two --
21 MR. TULLOCH: No, we're talking about
22 item number one.
23 MR. HAWKINS: You're referring to item
24 number one?
25 MR. TULLOCH: Yes.

1 MR. HAWKINS: If I'm not mistaken, it
2 says that for air quality related mitigation.
3 MR. TULLOCH: No, it says that's in
4 addition to the funds to be contributed as noted
5 below for air quality.
6 MR. HAWKINS: All right.
7 MR. TULLOCH: It goes on to say that
8 these would be used for local community energy
9 efficiency and related improvements for those, to
10 the direct benefit of the local --
11 MR. BUNDY: I'm going to object on the
12 basis of relevance here. I'm not sure what this
13 has to do with any significant impact or
14 mitigation measure that was actually identified in
15 the final staff assessment that there was any
16 analysis on environmental justice.
17 I mean this is in addition to mitigation
18 measures. I don't know what the relevance of --
19 MR. TULLOCH: Frankly, I don't know
20 where this fits in this.
21 HEARING OFFICER RENAUD: The witness is
22 here for socioeconomics. I believe this does fall
23 within that category.
24 MR. BELL: If I can be heard on this
25 issue.

1 HEARING OFFICER RENAUD: Yes, please,
2 Mr. Bell.
3 MR. BELL: What I heard under cross-
4 examination from Mr Bundy was a question of what-
5 if these funds were spent outside of this area.
6 And what I believe the city is trying to do is
7 show that the funds will not be spent outside this
8 area.
9 MR. BUNDY: My objection is that these
10 are different funds. The funds that I was talking
11 about are the funds mentioned in number two, and
12 the funds mentioned in air quality conditions of
13 certification that are actually mitigation
14 measures proposed for this project.
15 I'm understanding your description of
16 number one to be that this is not air quality
17 mitigation. So I'm wondering what the relevance
18 of --
19 MR. TULLOCH: That's correct. And when
20 we asked where we should bring this up we were
21 told by staff that this is where it fits. So if
22 it fits someplace else better, we're willing to
23 talk about it someplace else.
24 MR. BUNDY: I just don't see the
25 relevance to whether there's a significant

1 socioeconomic impact.
2 MR. TULLOCH: We're willing to talk
3 about it under some other topic, but --
4 HEARING OFFICER RENAUD: Well, let's try
5 it here. I'm willing to listen to the witness.
6 If the witness feels it doesn't fit within his
7 area of expertise, he can tell us.
8 MR. HAWKINS: While this does have to do
9 with, I suppose that the 210,000 could be seen as
10 an economic benefit as a result of the project, it
11 has no nexus to any impacts associated with
12 socioeconomic impacts in the project.
13 MR. TULLOCH: This is something that the
14 applicant's willing to do, they're willing to have
15 it as a condition. If we have it under the wrong
16 topic, then I'd like to figure out which topic it
17 should be discussed under. But we would like the
18 Commission and staff to tell us whether this can
19 be included as a condition.
20 The applicant's willing to do it. It
21 doesn't seem to be outside the authority, as best
22 we can tell, of the Commission.
23 HEARING OFFICER RENAUD: Well, Mr.
24 Tulloch, maybe you could specify which precise
25 words in paragraph one could be conceivably

1 related to socioeconomic impacts, and that might
2 help the witness.
3 MR. TULLOCH: Our intent is to use these
4 for things that are related mostly to energy
5 efficiency, things like insulation, double-paned
6 windows, high-efficiency air conditioning, that
7 sort of thing.
8 And as I said, I don't know whether this
9 best fits under this topic or not. We would like
10 to fit it under the right topic. And if it's a
11 different topic, we're willing to discuss it
12 someplace else.
13 HEARING OFFICER RENAUD: Well, perhaps
14 the witness can tell us the improvements to homes
15 and local businesses phraseology might be the
16 socioeconomic aspect. I see Mr. Bell is wishing
17 to speak here. Please.
18 MR. BELL: Yes, I'm sorry. I appreciate
19 the efforts that the city has put into this
20 project and their participation. I think that --
21 and what they're trying to bring up is legitimate.
22 I'm sure this is the right part.
23 But I believe that Mr. Meyer might be
24 able to resolve this issue. I believe it might be
25 slightly off-topic for right now, but if you would

like to handle this this way, Mr. Renaud, we might be able to do away with this issue and move on.

HEARING OFFICER RENAUD: All right, Mr. Bundy, did you wish to be heard further?

MR. BUNDY: I'll let Mr. --

HEARING OFFICER RENAUD: All right. Why don't we finish questioning this witness, and then proceed as you proposed, Mr. Bell.

MR. BELL: Thank you.

HEARING OFFICER RENAUD: Are there any further questions of this witness by anyone?

MR. BELL: No.

HEARING OFFICER RENAUD: All right, thank you.

MR. TULLOCH: I'm sorry, the other item on this same list that we thought fit under this, and we're open to correction if it's the wrong topic area, is item number three, which has to do with the utility users tax.

It's our understanding that -- well, I think we have concurrence by staff to include a condition surrounding utility users tax. But we haven't seen the wording.

MR. HAWKINS: This was included in the addendum, in staff's addendum.

1 MR. TULLOCH: Perhaps we can take a look
2 at that --
3 HEARING OFFICER RENAUD: If you'd like
4 to examine the witness about the addendum, that's
5 your right. Please go ahead. I think he's
6 correct, that that is mentioned in the addendum.
7 That's exhibit 205.
8 MR. TULLOCH: Is that something that
9 could be shown on the overhead?
10 MR. MEYER: Yeah, I did send that file
11 to the City of Chula Vista electronically, so they
12 may have it.
13 (Pause.)
14 MR. TULLOCH: Now that we've seen the
15 language we're fine with that. Thank you.
16 The last thing that I wanted to mention,
17 I'm not sure if you heard my comment, but now that
18 we've seen the language we're fine with the
19 utility users tax condition.
20 HEARING OFFICER RENAUD: I appreciate
21 that. That's good. My concern is I'm not sure
22 you have questions for the witness. It sounds
23 like you're just wanting to find out where things
24 stand. This is the opportunity to actually
25 examine witnesses about their expressed opinions.

1 MR. TULLOCH: Again, I apologize for not
2 having been through one of these before, so I'm
3 not exactly sure of the right procedure, but --
4 HEARING OFFICER RENAUD: You're doing
5 fine.
6 MR. TULLOCH: -- if I don't ask him I'm
7 afraid I'm not going to get to ask anybody.
8 HEARING OFFICER RENAUD: All right.
9 MR. TULLOCH: So, if I could put this
10 other topic out there, and then if this is -- if
11 I'm doing it wrong, we just want to get it in the
12 record.
13 The other one has to do with tax
14 increment, which is addressed in the final staff
15 assessment. And we just wanted to make sure that
16 there were corrected numbers that needed to be
17 included. And we wanted to make sure that the
18 staff had gotten those and that they have, in
19 fact, been included.
20 HEARING OFFICER RENAUD: All right.
21 Well, if you can phrase your inquiry in the form
22 of a question to the witness it would really help.
23 MR. TULLOCH: Okay. I'm sorry. So,
24 have you received our updated estimates for tax
25 increment, and will those be included going

1 forward?

2 MR. HAWKINS: Yes, those have been

3 included in the addendum.

4 MR. TULLOCH: Okay. Thank you.

5 HEARING OFFICER RENAUD: Okay, any other

6 questions for Mr. Hawkins? All right. Thank you,

7 sir.

8 Mr. Bell, did you want to call Mr. Meyer

9 on this topic, or somewhere else?

10 MR. BELL: Yes. Mr. Meyer. He has

11 previously been sworn.

12 Whereupon,

13 CHRISTOPHER MEYER

14 was recalled as a witness herein, and having been

15 previously duly sworn, was examined and testified

16 further as follows:

17 DIRECT TESTIMONY

18 MR. MEYER: This is similar to the issue

19 we spoke about earlier with the undergrounding of

20 the transmission line, no future expansion. Staff

21 has looked at the proposed language between the

22 applicant and the city, that they agreed upon in

23 their letter.

24 And whereas staff agrees that this is a

25 benefit, it was seen as outside of our proceeding.

1 And as Jacob testified, not being a mitigation of
2 a direct impact, it was not appropriate to put in
3 our document.
4 But then, as I say, staff appreciates
5 the work that the applicant and the city did to
6 come up with these agreements and supports them.
7 HEARING OFFICER RENAUD: Thank you.
8 MR. BUNDY: If I could, just --
9 HEARING OFFICER RENAUD: Yes, questions
10 for Mr. Meyer.
11 MR. TULLOCH: Just if we could have the
12 same request to the Commission that we had on the
13 last one that was like this, that we would like
14 the Commission to -- we understand why the staff's
15 rationale for not including this one as a
16 condition, but we'd ask that the Commission would
17 consider reflecting the issue and the agreement
18 and the permit, even though it's not a condition.
19 HEARING OFFICER RENAUD: And by reflect,
20 can you clarify what you mean by reflect?
21 MR. TULLOCH: We have submitted from the
22 applicant some language, and if the permit could
23 document this agreement, even though it's not a
24 condition, that would be helpful going forward.
25 HEARING OFFICER RENAUD: Thank you. And

as I said before, the Committee will consider that request, but we can't provide you an answer at this time. Thank you.

MS. LUCKHARDT: And just for clarity on the record, the two places where those things are stated, one is in exhibit 21. And my attempt to put them into language for conditions of certification is in applicant's prehearing conference statement dated September 16, 2008, as attachment 2.

HEARING OFFICER RENAUD: Okay, thank you. Are there documents that need to be admitted in evidence at this time on socioeconomics? I think you may have moved them, but we haven't admitted them.

Are there any objections to the admission of the documents enumerated by Mr. Bell?

MS. LUCKHARDT: No objection.

MR. BUNDY: No objection.

HEARING OFFICER RENAUD: All right, they're admitted then. Anyone else?

MS. LUCKHARDT: I just have one question for you. Would you like to have in the record the proposed conditions of certification that were attached to our prehearing conference statement?

1 Currently those are not exhibit, or that is not an
2 exhibit. It's a page and a half. It was served
3 on all parties on September 16th, and I would --
4 if you would like that into evidence I would be
5 happy to offer it. It would be just the
6 attachment to, not the entire prehearing
7 conference statement.
8 HEARING OFFICER RENAUD: I can't see any
9 harm in having that in evidence, so if you'd like
10 to do that.
11 MS. LUCKHARDT: Sure. I'd offer it as
12 the next one in order for applicant. It would be
13 exhibit 27.
14 HEARING OFFICER RENAUD: Any objection?
15 MR. BELL: None.
16 HEARING OFFICER RENAUD: All right.
17 That will be admitted.
18 It appears that the next witnesses on
19 this topic would be those of the Environmental
20 Health Coalition. Are you prepared to proceed,
21 Mr. Bundy?
22 MR. BUNDY: Yes. Just making a couple
23 of notes here, but we would like to call Diane
24 Takvorian. And I believe she needs to be sworn.
25 HEARING OFFICER RENAUD: Thank you.

1 Please raise your right hand.
2 Whereupon,
3 DIANE TAKVORIAN
4 was called as a witness herein, and after first
5 having been duly sworn, was examined and testified
6 as follows:
7 HEARING OFFICER RENAUD: Please state
8 your name.
9 MS. TAKVORIAN: My name is Diane
10 Takvorian, T-a-k-v-o-r-i-a-n.
11 HEARING OFFICER RENAUD: Thank you.
12 DIRECT EXAMINATION
13 BY MR. BUNDY:
14 Q Now, Ms. Takvorian, did you prepare a
15 written declaration and testimony that were
16 distributed earlier in this proceeding?
17 MS. TAKVORIAN: I did.
18 MR. BUNDY: And are the documents marked
19 exhibit 607 and 608 correct copies of that --
20 MS. TAKVORIAN: They are.
21 MR. BUNDY: -- earlier declaration and
22 testimony? The document marked exhibit 609, are
23 these references that are cited in your written
24 testimony?
25 MS. TAKVORIAN: Yes.

1 MR. BUNDY: I would, at this point, move
2 exhibits 607, 608 and 609 into evidence.
3 HEARING OFFICER RENAUD: All right,
4 that's been moved. Is there any objection?
5 MR. BELL: None.
6 MS. LUCKHARDT: None.
7 HEARING OFFICER RENAUD: Admitted.
8 MR. BUNDY: Thank you.
9 Now, just a couple of questions, I
10 think, anticipating some of what we might hear.
11 Can you talk -- now, you served as the co-chair of
12 the Cal EPA Environmental Justice Advisory
13 Committee, right?
14 MS. TAKVORIAN: I did.
15 MR. BUNDY: And you participated in the
16 recommendations that were developed by that
17 committee?
18 MS. TAKVORIAN: Yes. We held hearings
19 across the State of California for two years, and
20 took over 200 public members testified, as well as
21 many members of the State of California agencies
22 and departments.
23 And then we formulated recommendations
24 that were adopted in September of 2003.
25 MR. BUNDY: And this process started

1 with a couple of Acts of the Legislature, right?
2 Can you talk about those?
3 MS. TAKVORIAN: Yes. The Legislature
4 enacted SB-115 and SB-89. SB-115 actually
5 initiated the definition of environmental justice
6 for the State of California. And that definition
7 applies to all agencies of the State of
8 California, not just to the California
9 Environmental Protection Agency.
10 And it essentially requires fair
11 treatment of all people no matter their race or
12 income in regards to environmental pollutants.
13 The second, SB-89, established the
14 California Environmental Protection Agency
15 Environmental Justice Advisory Committee. I'll
16 call it CEJAC. And the intention of CEJAC and the
17 purpose of it was to essentially set a foundation
18 for environmental justice for the State of
19 California, and as an attempt to implement and
20 achieve the definition of environmental justice
21 for the State of California.
22 It applied directly to the Cal-EPA
23 boards departments and offices. However, many
24 other organizations and agencies were involved in
25 the development of those recommendations and in

1 those deliberations, including the California
2 Energy Commission.
3 MR. BUNDY: And how would you
4 characterize the intent or the weight of -- having
5 been involved in the process, the intent or the
6 weight of the recommendations that came out?
7 They're not regulations, right?
8 MS. TAKVORIAN: They are not
9 regulations. They are guidelines. And the
10 intention was -- the committee actually was
11 comprised of members of the -- there were
12 representatives from municipalities across
13 California, representatives of industry, including
14 utility industry, PG&E. There were
15 representatives of coalitions of industries, as
16 well as environment and environmental justice and
17 public health representatives.
18 And the intention was that these, again,
19 would serve as a foundation for environmental
20 justice guidelines across the State of California.
21 And after the near-unanimous adoption, there was
22 only one no-vote, we had a series of presentations
23 for the next two years to many state organizations
24 and associations so that they could learn about
25 environmental justice, and therefore use the Cal-

1 EPA recommendations as a foundation for the
2 development of their own environmental justice
3 policies. Much like the CEC policy.
4 MR. BUNDY: Okay, not to get too -- I
5 know we've been admonished not to do summarizing,
6 but is it fair to say that the conclusion of your
7 testimony is that this project and the analysis of
8 this project did not satisfy the recommendations
9 that the CEJAC made?
10 MS. TAKVORIAN: I think that's very
11 true. I mean, overall I think the MMC project and
12 the CEC Staff analysis of it really rejected the
13 notion of environmental justice, and didn't take
14 it seriously in a number of ways.
15 And one of them was the fact that the
16 CEJAC recommendations weren't even referenced in
17 the document. And so we have to assume that there
18 was no consideration of them.
19 It's also true that there was no mention
20 of the California definition of environmental
21 justice in the preliminary staff assessment. It
22 was only after comments from Environmental Health
23 Coalition that it was included in the FSA.
24 And the same is true of the CEC's own
25 environmental justice policy.

1 So, upon looking at how serious the
2 examination of environmental justice was in the
3 staff documents, we have to assume that there
4 wasn't rigorous analysis of environmental justice.
5 MR. BUNDY: Okay, thank you. What I'd
6 like to do is, I won't ask any more direct
7 questions right now. What I'd like to do is have
8 the witness remain available if I have some
9 redirect after cross, and also maybe a couple of
10 additional questions after we hear from the
11 applicant's witness. Is that all right?
12 HEARING OFFICER RENAUD: That's fine.
13 All right, cross-examination, applicant?
14 MS. LUCKHARDT: I guess I'd just -- I've
15 got some concerns about holding out witnesses on
16 witnesses on witnesses for the next opportunity,
17 the next opportunity, the next opportunity.
18 You know, we had to file our testimony,
19 actually staff filed first, the applicant filed
20 second and Environmental Health Coalition had the
21 opportunity to file third. And so they've had a
22 chance to look at all the testimony of the other
23 parties prior to filing their testimony.
24 We only received their testimony at the
25 prehearing conference. And have had and are

1 looking for short opportunities for rebuttal. But
2 I'm just not sure how many opportunities are we
3 going to then give Environmental Health Coalition
4 opportunity for surrebuttal on top of our rebuttal
5 to their testimony that we just recently received?
6 And I'm just wondering procedurally how
7 we're going to go forward.
8 HEARING OFFICER RENAUD: Well, at this
9 point I'd like you to cross-examine the witness on
10 her direct testimony. If we run into an obstacle
11 that you feel is prejudicing you or your client,
12 we'll discuss it at that time. But do you have
13 some cross-examination?
14 MS. LUCKHARDT: Very limited, actually.
15 HEARING OFFICER RENAUD: All right.
16 CROSS-EXAMINATION
17 BY MS. LUCKHARDT:
18 Q If I understood your summary, the
19 comments you gave just now correctly, isn't it
20 true that there are no established and adopted
21 regulations based upon the work that was done by
22 this committee?
23 MS. TAKVORIAN: The committee, itself,
24 was not authorized to set regulations, as it was
25 not a regulatory agency. The interesting thing

1 that happened is that the agency actually did go
2 forth, many of the members went forth and
3 discussed the 112 recommendations that were made.
4 And a really good example, actually, is
5 in the area of land use, which the CEJAC
6 recommendations talked about at length. And as a
7 result of the presentation of these
8 recommendations to a variety of bodies, a number
9 of municipalities looked at those very closely.
10 And one of those municipalities was the City of
11 Chula Vista.
12 We feel that the CEJAC recommendations
13 were really instrumental in developing Chula
14 Vista's general plan policy E6.4, which called for
15 the separation of energy-generating facilities and
16 sensitive uses.
17 The City of Chula Vista also went on to
18 adopt an environmental justice element as part of
19 the general plan. And they adopted policy E-6.15.
20 It was an affirmative statement from them
21 reflecting the buffer zone that was recommended in
22 the CEJAC recommendations as a way to separate
23 sensitive uses from sources of pollution.
24 Because we found, over and over again,
25 in many communities of color that there is a

1 prevalence of having no buffer, of having
2 industrial uses, polluting uses right next to
3 homes and schools, particularly in communities of
4 color.
5 And so that's what the CEJAC
6 recommendations really spoke to. And I think that
7 the City of Chula Vista is a great example of one
8 that went forward and did make it into a very firm
9 policy.
10 MS. LUCKHARDT: Did the California
11 Environmental Protection Agency adopt regulations
12 based upon this report?
13 MS. TAKVORIAN: The Cal EPA did not.
14 But, of course, you know that --
15 MS. LUCKHARDT: Thank you. That's what
16 I asked.
17 MS. TAKVORIAN: -- Cal EPA does not make
18 regulations. Their boards, departments and
19 offices do. And so some of these recommendations
20 were taken quite seriously by the California Air
21 Resources Board that went forward and produced the
22 air quality and land use guidance which recommends
23 separation and buffer zones.
24 MS. LUCKHARDT: Are those regulations?
25 MS. TAKVORIAN: Yes -- no, those are

1 guidance. That's a guidance, policy guidance.
2 MS. LUCKHARDT: Thank you.
3 HEARING OFFICER RENAUD: Further
4 questions?
5 MS. LUCKHARDT: Ms. Takvorian, do you
6 have a degree in land use planning?
7 MS. TAKVORIAN: I do not.
8 MS. LUCKHARDT: Have you ever worked as
9 a planner?
10 MS. TAKVORIAN: I have not.
11 MS. LUCKHARDT: Did the Energy
12 Commission adopt regulations based on this report?
13 MS. TAKVORIAN: They developed their own
14 policy, their own environmental justice policy.
15 And I was not part of that, so I don't know if
16 they referred to CEJAC. I would assume that they
17 used it as a reference document.
18 MS. LUCKHARDT: Okay, thank you.
19 Nothing further.
20 HEARING OFFICER RENAUD: All right.
21 Cross-examination, Mr. Bell.
22 CROSS-EXAMINATION
23 BY MR. BELL:
24 Q Good afternoon. It's safe to say that
25 you disagree with the manner in which CEC Staff

have analyzed the environmental justice issue?

MS. TAKVORIAN: Yes.

MR. BELL: Do you agree with the standard that there has to be a finding of an unmitigated significant impact before there can be a finding of an environmental justice issue?

MS. TAKVORIAN: I don't, and I -- I don't.

MR. BELL: You agree with that standard?

MS. TAKVORIAN: I don't agree that there needs to be a finding of significant impact in order to have a finding of environmental justice. Is that what you asked me?

MR. BELL: Yes. Have you been following these proceedings from the very beginning?

MS. TAKVORIAN: I have.

MR. BELL: Have you been to each workshop?

MS. TAKVORIAN: No.

MR. BELL: In your statement, would it be fair to say that you're fairly critical of the Public Adviser's Office in this matter?

MS. TAKVORIAN: I'm critical of the CEC's approach to public participation.

MR. BELL: Okay, I'll re-ask the

1 question.
2 MR. BUNDY: I think that
3 mischaracterizes the testimony. If I remember
4 right, the testimony says that there wasn't a
5 Public Adviser assigned to this proceeding at some
6 point early on, is that --
7 MR. BELL: That's one of the assertions,
8 correct.
9 HEARING OFFICER RENAUD: What's the
10 objection? Is there a --
11 MR. BUNDY: Just mischaracterizing the
12 testimony. I think her testimony can speak for
13 itself, or she can clarify.
14 HEARING OFFICER RENAUD: I think the
15 witness can correct the question if the witness
16 wants to.
17 MS. TAKVORIAN: I'd like to.
18 HEARING OFFICER RENAUD: Please.
19 MS. TAKVORIAN: We did note that there
20 was not, to our knowledge, a Public Adviser
21 assigned to this process from the beginning. That
22 was only one point, however, of my concern about
23 the public participation process associated with
24 the MMC application.
25 Again, there's clear guidance that the

1 CEC Staff could have followed in regards to public
2 participation. One of the critical things that we
3 note is that --
4 MR. BELL: Thank you. That actually
5 goes outside the scope of my question.
6 MS. TAKVORIAN: Well, I just want to be
7 sure that you understand --
8 MR. BELL: No, that's okay.
9 MS. TAKVORIAN: -- public participation
10 and not just --
11 MR. BELL: That's okay.
12 MS. TAKVORIAN: -- just about the
13 Advisor's Office.
14 MR. BELL: That's okay. My question's
15 about the Public Adviser's Office.
16 MS. TAKVORIAN: Okay.
17 MR. BELL: Okay. I have no further
18 questions.
19 HEARING OFFICER RENAUD: All right.
20 City, questions? Redirect?
21 MR. BUNDY: Yes, just a couple of
22 questions.
23 REDIRECT EXAMINATION
24 BY MR. BUNDY:
25 Q You were asked if you had a degree in

1 land use planning. You don't. Were you involved
2 in the City of Chula Vista's general plan update
3 process? Did you participate in that process?
4 MS. TAKVORIAN: The Environmental Health
5 Coalition.
6 MR. BUNDY: The Environmental Health
7 Coalition did. And you're the Executive Director
8 of --
9 MS. LUCKHARDT: That goes beyond the
10 scope of the direct. I simply asked whether -- or
11 the scope of the cross. I simply asked whether
12 she had a degree in land use planning and whether
13 she had ever worked as a planner.
14 MR. BUNDY: I'd --
15 HEARING OFFICER RENAUD: Overruled.
16 He's entitled to question his own witness about
17 her qualifications.
18 MR. BUNDY: Thank you. And specifically
19 you were involved in the development of general
20 plan policy E6.4?
21 MS. TAKVORIAN: Yes.
22 MR. BUNDY: Can you say just a little
23 bit more about why you believe that no significant
24 impact finding is required for there to be an
25 environmental justice issue? Or put a different

1 way, why you disagree with the assertion that
2 there's no environmental justice issue unless
3 there's a finding of unmitigated significant
4 impact? Can you expand on that a little bit?
5 MS. TAKVORIAN: Well, I think that one
6 of the very important -- let me say that I think
7 that environmental justice has really evolved over
8 20 years. And it is not, as we all know, an exact
9 science. But it does require that we take a broad
10 view of the disparities into consideration
11 whenever we're thinking about a project
12 application or permitting a new project.
13 And so we have to think about issues
14 such as lack of access to health care,
15 availability of nutritious food, safe and healthy
16 housing, all of these issues, in addition to the
17 impact that a specific project may have on a
18 specific population must be taken together.
19 And that's really the heart and soul of
20 environmental justice. Because in communities of
21 color we know that there are multiple disparities.
22 And all of those are meant to be taken into
23 consideration, not just one single pollution
24 source.
25 And, in fact, even if you -- we've

1 talked a lot within the environmental justice
2 advisory committee about cumulative impacts. And
3 cumulative impacts, in the CEJAC definition, are
4 meant to include not only multiple pollution
5 sources, which are rarely taken into account when
6 we're looking at permitting a single facility, but
7 also all of the other disparities and the
8 inequities and the challenges that people in
9 communities of color and low income communities
10 face.
11 So, that's why I think you have to take
12 a broader view when we're looking at environmental
13 justice and a no significant impact finding.
14 MR. BUNDY: Thank you. I have no
15 further questions.
16 HEARING OFFICER RENAUD: Any recross
17 questions?
18 MR. BELL: No, thank you.
19 HEARING OFFICER RENAUD: All right,
20 questions by the Committee? Yes.
21 EXAMINATION
22 ASSOCIATE MEMBER BOYD: Well, let me
23 just say in my six and two-thirds years as a
24 Commissioner there's never been a siting case
25 conducted to my knowledge that did not have a

1 Public Adviser assigned to it.
2 I believe you said there was not a
3 Public Adviser assigned.
4 MS. TAKVORIAN: My understanding is in
5 the beginning of the process there was not a
6 Public Adviser assigned, during the first part of
7 the process.
8 ASSOCIATE MEMBER BOYD: I've never known
9 that to happen. I mean we have multiple staff in
10 the Public Adviser's Office. There may be a
11 question about the conduct of the office or
12 something, but --
13 MS. TAKVORIAN: No, there was not --
14 that was not my assertion.
15 ASSOCIATE MEMBER BOYD: All right.
16 MS. TAKVORIAN: It was whether there was
17 one.
18 ASSOCIATE MEMBER BOYD: It's highly
19 unusual that there not be a person with the Public
20 Adviser's Office physically present at all
21 hearings or even the site visit and what-have-you
22 involving the Commission. I just want the record
23 to reflect that's, at least speaking for myself,
24 that's the understanding I would have.
25 It's not that big a deal, I just don't

want the record to show that there was never anybody assigned. It's never happened.

MR. BELL: And I can help with that, Commissioner Boyd. If I may, Mr. Renaud. I'd like you to take notice of the record of these proceedings dating back to the acceptance of the AFC wherein a Public Adviser's representative was assigned to this project. Mike Monasmith, I can represent, was originally assigned at the outset. Nick Bartsch filled in for him when -- or took over for him when Mr. Monasmith was reassigned. And currently we have Elena Miller, who is the appointed Public Adviser, present here. And she has been in every proceeding since her appointment.

HEARING OFFICER RENAUD: Thank you. Further questions? All right. The witness is dismissed, thank you.

MS. TAKVORIAN: Thank you.

HEARING OFFICER RENAUD: Mr. Bundy, do you have another witness to call?

MR. BUNDY: I do actually. I'd like to call Diana Vera. And I just want to state that I think that her testimony logically could go to either environmental justice or land use, maybe

1 more logically in land use. But, due to Ms.
2 Vera's request for a family situation, she's asked
3 to be able to go in under this --
4 HEARING OFFICER RENAUD: That's fine.
5 MR. BUNDY: -- under this part of the
6 list.
7 HEARING OFFICER RENAUD: That's fine.
8 All right. Raise your right hand, please.
9 Whereupon,
10 DIANA VERA
11 was called as a witness herein, and after first
12 having been duly sworn, was examined and testified
13 as follows:
14 HEARING OFFICER RENAUD: Please state
15 your name.
16 MS. VERA: My name is Diana Vera,
17 V-e-r-a.
18 HEARING OFFICER RENAUD: Thank you. Mr.
19 Bundy.
20 DIRECT EXAMINATION
21 BY MR. BUNDY:
22 Q Did you prepare written testimony that
23 was distributed earlier in this proceeding?
24 MS. VERA: Yes, I did.
25 MR. BUNDY: And do you have that in

1 front of you as exhibits marked 610, I believe,
2 which is a declaration, and 611, which is your
3 testimony?
4 MS. VERA: Yes, I do.
5 MR. BUNDY: Have there been any changes
6 to your testimony since?
7 MS. VERA: No, they haven't.
8 MR. BUNDY: And you also have something
9 marked exhibit 612, right?
10 MS. VERA: Yes.
11 MR. BUNDY: And can you tell me what
12 that is?
13 MS. VERA: Is the letter that went
14 around the neighborhood. Some of these letters
15 were given by hand; some of them were mailed.
16 This is the people in the community where the City
17 of Chula Vista offer approximately $4000 per home
18 in home improvements.
19 And the Spanish version, unfortunately,
20 it's misleading.
21 MR. BUNDY: Can you just talk about
22 what, how you -- where did you get this document?
23 MS. VERA: This document?
24 MR. BUNDY: Yeah, it was mailed to your
25 home?

1 MS. VERA: It was mailed, um-hum.
2 MR. BUNDY: At this point I'd like to
3 move exhibits 610, 611 and 612 into evidence.
4 MS. LUCKHARDT: I have an objection.
5 There are statements within Ms. Vera's testimony
6 that, I believe, go beyond simply that of a lay
7 witness. And I don't believe that there's any
8 foundation based upon the material that has been
9 previously filed that she is an expert in any
10 particular area, other than the fact that she
11 lives in a certain neighborhood.
12 There are comments, especially as you
13 look at her testimony in paragraph four, which
14 talks about --
15 HEARING OFFICER RENAUD: Which exhibit,
16 please?
17 MS. LUCKHARDT: I'm looking at exhibit
18 611, which is one page of her testimony that
19 talks, she talks about things such as health risk,
20 asthma. She talks about concerns about dire
21 conditions of our surroundings, toxins, air
22 poisons to our health. None of those, I believe,
23 she is qualified to testify to.
24 And in looking at this, if the point of
25 this testimony is to introduce the fact that this

1 letter exists, the letter from the City of Chula
2 Vista, dated August 18th, exists and that it was
3 passed out or sent to neighbors, I don't have an
4 objection.
5 But as far as her testimony, the one-
6 page testimony, there are several conclusions
7 based upon that which I do not believe she has
8 been qualified as an expert to make.
9 And so I object to that testimony, and I
10 object to her being considered an expert in public
11 health or health risk, or the incidence of -- or
12 characterizations of the impact of the project in
13 ways such as poisons to our health. She is not
14 qualified as --
15 HEARING OFFICER RENAUD: Thank you, I
16 think we understand.
17 MS. LUCKHARDT: -- a legal expert.
18 HEARING OFFICER RENAUD: May I ask Mr.
19 Bundy, are you offering this witness as an expert
20 witness?
21 MR. BUNDY: No, and I apologize, I
22 should have said that before asking her about
23 her -- I'm not offering this witness as an expert
24 witness.
25 HEARING OFFICER RENAUD: All right.

1 MR. BUNDY: I am --
2 HEARING OFFICER RENAUD: Then as to the
3 objection, we'll note it. I think the comments go
4 to the weight which will be assigned to the
5 evidence. It's clear for the record that this is
6 a lay witness.
7 MR. BUNDY: Okay, thank you.
8 MS. LUCKHARDT: Well, but I have
9 concerns, even as a lay witness, that we allow lay
10 witnesses to just provide their opinions on how
11 they feel about the project, which is much more
12 typically received in the form of public comment
13 rather than as evidence.
14 HEARING OFFICER RENAUD: Well, I agree,
15 that's typically more often received in public
16 comment. But I don't think there's any problem
17 with receiving it at this time in this fashion.
18 But your objection is noted, thank you.
19 MR. BELL: I have a similar concern.
20 Only insofar as much of what Ms. Vera proposes to
21 testify, and her testimony is hearsay and does
22 seem to go towards the feelings and thoughts of
23 other people, and not just herself.
24 We have no objection to her testifying.
25 I think that her participation here is welcome and

1 it's needed for our process. But to accept the
2 testimony as to the feelings and thoughts of other
3 people in the neighborhood I don't think is
4 appropriate.
5 HEARING OFFICER RENAUD: Well, as
6 counsel knows, this is an administrative
7 proceeding. We are fairly relaxed in terms of
8 enforcement of the rules of evidence. We all
9 understand that we're not talking about an expert
10 witness here. Mr. Bundy has chosen to call her as
11 part of his case, and I think he's entitled to do
12 that. The objections have been noted and will be
13 considered.
14 MR. BUNDY: Thank you very much.
15 Just to ask a couple of questions along
16 those lines, recognizing under the rules the
17 weight that hearsay is given in this proceeding.
18 I'd like to just lay a little bit of a
19 foundation for some of the statements that you
20 make. And just by asking you how long you've
21 lived at -- first of all, where do you live, where
22 is your residence?
23 MS. VERA: I live 3335 on Carrisa
24 (phonetic) Way, Chula Vista 91911.
25 MR. BUNDY: And how long have you lived

there?

MS. VERA: Forty-five years, nine with my parents and 36 at my present residence.

MR. BUNDY: And your previous residence was in the same --

MS. VERA: Across the street.

MR. BUNDY: Across the street. And do you feel like you know your neighbors pretty well?

MS. VERA: I know my --

MS. LUCKHARDT: Objection, hearsay.

MR. BUNDY: Again, recognizing the --

HEARING OFFICER RENAUD: Whether or not the witness knows her neighbors pretty well is something that she would know about. It's not hearsay. You may answer.

MS. VERA: I do know, after all I live there 45 years, I assume I know my neighbors.

MR. BUNDY: Thank you. And can you talk just a little bit about how the neighborhood has changed during those 45 years, from your direct experience?

MS. LUCKHARDT: Objection, relevance.

HEARING OFFICER RENAUD: Well, let me say --

MS. LUCKHARDT: I'm just going to

1 object.
2 HEARING OFFICER RENAUD: I understand.
3 But this is what I would say is not about the
4 objection, it's about the fact that you seem to be
5 asking the witness to recite what's in the written
6 testimony, and we really haven't been doing that
7 here. The written testimony is in the record. If
8 you have something that's not in the written
9 testimony to ask about, I'd welcome that. but I
10 think in the interests of efficiency we'd be
11 better off not repeating what's been submitted.
12 MR. BUNDY: All right, your point's
13 taken and I won't have any further direct
14 questions at this point.
15 HEARING OFFICER RENAUD: All right.
16 Would anyone like to cross-examine this witness?
17 MS. LUCKHARDT: No questions.
18 MR. BELL: No. Thanks for coming today.
19 MS. VERA: May I say something before I
20 leave?
21 HEARING OFFICER RENAUD: You may come in
22 public comment time if you want to speak. At this
23 point your counsel has no further questions for
24 you.
25 MS. VERA: Thank you.

1 HEARING OFFICER RENAUD: Thank you. We
2 will welcome your comments during public comment.
3 We're delighted to hear from you at that time.
4 MS. VERA: Basically what we're arguing
5 is the location.
6 HEARING OFFICER RENAUD: I understand.
7 You can tell us that in public comment time.
8 Thank you. Right now we're taking evidence.
9 All right. Any further witnesses, EHC?
10 MR. BUNDY: Not at this time, I don't
11 believe.
12 HEARING OFFICER RENAUD: All right.
13 Does any party have further evidence to present on
14 the topic of socioeconomic resources?
15 MR. BELL: None on behalf of staff.
16 HEARING OFFICER RENAUD: All right.
17 City?
18 MS. LUCKHARDT: I would like to have an
19 opportunity to have my witness respond to the
20 testimony of Ms. Takvorian, please.
21 HEARING OFFICER RENAUD: Yes, that was
22 the agreement and you may proceed.
23 Whereupon,
24 FATUMA YUSUF
25 was recalled as a witness herein, and having been

1 previously duly sworn, was examined and testified
2 further as follows:
3 FURTHER DIRECT EXAMINATION
4 BY MS. LUCKHARDT:
5 Q Dr. Yusuf, when you conduct an
6 environmental justice analysis do you follow
7 established guidelines?
8 DR. YUSUF: Yes.
9 MR. BUNDY: Objection, I believe that's
10 cumulative. We've already established that her
11 testimony is not that any of the recommendations
12 she's testifying about are established guidelines.
13 MS. LUCKHARDT: It goes -- although the
14 testimony provided by Ms. Takvorian was that the
15 environmental justice analysis should go beyond
16 the established guidelines and look to other
17 issues. And that it was insufficient because it
18 didn't go beyond those guidelines.
19 So I do believe it is a fair question --
20 (Parties speaking simultaneously.)
21 HEARING OFFICER RENAUD: Please proceed,
22 it's fine. Please proceed.
23 MS. LUCKHARDT: Do you have any reaction
24 to the testimony that was provided by Ms.
25 Takvorian?

1 DR. YUSUF: Well, my main reaction is
2 that, you know, we have established guidelines
3 that we follow. And I think the CEC follows the
4 same guidelines.
5 Typically we would look to see if there
6 was or if there is an environmental justice
7 community within a close proximity to the project
8 site. And once we have kind of set up that,
9 that's what we do with the screening analysis.
10 Then we talk to other resource areas,
11 people who are looking at air quality impacts.
12 And if they find that, you know, all the impacts
13 have been mitigated to levels below significance,
14 then we assume at that point that there is no
15 environmental justice impacts, because, you know,
16 those impacts have all been taken care of.
17 MS. LUCKHARDT: Thank you, I have
18 nothing further.
19 HEARING OFFICER RENAUD: Cross-
20 examination?
21 MR. BELL: No.
22 HEARING OFFICER RENAUD: Mr. Bundy?
23 MR. BUNDY: No, I don't have any
24 questions.
25 HEARING OFFICER RENAUD: City? No. All

1 right, thank you.
2 All right, that seems to conclude
3 socioeconomic resources. Next topic is biological
4 resources. Applicant, do you have a witness to
5 call or two?
6 MS. LUCKHARDT: Yes. In the area of
7 biological resources, as we discussed, I believe,
8 at the prehearing conference, the issue was
9 related more to land use issues. And so the folks
10 we have here to respond to that is Mr. Doug Davy
11 and, if necessary, we can call our land use expert
12 up, as well.
13 And so I'll have Doug Davy sponsor the
14 testimony that came in, as he supervised the
15 preparation of all the testimony in the areas that
16 were prepared by CH2MHILL in this proceeding.
17 And so at this point the applicant would
18 offer as evidence in the area of land use -- I'm
19 just checking to see if I've got an appendix in
20 the AFC that relates to land use here. Yeah.
21 So the exhibits that we would be
22 offering in the area of land use are section 5.6
23 and appendix 5.6 of exhibit 1. The land use
24 comments and portion of exhibit 2. Response to --
25 data responses 55 and 56 included in exhibit 8.

1 The land use comments on the preliminary staff
2 assessment, exhibit 19. And the declarations
3 included on land use in exhibit 23 -- or, I'm
4 sorry, we're in biology, right?
5 HEARING OFFICER RENAUD: Right.
6 MS. LUCKHARDT: I'm totally on the wrong
7 subject area.
8 HEARING OFFICER RENAUD: Okay, we will
9 strike your most recent statement.
10 MS. LUCKHARDT: All right, strike that
11 and let me pull biology out here.
12 (Pause.)
13 MS. LUCKHARDT: Okay. So the exhibits
14 that Mr. Davy is sponsoring in the area of
15 biological resources are section 5.2 and appendix
16 5.2 of exhibit 1. The biological resources
17 section of exhibit 2. The biological resources
18 section of exhibit 18. The biological resources
19 comments on exhibit 19. And the declarations on
20 biological resources included in exhibit 23.
21 HEARING OFFICER RENAUD: All right,
22 thank you. Is there any objection to admitting
23 those exhibits?
24 MR. BELL: None.
25 HEARING OFFICER RENAUD: Mr. Bundy, any

1 objection?
2 MR. BUNDY: No objection.
3 HEARING OFFICER RENAUD: All right,
4 those will be admitted. I take it then you aren't
5 going to call a witness at this time, Ms.
6 Luckhardt?
7 MS. LUCKHARDT: We have Mr. Davy here,
8 who supervised the work on the biological
9 resources --
10 HEARING OFFICER RENAUD: Okay.
11 MS. LUCKHARDT: -- analysis, who is
12 available to answer and address questions that
13 have been -- to address the issues that we believe
14 we to be addressed today, which had to do more
15 with land use concerns from the city, I believe.
16 HEARING OFFICER RENAUD: All right.
17 Does anyone want to question Mr. Davy on his
18 testimony, his written testimony? No. All right.
19 Staff, do you wish to call a witness?
20 MR. BELL: Yes, staff will be calling
21 Susan Sanders.
22 HEARING OFFICER RENAUD: All right. I
23 don't think we've sworn you yet, right? Okay.
24 //
25 //

Whereupon,

SUSAN SANDERS

was called as a witness herein, and after first having been duly sworn, was examined and testified as follows:

HEARING OFFICER RENAUD: State your name, please.

MS. SANDERS: Susan Sanders, S-a-n-d-e-r-s.

DIRECT EXAMINATION

BY MR. BELL:

Q Ms. Sanders, did you file previously written testimony entitled, biological resources in the matter of the Chula Vista Energy Upgrade project?

MS. SANDERS: I did.

MR. BELL: And do you have any changes or additions to that testimony?

MS. SANDERS: No.

MR. BELL: At this time I would move staff exhibit 200, chapter 4.2 into evidence.

HEARING OFFICER RENAUD: All right, is there any objection to admitting that in evidence?

MS. LUCKHARDT: No objection.

MR. BELL: Ms. Sanders is available for

1 questions.

2 HEARING OFFICER RENAUD: All right.

3 That will be admitted. Does anyone wish to

4 question the witness? Yes, all right, please,

5 city.

6 CROSS-EXAMINATION

7 BY MR. MEACHAM:

8 Q Ms. Sanders, I apologize in advance if

9 this has already been included in the addendum

10 that was sent out yesterday at 3:00, but I have

11 not had a chance to review it.

12 But can you tell me if you, in the

13 biology resources section, had addressed any of

14 the comments submitted by the city in the

15 prehearing conference specifically related to the

16 laydown areas in keeping the city involved in the

17 process, and the limitation of use of 25 percent

18 of the laydown area as a condition of a local

19 regulation regarding the multiple species

20 conservation plan?

21 MS. SANDERS: I did address those in the

22 final staff assessment. Do you want me to go over

23 how I addressed them? It's in the record, it's in

24 my written testimony.

25 MR. MEACHAM: The question, as I am

asking it, is specific to the comments submitted by the city after the final staff assessment. The prehearing conference statements, I believe, were intended to address the issue that the city staff felt were unresolved subsequent to that testimony.

MS. SANDERS: And that was regarding the 25 percent/75 percent, is that correct?

MR. MEACHAM: Yes, and the city's ability to review the process during compliance because of the storm drain and other related permits to those sites.

MS. SANDERS: What I've addressed in my final staff assessment did talk about those. Something different besides -- there was a suggestion from the city to cordon off or basically preserve 75 percent of the existing laydown area and use the remaining 25 percent for staging and parking, is that correct? Is that the one you're talking about in your --

MR. MEACHAM: It is the one I'm talking about, but it's not intended to be submitted by the city as a recommendation. The city is citing a condition of the multiple species conservation plan, --

MS. SANDERS: Right.

1 MR. MEACHAM: -- which is a local
2 regulation which involves multiple jurisdictions
3 in terms of how they manage the resource.
4 MS. SANDERS: Okay. Well, I did address
5 it in the final staff assessment. And I guess
6 that's what the confusion is. I thought I already
7 addressed it. But have I not addressed your
8 concern? Shall I go over and just repeat what I
9 said in the final staff assessment? Would that
10 clarify it?
11 MR. MEACHAM: If you believe it will
12 clarify, that would be great. Thank you.
13 MS. SANDERS: All right, well, basically
14 I said that that would not achieve consistency
15 with the intent of the multiple species preserve,
16 the Otay preserve. There's no biological
17 resources to be preserved. Laydown areas are
18 graveled and barren, and there's no sensitive
19 biological resources.
20 So it wouldn't do any harm, but it
21 wouldn't do any good. It wouldn't protect
22 anything to preserve to 75 percent of an existing
23 barren area. So that was our conclusion.
24 With respect to including the City of
25 Chula Vista in notifications, consultations, we

1 did revise the language so that the city receives
2 reports of the bird surveys; that they are
3 notified before construction; they are notified of
4 noncompliance.
5 But we did not -- we reserved the right
6 to have the compliance project manager tell the
7 applicant when construction could start again.
8 That was the one thing we did not accept from the
9 city's suggestions. Otherwise we did.
10 Did that clarify? I'm not sure I'm
11 getting to your questions.
12 MR. MEACHAM: You did on item number 2,
13 thank you very much. That was a clear up
14 regarding the notification to the city.
15 But on the first item, is it your
16 testimony then that you believe that the local
17 regulation that has been adopted by the city and
18 county and the City of San Diego for managing the
19 MSCP is not applicable in this case?
20 MS. SANDERS: No, no, I'm just saying
21 the current uses, the past, the current, the
22 future proposed uses of that laydown area are
23 right now inconsistent with the designation as a
24 25/75 percent. It is included in that preserve; a
25 line was drawn and it was drawn at the time when

the area was barren. So it was included in the preserve, and I don't know why it was included because it doesn't meet the standards. There's no biological resources to protect in that area.

So I'm just saying that right now the designation is inconsistent. The project doesn't change that inconsistency one way or the other. So that's why it's basically a land use issue and not really a biological issue. There are no sensitive resources to be protected on those laydown areas.

MR. MEACHAM: Thank you. I think we understand the CEC's position. Thank you.

MS. SANDERS: All right.

HEARING OFFICER RENAUD: All right, are there other questions of this witness? No.

MR. BELL: I have no questions.

HEARING OFFICER RENAUD: All right. Anyone?

MR. BUNDY: No.

HEARING OFFICER RENAUD: All right, thank you.

MS. SANDERS: Thank you.

HEARING OFFICER RENAUD: Now that we're in between topics and we've been going for two

1 hours, I think a short break is justified. Let's
2 limit it to ten minutes. Be back at 3:40.
3 (Brief recess.)
4 HEARING OFFICER RENAUD: I understand we
5 have the witness from Cal-ISO on the phone. So
6 we're going to proceed to item 17, transmission
7 system engineering. We are back on the record.
8 Who is going to introduce the Cal-ISO witness? I
9 think we'll take the Cal-ISO witness first.
10 Staff?
11 MR. MEYER: My understanding is that it
12 was requested in the prehearing conference by, I
13 think, Environmental Health Coalition or --
14 MR. BELL: No, it was the city.
15 MR. MEYER: Oh, I'm sorry, it was the
16 city.
17 HEARING OFFICER RENAUD: Okay. All
18 right, witness, are you there on the phone?
19 MS. DAVIES: Are we still on mute or are
20 we alive.
21 HEARING OFFICER RENAUD: You're live.
22 MS. DAVIES: Okay, I --
23 HEARING OFFICER RENAUD: So, --
24 MS. DAVIES: This is Cindy Davies
25 (phonetic). I'm an attorney with the California

ISO. And I'm here with witness Irena Green (phonetic).

MS. GREEN: I'm the engineer for this project.

HEARING OFFICER RENAUD: Okay, thank you. We have some parties who wish to question the witness, and so let me swear the witness first.

Whereupon,

ILENA GREEN

was called as a witness herein, and after first having been duly sworn, was examined and testified as follows:

HEARING OFFICER RENAUD: All right, state your name, please, for the record.

MS. GREEN: My name is Ilena Green.

HEARING OFFICER RENAUD: All right, thank you.

Applicant, do you wish to question the Cal-ISO witness?

MS. LUCKHARDT: We have no questions for the Cal-ISO. This is Jane Luckhardt on behalf of MMC.

HEARING OFFICER RENAUD: All right. Staff?

1 MR. BELL: Staff has no questions of the
2 representative from the Cal-ISO.
3 HEARING OFFICER RENAUD: Environmental
4 Health Coalition?
5 MR. BUNDY: Thank you, just one quick
6 question. My name's Kevin Bundy; I'm an attorney
7 for the Environmental Health Coalition, an
8 intervenor in this proceeding. And thank you very
9 much for being willing to join us today. I didn't
10 know until just this moment that you'd be able to,
11 and I really appreciate it.
12 CROSS-EXAMINATION
13 BY MR. BUNDY:
14 Q I just have one question, one basic
15 question. Well, maybe a couple. Are you familiar
16 with the letter dated July 24, 2008 from Cal-ISO
17 to Jane Luckhardt regarding this project?
18 MS. GREEN: Yes, I am.
19 MR. BUNDY: Okay, and I see that Gary
20 DeShazo signed the letter, but you're familiar
21 with it?
22 MS. GREEN: It's drafted some of it.
23 MR. BUNDY: I'm sorry, I didn't get
24 that.
25 MS. GREEN: I had drafted this letter,

so I am familiar.

MR. BUNDY: Okay, thank you. I just want to be clear about what the record, what the letter says and doesn't say. It's my understanding that permitting this project would not allow Cal-ISO to remove the RMR requirement from the South Bay Power Plant, is that a correct understanding?

MS. GREEN: Yeah, this is correct. It is because South Bay is almost 700 megawatts. And this project is only 49 megawatts. The 49 megawatts (inaudible) 700 megawatts.

MR. BUNDY: And there are also a couple of references to other capabilities that South Bay Power Plant has. Is it your understanding that both blackstart and dual-fuel capability would have to be replaced somewhere in order to remove the RMR from South Bay?

MS. GREEN: (inaudible) can be taken out from South Bay because conditions for gas delivery significantly improved. But it is still in discussion. The blackstart most likely to be needed somewhere else.

MR. BUNDY: Okay, if I understand correctly, whether or not you would need another

1 dual-fuel plant is still in discussion?
2 MS. GREEN: It is still in discussion
3 but (inaudible) to not be needed.
4 MR. BUNDY: Okay. All right, thank you.
5 I just wanted to clarify, thank you.
6 MS. GREEN: Thank you.
7 MR. BUNDY: I have no further questions.
8 HEARING OFFICER RENAUD: Does anyone
9 else wish to question the witness?
10 MR. TULLOCH: Yes.
11 HEARING OFFICER RENAUD: City, please
12 proceed.
13 MR. TULLOCH: This is Scott Tulloch; I'm
14 the Interim City Manager for the City of Chula
15 Vista. I wanted to mention that this is the July
16 24, 2008 letter that we're talking about is the
17 city exhibit 801. So at some point we'll want to
18 move that into the record.
19 CROSS-EXAMINATION
20 BY MR. TULLOCH:
21 Q And if I could just ask a couple of
22 questions. My understanding of your testimony so
23 far is that just this expansion of this plant
24 alone would not be sufficient to remove the RMR
25 from the entire South Bay Plant, is that correct?

1 MS. GREEN: Perhaps it will help but it
2 will not remove the requirement because South Bay
3 is much larger plant than this one.
4 MR. TULLOCH: So it could contribute to
5 removing the RMR, but not satisfy it completely,
6 is that correct?
7 MS. GREEN: Yeah, that's right.
8 MR. TULLOCH: And could you give us a
9 sense of how much of a contribution that would be?
10 MS. GREEN: For this plant is 49
11 megawatts, and the amount what is needed is the
12 capacity of South Bay, which is 690 megawatts.
13 MR. TULLOCH: Let me --
14 MS. GREEN: Will need at least 600 and
15 something megawatts more.
16 MR. TULLOCH: The project that's being
17 applied for is a 93 to 100 megawatt plant. The
18 existing --
19 MS. GREEN: Oh, sorry, that's addition
20 because there was existing 49. But still it will
21 be not sufficient because South Bay is 690
22 megawatts.
23 MR. TULLOCH: But this, combined with
24 other new power sources, it would contribute to
25 the removal of RMR?

MS. GREEN: Yeah, we need other generation, so this requirement can be taken off.

MR. TULLOCH: And do you happen to know if it's possible that as these increments are added, for example, this one, if that would allow taking one or more engines off --

(Interrupting cellphone noise.)

MR. SPEAKER: It's a cellphone.

MS. GREEN: You know there is so much noise we can hardly hear you. Can you repeat the --

MR. TULLOCH: Yes. I just was asking, since the South Bay Plant is a multi-engine plant, is it possible that this plant that we're discussing today would be sufficient to be able to take one of the engines offline?

MS. GREEN: But still we need South Bay a lot, and we need to do studies to determine which unit could stay, which can be taken off RMR.

MR. TULLOCH: Okay, thank you very much.

MS. GREEN: It will help, but -- don't do RMR requirements.

(Interrupting cellphone noise.)

MR. TULLOCH: Okay, thank you.

HEARING OFFICER RENAUD: Are there

1 further questions of Ms. Green?
2 (Interrupting cellphone noise.)
3 MS. LUCKHARDT: If we can manage to do
4 it -- okay, let's try that.
5 CROSS-EXAMINATION
6 BY MS. LUCKHARDT:
7 Q I don't know, Ms. Green, this is
8 (Interrupting cellphone noise.)
9 MR. SPEAKER: Someone's phone is on too
10 close to a microphone.
11 MS. LUCKHARDT: Okay, I'm moving more
12 stuff.
13 Okay, Ms. Green, are you aware of how
14 much of the existing capacity is actually counted
15 currently by Cal-ISO at that facility? Are you
16 aware of the derate that's currently applicable to
17 that site?
18 MS. GREEN: You mean the rate of South
19 Bay or what?
20 MS. LUCKHARDT: No, of MMC Chula Vista.
21 MS. GREEN: The rate of Chula Vista.
22 No, I don't know about it, no.
23 MS. LUCKHARDT: If that were the case,
24 would the additional capacity be greater? If it
25 was derated to say 40 megawatts instead of 49,

1 would the additional contribution of the new
2 facility be greater?
3 MS. GREEN: Whatever be generated by
4 Chula Vista will help, but it still will not
5 replace South Bay. But it will help towards the
6 RMR requirement.
7 MS. LUCKHARDT: Right. It's my
8 understanding from the letter that you drafted
9 that there was a requirement that you have at
10 least two peakers and potentially Otay Mesa to
11 replace South Bay, is that correct? Am I
12 recalling the letter correctly?
13 MS. GREEN: To replace South Bay they
14 need also Sunrise Power Link because this RMR
15 requirement based on the fact that import
16 capability to San Diego -- and they should be
17 certain amount of internal generation.
18 Otay Mesa Plant is built, and Sunrise
19 Power Link, which is 500 kV transmission line is
20 built, then Sunrise Power Link will help to
21 increase import capability. And Otay Mesa may
22 count as internal generation.
23 If these two things happen, then RMR
24 requirements can be at least reduced, but still
25 maybe some peakers may be needed. It depends on

total load in San Diego and total load forecast.

MS. LUCKHARDT: Okay, as I'm looking at your letter, on page 2 in the last paragraph, your letter indicates that if you have Otay Mesa and peaking generation the Sunrise Power Link is not required for the removal of RMR, is that correct?

MS. GREEN: This will be correct if there is enough amount of peaking generation. Because Sunrise Power Link brings additional 1000 megawatt to the import capability. So we will need a lot of peakers to replace Sunrise Power Link. But it may be possible if they all develop.

MR. TULLOCH: Could I make a comment?

HEARING OFFICER RENAUD: I think it would be best if you could wait until Ms. Luckhardt is done with her questioning. And then you can have a turn.

MS. DAVIES: Is there a question pending?

MS. LUCKHARDT: No. I'm just trying to understand.

MR. BUNDY: Just for clarification could you identify which letter. There are two Cal-ISO letters, right? Which letter are you looking at?

MS. GREEN: I can explain that San Diego

is a load pocket, so cover for all the load we need some of it comes from import and some comes from internal generation. Import capability is limited. So we need to have certain amount of internal generation to cover for all the load. This is why this RMR requirement exists.

MR. TULLOCH: With all due respect, I think I can help clarify the letter issue. That's what I was trying to do.

HEARING OFFICER RENAUD: All right, it sounds like there may be some confusion about versions of the letter?

MR. TULLOCH: No. It's two different letters.

HEARING OFFICER RENAUD: All right.

MR. TULLOCH: The letter that I was referring to is city exhibit number 801, is the July 24 letter, which is a one-page letter.

I believe the letter that's now being referred to is a January 28th letter that was sent by the Cal-ISO to the Mayor of Chula Vista. And that's the one that talks about two alternatives. One is with Sunrise and the one without is that you'd need a lot of peakers.

MS. GREEN: Yeah, those things are --

1 because distance is between the letters. They say
2 same thing.
3 MS. LUCKHARDT: And it seems like, you
4 know, I'm looking at the July 24th letter, and I'm
5 looking at the second paragraph in the July 24th
6 letter. And in that paragraph it says, and I
7 quote, "In other words, in the event either Otay
8 Mesa is delayed, the capacity of the project
9 would, either Otay Mesa or the Sunrise Power Link
10 project is delayed, the capacity of the project
11 would contribute to meeting San Diego's local
12 reliability requirements, provided sufficient
13 additional capacity were available. And that
14 would allow the entire South Bay Power Plant to be
15 retired."
16 MS. GREEN: It just clarify, it says
17 that sufficient additional new capacity will be
18 needed. And this additional means capacity may be
19 very high, especially if there is no Sunrise Power
20 Link. To replace Sunrise Power Link we will need
21 1000 megawatts, because this is how much it brings
22 to import capability.
23 MS. LUCKHARDT: Now, are you saying 1000
24 megawatts of local generation, is that -- you need
25 1000 megawatts of local generation or you need

1 Sunrise Power Link, is that correct?
2 MS. GREEN: The 1000 megawatts, it is
3 increased in import capability for San Diego, this
4 Sunrise Power Link.
5 MS. LUCKHARDT: Right, --
6 MS. GREEN: How much power Sunrise Power
7 Link can bring.
8 MS. LUCKHARDT: Right. The Sunrise
9 Power Link can bring 1000 megawatts of generation
10 along that transmission line. So, am I
11 understanding what you're saying in that it's the
12 Cal-ISO's position that you need 1000 megawatts --
13 MS. GREEN: We may not need it at the
14 beginning; it depends on what year because this
15 power is needed to cover for load. And load grows
16 every year. So we may have sufficient capacity
17 for like first several years, but then we still
18 need some. And it depends on load forecast.
19 (Pause.)
20 MS. LUCKHARDT: Okay, so just to clarify
21 that the addition of additional megawatts, such as
22 those proposed by this project, would contribute
23 to the removal of the RMR, is that correct?
24 MS. GREEN: It will contribute, but it
25 will not replace the whole South Bay.

1 MS. LUCKHARDT: Correct. Okay, thank
2 you.
3 MS. GREEN: Thank you.
4 HEARING OFFICER RENAUD: Are there
5 further questions of this witness? Now, I'd like
6 to -- well, first of all, Mr. Tulloch, you asked
7 to have the July 24, 2008 letter admitted into
8 evidence. I take it no one objects to that.
9 MS. LUCKHARDT: No. I think we also
10 need the --
11 HEARING OFFICER RENAUD: Yes.
12 MS. LUCKHARDT: -- January 28, 2008
13 letter.
14 HEARING OFFICER RENAUD: I'll get to
15 that. Let's do this one first. So it's admitted.
16 And what would it --
17 MS. LUCKHARDT: Well, that one --
18 MR. TULLOCH: That's in the --
19 MS. LUCKHARDT: -- also is our exhibit
20 20.
21 HEARING OFFICER RENAUD: Okay, well,
22 then it's already here. So we don't need to worry
23 about that.
24 Now, the other one --
25 MR. TULLOCH: Except that I don't know

that it was admitted.

HEARING OFFICER RENAUD: Well, --

MS. LUCKHARDT: Okay, well, just -- we can --

HEARING OFFICER RENAUD: Did you move it into evidence.

MS. LUCKHARDT: I moved it in --

HEARING OFFICER RENAUD: I thought you did.

MS. LUCKHARDT: -- under project description.

HEARING OFFICER RENAUD: All right, fine. So it's been admitted.

Now, there was also a reference in the testimony to a January letter. And since it was referred to, I think we need it in the record. Is someone able to offer it? All right, Mr. Tulloch is offering it. I take it it's not already in applicant's exhibits?

MS. LUCKHARDT: I'm checking that right now.

HEARING OFFICER RENAUD: All right. I think it's not, but --

MS. LUCKHARDT: Yeah, I don't think it is. They can offer it or we can offer it, it

1 doesn't matter.
2 HEARING OFFICER RENAUD: I think that
3 would be city's exhibit 804 if I'm not mistaken.
4 MR. TULLOCH: That's correct.
5 HEARING OFFICER RENAUD: All right.
6 That will be admitted.
7 Any further questions of the witness
8 before we let her go? All right. Thank you, Ms.
9 Green, you may go.
10 MR. BUNDY: There was, I'm sorry -- is
11 she already --
12 HEARING OFFICER RENAUD: Witness, are
13 you still there?
14 MS. DAVIES: We're still here.
15 HEARING OFFICER RENAUD: Okay, don't go.
16 MR. BUNDY: I'm sorry, I'm just getting
17 one last question. This is Kevin Bundy with
18 Environmental Health Coalition.
19 FURTHER CROSS-EXAMINATION
20 BY MR. BUNDY:
21 Q Does the additional generation provided
22 by a peaker plant have to be in the same location
23 as the plant that it's replacing in order to
24 contribute reliability, in order to offset some of
25 what's being provided by the existing South Bay

Plant?

MS. GREEN: No, not necessarily. What they are talking about now is total generation, which is required, but there may still be some local requirements or some transmission upgrades which must be needed if it is in a different location. But it is not necessarily that it has to be in location.

MR. BUNDY: Okay, thank you.

MS. GREEN: As long as it is in San Diego.

MR. BUNDY: All right, thank you very much.

MS. GREEN: Thank you.

HEARING OFFICER RENAUD: Any further questions? All right, thank you, Ms. Green, you may go.

MS. GREEN: Thank you.

HEARING OFFICER RENAUD: All right, parties, since we're on transmission system engineering, I suspect -- I think we ought to finish it before we go back to noise and vibration which we skipped.

Applicant, do you wish to call any witnesses on transmission system engineering?

1 MS. LUCKHARDT: Well, we need to enter
2 in a couple of exhibits. I don't know if anyone
3 would like to cross-examine our folks. I can
4 bring up Steve Blue to bring in the
5 interconnection study and --
6 HEARING OFFICER RENAUD: All right.
7 MS. LUCKHARDT: I need to get a couple
8 of exhibits in, so I can have Steve Blue come up
9 and testify on that if you'd like.
10 HEARING OFFICER RENAUD: Okay. Let me
11 find out if anyone would be interested in
12 examining Mr. Blue. Staff, do you have any
13 interest? No.
14 MR. BELL: Staff does have -- when this
15 topic came up as one that was not a settled topic,
16 we did make arrangements to have Mark Hesters --
17 HEARING OFFICER RENAUD: Yes.
18 MR. BELL: -- available via phone. If
19 there are any questions for Mr. Hesters we'll
20 attempt to get him on the line now. And I'd ask
21 the parties if there's anybody who wants to ask
22 him questions. If not, staff is prepared to
23 simply move his testimony into evidence.
24 HEARING OFFICER RENAUD: Yes, Mr.
25 Hesters has filed testimony.

1 MR. BELL: I'm not sure that there are
2 any other questions based on the colloquy we just
3 had with Cal-ISO.
4 HEARING OFFICER RENAUD: Yeah, let's
5 find out just to make sure. Will anyone want to
6 question Mr. Hesters?
7 MR. BUNDY: I have no questions.
8 MS. LUCKHARDT: No.
9 HEARING OFFICER RENAUD: All right.
10 City? Will you want to question Mark Hesters?
11 MR. TULLOCH: No.
12 HEARING OFFICER RENAUD: Staff's
13 witness. All right. And you needn't get him on
14 the phone.
15 MR. BELL: Right. May I move his --
16 HEARING OFFICER RENAUD: Go ahead.
17 MR. BELL: Staff would move staff
18 exhibit 200, chapter 5.5 transmission system
19 engineering, into evidence.
20 HEARING OFFICER RENAUD: Any objection?
21 All right, that's admitted. Okay, let's see --
22 MS. LUCKHARDT: And can we move our
23 exhibits in, too? We need to move in exhibits 17
24 and appendix 3 of exhibit 1.
25 HEARING OFFICER RENAUD: All right. Any

1 objections? That's admitted.
2 EHC, any exhibits?
3 MR. BUNDY: We have no exhibits on this.
4 HEARING OFFICER RENAUD: All right.
5 City, any exhibits? You already did yours. Yeah.
6 All right, I believe that will close out
7 that topic.
8 Noise and vibration, which we skipped.
9 I'm not clear as to whether we actually have
10 anything to talk about here. Does anyone wish to
11 call a witness or question a witness?
12 Maybe we'll start with applicant.
13 MS. LUCKHARDT: We don't wish to
14 question anyone. We have our noise expert, in
15 fact he may be on the phone -- he is on the phone
16 at this time. If anyone has questions, Mr. Baker.
17 HEARING OFFICER RENAUD: David Baker,
18 all right.
19 MR. BELL: And staff has Steve Baker, no
20 relation --
21 HEARING OFFICER RENAUD: No relation.
22 MR. BELL: -- present and available for
23 answering questions, as well.
24 HEARING OFFICER RENAUD: Okay. Will
25 anyone want to question David Baker?

MS. LUCKHARDT: And I guess I'd just like to take a moment to make sure that I've got his exhibits listed that we would offer under noise, which would be section 5.7 of exhibit 1; and data responses 50 and 51 of exhibit 7; and Mr. Baker's declaration contained in exhibit 23.

HEARING OFFICER RENAUD: All right. Is there any objection to those being admitted?

MR. BELL: None.

HEARING OFFICER RENAUD: They're admitted.

All right. Staff, would you care to offer exhibits at this time?

MR. BELL: This is just in the area of noise and vibration?

HEARING OFFICER RENAUD: That's right.

MR. BELL: Since Mr. Baker is not being called, staff would, at this point, move --

HEARING OFFICER RENAUD: Looks like the city will have a question of Mr. Baker?

MR. BELL: Staff will call Steve Baker.

HEARING OFFICER RENAUD: All right. Come forward. You look familiar so I think you may have been sworn already? Did I swear you?

MR. BAKER: Yes.

1 HEARING OFFICER RENAUD: Okay, thank
2 you. You are still sworn.
3 MR. BAKER: Okay
4 Whereupon,
5 STEVE BAKER
6 was recalled as a witness herein, and having been
7 previously duly sworn, was examined and testified
8 further as follows:
9 HEARING OFFICER RENAUD: Proceed.
10 MR. BELL: Thank you.
11 DIRECT EXAMINATION
12 BY MR. BELL:
13 Q Mr. Baker, did you file previously
14 written testimony entitled, noise and vibration,
15 in the matter of the Chula Vista Energy Upgrade
16 project?
17 MR. BAKER: Yes, I did.
18 MR. BELL: At this time staff would move
19 staff's exhibit 200, chapter 4.6 entitled noise
20 and vibration, into evidence.
21 HEARING OFFICER RENAUD: Any objections?
22 MS. LUCKHARDT: No objection.
23 HEARING OFFICER RENAUD: It's admitted.
24 Okay, city, questions?
25 MR. MEACHAM: Yes.

1 CROSS-EXAMINATION
2 BY MR. MEACHAM:
3 Q Mr. Baker, for the folks on the phone,
4 I'm Michael Meacham, the Director of Conservation
5 and Environmental Services for the City of Chula
6 Vista.
7 Mr. Baker, again I apologize to you if
8 you have already done this in the addendum, but I
9 didn't get a chance to review that. Did you have
10 a chance to review the city's prehearing
11 conference comments with regards to noise and
12 vibration, particularly as they relate to the
13 standards the city provided that are commonly or
14 ubiquitously used throughout the State of
15 California with regards to the noise and vibration
16 control standards? And have you addressed those
17 specifically in subsequent comments?
18 MR. BAKER: I've examined the city's
19 prehearing conference statement. The comments in
20 the statement appear to be the same ones that the
21 city previously issued against staff's preliminary
22 staff assessment. And I thought that I'd
23 adequately answered those comments in the final
24 staff assessment.
25 MR. MEACHAM: It was staff's position

that they were not satisfied with the response, and that's why they provided the two references that are used by municipalities throughout the State of California, so that you'd have a reference particularly as it relates to the threshold numbers and increases above 3 decibels.

MR. BAKER: Please continue. I'm waiting for a question.

MR. MEACHAM: So the question is, I guess your testimony is that you feel that you've addressed the request by the city with regards to noise?

MR. BAKER: I was under the impression, but obviously I haven't. So if you can hand me your question in a form I can deal with, I'll do my best to answer it.

HEARING OFFICER RENAUD: If I can help out, perhaps if you can refer to a section of the written document that you need clarification on, that might help.

MR. MEACHAM: Yes, in the city's prehearing statement on page 5, the first and fourth paragraphs, the city specifically, with regards to references what the CEC Staff doesn't, and the last paragraph says that does not provide

1 justification for the use of nine decibel increase
2 in the ambient noise levels as the threshold.
3 MR. BAKER: Okay, let's go to the first
4 paragraph. This is on page 5 of the city's
5 prehearing conference statement. You attempt to
6 quote some of my final staff assessment, page 13,
7 final staff assessment noise and vibration, page
8 13.
9 You say that I state that I don't know
10 where the 3 dba increase in ambient noise
11 threshold came from. And that's true because on
12 that page of my testimony I'm trying to respond to
13 the comments that you issued on our preliminary
14 staff assessment.
15 Someone, whoever put the comments
16 together, claimed that a 3 db increase in noise
17 level is a significant impact. And in the noise
18 industry that's generally not understood.
19 A 3 db increase is understood as the
20 minimum increase in noise level that's normally
21 perceptible by the human ear. In the laboratory
22 situation, the human ear can detect a 1 db
23 increase, but that's only in a special laboratory
24 situation.
25 In normal life if a noise increases by 3

1 decibels you can say, oh, yes, that's louder. But
2 it's barely noticeable. It's certainly not taken
3 to be significantly louder.
4 When you talk about increases of 10
5 decibels or more, then you're talking a
6 significant increase. And that's the level at
7 which people are expected to start noticing or
8 even complaining about the increase. But a 3
9 decibel increase is not considered a significant
10 increase.
11 MR. MEACHAM: So your testimony is that
12 that's the industry standard, but not the commonly
13 used municipal standard?
14 MR. BAKER: The only municipal standards
15 I'm aware of in this case are the existing laws,
16 ordinances, regulations and standards for Chula
17 Vista, which, if you read in my final staff
18 assessment pages 1 through 3, we're talking about
19 the City of Chula Vista general plan noise element
20 and the City of Chula Vista municipal code section
21 19.68. Those are the only LORS I'm aware of, and
22 the only LORS that I could locate that set noise
23 limits within the city limits of Chula Vista.
24 And I believe that I've thoroughly and
25 adequately applied those LORS in my noise

analysis. Where this 3 db increase came from, I honestly don't know.

MR. MEACHAM: And that was the intent of staff's providing the references that are listed on page 5 at the top of the page.

MR. BAKER: The references listed --

MR. MEACHAM: Were you able to review those references?

MR. BAKER: The references listed are two of many many many texts on noise written by the top experts on the subject. And someone has apparently looked through those texts and misinterpreted the 3 decibel increase.

Three decibels is barely perceptible. No one in the noise industry considers a 3 decibel increase as a significant or annoying increase in noise level. So, whoever has cited Bob Baranack (phonetic) as a source saying that 3 decibels is an unacceptable increase has, in my opinion, completely misunderstood the books.

MR. MEACHAM: I appreciate your testimony as the expert. I really just have one more followup question with regards to your comment about the increase of 3 decibels and the perceptibility.

1 I believe you said earlier, I don't
2 remember exactly what your adjective was, but when
3 you mentioned 9 or 10 decibels, you said something
4 about it being audible. It's my understanding
5 from the city's expert staff that at 10, these are
6 actually exponential increases, by decibel 10 it's
7 roughly doubling of the noise?
8 MR. BAKER: Well, it's not exponential,
9 it's logarithmic. A 10 decibel increase is, yes,
10 it's a doubling in perceived noise. Increases of
11 10 decibels or more are, in the noise industry,
12 typically considered not only noticeable, but also
13 annoying.
14 So if you see an increase of 10 decibels
15 or more, there's a chance, you know, the chance
16 that it's an annoying increase. If the increase
17 is less than 10 decibels, it's noticeable, three
18 decibels or more is probably noticeable. But less
19 than 10 decibels is probably not annoying. It
20 depends on the circumstances.
21 MR. MEACHAM: Thank you, I think you've
22 addressed our question.
23 MR. BAKER: If we'd like, I'll go to the
24 fourth paragraph in your prehearing conference
25 statement. You say that I have provided no

1 justification for the use of a 90 dba increase.
2 If you turn to my final staff assessment on page
3 4, this is final staff assessment, noise and
4 vibration, page 4.
5 There's a paragraph here; it's the
6 second paragraph after the numbered paragraphs.
7 "Staff considers it reasonable to assume that an
8 increase in background noise levels up to 5 dba in
9 a residential setting is insignificant. An
10 increase of more than 10 dba is considered
11 significant. And increase between 5 and 10 dba
12 should be considered an adverse impact, but may be
13 either significant or insignificant, depending on
14 the particular circumstances of the case."
15 In the particular circumstances of this
16 case I judged that a 9 decibel increase would not
17 be a significant adverse impact.
18 MR. MEACHAM: Thank you very much.
19 HEARING OFFICER RENAUD: All right,
20 thank you. Any other questions?
21 REDIRECT EXAMINATION
22 BY MR. BELL:
23 Q Just to provide a little clarity here,
24 so that we all understand your analysis, I
25 noticed, Mr. Baker, that when you're discussing

1 the 3 decibel increase, the word significant
2 doesn't appear in that description. And yet it
3 does when you discuss a 10 decibel or greater
4 increase.
5 Is that really the difference between 3
6 decibels and 10, whether or not it's significant?
7 MR. BAKER: Well, significance is does
8 it cause annoyance in a person of normal
9 sensitivity. I'm not talking about somebody who's
10 deliberately looking for noise, ah, I can hear an
11 increase, that's not acceptable.
12 The normal person in their normal life
13 would consider a certain increase in noise level
14 annoying. And at that point we certainly would
15 say it's a significant adverse impact.
16 MR. BELL: And the industry standard you
17 said is 10 decibels?
18 MR. BAKER: Well, in the work we've done
19 with power plants over the years, and I've been
20 responsible for the Commission's noise analysis
21 for over 16 years now. In our work we consider
22 increases of less than 5 decibels as
23 insignificant. And typically that's the case. If
24 the increase is less than 5 decibels no one
25 complains.

1 Increases of more than 10 decibels are
2 generally significant. In cases where the noise
3 increase is more than 10 decibels, there's usually
4 some complaints. It's in between 5 to 10
5 decibels, that's the gray area, and depending on
6 the circumstances, depending on the nature of the
7 noise, depending on the nature of the ambient
8 noise environment on which the impact occurs,
9 somewhere in the 5 to 10 decibel range may or may
10 not be significant.
11 MR. BELL: Thank you.
12 HEARING OFFICER RENAUD: All right,
13 thank you. Any further questions? Okay, Mr.
14 Bundy.
15 CROSS-EXAMINATION
16 BY MR. BUNDY:
17 Q Yeah, I just have a couple of questions.
18 Looking at your testimony on page 4.6-11, the 9
19 decibel increase that we're talking about is
20 during nighttime as compared to ambient level, is
21 that correct?
22 MR. BAKER: Yes.
23 MR. BUNDY: And you determined that this
24 is not significant because -- that's in the range
25 that you would consider potentially significant,

is that correct?

MR. BAKER: That's correct.

MR. BUNDY: And you determined that this not significant because of, quoting, "the plant is unlikely to operate a significant portion of the time during the quiet nighttime hours," is that correct?

MR. BAKER: That's the majority of the reason. Partly, also, the resulting noise level, 46 decibels, is not that noisy in an industrial/residential neighborhood such as the one surrounding this project area.

So, first, the increase of noise to 46 decibels is not necessarily going to annoy people. It may or it may not. But then when you factor in the fact that this plant is probably only going to operate in the nighttime hours, which begin at 10:00 p.m., it's probably only going to operate in its lifetime a few hours beyond 10:00 p.m. The statistics are that that's going to be the case.

Given the unlikelihood of the impacts occurring at night I felt comfortable in declaring them insignificant adverse impacts.

MR. BUNDY: Okay, that was going to be my question, is how many hours of night operations

are we really talking about? Are you saying under ten over the life of the plant or 100?

MR. BAKER: If you go to page 13 of my testimony you'll find a footnote there. Above that, in the second paragraph, I've responded to one of the City of Chula Vista's comments. And I've talked about how this plant is not expected to operate much.

I did a little statistical analysis for a previous project, the Pastoria Energy Facility expansion project. And what I found was that peaking power plants in California above 40 megawatts typically don't run more than 4 percent of the time, 4 percent capacity factor. That's about 350 hours a year.

That was swayed by several plants that operate a lot of hours. If you take out those two or three plants that operate a lot of hours, you're talking a 2 percent capacity factor.

When these people make money off their plant they only make it in short spurts, a few hours at a time. And generally, those hours are not going to be in the nighttime hours. They're going to be in the afternoon and evening when all the air conditioners are running.

1 So the times when this plant is likely
2 to run during the nighttime hours, when it would
3 be most annoying, are probably maybe just a
4 handful of hours throughout its 30-year lifespan.
5 MR. BUNDY: Did that analysis you're
6 talking about quantify -- did you divide the hours
7 between daytime and nighttime as part of that
8 analysis? Did you quantify the hours that run at
9 nighttime?
10 MR. BAKER: No, that's just an overall
11 annual capacity.
12 MR. BUNDY: Overall, okay.
13 Those are the only questions I have. I
14 do have one exhibit that's relevant to noise.
15 This is exhibit 630, and this was attached to our
16 request for official notice. I realize the
17 request for official notice may have been
18 overkill, given that relevant document of good
19 evidence can be admitted.
20 So, I would -- exhibit 630 may have
21 resulted from an excess on my part of trying to be
22 helpful to the city. These are a few pages from
23 the Chula Vista Vision 2020 general plan update
24 final EIR that was discussed in Mr. Meacham's
25 comments on the prehearing conference statement.

1 And I've included a few pages from the
2 final EIR showing that this portion of the draft
3 EIR was not changed. And one page of the draft
4 EIR, I believe it's page 420, that apparently --
5 I'm sorry, 439, that apparently does -- apparently
6 in this final EIR the city treated a 3 decibel
7 noise increase in the context of traffic as a
8 significant impact.
9 So that may be the source of -- so I
10 would offer this into evidence as, you know, if
11 it --
12 HEARING OFFICER RENAUD: It sounds like
13 it's a public record anyway. So, it's fine. Does
14 anybody want to object to it? All right, that's
15 admitted -- well, --
16 MS. LUCKHARDT: Well, which portion of
17 this are you referring to?
18 (Pause.)
19 MS. LUCKHARDT: Okay, so you're not
20 offering it as to the truth of what's stated
21 there, but simply that it's included in that
22 document?
23 MR. BUNDY: That's correct.
24 MS. LUCKHARDT: Then I have no
25 objection.

1 HEARING OFFICER RENAUD: All right, it's
2 admitted then. Thank you. Any further questions
3 for Mr. Baker?
4 MR. BELL: No.
5 MR. MEACHAM: Yes.
6 HEARING OFFICER RENAUD: Okay.
7 RECROSS-EXAMINATION
8 BY MR. MEACHAM:
9 Q Mr. Baker, I just wanted to confirm that
10 it is your testimony, having reviewed the
11 documents by the applicant then, you had just
12 earlier referenced a 46 decibel number of the
13 city's, I think, strictest noise levels with
14 regards to residential areas.
15 Is it your testimony, again to confirm
16 your testimony, that the mitigation efforts by the
17 applicant, like the improved sound wall and other
18 mitigation that they're applying, will reduce the
19 noise impacts from this project to those sensitive
20 receptors to a level below significance and less
21 than 3 decibels greater than the city standard for
22 those receptors?
23 So residential and commercial --
24 MR. BAKER: I'm sorry, that question
25 went in two different directions and the answers

to part are yes and the answers to part are no. If you'd care to give me one question at a time --

MR. MEACHAM: Okay. With respect to the mitigation efforts made by the applicant, will they reduce the noise impacts to those receptors at those relative levels to less than 3 decibels above the city standard?

MR. BAKER: As I pointed out in my final staff assessment, I believe that the project, as it's intended to be built, with the intended mitigation measures, will meet all standards of the city. Not exceed them by 3 decibels, but meet them.

MR. MEACHAM: Great. Thank you.

HEARING OFFICER RENAUD: Any further questions? No. All right. Thank you.

Do we have any other witnesses on the topic of noise and vibration? Anybody?

All right, I --

MS. LUCKHARDT: Okay, at this point, I guess, we can tell David Baker, too, that he can now, unless anyone has any questions, that he can now get off the phone?

HEARING OFFICER RENAUD: All right, yes.

1 We have David Baker on the phone. Anybody want to
2 question Mr. Baker, that Mr. Baker?
3 MR. BELL: The next topic we had was
4 with respect to power plant reliability. Are we
5 moving on?
6 HEARING OFFICER RENAUD: Okay, we're
7 still trying to find out about David Baker,
8 though. Anybody want to question David Baker?
9 MR. BELL: No.
10 HEARING OFFICER RENAUD: All right,
11 thank you. You may go, Mr. Baker. Both of you.
12 MR. BAKER: Thank you.
13 HEARING OFFICER RENAUD: Both Mr.
14 Bakers.
15 All right. Power plant reliability
16 would be the next topic in order. Is that what
17 you said, Mr. Bell?
18 MR. BELL: Yes, good.
19 HEARING OFFICER RENAUD: All right. And
20 let's start with the applicant. Do you have
21 anything to offer?
22 MS. LUCKHARDT: We do not have any new
23 testimony that hasn't already been offered under
24 the area of project description, although I do
25 have Mr. Harry Scarborough here, who can talk

about issues regarding the blackstart generator and any other issues that may come up along those lines.

HEARING OFFICER RENAUD: All right. Do you wish to offer any documents at this time?

MS. LUCKHARDT: No. I believe all of our documents have previously come in under the topic of project description.

HEARING OFFICER RENAUD: All right. How about staff, anything to present here?

MR. BELL: Staff does have Steve Baker still available to testify if any of the parties have questions for him. May I make that inquiry now? If not, then I'll just be moving his testimony into evidence.

HEARING OFFICER RENAUD: All right. Why don't you do that first, and then we'll find out if anyone has questions.

MR. BELL: All right. Mr. Baker, you've been previously sworn.

Whereupon,

STEVE BAKER

was recalled as a witness herein, and having been previously duly sworn, was examined and testified further as follows:

1 DIRECT EXAMINATION
2 BY MR. BELL:
3 Q Did you file previously written
4 testimony entitled, power plant reliability in the
5 Chula Vista Energy Upgrade project?
6 MR. BAKER: Yes, I did.
7 MR. BELL: Do you have any changes or
8 additions to that testimony?
9 MR. BAKER: No.
10 MR. BELL: At this time staff would
11 enter staff's exhibit 200, chapter 5.4, power
12 plant reliability, into evidence.
13 HEARING OFFICER RENAUD: All right, is
14 there any objection to admitting that? All right,
15 thank you, that's admitted.
16 Does anyone wish to question the
17 witness? Mr. Bundy?
18 CROSS-EXAMINATION
19 BY MR. BUNDY:
20 Q I have just one question as to whether,
21 does the -- your testimony on reliability
22 addresses the overall availability factor of the
23 plant?
24 MR. BAKER: Yes, it does.
25 MR. BUNDY: Does the existence of

1 blackstart capability affect the availability
2 factor?
3 MR. BAKER: No, not at all. We do not
4 consider that in our evaluation here of the power
5 plant reliability. Blackstart capability is a
6 system aspect, and that's beyond what I do here.
7 MR. BUNDY: Okay, thank you. That's
8 all.
9 HEARING OFFICER RENAUD: Any further
10 questions? Good. Thank you.
11 MS. LUCKHARDT: I'm just wondering if it
12 would be helpful to the record to have Mr.
13 Scarborough clarify the applicant's willingness to
14 add blackstart to the facility, should that be
15 necessary. Do you want that --
16 HEARING OFFICER RENAUD: I think that
17 couldn't hurt to put in the record. It sounds
18 like it would be very brief.
19 MS. LUCKHARDT: Okay. He needs to be
20 sworn.
21 HEARING OFFICER RENAUD: All right.
22 Whereupon,
23 HARRY SCARBOROUGH
24 was called as a witness herein, and after first
25 having been duly sworn, was examined and testified

as follows:

HEARING OFFICER RENAUD: Thank you. Please state your name.

MR. SCARBOROUGH: Harry Scarborough, last name S-c-a-r-b-o-r-o-u-g-h.

DIRECT EXAMINATION

BY MS. LUCKHARDT:

Q And at this point, Mr. Scarborough, can you clarify MMC's willingness to install a blackstart generator?

MR. SCARBOROUGH: MMC originally, when they filed the application, intended to install a blackstart generator. It was only after careful consideration and realizing that the only requirement for blackstart was because we had participated in an RFO by San Diego Gas and Electric that they required the blackstart. They were going to include it in there.

Subsequently, after not being selected for that particular RFO, we opted to remove the blackstart capability. There are additional requirements that become part of the construction when you do install a blackstart. In this case it would require probably an SCR converter on top of the natural gas generator. So for those reasons

1 we opted to eliminate it.
2 As we've made it clear to the city, as
3 well as to the Commission, we're more than willing
4 at this point to install a blackstart generator.
5 If you'll note, too, that in Irena Green's prior
6 testimony when I think she was questioned about
7 whether or not there's a requirement for dual
8 fuel, as well as for blackstart, she was pretty
9 hesitant to answer on the dual fuel, other than to
10 say most likely that's not required. And I think
11 that's the route that probably California, in
12 general, is taking.
13 In terms of the blackstart, that is only
14 a requirement right now that's issued by a
15 requirement of the utility. And it's not of every
16 utility. And it's not to say that every peaker
17 that's permitted, either on conditional use permit
18 or otherwise, is required to have it.
19 But, again, for the record, we'd like to
20 say that MMC will include a blackstart generator
21 and request an amendment to the air permit if so
22 required.
23 HEARING OFFICER RENAUD: Thank you. Any
24 cross-examination?
25 MR. BUNDY: I have no questions. I want

to state again, for the record, as I did at the prehearing conference statement, that EHC is not asking for installation of a blackstart generator. We had some questions regarding the interplay between blackstart and the South Bay Plant. I believe those are addressed at ISO. So I don't have any questions --

HEARING OFFICER RENAUD: All right, thank you. Anyone else? Yes, city.

CROSS-EXAMINATION

BY MR. MEACHAM:

Q Mr. Scarborough, a question of clarification. You mentioned SCR on the natural gas facility. Is this proposal to be a natural gas generator? Natural gas fueled generator.

MR. SCARBOROUGH: Mr. Meacham, originally we were looking at the possibilities of doing a diesel generator. In light of some of the unfavorable characteristics of having diesel fuel onsite, we were opting to go with natural gas. And, in fact, if we did do the natural gas option it would require an SCR.

MR. MEACHAM: Thank you very much.

HEARING OFFICER RENAUD: All right, I think that concludes that witness. Thank you.

1 Does anyone have further evidence or
2 testimony on power plant reliability?
3 MS. LUCKHARDT: One thing we might want
4 to add at this point, I don't know if this is the
5 right point, but there had been a question raised
6 by the Environmental Health Coalition regarding
7 the elevation of the facility in regards to the
8 flood plane.
9 And so I'd like to get exhibit 25 in.
10 I've got Steve Blue here who can interpret that
11 for us. We also have some large copies of the
12 map, and I believe we emailed it to the city, so
13 it can go up on the board if you're interested in
14 that.
15 HEARING OFFICER RENAUD: Is that still
16 an issue with respect to EHC?
17 MR. BUNDY: We had some questions, and I
18 also have an exhibit, exhibit 625.
19 HEARING OFFICER RENAUD: All right.
20 Sounds like we'd better proceed on that, then.
21 MS. LUCKHARDT: Okay.
22 HEARING OFFICER RENAUD: Do you have a
23 witness on that, Ms. Luckhardt?
24 MS. LUCKHARDT: Yes. We have Mr. Steven
25 Blue, who I don't believe has been sworn.

1 HEARING OFFICER RENAUD: I don't think
2 so. All right.
3 Whereupon,
4 STEVEN BLUE
5 was called as a witness herein, and after first
6 having been duly sworn, was examined and testified
7 as follows:
8 HEARING OFFICER RENAUD: Thank you.
9 Please state your name.
10 MR. BLUE: My name is Steven Blue.
11 DIRECT EXAMINATION
12 BY MS. LUCKHARDT:
13 Q And then, Steve, if I can get the large
14 copies of the topographic map from you. This is
15 exhibit 25. And if you guys can load that up on
16 the -- oh, you've got it. Okay. Yes.
17 (Pause.)
18 MS. LUCKHARDT: Okay, what we're passing
19 out are large-sized versions of the exhibit that
20 we had previously filed. It's easier to read in
21 the larger format, and so we've brought some of
22 the larger format with us.
23 And the one question I have is, Mr.
24 Blue, is the current elevation of the existing
25 site above the flood plane?

1 MR. BLUE: Yes, it is.
2 MS. LUCKHARDT: And how far above is it?
3 MR. BLUE: About five feet.
4 MS. LUCKHARDT: And is the location of
5 the new facility further outside of the current
6 flood plane?
7 MR. BLUE: No, it's all about five feet.
8 MS. LUCKHARDT: Okay, so it's five feet
9 out of the flood plane. Okay. And these maps are
10 larger and give the elevations. If anyone has any
11 questions, we'd be happy to -- Mr. Blue is
12 available to respond.
13 HEARING OFFICER RENAUD: Thank you.
14 Cross-examination?
15 MR. BUNDY: Just a quick question. I
16 think at this point it might be good to move our
17 exhibit 625 into evidence. This is an excerpt
18 from a 10Q report filed with the Securities and
19 Exchange Commission, that makes some statements
20 relative to the location of the plant with respect
21 to the flood plane.
22 HEARING OFFICER RENAUD: Do you intend
23 to examine the witness about them?
24 MR. BUNDY: I would like to ask the
25 witness a question about this.

1 HEARING OFFICER RENAUD: All right.
2 Then you may move that into evidence. We'll deal
3 with admitting it after the testimony.
4 CROSS-EXAMINATION
5 BY MR. BUNDY:
6 Q Mr. Blue, do you have a copy of this?
7 MR. BLUE: I do not.
8 MR. BUNDY: I think I've given away all
9 my extras at this point.
10 HEARING OFFICER RENAUD: What's the
11 number?
12 MS. LUCKHARDT: Do you remember what --
13 MR. BUNDY: 625.
14 MS. LUCKHARDT: -- subject area it was
15 originally --
16 MR. BUNDY: It was identified as power
17 plant reliability, I think.
18 MS. LUCKHARDT: Okay.
19 MR. BUNDY: I may have an extra copy --
20 (Pause.)
21 MR. BUNDY: I have an extra copy of it.
22 (Pause.)
23 MR. BUNDY: These printed out kind of
24 odd because I printed them off of the SEC's
25 website, and the text runs over more than one

1 page. But if you look in the upper right-hand
2 corner on page 29 of 53, I believe it's about the
3 fourth page of the exhibit.
4 The fifth paragraph, second sentence
5 states that the Chula Vista facility lies within a
6 designated flood plane and is therefore
7 potentially at risk if subject to a 100-year flood
8 event, is that correct?
9 MR. BLUE: According to the FEMA maps it
10 is in a flood plane, that's correct. However, the
11 FEMA map shows the flood elevation to be
12 approximately 45 feet. The current site elevation
13 is at about 50 feet.
14 MR. BUNDY: So it's in the flood plane
15 on the FEMA map, but the FEMA map elevations are
16 wrong, is that the --
17 MR. BLUE: No. The FEMA map is showing
18 what the flood elevation would be. Okay?
19 MR. BUNDY: Of a 100-year flood?
20 MR. BLUE: Of a 100-year flood. This
21 map on the screen up there is showing what the
22 actual dirt elevation is right now, which is
23 approximately 50 feet. So it's five feet above
24 what the FEMA flood level would be, or indicates.
25 MR. SCARBOROUGH: In other words, when

they went in to do the construction of the existing plant, they added nearly 30 feet of additional fill in order to bring it above flood plane level.

So right now you've got roughly 45 feet up there, and you got another five feet that pretty much keeps it above flood plane.

MR. BUNDY: Okay, moving on. This paragraph also discusses the company's insurance policy which imposes a $1 million limit on claims resulting from an earthquake or flood.

It essentially says that the company is self-insuring above the $1 million limit?

MR. BLUE: That is correct.

MR. BUNDY: Does that -- given the acknowledgement of potential damage from a catastrophic event, does this affect your assessment of the overall reliability over the 30-year life of the plant at all?

MR. BLUE: From an engineering perspective, no.

MR. BUNDY: Okay. I'd like to go ahead and offer this exhibit into evidence. I don't have any further questions at this time.

HEARING OFFICER RENAUD: Is there any

1 objection?
2 MS. LUCKHARDT: No.
3 HEARING OFFICER RENAUD: All right, that
4 will be admitted. Actually, does anyone else have
5 any questions of this witness? Committee?
6 I would just like to ask whether -- so
7 we're talking about five feet above the 100-year
8 flood level, is that what we're talking about?
9 MR. BLUE: That's correct.
10 HEARING OFFICER RENAUD: Okay. So, if
11 there were such a flood would this project be
12 damaged by it?
13 MR. BLUE: From an engineering
14 perspective, no.
15 HEARING OFFICER RENAUD: It would still
16 work? It would still run?
17 MR. BLUE: Yes.
18 HEARING OFFICER RENAUD: All right. Do
19 you know what the damage that the SEC document is
20 referring to with respect to insurance questions
21 is about, if it's not the power plant, itself?
22 MR. BLUE: That's a question for MMC.
23 HEARING OFFICER RENAUD: All right.
24 Thank you. Any further questions on this topic?
25 All right.

MS. LUCKHARDT: Mr. Scarborough, I think, can answer this question.

HEARING OFFICER RENAUD: All right, please.

MR. SCARBOROUGH: Just for the record, the reason why that policy is set at $1 million, that's assuming a replacement cost of the existing plant, not what the capital cost replacement would be of a future plant.

HEARING OFFICER RENAUD: Okay, thank you. That's helpful. All right, reliability. Anything else from any party on reliability, questions, witnesses, evidence?

MR. BELL: No.

HEARING OFFICER RENAUD: Nothing. All right.

Let's move on. Visual resources. Does the applicant wish to present anything?

MS. LUCKHARDT: In the area of visual resources, no. We have Doug Davy available. And we have exhibits that we need to move in in the area of visual resources. Mr. Davy was the supervisor at CH2MHILL, and he supervised the work that was done in the area of visual resources.

The exhibits that we would be sponsoring

1 would be section 513 and appendix 513 of exhibit
2 1. The visual resources section of exhibit 18.
3 The visual resources section of exhibit 19. And
4 the visual resources declaration included in, and
5 testimony included in, exhibit 23.
6 HEARING OFFICER RENAUD: Any objection
7 to those being admitted?
8 MR. BELL: None.
9 HEARING OFFICER RENAUD: They'll be
10 admitted then, thank you.
11 Does anyone wish to question Mr. Davy
12 regarding this topic? All right.
13 Staff, do you wish to present anything?
14 MR. BELL: Just by way of declaration.
15 Staff would be moving into evidence staff's
16 exhibit 200, chapter 4.12 visual resources.
17 HEARING OFFICER RENAUD: All right. Is
18 there any objection to that?
19 MS. LUCKHARDT: No.
20 HEARING OFFICER RENAUD: All right,
21 that's admitted. Does anyone wish to question
22 staff's witness? No, this is by declaration --
23 MR. BELL: That was by declaration.
24 HEARING OFFICER RENAUD: All right.
25 City, do you wish to offer anything on this topic?

1 Okay.
2 And EHC, anything --
3 MR. BUNDY: No, we don't have any.
4 HEARING OFFICER RENAUD: All right.
5 The next topic I have would be worker
6 safety and fire protection, but I suspect that's
7 been taken care of.
8 MR. BELL: Yes, that's correct.
9 HEARING OFFICER RENAUD: All right,
10 that's been resolved.
11 MR. BELL: Yes, and staff's exhibit has
12 already been admitted.
13 HEARING OFFICER RENAUD: All right.
14 Applicant, anything on that?
15 MS. LUCKHARDT: We've already moved
16 those.
17 HEARING OFFICER RENAUD: EHC?
18 MR. BUNDY: No.
19 HEARING OFFICER RENAUD: All right,
20 thank you. So we move on to land use, which I
21 think we've decided to combine with alternatives.
22 And, applicant, the witness list shows Matthew
23 Frank would be your first witness.
24 MS. LUCKHARDT: Right. And he is in the
25 audience, so we're moving now and getting folks

1 set up.
2 HEARING OFFICER RENAUD: Good, thank
3 you.
4 MS. LUCKHARDT: It'll take us just a
5 second.
6 HEARING OFFICER RENAUD: That's fine.
7 (Pause.)
8 MS. LUCKHARDT: Okay, so the applicant
9 calls Matt Frank, who has agreed to step in and
10 help us out in the area of land use.
11 The exhibits that the applicant is
12 sponsoring in the area of land use are section 5.6
13 and appendix 5.6 of exhibit 1. The land use
14 portion of exhibit 2. Data requests 55 and 56 of
15 exhibit 8. Land use portion of exhibit 19. I
16 believe exhibit 21 has already gone in. And the
17 land use declaration, exhibit 23.
18 Since Mr. Frank -- I'm sorry, it's a
19 different exhibit, it is -- I guess we need to add
20 a number. It was filed on Friday, September --
21 filed last Friday, I believe. And it was the
22 r,sum, and declaration for Mr. Frank. We need --
23 the 26th, Friday, September 26th -- we need a
24 number for that.
25 HEARING OFFICER RENAUD: All right, that

1 would be 28.

2 MS. LUCKHARDT: Okay, 28. We offer

3 that. And we also offer exhibit 24.

4 HEARING OFFICER RENAUD: Okay. Is there

5 any objection to the admission of those documents?

6 MR. BELL: None.

7 MR. BUNDY: I have an objection to

8 exhibit 24. This is a purported list of power

9 plants in I-L equivalent zones. That's the title

10 of it.

11 HEARING OFFICER RENAUD: Can you --

12 MR. BUNDY: Oh, I'm sorry, the

13 microphone's off. Sorry. I'll start over.

14 I have an objection to exhibit 24. It's

15 legally irrelevant. This exhibit only discusses

16 other projects in other areas under other zoning

17 codes. The only question that's relevant to this

18 proceeding is whether this project is consistent

19 with applicable provisions of the Chula Vista

20 zoning ordinance. Past decisions on different

21 projects under different city and county codes are

22 not at all probative of whether this project is

23 consistent with this zoning ordinance.

24 It's a legal issue. Exhibit 24 doesn't

25 tend to prove anything relevant to the

1 determination of that legal issue. And I don't
2 think it should be admitted.
3 MS. LUCKHARDT: In this instance --
4 HEARING OFFICER RENAUD: You needn't
5 respond, Ms. Luckhardt. I think I understand this
6 exhibit to be showing examples of how this type of
7 issue was handled in other jurisdictions. And
8 under our liberal rules of admission, I think it's
9 admitted.
10 MR. BUNDY: Just wanted to say that on
11 the record.
12 HEARING OFFICER RENAUD: Thank you. All
13 right. Any other objections? Okay, they're all
14 admitted.
15 And do you wish to call a witness, Ms.
16 Luckhardt?
17 MS. LUCKHARDT: The witness is available
18 for cross-examination at this point. I guess I
19 would like to take a moment just at this point to
20 ask Mr. Frank if he can address the question that
21 you had asked prior to the prehearing conference
22 regarding -- oh, I'm sorry, Mr. Frank has not been
23 sworn.
24 HEARING OFFICER RENAUD: Are you asking
25 a question of your witness? All right.

MS. LUCKHARDT: Yes. He has not been sworn. Sorry.

HEARING OFFICER RENAUD: Okay.

Whereupon,

MATTHEW FRANK

was called as a witness herein, and after first having been duly sworn, was examined and testified as follows:

HEARING OFFICER RENAUD: Please state your name.

MR. FRANK: Matt Frank.

HEARING OFFICER RENAUD: Thank you. Go ahead.

MS. LUCKHARDT: Okay. Sorry about that, I got a little ahead of myself.

DIRECT EXAMINATION

BY MS. LUCKHARDT:

Q I would ask Mr. Frank if he could respond to the question that was raised by the Committee prior to the prehearing conference regarding the fact that power plant is not listed as a permitted use within the zone in which the project is proposed to be sited.

So just ask if you can address that.

MR. FRANK: Yes. The Chula Vista zoning

1 code clearly does not state that power plants are
2 a permitted use in the limited industrial zone.
3 Just because they're not called permitted uses
4 does not mean that they are prohibited uses.
5 As a matter of fact, the Chula Vista
6 zoning code has a section following that where it
7 describes prohibited uses and that does not
8 contain power plants as one of the prohibited
9 uses.
10 Typically when something is not listed
11 as a permitted use in the zoning code there are
12 still other options that are available for the
13 local jurisdiction to make a determination on
14 whether or not the use is acceptable or not.
15 And in the Chula Vista zoning code at
16 section 1944.020(t) it states: Any other limited
17 manufacturing use which is determined by the
18 Commission be of the same general character as the
19 above uses."
20 In my experience with zoning ordinances,
21 that essentially means that if it's not listed as
22 a permitted use and if it goes through the
23 conditioned use permit process that it may be
24 considered acceptable in that zone. It's just not
25 patently acceptable as permitted by right.

MS. LUCKHARDT: And are you familiar with the determination made by the city when the existing project was permitted?

MR. FRANK: Yes.

MS. LUCKHARDT: And did the city find that the project was consistent with its zoning ordinance?

MR. FRANK: Yes.

MS. LUCKHARDT: And how did they reach that conclusion?

MR. FRANK: In the environmental documentation they described a category under the CEQA checklist about consistency with land use plans and policies, the box was checked no impact. Which, to me, implies that they did establish that level of consistency.

And because it was a use permit process, in my opinion, going through the use permit process and approving it means that they did make that determination, that it was an acceptable use subject to the conditions that the use permit was approved.

MS. LUCKHARDT: Okay, I have nothing further.

HEARING OFFICER RENAUD: Any cross-

1 examination --
2 MS. LUCKHARDT: Oh, we've got one thing.
3 I'm sorry, there is one correction to his
4 testimony that he needs to make at this time.
5 MR. FRANK: In exhibit 24 where we
6 present information about other jurisdictions and
7 appropriate industrial zoning, we talked about
8 Grapeland, the Grapeland project in Rancho
9 Cucamonga. We said general industrial. That is
10 incorrect. It is heavy industrial.
11 HEARING OFFICER RENAUD: What was that
12 last word, heavy industrial?
13 MR. FRANK: Heavy industrial.
14 HEARING OFFICER RENAUD: All right,
15 thank you. All right, is there any cross-
16 examination by staff?
17 MR. BELL: Not on behalf of staff.
18 HEARING OFFICER RENAUD: All right. By
19 EHC?
20 MR. BUNDY: I do have a few questions
21 regarding exhibit 24. At this point I think it
22 might be appropriate to move exhibit 629 into
23 evidence. These are copies of what I was able to
24 find of the zoning codes, county codes and
25 municipal codes, for the jurisdictions discussed

in exhibit 24, along with some Commission documents and other public documents regarding the projects discussed in exhibit 24.

MS. LUCKHARDT: We have no objection.

HEARING OFFICER RENAUD: Any objections?

MR. BELL: No.

HEARING OFFICER RENAUD: It's admitted, thank you.

CROSS-EXAMINATION

BY MR. BUNDY:

Q I don't want to go through all of these. Do you have a copy of exhibit 629?

MR. FRANK: Electronic, yes.

MR. BUNDY: You do, okay. Now, would you agree that -- I'll just ask you a couple questions about the existing site, the project site, the proposed project site.

You would agree that power generation is not explicitly listed as a permitted use?

MR. FRANK: Yes.

MR. BUNDY: And would you agree that power generation is also not explicitly listed as a conditional use in the limited industrial zone?

MR. FRANK: Correct.

MR. BUNDY: Turning to exhibit 24, do I

1 understand -- there's not a lot of narrative here,
2 but do I understand your testimony to be that the
3 zoning designations for the various jurisdictions
4 and power plants discussed in this exhibit are
5 equivalent to Chula Vista's limited industrial
6 zone? That's the word you use in the title.
7 MR. FRANK: They are very similar. I
8 think most municipalities have various grades of
9 industrial zoning. And what we're seeing in these
10 other jurisdictions is a similar pattern at Chula
11 Vista -- Chula Vista has.
12 But each jurisdiction is unique. So
13 equivalent, I think, is -- they are certainly
14 similar.
15 MR. BUNDY: Okay. I wanted to just ask
16 you a couple questions about some of those zones.
17 Going to the -- I don't know how to pronounce it,
18 the first one on the list of SCE peakers, I want
19 to say Barre, from, you know, Pennsylvania
20 experience.
21 Is it Barre or Barre or --
22 MS. SPEAKER: Barre.
23 MR. FRANK: It's Barre.
24 MR. BUNDY: Is it Barre? Okay. Just
25 for identification. I'd like you to look at

1 629(a), exhibit 629(a). And your testimony that
2 this is in the M1, is located in the M1 zone,
3 industrial manufacturing district?
4 MR. FRANK: The M1 zone is, I believe,
5 called light industrial.
6 MR. BUNDY: Light industrial, okay.
7 HEARING OFFICER RENAUD: Mr. Frank, let
8 me remind you to get right up to that microphone,
9 please. Have a clearer record. Thank you.
10 MR. BUNDY: Could I draw your attention
11 to, it's the second page of what's in exhibit
12 629(a), this is section 20.14.020 of the Stanton
13 municipal code.
14 MR. FRANK: Yes.
15 MR. BUNDY: Sub (a), light industrial,
16 you see that. If you could look at the last
17 sentence, would you agree that this classification
18 explicitly includes power generation?
19 MR. FRANK: Yes.
20 MR. BUNDY: You mentioned the City of
21 Grapeland, that you had a -- or the City of Rancho
22 Cucamonga, sorry, Grapeland project, that you had
23 a correction to. And you said that's in the heavy
24 industrial or HI zone?
25 MR. FRANK: Yes.

1 MR. BUNDY: Okay, can I turn your
2 attention to exhibit 629(c). This is an excerpt
3 from the Rancho Cucamonga municipal code. On the
4 third page if you look in the upper right-hand
5 corner, page 5 of 585, there's table 17.30.030.
6 MR. FRANK: Um-hum.
7 MR. BUNDY: The very last listing in
8 that table is extensive impact utility facilities.
9 MR. FRANK: Yes.
10 MR. BUNDY: Is that right? And I'm
11 assuming MIHI is minimum impact heavy industrial.
12 Okay. I think the correction to your testimony --
13 oh, okay. If you look over at HI is the zone
14 we're talking about?
15 MR. FRANK: Yes.
16 MR. BUNDY: Okay. Extensive impact
17 utility facilities. Is it correct that this is
18 listed as a conditional use in the HI zone,
19 according to this table?
20 MR. FRANK: Yes.
21 MS. LUCKHARDT: Objection. If you're
22 assuming that extensive impact utility facilities
23 applies to this project, --
24 MR. BUNDY: Let me follow up with --
25 MS. LUCKHARDT: -- clarify that?

1 MR. BUNDY: That's actually my next
2 question. You're anticipating it. If you could
3 turn to the same exhibit, upper right-hand corner
4 page 14 of 85.
5 This is a rather long section, this is
6 still in 17.30.030D(f) at the very bottom of page
7 14 of 85, if I can use that reference.
8 There's a definition of extensive impact
9 utility facilities? You go to the next page,
10 subdivision (10) under that definition, is it true
11 that includes steam, fossil or nuclear power
12 plants?
13 MR. FRANK: Yes.
14 MR. BUNDY: Let's go to the City of
15 Oxnard, exhibit 629(e). There's only one page to
16 this exhibit, and this is under -- it was your
17 testimony that this is in the EC zone, the coastal
18 energy facilities zone, this project, the McGrath
19 Beach project?
20 MR. FRANK: Yeah, just a moment.
21 MR. BUNDY: Okay, sorry.
22 MR. FRANK: No problem. Yes.
23 MR. BUNDY: Okay. If you could look at
24 section 17-20 EC coastal energy facilities
25 subzone, subdivision (A), isn't it true that this

1 says the purpose of the EC subzone is to provide
2 areas that allow for siting, construction,
3 modification and maintenance of power-generating
4 facilities and electrical substation?
5 MR. FRANK: Yes.
6 MR. BUNDY: Okay. Go on to exhibit
7 629(g). This is where the Niland peaker plant in
8 Imperial County, and 629(g) is the Imperial County
9 -- I'm sorry, the Imperial County code. And it's
10 your testimony this is in the M1, this power plant
11 is located in the M1 zone?
12 MR. FRANK: Yes.
13 MR. BUNDY: Okay. Turning to, again, in
14 the upper right-hand corner pagination, page 7 of
15 11, near the bottom section 90515.02. It says the
16 following uses essentially will be, and similar
17 uses shall be allowed subject to securing a
18 conditional use permit?
19 MR. FRANK: Yes.
20 MR. BUNDY: And turning to the next
21 page, number 20 on this rather long list, is it
22 true that that says electrical power generation
23 plants?
24 MR. FRANK: Yes.
25 MR. BUNDY: I just have a couple more.

1 I want to go to the Roseville combined cycle
2 plant. This is exhibit 629(i). And I think the
3 pages got copied out of order here, I apologize.
4 There are three pages, but if you look in the
5 upper right-hand corner it should put it together.
6 Your testimony is that this power plant
7 is located in the PQP, or the public-quasi-public
8 district, right?
9 MR. FRANK: Yes.
10 MR. BUNDY: Okay. If you look in the
11 upper right-hand corner, page 203, this may
12 actually appear as the first page of the exhibit
13 because of the copy ordering. This is section --
14 MR. FRANK: I'm sorry page 3 of 3?
15 MR. BUNDY: I'm sorry, 2 of 3.
16 MR. FRANK: 2 of 3.
17 MR. BUNDY: This is from --
18 MR. FRANK: Okay, yes, I have it.
19 MR. BUNDY: -- section 19.08.070 of the
20 Roseville municipal code covering civic use types,
21 subdivision (h), power generating facilities, is
22 that what it says?
23 MR. FRANK: Yes.
24 MR. BUNDY: A couple more. I'd like to
25 draw your attention to 629(l). This is the, I

1 believe you called it the von Raesfeld plant
2 (phonetic) in exhibit 24, is that right?
3 MR. FRANK: Yeah, I'm sorry, let me
4 just --
5 MR. BUNDY: Donald von Raesfeld Power
6 Plant project.
7 MR. FRANK: Oh, yeah.
8 MR. BUNDY: City of Santa Clara.
9 MR. FRANK: Yes, I'm sorry.
10 MR. BUNDY: Okay. 629(l) is a brief
11 excerpt from the Santa Clara municipal code. If
12 you look at page 2 of 2, again using the
13 pagination in the upper right-hand corner, these
14 are regulations -- okay, I'm sorry, give me one
15 second.
16 Your testimony was that this power plant
17 is in the B or public usage, correct?
18 MR. FRANK: Yes.
19 MR. BUNDY: And if I could draw your
20 attention to section 18.60.050, Santa Clara
21 municipal code. It's on page 2 of 2. Is it
22 correct that this says that the construction or
23 operation of electric power plants, et cetera, is
24 permitted only in MPMLMH or B zoning districts?
25 MR. FRANK: Yes.

1 MR. BUNDY: Subject to securing a
2 permit?
3 MR. FRANK: Um-hum.
4 MR. BUNDY: The final one I want to look
5 at is 629(r). This is for Wildflower Larkspur in
6 the City of San Diego.
7 MR. FRANK: Yes.
8 MR. BUNDY: And your testimony is that
9 this project is located in the industrial park?
10 MR. FRANK: Yes.
11 MR. BUNDY: -- designation. Okay.
12 Turning to, this is another one of those long
13 charts. I'll do my best to point you in the right
14 direction.
15 There are -- this is an excerpt from the
16 San Diego municipal code and the pagination uses a
17 strange box --
18 MR. FRANK: Yeah.
19 MR. BUNDY: -- thing in the lower right-
20 and left-hand corners of the facing pages. Is
21 table 131-06V use regulations table for industrial
22 zones? If you look at page 6 in that last little
23 blackened box, --
24 MR. FRANK: Um-hum.
25 MR. BUNDY: -- under institutional, the

very last section says energy generation and distribution facilities, correct?

MR. FRANK: Yes.

MR. BUNDY: And this is listed as a conditional use in both of the IP zones, is that correct?

MR. FRANK: Yes.

MR. BUNDY: So, would it be fair to say that, I mean again I didn't walk you through all of this, but would it be fair to say that in seven of the 12 projects you identified, the zoning explicitly allowed a power plant at that location?

MR. FRANK: Well, subject to a conditional use permit.

MR. BUNDY: Subject to a conditional use permit, --

MR. FRANK: Yes.

MR. BUNDY: -- but it's listed as a conditional use, or a permitted use in those locations?

MR. FRANK: I think in each of the seven cases we talked about they were explicitly stated, yes.

MR. BUNDY: Okay, thank you. Let me see if I have any questions on any other topics

1 besides exhibit 24.
2 I think those are all the questions I
3 have right now, thank you.
4 HEARING OFFICER RENAUD: All right. Any
5 other cross-examination?
6 CROSS-EXAMINATION
7 BY MR. BELL:
8 Q Good afternoon, Mr. Frank. Each of
9 those facilities that you were just walked through
10 are different from the Chula Vista Energy Upgrade
11 project, correct?
12 MR. FRANK: I might -- when Doug and I
13 put this table together it intended to identify
14 projects that were similar in scale to the
15 proposed project. So, I think the appropriate
16 answer is yes, they were intended to be similar to
17 the project. We didn't want to compare apples and
18 oranges.
19 MR. BELL: I think that's my point, what
20 I'm getting at with my next question. Not only
21 are they different from the current project, but
22 they're all slightly different from each other,
23 correct?
24 MR. FRANK: Yes.
25 MR. BELL: No two are the same, correct?

1 MR. FRANK: Well, I can't say that I
2 pored through the project descriptions to compare
3 in such detail that they were identical. You
4 know, every project is different. So I expect
5 there's some variation between the two.
6 MR. BELL: You did see some
7 similarities?
8 MR. FRANK: Well, they were power
9 plants, gas-fired power plants of roughly the same
10 size.
11 MR. BELL: And were they all located in
12 limited industrial zones or the equivalent?
13 MR. FRANK: They were in industrial
14 zones of communities like Chula Vista, or -- I
15 think for the most part they were in communities
16 similar to Chula Vista or, you know, either more
17 rural or more urban in character. But generally
18 similar.
19 MR. BELL: Thank you, no further
20 questions.
21 HEARING OFFICER RENAUD: Any further
22 cross-examination? All right. Redirect?
23 MS. LUCKHARDT: Yeah, I have one
24 redirect question.
25 //

1 REDIRECT EXAMINATION
2 BY MS. LUCKHARDT:
3 Q You were directed to exhibit 629, part
4 (c), and this is in regards to the Grapeland
5 project, which is the one project that's on this
6 list that's in a heavy industrial zone, is that
7 correct?
8 MR. FRANK: Yes.
9 MS. LUCKHARDT: And you were directed to
10 page 15 of that exhibit. Do you remember that?
11 MR. FRANK: Yes.
12 MS. LUCKHARDT: And to number 10 down
13 there. Let me ask you, would you consider this
14 project to be similar to a nuclear power plant,
15 what's proposed in this instance?
16 MR. FRANK: No.
17 MS. LUCKHARDT: Would you consider a
18 nuclear power plant to be of a much more
19 industrial use?
20 MR. BUNDY: I'm not sure what the --
21 well, anyway, it's about the relevance, but --
22 MR. FRANK: Whether -- it's a more
23 intensive use. Whether it's more industrial, it's
24 certainly is subject to a whole different host of
25 land use considerations. It's much much

1 different.

2 MS. LUCKHARDT: Thank you. I have

3 nothing further.

4 MR. BUNDY: I'd just ask one followup

5 question on that.

6 HEARING OFFICER RENAUD: Yes, please.

7 RECROSS-EXAMINATION

8 BY MR. BUNDY:

9 Q Was the Grapeland facility a nuclear

10 power plant?

11 MR. FRANK: No.

12 MR. BUNDY: As you just testified, you

13 chose these various facilities for what you

14 thought of as their similarity to the peaker

15 plant?

16 MR. FRANK: Yes.

17 MR. BUNDY: And on page 15 that was just

18 referred to of exhibit 629(c), the extensive

19 impact utility facilities include steam, fossil or

20 nuclear power plants?

21 MR. FRANK: Yes.

22 MR. BUNDY: Would you refer to a natural

23 gas fired peaker plant as a fossil power plant?

24 Is it fair to say that it could be?

25 MR. FRANK: Well, yeah, sure.

1 MR. BUNDY: Okay, thank you.
2 MS. LUCKHARDT: I have one more redirect
3 on that.
4 FURTHER REDIRECT EXAMINATION
5 BY MS. LUCKHARDT:
6 Q Is a gas-fired peaker plant of 100
7 megawatts substantially smaller and less impactive
8 than a nuclear power plant?
9 MR. FRANK: Yes.
10 HEARING OFFICER RENAUD: All right. Any
11 other questions? All right.
12 EXAMINATION
13 HEARING OFFICER RENAUD: Well, I'm going
14 to ask a question, or maybe more than one. The
15 Committee, I think, made it pretty clear a couple
16 weeks ago that it was interested in hearing from
17 witnesses about the fact that there is a permitted
18 zone in Chula Vista that calls for electrical
19 generating plants, and that's the general
20 industrial zone. And I haven't heard that
21 addressed.
22 And the Committee would be very
23 interested to hear testimony about that. Now,
24 perhaps that's coming from another witness, but,
25 I'll take it, applicant, this is your zoning

1 witness, so --

2 MR. FRANK: Yeah, I can speak to that.

3 HEARING OFFICER RENAUD: All right.

4 MR. FRANK: And I can't speculate as to

5 exactly what the city's intent was, but, yeah,

6 it's very clear that in the general industrial

7 zone they do list electric generating facilities

8 as a permitted use. And they don't in our zone,

9 which is a limited industrial zone.

10 So, you know, to me, if I can speculate

11 about the city's intent, I would say that they

12 probably made a conscious decision to not allow

13 power plants, by right, in a limited industrial

14 zone.

15 In a general industrial zone, it sounds

16 like, based on my interpretation of the city

17 zoning code, they would allow that without a use

18 permit process, subject to, you know, limited

19 design review at a staff level. But it is a by-

20 right ministerial process.

21 They didn't want to allow that, I'm

22 speculating, in the light industrial zone. So

23 they did not list it, they chose not to list it

24 explicitly as a permitted use.

25 They didn't list it as a prohibited use,

1 and they do list those. And when they're faced
2 with what to do in 2000 with that sort of
3 situation, they chose to take it through the
4 conditional use permit process.
5 And so when I went back at the light
6 industrial zone, I interpret it as, you know,
7 where it says any other limited manufacturing use
8 which is determined by the commission, be the same
9 general character as the above uses.
10 So, they went through a process which is
11 normal for a city considering appropriate zoning
12 designations to say, okay, we're not going to
13 allow this by right, we're going to go through a
14 process and consider it, issue a use permit and
15 consistent with their zoning code. You know, it's
16 very hard to list everything that's potentially
17 perceivable in every zoning code or in every zone.
18 So, you know, that was the process they
19 followed. And I think it's very -- I used to work
20 in a planning department, and if something is not
21 listed as a permitted use, it doesn't necessarily
22 mean it's a prohibited use or only permitted in
23 other zones.
24 It would be my interpretation that they
25 did make a conscious decision to not allow it by-

1 right, which essentially puts it into the
2 conditional use permit category where they can
3 allow it as long as they subject it to a
4 discretionary review process.
5 HEARING OFFICER RENAUD: Now, 1944,
6 which is limited industrial, has permitted uses
7 and conditional uses and prohibited uses.
8 MR. FRANK: Yes.
9 HEARING OFFICER RENAUD: So, it's not
10 listed as permitted, so it can't go there.
11 MR. FRANK: Um-hum.
12 HEARING OFFICER RENAUD: And it's not
13 specifically prohibited, as you pointed out. So
14 if it's going to go in that zone it would have to
15 be conditional, is that what you're saying?
16 MR. FRANK: No.
17 HEARING OFFICER RENAUD: It would have
18 to be under a conditional use permit?
19 MR. FRANK: Yes. The purpose of the
20 description of conditional uses is to list out
21 ones that, at the time, the city identified would
22 be certainly subject to the conditional use permit
23 process.
24 It's silent about power plants. Under
25 1944(o)(2)(O), where it talks about any other

limited manufacturing use which is determined by the commission to be of the same general character, it's under the permitted use category because it goes with the condition, and because the prior project that was built had a use permit.

I think it's a reasonable interpretation to say that it is a conditional use, but is not specifically listed as a conditional use. They obviously made a determination to allow it in the zone. I can't speak to, you know, their internal decisionmaking processes as to why they chose to, you know, go through that process.

But it seems like a reasonable process to say, especially where you have the section (p) under permitted uses, you know, it gives you the flexibility to make a discretionary action rather than just a ministerial staff level action, to consider something and make a determination as to whether or not it would be allowed in that zone.

HEARING OFFICER RENAUD: Does the conditional use category under limited industrial specifically allow for other similar uses, similar character?

MR. FRANK: Yes.

HEARING OFFICER RENAUD: Where does it

say that?

MR. FRANK: Well, it lists what types of industrial uses would be permitted subject to a conditional use permit process. Machines shops --

HEARING OFFICER RENAUD: I understand.

MR. FRANK: Yeah. It doesn't say power plants specifically.

HEARING OFFICER RENAUD: No, but maybe I wasn't clear. The permitted uses, the last type, is anything else that's similar, to paraphrase it?

MR. FRANK: Subject to commission rule, yes.

HEARING OFFICER RENAUD: Yes. Conditional use, as far as I can see, doesn't contain that final blanket category?

MR. FRANK: That's correct.

HEARING OFFICER RENAUD: Can you explain why it doesn't?

MR. FRANK: I could only speculate.

HEARING OFFICER RENAUD: And is that significant in terms of your analysis?

MR. FRANK: No. I don't think so.

HEARING OFFICER RENAUD: All right. Is it significant in terms of your analysis that the general zone lists power plants but the other zone

1 doesn't? Does that mean, for example, that city
2 intended that they only go in that place?
3 MR. FRANK: No, I wouldn't interpret it
4 that way.
5 HEARING OFFICER RENAUD: Are there any
6 other questions?
7 MR. BELL: Yes.
8 HEARING OFFICER RENAUD: Okay.
9 FURTHER RECROSS-EXAMINATION
10 BY MR. BELL:
11 Q I want to direct your attention to City
12 of Chula Vista municipal code, title 19, zoning
13 and specific plans. Section 19.44.040 lists
14 conditional uses inclusive.
15 One of those items that are listed under
16 conditional uses is unclassified uses That's
17 sandwiched between building heights exceeding 45
18 feet and trucking yards, terminals and
19 distribution operations.
20 Would you, in your opinion, consider a
21 100 megawatt peaking plant such as the CVEUP, to
22 be an unclassified use in this area?
23 MR. FRANK: Well, I'd have to look at
24 the following part of the sentence where it says,
25 as set forth in chapter 19.54. I don't have that

in front of me. I don't recall if I -- I don't think I looked at that list.

MR. BELL: Do you have a copy of the AFC in front of you -- I'm sorry, the FSA, staff FSA?

MR. FRANK: Yes.

MR. BELL: If I could direct you to chapter 4.5, page 19.

MR. FRANK: Um-hum.

MR. BELL: In the second column, which is listed as description of applicable LORS, the second bullet, section 19.44.040 is listed there.

(Pause.)

HEARING OFFICER RENAUD: Is there a question pending? I've lost it if there was.

MR. BELL: Yes, I'm sorry. I was directing him to a section that I believed he --

HEARING OFFICER RENAUD: 19.54.020?

MR. BELL: 19.44.040.

HEARING OFFICER RENAUD: 55, okay.

MR. BELL: Yes.

MR. FRANK: Yes.

MR. BELL: Do you have that in front of you now?

MR. FRANK: Yes.

MR. BELL: In the middle of that that

1 does list unclassified uses?
2 MR. FRANK: Yes.
3 MR. BELL: What would an unclassified
4 use be, in your estimation? Taking section
5 19.44.040 conditional uses into consideration in
6 its entirety.
7 MR. FRANK: Without the benefit of any
8 additional definitions of the zoning code, I would
9 say that it would be other things that they didn't
10 think about when writing the zoning code and they
11 wanted to have the ability to consider those, and
12 take action.
13 MR. BELL: Could that also apply to a
14 small peaking power plant, such as CVEUP?
15 MR. FRANK: Yes.
16 MR. BELL: No further questions.
17 HEARING OFFICER RENAUD: All right, are
18 there any further questions of this witness?
19 Okay, thank you, sir.
20 Applicant, further testimony on this?
21 MS. LUCKHARDT: Nothing further.
22 HEARING OFFICER RENAUD: All right.
23 Staff, do you wish to present evidence?
24 MR. BELL: Yes. Staff would call Negar
25 Vahidi.

HEARING OFFICER RENAUD: Good afternoon. Let me swear you in.

Whereupon,

NEGAR VAHIDI

was called as a witness herein, and after first having been duly sworn, was examined and testified as follows:

HEARING OFFICER RENAUD: Please state your name.

MS. VAHIDI: First name Negar, N-e-g-a-r, las name Vahidi, V-a-h-i-d-i.

DIRECT EXAMINATION

BY MR. BELL:

Q Ms. Vahidi, did you file previously written testimony entitled land use in the matter of the Chula Vista Energy Upgrade project?

MS. VAHIDI: Yes.

MR. BELL: Do you have any changes or additions to that testimony?

MS. VAHIDI: I do not.

MR. BELL: At this time we would move staff exhibit 200, chapter 4.5 into evidence.

HEARING OFFICER RENAUD: Is there any objection?

MS. LUCKHARDT: No.

HEARING OFFICER RENAUD: That's admitted.

MR. BELL: And before we go on, we would also be moving exhibit 204 into evidence, as well, the letter from the City of Chula Vista to Project Manager Christopher Meyer regarding the CVEUP.

HEARING OFFICER RENAUD: All right, is there any objection?

MS. LUCKHARDT: No objection.

HEARING OFFICER RENAUD: All right, that's admitted.

MR. BELL: Ms. Vahidi, just a couple of followup questions to your previously filed testimony. There were some concerns that have been expressed at the prehearing conference that was issued by the Committee with respect to compliance with local LORS.

Could you please provide an answer, if you could, as to the applicability of LORS to this project?

MS. VAHIDI: Yes. When we conducted the LORS, review of applicable LORS, we looked at several documents, including the City of Chula Vista general plan, the zoning code, applicable portion of the redevelopment plan, which is called

the southwest area plan, the Otay Valley regional park concept plan. And we gave a brief description of the Chula Vista multiple species conservation program, but that's actually analyzed in biological resources, as was testified to earlier.

MR. BELL: No further questions at this time.

HEARING OFFICER RENAUD: All right. Is there cross-examination?

MS. LUCKHARDT: No.

HEARING OFFICER RENAUD: All right. Mr. Bundy?

MR. BUNDY: Yes, I do have a few questions.

CROSS-EXAMINATION

BY MR. BUNDY:

Q I'd like to draw your attention first to exhibit 200, that's the final staff assessment, page 4.5-13, and this is the general first discussion of the consistency of the project with local LORS, correct?

MS. VAHIDI: Yes, with the city general plan policy LUT1.1.

MR. BUNDY: Which is to insure that land

uses essentially are consistent with the general plan and zoning, is that how you read that?

MS. VAHIDI: Yes.

MR. BUNDY: Right?

MS. VAHIDI: Yes.

MR. BUNDY: Your testimony in the fourth column under basis for consistency is that the CVEUP represents the intensification or upgrade of the same exact existing onsite land use, is that correct?

MS. VAHIDI: That is correct.

MR. BUNDY: Are you pretty familiar with the existing plant?

MS. VAHIDI: Yes.

MR. BUNDY: And with the proposed upgrade?

MS. VAHIDI: Yes, with regard to as it applies to land use, yes.

MR. BUNDY: Okay. Isn't it true that the existing plant has one turbine?

MS. VAHIDI: Yes. I mean -- I'm not sure I understand where you're going with your question. I mean if it's project description-related, I reviewed the --

MR. BUNDY: Just basic, yeah. And is it

true that the proposed project would have two turbines?

MS. LUCKHARDT: I would just like to note for the record that actually the existing project has two turbines.

MR. BUNDY: It's a twin-pack facility, though?

MS. LUCKHARDT: Yes, so it has two turbines.

MR. BUNDY: Okay.

MS. VAHIDI: I really don't want to testify to project description details.

MR. BUNDY: Okay.

MS. VAHIDI: That's not what I'm here for.

MR. BUNDY: Well, your testimony was that this is the same exact existing onsite land use, so I want --

MS. VAHIDI: It is, it's a power plant being sited at a site that actually has a power plant on it currently.

MR. BUNDY: So, would it --

MS. VAHIDI: When I say same exact land use perspective, I'm not saying that every same exact specific project description component would

be, you know, it's from a land use perspective as far as --

MR. BUNDY: You're aware that the new plant would go in a different place on the site --

MS. VAHIDI: Yes, it's on the northern portion of the site, whereas the existing is located on the southern portion of the site.

MR. BUNDY: And you're aware that it's closer to residential receptors than the old plant was?

MS. VAHIDI: It's actually if the -- yes, to the ones north of the project site, it is, by the few hundred feet that it would be moved it would be.

MR. BUNDY: Okay. And it's true that the new plant will have about double the generation capacity of the old --

MS. VAHIDI: it's going from 49 to 100 megawatts.

MR. BUNDY: And it'll have two 70-foot stacks instead of a single 45-foot stack?

MS. VAHIDI: It is proposed to have two 70-foot stacks.

MR. BUNDY: Okay, but it's your testimony that this the same exact onsite land

use?

MS. VAHIDI: Land use. It's the same use of the land, meaning it's power generation and it will continue to be power generation.

MR. BUNDY: So, in your opinion, would a 200 megawatt, four turbine peaker plant with four 100-foot stacks be the same existing, the same --

MS. VAHIDI: It's the same type of land use. It's power generation. It's using --

MR. BUNDY: A 700 watt baseload plant would be the same --

MS. VAHIDI: It's the same land use.

HEARING OFFICER RENAUD: I think this is getting argumentative.

MS. VAHIDI: Yeah.

HEARING OFFICER RENAUD: May I suggest that we move on.

MR. BUNDY: I just wanted to establish --

MS. VAHIDI: It's the same -- yeah, yeah.

MR. BUNDY: I'd like to turn your attention to page 4.5-16 of the same exhibit. And this is -- sorry -- this is with respect to policy E6.4.

1 MS. VAHIDI: Yes.
2 MR. BUNDY: There's a discussion in the,
3 I believe it's the -- hang on, let me see if I can
4 find this exactly for you. About halfway through
5 the second paragraph in the basis for consistency
6 section, I'm not entirely clear, but do I
7 correctly understand your testimony here to be
8 that the city's decision to conditionally permit
9 the existing plant in 2000 means that the city
10 must view that plant as consistent with the
11 general plan adopted in 2005?
12 MS. VAHIDI: I'm not going to speak for
13 the city. I made an interpretation based on that
14 action having taken place, and the conditional use
15 having been issued under the same zoning
16 designation, which is limited industrial.
17 But that is not the only basis used or
18 only factor used for making a consistency
19 determination for LORS, as I responded to in the
20 responses to comments on the PSA.
21 MR. BUNDY: Okay, well, let me ask you
22 about that. If we look at page 4.5-27 of that
23 same exhibit, I believe this is your response to
24 the city's comments regarding the preliminary
25 staff assessment's analysis --

1 MS. VAHIDI: Yes.
2 MR. BUNDY: -- of this general plan?
3 And an additional reason that you give for your
4 conclusion is that the CVEUP appears to be
5 consistent with the city's goals and objectives
6 for the pattern of industrial development in the
7 area, correct?
8 MS. VAHIDI: Yes.
9 MR. BUNDY: Actually I think we have a
10 copy of policy E6.4 that we emailed to the city,
11 exhibit 619.
12 MS. VAHIDI: A copy of the policy
13 verbiage?
14 MR. BUNDY: This is the general plan
15 policy, yeah, this is the text of the general plan
16 policy 6.4.
17 MS. VAHIDI: The policy is actually in
18 land use table 4.
19 MR. BUNDY: Okay, well, this is a copy
20 from the actual general plan.
21 MS. VAHIDI: That was cut-and-pasted and
22 it's referenced, so --
23 MR. BUNDY: Is there any exception in
24 the text of this policy for energy generation
25 facilities that are consistent with the city's

1 goals and objectives for the pattern of industrial
2 development in the area?
3 MS. VAHIDI: The policy reads exactly:
4 Avoid siting near or repowered energy generation
5 facilities and other major toxic air emitters
6 within 1000 feet of a sensitive receiver, or the
7 placement of a sensitive receiver within 1000 feet
8 of a major toxic emitter."
9 MR. BUNDY: So your answer to my
10 question is no?
11 MS. VAHIDI: Restate your question.
12 MR. BUNDY: Okay. Is there any
13 exception in the text of this policy for an energy
14 generation facility that is otherwise consistent
15 with the city's goals and objectives for --
16 MS. VAHIDI: I don't understand your
17 question.
18 MR. BUNDY: The words -- okay.
19 HEARING OFFICER RENAUD: I'm having a
20 hard time understanding that question, too.
21 MR. BUNDY: Okay. Let me back up one
22 step. Do I understand correctly that one of the
23 reasons you found this project consistent with
24 general plan policy E6.4 is because the project
25 appears to be consistent with the city's overall

1 goals and objectives for the industrial
2 development pattern in the area? Was that your
3 testimony?
4 MS. VAHIDI: Goals, objectives and the
5 legally in-place zoning designation, which is I-L.
6 MR. BUNDY: Okay. My question was
7 whether there's anything in the text of policy
8 E6.4 that allows for development of an energy
9 generation facility based on a finding that is
10 generally consistent with the goals and objectives
11 for the pattern of industrial development in an
12 area?
13 MS. VAHIDI: It doesn't allow, it says
14 avoid. So, I mean I take it as the straight
15 reading of it. I'm not really sure what you're
16 trying to get at, so --
17 MR. BUNDY: Okay, that's fine. That's
18 enough of that. I'd like to ask you just a couple
19 questions about the -- let's see if I can figure
20 out which exhibit has actually been admitted into
21 evidence. The city's agreement with MMC, which I
22 think has been offered into evidence as exhibit
23 803.
24 MS. VAHIDI: Yes.
25 MR. BUNDY: Okay. And do you understand

the city's position now to be that this agreement has resolved general plan inconsistencies?

MS. VAHIDI: I can only take what I've been given and have read, which is in the August 7th letter. I won't speak for the city, the city's here. In their letter on August 7th they said city staff believes that adding this portfolio of local commitments to the CEC Staff assessment conditions will address any potential inconsistencies with the general plan, and makes a good faith effort to address the community's primary concerns.

MR. BUNDY: And one followup question. Does anything in this agreement actually change the site of the plant with respect to residential receptors?

MS. VAHIDI: Wait, say that again?

MR. BUNDY: Does anything in exhibit 803, which is the agreement between the city and MMC, actually change the location of the plant with respect to residential receptors?

MS. VAHIDI: It does not change the location of the proposed power plant.

MR. BUNDY: Okay, thank you. One last series of questions here regarding the

1 construction laydown area. Actually I think
2 that's -- I'll stop there, thanks.
3 MS. VAHIDI: Um-hum.
4 HEARING OFFICER RENAUD: All right.
5 City, do you have any questions? Any redirect?
6 REDIRECT EXAMINATION
7 BY MR. BELL:
8 Q Were you able to determine whether or
9 not the City of Chula Vista is a charter city?
10 MS. VAHIDI: I'm sorry, say that again?
11 MR. BELL: Were you able to determine
12 whether or not the City of Chula Vista is a
13 charter city?
14 MS. VAHIDI: Yes, they are a charter
15 city.
16 HEARING OFFICER RENAUD: Applicant, do
17 you wish to question this witness? Ms. Luckhardt?
18 MS. LUCKHARDT: No, I believe her
19 testimony in the FSA is sufficient.
20 HEARING OFFICER RENAUD: All right. Are
21 you finished, Mr. Bell?
22 MR. BELL: I am.
23 HEARING OFFICER RENAUD: All right. May
24 I ask you a question?
25 MS. VAHIDI: Oh, of course, yeah.

1 EXAMINATION

2 HEARING OFFICER RENAUD: You heard Mr.

3 Frank's testimony about unclassified uses?

4 MS. VAHIDI: Yes.

5 HEARING OFFICER RENAUD: Do you have any

6 feelings about that one way or another? Do you

7 agree with it, disagree?

8 MS. VAHIDI: Sure, I'm so sorry, I'm

9 having a hard time hearing.

10 HEARING OFFICER RENAUD: I understand.

11 MS. VAHIDI: Yes, if you could -- if I

12 could have the Committee look at page 45-19 of the

13 FSA, which is a section of the City of Chula

14 Vista's zoning code, section 19.44.040.

15 HEARING OFFICER RENAUD: Yes.

16 Conditional uses, right.

17 MS. VAHIDI: Conditionally permitted

18 uses, and to sort of expand on what the

19 applicant's witness had said, based on a review of

20 that, if you look at the list of conditional uses,

21 you know, there is the unclassified use. But if

22 you keep reading and go further down, one of the

23 conditional uses is a hazardous waste facility.

24 So, from a land use perspective, I don't

25 think any land use planner would argue that a

1 hazardous waste facility is a pretty industrial
2 use. In fact, I would say it's heavier in
3 intensity, as far as industry goes, than a power
4 generation facility.
5 HEARING OFFICER RENAUD: All right, I
6 appreciate that. But my specific question was
7 whether you agree or differ with the testimony
8 that the power plant could be an unclassified use
9 as specified in the section --
10 MS. VAHIDI: I would agree that it could
11 be an unclassified use because it provides the
12 city latitude to make decisions on uses they
13 didn't think about when they put the zoning in
14 place, or the list of categories in place.
15 HEARING OFFICER RENAUD: Did you analyze
16 the unclassified use aspect in your analysis?
17 MS. VAHIDI: I did not specifically look
18 at the unclassified use aspect. We sort of looked
19 at all of the documents in their entirety, and
20 also I want to make sure that everybody knows that
21 physical compatibility was also a factor, given
22 the surrounding -- immediately surrounding uses,
23 the substation that's across the street, the
24 onsite existing use, those were all factors that
25 played in, as well.

1 But not specifically the unclassified
2 use. There wasn't a discussion of that specific.
3 HEARING OFFICER RENAUD: All right. Are
4 you familiar with the unclassified use part of the
5 Chula Vista zoning ordinance 19.54?
6 MS. VAHIDI: No, I am not.
7 HEARING OFFICER RENAUD: All right. Do
8 you know whether or not it lists power plants as
9 an unclassified use?
10 MS. VAHIDI: I do not know that.
11 HEARING OFFICER RENAUD: Okay. Okay,
12 thank you. Any other questions?
13 (Pause.)
14 FURTHER REDIRECT EXAMINATION
15 BY MR. BELL:
16 Q Now, you've had a chance to review
17 section 19.44.040 conditional uses, correct?
18 MS. VAHIDI: Yes.
19 MR. BELL: And is the unclassified use,
20 is that it's own separate subsection, or is that
21 just included in a list of types of uses that are
22 considered conditional uses?
23 MS. VAHIDI: It's listed as types of uss
24 or categories of uses that would be conditionally
25 permitted.

1 MR. BELL: Okay, thanks.
2 HEARING OFFICER RENAUD: Any further
3 questions?
4 MR. BUNDY: No.
5 HEARING OFFICER RENAUD: All right.
6 MR. BUNDY: I do have some exhibits to
7 offer into evidence on this.
8 HEARING OFFICER RENAUD: Okay, go ahead.
9 MR. BUNDY: We would offer exhibit 619,
10 excerpts of the general plan; 620, excerpts of the
11 zoning ordinance. This may not technically be
12 necessary, but I wanted to get the copies of the
13 actual official text of the document in the
14 record, and not just have what was cut-and-pasted
15 into the FSA.
16 I notice nobody offered into evidence
17 exhibit 621 and 622, which were the city's two
18 comment letters on the PSA and the FSA. I believe
19 those were docketed in this proceeding and are
20 relevant to land use issues.
21 Exhibit 626, which are some documents
22 from the Chula Vista, and some other sources
23 during the adoption of general plan policy 6.4,
24 essentially the legislative history of the policy.
25 And 629 we already dealt with.

1 HEARING OFFICER RENAUD: All right. Any
2 objection?
3 MS. LUCKHARDT: One caveat I would say
4 on exhibit 626 is that we have not had a chance to
5 determine whether that is a complete record of the
6 legislative history. We aren't disputing the ones
7 that are included, but that may or may not be a
8 complete record.
9 HEARING OFFICER RENAUD: All right.
10 MR. BUNDY: I couldn't represent that
11 it's a complete record. A general plan update,
12 the city could tell you, takes months and months
13 and months, and generates tons of paper. And
14 these are some exhibits provided by the former
15 Mayor in regard --
16 HEARING OFFICER RENAUD: Yeah, again,
17 we're talking about public records here, so it's
18 questionable whether we even need to do this. But
19 does anybody object, other than what Ms.
20 Luckhardt's caveat?
21 MR. BELL: Not on behalf of staff.
22 HEARING OFFICER RENAUD: All right.
23 MR. BUNDY: Thank you.
24 HEARING OFFICER RENAUD: They'll be
25 admitted. Thank you.

1 Is there any other testimony on --
2 MR. BUNDY: I'm very sorry, there were a
3 couple of other exhibits, 631 and 632, a
4 declaration and map showing daycare centers,
5 recreational centers and similar facilities within
6 one mile of the project. I believe it's been
7 submitted as public comment, but it was given to
8 us and we were asked to put this into the record.
9 This is a declaration showing how the map was
10 made.
11 HEARING OFFICER RENAUD: Okay. Any
12 objection to those being admitted? Hearing none,
13 they'll be admitted.
14 Is there any further testimony on land
15 use before --
16 MS. LUCKHARDT: I guess the one thing
17 that I would like, is I'd like, if we can, to have
18 Mr. Frank explain what is included in the
19 unclassified use, I believe there's a category
20 called quasi-public.
21 FURTHER REDIRECT EXAMINATION
22 BY MS. LUCKHARDT:
23 Q And if you could explain what that
24 includes?
25 MR. FRANK: Yes, when we were talking

1 earlier we talked about how unclassified uses --
2 oh, I'm sorry, my microphone was off -- when we
3 were talking earlier we talked about what is an
4 unclassified use. And it was in section 19.54 of
5 the zoning code which I've had a chance to review.
6 It includes a category called quasi-
7 public uses. Quasi-public means used as or
8 seemingly public for the purposes of this title,
9 electrical substation shall be considered a quasi-
10 public use of a public service type. It simply
11 says that.
12 But, you know, it does provide more
13 evidence, I think, that power facilities would be
14 certainly something that the city could consider
15 an unclassified use.
16 HEARING OFFICER RENAUD: All right.
17 Maybe you or your counsel could provide the
18 precise cite, because I'm struggling with where
19 that is in 19.54.
20 MR. FRANK: It's 19.54.090.
21 HEARING OFFICER RENAUD: 090.
22 MR. FRANK: I think that's a typo; it
23 should be 19.54.090. At least in the version I'm
24 looking at here. Yeah, this is something we
25 pulled off the internet, I believe, and it --

MS. LUCKHARDT: Okay, so we'll chase that down and --

HEARING OFFICER RENAUD: All right.

MS. LUCKHARDT: -- submit the -- make sure that that's the correct citation, if it's not the correct citation. Or maybe Mr. --

HEARING OFFICER RENAUD: I'm looking at the city website and it only goes to 060 as far as I can tell.

MS. LUCKHARDT: I think the city's going to be able to help us out with this.

(Interruption - chanting "MMC go home.")

MR. FRANK: Thank you. Chapter 19.54 -- I'm sorry, we're having trouble finding the specific citation.

MS. LUCKHARDT: We found it electronically but not in the hard copy.

MR. FRANK: Oh, I'm sorry, I -- let me try one more time, 19.54.020, the following uses may be considered for location in any zone subject to provisions set forth herein. Additional conditions, et cetera.

Under 19.54.020, category (m) is public and quasi-public uses.

HEARING OFFICER RENAUD: Thank you,

that's what I was looking for. Okay.

MR. FRANK: Sorry it took so long.

HEARING OFFICER RENAUD: I just didn't see that. Okay. Thank you, that answers that.

MR. FRANK: And to clarify earlier, the definition of what is a public and quasi-public use that I read earlier was in 19.04.190. So that just provides additional definition with that.

HEARING OFFICER RENAUD: All right, that's helpful. Thank you.

MR. FRANK: Okay.

HEARING OFFICER RENAUD: Is there any further questions for this witness?

MR. BUNDY: Just a couple questions.

RECROSS-EXAMINATION

BY MR. BUNDY:

Q You mentioned that that definition of public and quasi-public uses includes electrical substations, correct?

MR. FRANK: Yes.

MR. BUNDY: It doesn't mention generating facilities or power plants, does it?

MR. FRANK: Not specifically.

MR. BUNDY: Okay, thanks.

HEARING OFFICER RENAUD: Anything else

before we move on to alternatives?

MS. LUCKHARDT: I'm just wondering if the city would have anything to add in this instance on its interpretation.

MR. BUNDY: I'm going to object to that because the city offered no witnesses --

HEARING OFFICER RENAUD: No, I'm going to interject because the Committee is very interested in hearing from the city about that topic. And if one of you wants to tell us about it, fine. I can even swear you. You are intervenors, you are a party. Or if you have a witness you'd like to call, that would be fine, too.

MR. TULLOCH: I'm sorry, I didn't hear the last part of that, what you said.

HEARING OFFICER RENAUD: The Committee is very interested in the question that Ms. Luckhardt just raised, which is we'd like to hear from the city about its interpretation of the zoning ordinance. And particularly whether the city would issue a conditional use permit for this project were it within the city's jurisdiction to do so.

MR. TULLOCH: Well, we would want to go

through that process, ourselves. But this is my understanding, it's pretty consistent with what you've heard. And that is that the unclassified use category gives the city the flexibility where they haven't either prohibited or specifically allowed a use. It gives them the flexibility to go through that process to determine on a specific basis for a specific project.

HEARING OFFICER RENAUD: All right.

MR. TULLOCH: So what I've heard so far, if it's in that vein, is consistent with that.

HEARING OFFICER RENAUD: Proceed. You have a question?

PRESIDING MEMBER PFANNENSTIEL: I guess I'm still interested in whether the city intends to go through that process, to determine whether it should issue a conditional use permit.

MR. TULLOCH: No. We see this as part of -- this process as the mechanism that we would see as the way to get to the --

PRESIDING MEMBER PFANNENSTIEL: This process being the Energy Commission's process. The city does not feel that it needs to do a separate process?

MR. TULLOCH: No, we do not.

PRESIDING MEMBER PFANNENSTIEL: Thank you.

HEARING OFFICER RENAUD: All right, thank you. Before we move on to the final topic of alternatives, -- something else?

MR. SPEAKER: One moment, please, I just want --

HEARING OFFICER RENAUD: All right, okay.

(Pause.)

HEARING OFFICER RENAUD: Welcome to all of you who are arriving. We are still taking testimony. We don't expect it to be too much longer, and then I believe we'll be opening it up for public comment. But thank you, and I appreciate your efforts to keep the noise level down so that we can all hear the evidence. Thank you very much.

MR. BELL: I'm sorry, are we moving on to alternatives at this time?

HEARING OFFICER RENAUD: We will if everybody's done with land use.

MR. BELL: I know that the Chair --

FIRE MARSHAL: Excuse me, ladies and gentlemen. Everybody that's in the crowd and

1 everybody that's in the gallery, you will be
2 allowed to stay inside chambers. You will have to
3 have a seat. Once all seats are filled, you will
4 have to exit the chambers. So, if you find a
5 seat, we encourage you to find one. If you can't
6 find one, you have to exit chambers and wait
7 outside.
8 (Spanish translation.)
9 (Simultaneous audience speakers.)
10 (Pause.)
11 FIRE MARSHAL: There are a few more
12 seats up here. If you can't find a seat you have
13 to wait outside.
14 (Spanish translation.)
15 (Pause.)
16 HEARING OFFICER RENAUD: Again, welcome
17 to you all. Thank you for coming. We are
18 approaching the end of taking the formal
19 evidentiary testimony and evidence in this case.
20 We've been at this since 10:00 this morning. And
21 we have one final area to go. And I think we're
22 going to proceed and do that, get that finished.
23 And then we can open the mikes up for
24 public comment. I understand we're trying to
25 comply with the fire regulations and make sure

1 everybody has a seat and not exceed the occupancy
2 of the room.
3 And I really do appreciate the quiet I'm
4 hearing. Thank you very much. We're struggling
5 to hear one another here, and the court reporter
6 here is making an evidentiary record upon which
7 the decision will be based. So helping everyone
8 be heard is very very important. We do appreciate
9 your efforts.
10 Let's move right along. Mr. Bell, did
11 you have further questions?
12 MR. BELL: Yes. Actually we would be
13 recalling our land use expert, Negar Vahidi.
14 HEARING OFFICER RENAUD: All right.
15 Please come forward. You're still under oath.
16 Whereupon,
17 NEGAR VAHIDI
18 was recalled as a witness herein, and having been
19 previously duly sworn, was examined and testified
20 further as follows:
21 HEARING OFFICER RENAUD: Proceed.
22 DIRECT EXAMINATION
23 BY MR. BELL:
24 Q Ms. Vahidi, we had some questions a
25 moment ago about the original license for the

1 facility that is currently in place. Did you have
2 a chance to review the report that was prepared by
3 the city in that matter?
4 MS. VAHIDI: Yes. The city had
5 forwarded to us the full agenda packet resolution
6 and findings on the current onsite power plant.
7 So we have reviewed those.
8 MR. BELL: Okay. There was some
9 discussion about the applicability of the LORS to
10 that facility, and whether or not this could be an
11 unclassified use.
12 What did you find in your review of the
13 original?
14 MS. VAHIDI: Yes, as was discussed and
15 testified to earlier, I believe, Mr. Frank said
16 the definition of unclassified included quasi
17 public quasi -- or what was that -- quasi-public
18 uses.
19 MR. BELL: Yes.
20 MS. VAHIDI: Okay, so from the city's
21 permit, the special use permit on the existing
22 power plant, under the discussion of land use
23 designation it says the zoning, and I quote, and
24 this permit has been docketed, I believe --
25 MR. BUNDY: I'm sorry, is that actually

the case? Has this been moved into evidence?

MS. VAHIDI: It's been docketed, but I don't know if it's been moved into evidence.

MR. BELL: I agree that it's been docketed. We would request then that it be marked staff exhibit next in order. I believe that's 207.

HEARING OFFICER RENAUD: All right. Is there any objection to the moving of that into evidence?

MR. BUNDY: I have the same -- it's a legal relevance objection. This is a different project, adopted under a different general plan by a different agency.

MS. VAHIDI: It's the same zoning code, though, the same zoning designation.

MR. BUNDY: Objection for the record.

HEARING OFFICER RENAUD: Thank you, I appreciate that. But it has been referred to by the witness, so we need to have it in the record. It will be admitted.

All right, go ahead.

MS. VAHIDI: Okay, so it says: the zoning on the currently vacant site (limited industrial) allows public and quasi-public uses

like a peak load power plant through a special use permit."

And the findings that are applicable, the proposed -- this is the special use permit findings, item (e), page 4-A: The proposed use at the location is necessary or desirable to provide a service or facility which will contribute to the general well being of the neighborhood or the community."

Finding two: That such use will not, under the circumstances of this particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity."

And finding three: That the proposed use will comply with the regulations and conditions specified in the code for such use."

Finding four: That the granting of the special use permit will not adversely affect the general plan of the city or the adopted plan of any government agency."

MR. BELL: I have no further questions on behalf of staff.

HEARING OFFICER RENAUD: All right. Any

1 further questions of this witness?
2 MR. BUNDY: Just a couple.
3 RECROSS-EXAMINATION
4 BY MR. BUNDY:
5 Q I'm looking at what I guess was marked
6 as the city's exhibit 802, that this is the same
7 document that staff --
8 This project was approved by the City of
9 Chula Vista Redevelopment Agency, correct?
10 MS. VAHIDI: Actually -- give me one
11 second because I want to be specific. I believe
12 at the time they were called the Community
13 Development Department. The terminology special
14 use permit is no longer used in the city. This is
15 according to one of the principal planners at the
16 city. They now call them a conditional use permit
17 because that department of the city, the community
18 development department, has since been dismantled
19 and their authority is now under, I believe,
20 planning.
21 MR. BUNDY: Okay. And one of the
22 findings you quoted, this is on page 4-9, finding
23 four, the granting of the special use permit will
24 not adversely affect the general plan of the city,
25 the adopted plan of any government agency?

1 MS. VAHIDI: Right.
2 MR. BUNDY: This permit was issued in
3 the year 2000, correct?
4 MS. VAHIDI: That is correct.
5 MR. BUNDY: And in the year 2005 the
6 City of Chula Vista adopted its general -- updated
7 its general plan, correct?
8 MS. VAHIDI: That's correct.
9 MR. BUNDY: And policy E6.4 was adopted
10 in 2005, is that correct?
11 MS. VAHIDI: As part of the general plan
12 update, yes.
13 MR. BUNDY: Okay, thank you. I have no
14 further questions.
15 HEARING OFFICER RENAUD: Any further
16 questions? All right, thank you.
17 Anything else on land use?
18 MR. BELL: No.
19 HEARING OFFICER RENAUD: All right,
20 let's move on to alternatives. Applicant, can you
21 proceed with your presentation, please.
22 MS. LUCKHARDT: Yes. And the applicant
23 calls Sarah Madams. We also have Harry
24 Scarborough back up here and available. But I'll
25 start with Sarah.

1 I'll just list the exhibits while she's
2 coming up. Or do you want me to have her -- she
3 has not been sworn.
4 HEARING OFFICER RENAUD: All right,
5 we'll swear the witness.
6 Whereupon,
7 SARAH MADAMS
8 was called as a witness herein, and after first
9 having been duly sworn, was examined and testified
10 as follows:
11 HEARING OFFICER RENAUD: All right,
12 thank you. Please state your name.
13 MS. MADAMS: Sarah Madams, M-a-d-a-m-s.
14 MS. LUCKHARDT: And Mr. Scarborough has
15 already been sworn.
16 HEARING OFFICER RENAUD: Yes.
17 Whereupon,
18 HARRY SCARBOROUGH
19 was recalled as a witness herein, and having been
20 previously duly sworn, was examined and testified
21 further as follows:
22 MS. LUCKHARDT: So, under the topic of
23 alternatives the applicant moves section 6 of
24 exhibit 1. Data responses 34 and 35 of exhibit 5.
25 Data responses 48 and 49 of exhibit 7. The

alternatives comments contained in exhibit 19. And the declaration of Ms. Madams contained in exhibit 23.

HEARING OFFICER RENAUD: All right. Is there any objection to the admission of those exhibits?

MR. BELL: Not on behalf of staff.

MR. BUNDY: None.

HEARING OFFICER RENAUD: They'll be admitted then, thank you.

MS. LUCKHARDT: And then we have essentially rebuttal testimony at this point, except for -- yeah, we have essentially rebuttal testimony since we're not doing summaries of testimony.

HEARING OFFICER RENAUD: And your rebuttal is to?

MS. LUCKHARDT: Mr. Powers.

HEARING OFFICER RENAUD: All right. Well, I don't have a witness listed -- oh, I do. Mr. Meyer, would staff like to go first, or should we go with Mr. Powers?

MR. BELL: We can swear Mr. Meyers; I'll just be admitting his testimony via declaration.

HEARING OFFICER RENAUD: All right.

1 MR. BELL: If there's any rebuttal
2 necessary after Mr. Powers' testimony, then --
3 HEARING OFFICER RENAUD: All right,
4 let's do that.
5 MR. BELL: Okay, I believe Mr. Meyers
6 has been previously sworn.
7 MR. BUNDY: Just a point of
8 clarification. I do have cross for both the
9 applicant's and the staff's witnesses I'd like to
10 get to.
11 HEARING OFFICER RENAUD: You'll be
12 allowed that. No problem.
13 Whereupon,
14 CHRISTOPHER MEYER
15 was recalled as a witness herein, and having been
16 previously duly sworn, was examined and testified
17 further as follows:
18 DIRECT EXAMINATION
19 BY MR. BELL:
20 Q Mr. Meyer, did you file previously
21 written testimony entitled, alternatives in the
22 Chula Vista Energy Upgrade project?
23 MR. MEYER: Yes, I did.
24 MR. BELL: Do you have any changes or
25 additions to that testimony other than what you

filed in the final staff addendum?

MR. MEYER: No, I do not.

MR. BELL: At this time I would move into evidence staff exhibit 200, section 6. And move into evidence in its entirety at this point staff exhibit 205.

HEARING OFFICER RENAUD: Any objections?

MR. BUNDY: No.

HEARING OFFICER RENAUD: Those are admitted then. Thank you.

MR. BELL: And lastly, I would also move into evidence staff exhibit 200, chapter 8, declarations and r,sum,s for all witnesses previously sworn and testified.

HEARING OFFICER RENAUD: Any objections?

MS. LUCKHARDT: No.

MR. BUNDY: No.

HEARING OFFICER RENAUD: It's admitted, thank you.

MR. BELL: Thank you.

HEARING OFFICER RENAUD: All right. Any cross-examination of Mr. Meyer?

MR. BUNDY: Should I proceed with Mr. Meyer and then go back to Ms. Madams, or -- it doesn't matter to me. I can do either.

1 HEARING OFFICER RENAUD: Well, --
2 MR. BUNDY: I know she says she has
3 rebuttal testimony, but I have cross-examination
4 on her primary testimony.
5 HEARING OFFICER RENAUD: All right, why
6 don't we do that first, since she was the first
7 witness called.
8 MR. BUNDY: Okay, thank you.
9 CROSS-EXAMINATION
10 BY MR. BUNDY:
11 Q Ms. Madams, I'd like to draw your
12 attention to page 6-8 of exhibit 1, that's the AFC
13 section discussing alternatives.
14 MS. MADAMS: Yes.
15 MR. BUNDY: And is it correct that
16 there's a -- this is a discussion of two
17 alternative sites identified by MMC?
18 MS. MADAMS: On page 6-8?
19 MR. BUNDY: I'm sorry, let me make sure
20 that's right. I apologize, I think I wrote down
21 the wrong page number there. Page 6-4 you
22 identified two potential alternative sites?
23 MS. MADAMS: Correct.
24 MR. BUNDY: And then turning to page 6-
25 8, is it your testimony that the differences

1 between those two sites, in terms of how close
2 they are to existing residences, would not make a
3 significant difference in terms of air quality?
4 MS. MADAMS: I am not an air quality
5 expert, so I can't address that specifically for
6 air quality. But having looked at where the
7 nearest residences are, I believe at the
8 alternative site one the nearest resident is
9 approximately --
10 MR. BUNDY: I can --
11 MS. MADAMS: It's approximately 300 feet
12 away. And for the Faver (phonetic) side, the
13 nearest residence is also approximately 300 feet
14 away.
15 I would, without being an air quality
16 expert, would say yes, the air quality emissions
17 would be very similar.
18 MR. BUNDY: Is it correct that the
19 proposed project site is about 350 feet away --
20 MS. MADAMS: That is correct.
21 MR. BUNDY: -- from the nearest
22 residence?
23 MS. MADAMS: Yes.
24 MR. BUNDY: So, both of the alternative
25 sites examined by MMC are actually closer to

residences?

MS. MADAMS: That is correct.

MR. BUNDY: Than the proposed site?

MS. MADAMS: Yes.

MR. BUNDY: Did you give serious consideration to any alternative sites in this analysis that were further away from residences?

MS. MADAMS: Part of conducting the alternative analysis was that we were trying to meet MMC's project objectives for the site, which included using the existing infrastructure site. Also that site control is readily available, and that it serve the growing for that particular area. So, we were looking only for particular vacant lots in the area as alternative sites.

MR. BUNDY: Okay, thank you. I think that --

AUDIENCE SPEAKER: We can hear nothing over here.

HEARING OFFICER RENAUD: Remind everyone to get up really close to these mikes. They don't pick up very well, so talk right up to it.

MR. BUNDY: All right. I'd like to turn your attention to exhibit 5. This is response to EHC's data request 34.

MS. MADAMS: Yes.

MR. BUNDY: And on page 6 of that document, is it correct that in the last paragraph you acknowledge that the eastern section of Chula Vista is a large area and there may be portions of eastern Chula Vista that would be appropriate sites for a power plant?

MS. MADAMS: That is what it states.

MR. BUNDY: And you then state without a specific site to analyze it would be difficult to tell whether there would be -- what the impact of siting a plant?

MS. MADAMS: That is correct. Eastern section of Chula Vista is a very large area, so we would have to limit it to something a little bit smaller.

MR. BUNDY: But did you review any specific sites in eastern Chula Vista?

MS. MADAMS: No.

MR. BUNDY: Okay.

MS. MADAMS: That did not meet the project's objectives of using the existing infrastructure at the site.

MR. BUNDY: All right. In your response to -- I'm going to turn your attention to exhibit

1 7. Oh, I'm sorry, one more question regarding the
2 project's objectives. on page 25, this is again
3 exhibit 5, page 25, response to data request 34.
4 That last paragraph on the page you
5 state that given the project's objectives, by
6 definition there are no other sites that meet
7 these objectives, is that correct?
8 MS. MADAMS: That is correct.
9 MR. BUNDY: Okay. So, turning to
10 exhibit 7, this is responses to EHC's data request
11 49. You discuss existing transmission from the
12 landfill area, the Otay landfill area, to the Otay
13 substation, is that correct?
14 MS. MADAMS: Correct.
15 MR. BUNDY: And you state that in the
16 interconnection system impact study for this
17 project, the CVEUP, there could be potential
18 overloads to the line that would need to be
19 corrected on the Otay to Otay Lake line?
20 MS. MADAMS: That is correct.
21 MR. BUNDY: So upgrades to this line
22 were required for the current project, is that
23 correct?
24 MS. LUCKHARDT: I would refer that to
25 Mr. Scarborough. He's more familiar with the

1 interconnection requirements of this project.
2 MR. SCARBOROUGH: It's my understanding
3 that no, those upgrades were not required for the
4 proposed project.
5 MR. BUNDY: Were there upgrades to that,
6 any upgrades at all, special protection scheme,
7 anything that was required for that line for this
8 project?
9 MR. SCARBOROUGH: Yes, there were.
10 There were a number of special protection schemes
11 that would be required in order to take the full
12 thermal delivery.
13 MR. BUNDY: Okay. So would it be -- all
14 right, that's fine. I believe those are all my
15 questions for Ms. Madams, thank you.
16 HEARING OFFICER RENAUD: Any other
17 cross-examination of the witness?
18 MR. BELL: Not on behalf of staff.
19 HEARING OFFICER RENAUD: All right.
20 Redirect?
21 MS. LUCKHARDT: I guess I just have one
22 question.
23 REDIRECT EXAMINATION
24 BY MS. LUCKHARDT:
25 Q We were just discussing costs or

1 potential upgrades to transmission lines. Is
2 there a rule of thumb on costs for linear
3 facilities if you have to build new linear
4 facilities?
5 MR. SCARBOROUGH: Yeah, the rule of
6 thumb in the construction of energy, at least as
7 far as transmission line, and we could look at
8 that either from 69 kV or 130, 230 kV, but the
9 rule of thumb is normally $1 million per mile.
10 And pretty much the same holds true for
11 a natural gas pipeline lateral to feed a plant, as
12 well.
13 MS. LUCKHARDT: Thank you. I have
14 nothing further.
15 HEARING OFFICER RENAUD: All right, any
16 other questions? All right, thank you.
17 MR. BUNDY: I do have some questions for
18 Mr. Meyer, though.
19 HEARING OFFICER RENAUD: Please proceed.
20 MR. BUNDY: Is now the time to do it?
21 HEARING OFFICER RENAUD: Yes.
22 MR. BUNDY: Okay. Thanks.
23 CROSS-EXAMINATION
24 BY MR. BUNDY:
25 Q Mr. Meyer, I'd like to turn your

1 attention to exhibit 200, pages 6-8 to 6-9. This
2 is the discussion of staff alternative site C.
3 In here you state that there -- is it
4 correct that you state that there's sufficient
5 land for development of two LM6000 turbines
6 adjacent to one of the existing landfill gas
7 plants?
8 MR. MEYER: Yes, that is my
9 understanding from speaking with the operator of
10 the existing facility.
11 MR. BUNDY: Okay.
12 MR. MEYER: I'm sorry, let me clarify a
13 little bit. The operator of the facility at the
14 landfill.
15 MR. BUNDY: The operator of the
16 generating plant at the landfill?
17 MR. MEYER: That is correct.
18 MR. BUNDY: And you state that this area
19 is designated general industrial, correct?
20 MR. MEYER: That is correct.
21 MR. BUNDY: Just for clarification
22 because your testimony doesn't say, is that
23 general plan, zoning, or both?
24 MR. MEYER: That is basically just going
25 off of the zoning maps.

1 MR. BUNDY: The zoning maps.
2 MR. MEYER: So I didn't -- I'm not a
3 land use expert, so I --
4 MR. BUNDY: I understand. And you do
5 state that a CUP would not be required?
6 MR. MEYER: That is correct.
7 (Audience interruption.)
8 MR. BUNDY: I thought Perry Mason had
9 intruded on us --
10 (Laughter.)
11 MR. BUNDY: So this site, staff
12 alternative site C, is quite a bit further from
13 residences than the proposed site, is that
14 correct? I think you stated it's about 2000 feet
15 away?
16 MR. MEYER: If you refer to the first
17 paragraph, talk about the closest noise receptors
18 are located approximately 300 feet from the site.
19 And the school is located approximately 2200 feet
20 northeast of the site. That would be on page 6-8.
21 MR. BUNDY: Are you looking there at
22 MMC's alternative site two, or are you looking at
23 staff's alternative --
24 MR. MEYER: Oh, I'm sorry, no, my
25 mistake.

1 MR. BUNDY: So on 6.9, the bottom of
2 that first paragraph --
3 MR. MEYER: I'm sorry. Your statement
4 is correct that on 6-9, bottom of the first
5 paragraph, yes, I do refer to it as being
6 approximately 2000 feet to the nearest residence.
7 MR. BUNDY: Okay. Now, you talk about
8 some of the potential environmental impacts of
9 siting the facility here. I mean, granted, it's a
10 rough analysis, but you do address some of those
11 impacts?
12 MR. MEYER: That is correct.
13 MR. BUNDY: Okay. Is it fair to assume
14 that the greater distance from residences at this
15 site could reduce exposure to air pollutants at
16 the nearest residential receptor, 350 feet versus
17 2000 feet?
18 MR. MEYER: I'm not an air quality
19 expert; there was no modeling done on this.
20 MR. BUNDY: There was no modeling done
21 for the alternative site. Is it your testimony in
22 alternatives table 2 that the air quality impacts
23 actually listed here as staff's alternative site
24 D, but I believe that should be C, is that right?
25 This is on page 6-11.

MR. MEYER: That is correct.

MR. BUNDY: Okay, and your testimony here is that the air quality impacts are similar to the proposed site?

MR. MEYER: That is correct.

MR. BUNDY: But there was no modeling done to support that?

MR. MEYER: No.

MR. BUNDY: Okay. You also state that visual impacts are not expected due to this site's industrial siting, is that right? Going back to page 6-9.

MR. MEYER: And you're referring to alternate -- staff alternate C?

MR. BUNDY: -- everything is about alternate site C, yeah.

MR. MEYER: That is correct.

MR. BUNDY: Okay. So, would it be fair to say that staff alternative C would reduce or avoid at least some of the project's environmental impact?

MR. MEYER: You're not talking since there were no significant environmental impacts from, other than identified in the FSA, you're talking about just any impact at all that are less

than significant?

MR. BUNDY: Without conceding that the mitigation is effective to reduce to insignificance, you do state in table 2 that there are a number of impacts that are less than, as opposed to --

MR. MEYER: Right. That is correct.

MR. BUNDY: And would it be fair to say that staff alt-C would meet at least some of the applicant's objectives?

MR. MEYER: Yes. It does not meet all, it meets some of their objectives.

MR. BUNDY: Okay. Thank you, I think that's all I have for you.

HEARING OFFICER RENAUD: Any other questions for Mr. Meyer?

MR. BELL: No redirect.

HEARING OFFICER RENAUD: All right. Okay, thank you.

I think it would be time to call your witness, Mr. Bundy.

MR. BUNDY: All right. Mr. Powers, are you ready to go? I believe he needs to be sworn.

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1 Whereupon,

2 WILLIAM POWERS

3 was called as a witness herein, and after first

4 having been duly sworn, was examined and testified

5 as follows:

6 HEARING OFFICER RENAUD: Would you

7 please state your name.

8 MR. POWERS: William Powers.

9 HEARING OFFICER RENAUD: And just

10 remember to speak right into that mike.

11 MR. POWERS: I will.

12 DIRECT EXAMINATION

13 BY MR. BUNDY:

14 Q Mr. Powers, have you prepared written

15 testimony in a declaration that was previously

16 distributed in this proceeding?

17 MR. POWERS: I have.

18 MR. BUNDY: And do you have any changes

19 to that testimony since the time you prepared it?

20 MR. POWERS: I do not.

21 MR. BUNDY: Do you have that testimony

22 in front of you marked as -- the declaration and

23 testimony marked as exhibit 615 and 616?

24 MR. POWERS: I eo.

25 MR. BUNDY: I want to turn your

1 attention to exhibit 617. Tabs A through F in
2 exhibit 617, are these documents that you relied
3 on and referenced in preparing your written
4 testimony?
5 MR. POWERS: Yes.
6 MR. BUNDY: Ask you about exhibits
7 617(g), (h) and (i), are you familiar with these
8 documents?
9 MR. POWERS: Yes.
10 MR. BUNDY: Were they cited in your
11 testimony?
12 MR. POWERS: No.
13 MR. BUNDY: Can you describe how these
14 documents are relevant to your testimony?
15 MR. POWERS: (g), (h) and (i) are -- one
16 is a very recent document that talks about how San
17 Diego County can't comply with AB-32, reducing
18 greenhouse gas emissions by 25 percent by 2020.
19 It's relevant because it does highlight some of
20 the actions we'll have to take reducing our energy
21 consumption or electricity consumption by 10
22 percent, adding 400 megawatts of PV and adding, I
23 think, 200 megawatts of combined heat and power,
24 basically steps following the energy action plan
25 of the State of California to meet that target.

1 And these three (g), (h) and (i) are
2 basically the executive summary of the document in
3 the PowerPoint presentation of the same
4 information.
5 MR. BUNDY: And can you -- I'm sorry,
6 give me one second -- do you have in front of you
7 exhibit 617, tabs J, K and L?
8 MR. POWERS: I do.
9 MR. BUNDY: And can you describe what
10 these documents are and how they're relevant to
11 your testimony?
12 MR. POWERS: They're relevant because my
13 testimony talks about an air conditioning cycling
14 program, key element, one tool in the kit to drop
15 peak demand. And these documents talk about, one
16 is Austin Energy, Austin, Texas, where the
17 municipal utility bought 50,000 smart thermostats;
18 installed them to get a 45 megawatt reduction in
19 peak load.
20 Another is a description of a similar
21 project. And this is exclusively about air
22 conditioning cycling programs. Putting in smart
23 thermostats, dropping load basically
24 instantaneously with almost no impact on the user.
25 MR. BUNDY: Thank you. At this time I

1 would move exhibits 615, 616 and 617 into
2 evidence.
3 HEARING OFFICER RENAUD: Is there any
4 objection?
5 MR. BELL: None on behalf of staff.
6 MS. LUCKHARDT: I would just note that
7 it was quite a bit of information to send to
8 parties two days before the hearing.
9 HEARING OFFICER RENAUD: Agreed.
10 Nonetheless, --
11 MR. BUNDY: And I apologize for that.
12 It's correct that this study on the greenhouse gas
13 emissions, is it your understanding, this came out
14 after your testimony was prepared?
15 MR. POWERS: Correct.
16 MR. BUNDY: I've been admonished not to
17 ask for --
18 HEARING OFFICER RENAUD: It's admitted.
19 MR. BUNDY: Okay, thank you. I've been
20 admonished not to ask for a summary, so at this
21 point I'd like to just reserve some time for
22 redirect if necessary.
23 HEARING OFFICER RENAUD: All right,
24 thank you. Is there any cross-examination?
25 MS. LUCKHARDT: Yes.

HEARING OFFICER RENAUD: All right, please proceed.

CROSS-EXAMINATION

BY MS. LUCKHARDT:

Q Mr. Powers, in your testimony -- in looking at your r,sum, and your testimony, you have on page 1 in the first paragraph that you've permitted three 50 megawatt peaking turbine installations.

Were you employed by CalPeak at that time? Were you an employee of CalPeak?

MR. POWERS: I wasn't employed by CalPeak; I was a consultant, as I am now. And was hired as a contractor to secure the air permits for those projects.

MS. LUCKHARDT: Okay, so when you refer to that you're referring to the air permits, is that correct?

MR. POWERS: Right.

MS. LUCKHARDT: In your testimony you refer to the Sunrise Power Link proceeding, is that correct?

MR. POWERS: That is correct.

MS. LUCKHARDT: And did you testify in that proceeding?

1 MR. POWERS: I did.
2 MS. LUCKHARDT: And you testified
3 against the Sunrise Power Link, is that correct?
4 MR. POWERS: I did.
5 MS. LUCKHARDT: Okay, on page 1 of your
6 testimony you reference decision D07-10-032.
7 MR. POWERS: Correct.
8 MS. LUCKHARDT: Isn't it true that those
9 policies only apply to new construction?
10 MR. POWERS: Could you repeat the
11 question?
12 MS. LUCKHARDT: Isn't it true that the
13 policies adopted in D07-10-032 only apply to new
14 construction?
15 MR. POWERS: Is your question
16 specifically about residential and commercial --
17 MS. LUCKHARDT: Yes.
18 MR. POWERS: -- homes? That is correct.
19 But I'd like to clarify that it is a much broader
20 decision than residential and commercial
21 construction.
22 MS. LUCKHARDT: But the energy
23 efficiency measures identified are to apply
24 specifically to new construction, correct?
25 MR. POWERS: That element of that

1 decision, that is correct.
2 MS. LUCKHARDT: And isn't it true that a
3 zero net program initiative means that the
4 building will, or the structure, will take power
5 from the grid sometimes and send power back at
6 others?
7 MR. POWERS: That's definitely one
8 format, yes, that it would be grid connected.
9 MS. LUCKHARDT: But that it takes power
10 from the grid in some instances and returns power
11 to the grid in others?
12 MR. POWERS: Correct.
13 MS. LUCKHARDT: And isn't it true in
14 DO7-10-032 that the IOUs' energy savings goals for
15 2009 through 2011 and 2012 to 2013 were not
16 changed by that decision?
17 MR. POWERS: Those specific goals were
18 not changed.
19 MS. LUCKHARDT: Thank you. On page 9 of
20 your testimony in section A, --
21 MR. POWERS: I'm there.
22 MS. LUCKHARDT: You're there? You
23 referred to demand forecast for the San Diego Gas
24 and Electric system. Can you provide the document
25 reference or page number from which you pulled

1 those numbers?
2 MR. POWERS: You're talking about the
3 sentence, 4700 megawatts?
4 MS. LUCKHARDT: Yes.
5 MR. POWERS: I would need a minute,
6 since it's not directly referenced, to track down
7 the document. Give me a moment just to read this
8 paragraph.
9 It isn't referenced here. I'll have
10 to -- can find that reference for you, I think,
11 when I have a moment, but I don't have it at my
12 fingertips.
13 Our peak load last year was a little
14 over 4600 megawatts. And I'll have to get that
15 for you.
16 MS. LUCKHARDT: On page 9 also on your
17 testimony you refer to the reserve margin in SP-
18 26, is that correct?
19 MR. POWERS: Correct.
20 MS. LUCKHARDT: Doesn't SP-26 include
21 Los Angeles, as well as San Diego?
22 MR. POWERS: Correct.
23 MS. LUCKHARDT: Isn't it true that San
24 Diego is a separate load pocket for resource
25 adequacy?

MR. POWERS: Correct.

MS. LUCKHARDT: Are you aware of the status of the Wellhead Margarita project?

MR. POWERS: Yes.

MS. LUCKHARDT: And what is that status?

MR. POWERS: My understanding is that the developer withdrew their original proposal and that the proposal has resurfaced in a new SDG&E application to the CPUC.

MS. LUCKHARDT: That it's resurfaced and that there's a new application at the CPUC?

MR. POWERS: Correct.

MS. LUCKHARDT: But it's not proceeding as it was originally proposed? Or on the timeline in which it was originally proposed?

MR. POWERS: No, it's not proceeding on the original timeline that was proposed.

MS. LUCKHARDT: Isn't it true that the majority of the resource additions shown in your exhibits 617(d) and (e) are located within the SCE service territory?

MR. POWERS: Would you repeat the exhibit again?

MS. LUCKHARDT: Exhibit 617(d) and (e).

MR. POWERS: Okay, these are the

1 forecasts?
2 MS. LUCKHARDT: Yes.
3 MR. POWERS: And the comment is?
4 MS. LUCKHARDT: That the majority of the
5 resource additions are in the L.A. area, or the
6 Southern California Edison service territory or
7 L.A. service territory?
8 MR. POWERS: Correct.
9 MS. LUCKHARDT: And are you aware of the
10 status of the Inland Empire Energy Center Unit 1?
11 MR. POWERS: I'm aware that the ISO put
12 out a report a couple of days ago that indicated
13 some delays in the inception of operations at a
14 couple of these facilities.
15 MS. LUCKHARDT: And are you aware of the
16 actions in the South Coast Air District regarding
17 a priority reserve in limiting development of
18 power plants?
19 MR. POWERS: No.
20 MR. BUNDY: There are a number of these
21 questions that are referencing documents that
22 nobody's offered -- referencing documents that
23 nobody's actually offered into evidence --
24 MS. LUCKHARDT: Actually, what I'm
25 referring to are the exhibits that he has offered,

himself, which are exhibits 617(d) and 617(e), which are referred to in his exhibits explicitly. And those exhibits explicitly reference status of new generations coming online, many of which have been delayed. And he has some knowledge of some of them.

MR. POWERS: Right.

MS. LUCKHARDT: Isn't it true that the California ISO is regulated by the Federal Energy Regulatory Commission?

MR. POWERS: The ISO is the FERC's representative in California, that's correct.

MS. LUCKHARDT: You say that the FERC is the -- that the Cal-ISO is the representative of FERC in California. Do you think FERC would agree with that statement?

MR. POWERS: You're going to have to speak up.

MS. LUCKHARDT: I'm sorry. Is the ISO regulated by FERC?

MR. POWERS: I don't know if I would put it in those words. I see the ISO as the FERC presence in California. In terms of regulated by FERC, I don't know if I'd use that term.

MS. LUCKHARDT: Does the ISO have to

1 obtain approval for its tariffs from the Federal
2 Energy Regulatory Commission?
3 MR. POWERS: Yes.
4 MS. LUCKHARDT: Isn't it true that the
5 Cal-ISO has not been delegated authority to act on
6 behalf of FERC?
7 MR. POWERS: I really can't answer that
8 question, as an expert.
9 MS. LUCKHARDT: Okay. Referring to your
10 exhibit 617(e), which is the Cal-ISO forecast, or
11 the Cal-ISO study.
12 MR. POWERS: 617(d)?
13 MS. LUCKHARDT: 617(e), sorry about
14 that. E as in elephant.
15 MR. POWERS: Okay, I have that.
16 MS. LUCKHARDT: You quote that report to
17 say that 1700 megawatts of additional generation
18 will be online in 2009. How much of that
19 generation is located in San Diego?
20 MR. POWERS: The question is how much of
21 that generation is located in San Diego?
22 MS. LUCKHARDT: Yes.
23 MR. POWERS: I think we'll have to walk
24 through the list of projects to identify that. I
25 think the Margarita, Pala, 40 megawatt addition at

1 Palomar, and Otay Mesa is the other that I can
2 think of.
3 MS. LUCKHARDT: Where are those shown in
4 exhibit 617(e)? What are you referring to?
5 MR. POWERS: It might be on the last
6 page. Not identified by name. But they are
7 identified by name in the CEC project list.
8 MS. LUCKHARDT: Is the CEC project list
9 included in one of your exhibits?
10 MR. POWERS: Yes. That is exhibit (d),
11 617(d).
12 MS. LUCKHARDT: Can you point me to
13 where that is in 617(d)?
14 MR. POWERS: That might take a moment.
15 Okay, on page A-5, table A-2, SP-26 additions.
16 Inland Empire, SCE Oxnard, J Power Pala, Wellhead
17 Margarita, Palomar retrofit.
18 MS. LUCKHARDT: Okay. And looking at
19 that list, again the projects that would be
20 located in San Diego would be?
21 MR. POWERS: The last three are San
22 Diego projects.
23 MS. LUCKHARDT: And, again, the
24 Margarita project has been delayed?
25 MR. POWERS: Correct.

MS. LUCKHARDT: Are you aware of the timing on the Pala project?

MR. POWERS: No.

MS. LUCKHARDT: Have you ever been the plant manager of a combined cycle power plant?

MR. POWERS: No.

MS. LUCKHARDT: Have you ever worked as the operating staff on a combined cycle power plant?

MR. POWERS: Not on a combined cycle power plant.

MS. LUCKHARDT: Isn't it true that the heat rate for operating either Palomar or Otay Mesa would increase substantially when generated in simple cycle mode?

MR. POWERS: That is true, but it is important to note that they can generate in simple cycle mode.

MS. LUCKHARDT: And in making that statement, are you relying upon the statement made by Southern California Edison or -- I mean San Diego Gas and Electric or are you relying on your own experience?

MR. POWERS: I'm relying on a San Diego Gas and Electric response to discovery in the

1 Sunrise Power Link case where they made the
2 statement that both Palomar Energy and Otay Mesa
3 are capable of operating in simple cycle mode,
4 even though the ISO does not acknowledge that.
5 MS. LUCKHARDT: Do you know what happens
6 when you shift to simple cycle mode on a combined
7 cycle power plant?
8 MR. POWERS: I know that when you shift
9 to simple cycle mode when it's 100 degrees out and
10 your peak load, you get another 200 megawatts of
11 power. Your heat rate, when you need power in an
12 emergency is not an issue.
13 MS. LUCKHARDT: And how are you
14 calculating that 200 megawatts of power?
15 MR. POWERS: How am I calculating it?
16 MS. LUCKHARDT: Yes.
17 MR. POWERS: It is the steam cycle, the
18 calculation of additional power is the total
19 output of the Palomar Energy project minus, to get
20 into a little detail, the G-1, or largest
21 generator out in San Diego historically has been
22 Unit 5 of the Encina Power Plant. That's 329
23 megawatts. Palomar is 542 megawatts.
24 The 220 or thereabouts that you would
25 get as an increase is instead of your G1 being a

1 loss Palomar at 542 megawatts, you're back to your
2 G1 being Unit 5 at Encina.
3 Therefore, you magically get another 220
4 megawatts available. But it's not magic. It is
5 how the Palomar Unit is designed to operate.
6 MS. LUCKHARDT: And so is it your
7 testimony that the way to determine the output of
8 Palomar running in simple cycle mode is to simply
9 subtract out the generation provided by the steam
10 cycle?
11 MR. POWERS: No, --
12 MS. LUCKHARDT: -- the steam turbine?
13 MR. POWERS: No, this is how SDG&E
14 presents it. If the -- and they are presenting it
15 correctly. The --
16 MS. LUCKHARDT: You just said they were
17 presenting it correctly? Is that what you said?
18 MR. POWERS: I've not asserted that
19 SDG&E is not presenting it correctly. I'm
20 asserting that the ISO is not acknowledging the
21 ability of either Palomar or Otay Mesa to operate
22 in simple cycle mode when they lose the single
23 steam turbine generator.
24 And as a result of that failure to
25 acknowledge or incorporate that in the reliability

criteria that they're applying in San Diego, we have a phantom deficit of 220 megawatts that is part of the reason that we're having this discussion today.

MS. LUCKHARDT: Now, are you assuming in that statement that those projects can operate in simple cycle mode for an extended period of time?

MR. POWERS: Yes

MS. LUCKHARDT: Isn't it true that the heat rate from either of those projects operating in simple cycle mode would be substantially higher than the heat rate for the Chula Vista expansion?

MR. POWERS: The only time they would operate in simple cycle mode is under emergency conditions. Operation of these turbines in simple cycle mode would not be an alternative to this installation. It would be an emergency peak load response operation.

MS. LUCKHARDT: Okay, that's not the question I asked. I asked whether the heat rate for Palomar/Otay Mesa operating in simple cycle mode would be higher than that of the Chula Vista project as proposed.

MR. POWERS: It would not be substantially different. That is a Frame 7 FA

turbine at Palomar with inlet cooling; this is an LM6000 Sprint turbine. I would have to look at their heat rates to see how they compare. They're going to be very close.

MS. LUCKHARDT: Okay, do you know that they're close or are you assuming that they're close?

MR. POWERS: I know that they are -- I do not know the exact numbers, but I can tell you from my professional experience that they are very close.

MS. LUCKHARDT: Okay. Where in your r,sum, have you looked at the heat rate of a Frame 7 FA operating individually?

MR. POWERS: I was involved as an expert in a case in New Mexico where I was evaluating a two simple cycle Frame FA installation proposed for the City of Albuquerque.

I was an intervenor in the Palomar Energy case, which is two Frame 7 FAs. I work with gas turbines routinely as a part of my work as a consulting engineer, for example.

MS. LUCKHARDT: What is the quickstart capability of a combined cycle power plant operating in simple cycle mode?

1 MR. POWERS: The incorrect question,
2 this is a combined cycle unit that's online, not a
3 cold combined cycle unit. This is a hot day in
4 San Diego; we need all our assets. We have a G-1
5 event. And instead of dropping Palomar offline,
6 because it's online, it's going at full throttle.
7 Instead of dropping it offline from 542 to zero,
8 the unit switches to simple cycle mode and
9 continues to operate. It's not a slow-start/fast-
10 start issue.
11 MS. LUCKHARDT: Okay, so then what
12 you're talking about is not a peaking facility
13 then? You wouldn't be considering that --
14 MR. POWERS: No.
15 MS. LUCKHARDT: -- a peaking facility?
16 MR. POWERS: No. I'm not presenting
17 Palomar as a replacement for the MMC facility.
18 What I'm saying is that the improper
19 classification of Palomar when it loses that steam
20 turbine is showing us with a deficit of 220
21 megawatts that we don't have.
22 MS. LUCKHARDT: Do you know -- are you
23 aware of what kind of noise is created in that
24 situation?
25 MR. POWERS: Could you be more specific

about the question?

MS. LUCKHARDT: You just explained that you expect this Palomar, for example, to operate in simple cycle mode on a hot day when it's operating at full output with the steam cycle operating. They lose the steam cycle, do you know what happens to the plant from a noise perspective?

MR. POWERS: Yes. If they lose that steam turbine generator, what they do is they exhaust, the run boiler feedwater through the steam generator to keep it cool. And so in order to keep those heat recovery steam generator tubes from overheating they run sufficient boiler steam water through the tubes to keep them cool enough so that they don't get damaged.

That is vented through a pressure relief valve. Now, I presume that they have some noise control on it, but that is how they assure that that steam generator is safe when they run in simple cycle mode.

Again, it's not something you're going to do 100 hours a year. It's the capability they have to assure reliability.

MS. LUCKHARDT: Would there be any

venting of excess steam to the atmosphere?

MR. POWERS: Yes.

MS. LUCKHARDT: Okay, moving on. Isn't it true that the solar peak does not match the load peak?

MR. POWERS: That is true.

MS. LUCKHARDT: Are you aware that there are two peaks in San Diego?

MR. POWERS: Yes.

One clarification. There are two peaks; the afternoon peak is several hundred megawatts higher than the 8:00 p.m. peak.

MS. LUCKHARDT: Can you point to a large-scale battery installation that is installed in California at this time?

MR. POWERS: There are -- the CEC had a two megawatt hour installation, a ZBB battery up at a PG&E substation, which is still owned by the CEC. It's been -- that trial is over. Up at a battery plant in L.A. they've got a 3.5 megawatt hour lead acid battery peaker that is used for peak shaving. So there are a few examples that we have in California of large-scale battery installations.

MS. LUCKHARDT: And you consider 3.5

megawatts to be large scale?

MR. POWERS: I consider it to be large scale.

MS. LUCKHARDT: In your testimony you state that the cost to MMC to control hundreds of acres of land would be zero for PV installation?

MR. POWERS: Correct.

MS. LUCKHARDT: You assume, I gather, that the property owners would provide the space free to MMC?

MR. POWERS: That is correct.

MS. LUCKHARDT: You furthermore assume that there will be no requirement to comply with CEQA for permitting?

MR. POWERS: That is correct. That is correct in the case of rooftops and correct in the case of parking lots. That is not correct in the case of land-based systems.

MS. LUCKHARDT: Do you consider yourself an expert on CEQA?

MR. POWERS: I have had to do negative declarations for CEQA for power plants. I would not consider myself an expert, but I have conducted those evaluations.

MS. LUCKHARDT: And you further assume

in your testimony that SCE's estimates would apply to MMC, is that correct?

MR. POWERS: Can you repeat the question?

MS. LUCKHARDT: That the Southern California Edison's estimates of cost would apply to MMC?

MR. POWERS: I actually think the costs would be lower than that. I think that the SCE cost is a high-end cost. One of those examples that is given there is we have our own warehouse district here in Otay Mesa. And it is a small-scale version of what SCE's deploying their 250 megawatts of PV on here locally.

And so I do use many of the assumptions, or I'm assuming that SCE is -- that their assumptions are relatively accurate in making that comparison.

MS. LUCKHARDT: Isn't it true that SCE includes generation as part of its PV system?

MR. POWERS: I don't understand the question. The PV system is generation.

MS. LUCKHARDT: Okay, referring to your testimony on page 14, at the very bottom paragraph you talk about the SCE proposal for 250 megawatts

of PV.

MR. POWERS: Correct.

MS. LUCKHARDT: You quote that application. And you quote that it can coordinate with generation or storage technologies, is that correct?

MR. POWERS: That is correct.

MS. LUCKHARDT: And isn't it true that SCE has recently installed a whole set of small peakers at substations?

MR. POWERS: I do not know if they have installed small peakers in substations, but that is not necessarily related to this project. What they're saying here is that in order to modulate, what they're talking about, the context is that they can absorb a lot of PV.

And that one of the tools in the kit that they have in absorbing a lot of this PV, they can put energy storage at the distribution substation or they can put a peaker at that distribution substation.

They're just describing that they see as one of the tools at their disposal energy storage at the substation. That's my point in putting it in here.

1 MS. LUCKHARDT: But isn't it true that
2 SCE has substantial generation within its service
3 territory?
4 MR. POWERS: I cannot hear you.
5 MS. LUCKHARDT: I'm sorry. Isn't it
6 true that SCE has substantial generation in its
7 service territory?
8 MR. POWERS: That is true.
9 MS. LUCKHARDT: Moving on to CHP. Isn't
10 it true that most CHP installations obtain backup
11 service from the electric grid?
12 MR. POWERS: That has been a utility
13 requirement for CHP to have backup power.
14 MS. LUCKHARDT: Is backup power -- isn't
15 it true that backup power is to account for
16 situations such as maintenance on the CHP systems?
17 MR. POWERS: I'd like to point out that
18 the CEC has funded a project to develop an
19 islanding control system for CHP facilities. And
20 I have not elaborated on this in this testimony,
21 but you are hitting on a point that is one of
22 great controversy in California, why CHP
23 facilities are required to have an equivalent
24 amount of backup power support from a utility when
25 that is definitely not necessary.

But the issue of backup power can be remedied by simply requiring -- a capacity charge, be ready to go in the summertime, or utilizing this new control system the CEC helped to develop which allows it to instantly island, instantly integrate back into the grid.

So this is an administrative issue. This is not a technology issue with CHP.

MS. LUCKHARDT: But isn't it true that in those situations where the CHP unit is down they depend on the grid to provide backup power?

MR. POWERS: Correct.

MS. LUCKHARDT: So therefore isn't it true that the load is not permanently eliminated from the grid?

MR. POWERS: That is untrue. If you take that operation or you take that unit offline for maintenance in November when your load is at its absolute minimum, you have no impact on grid reliability. So, no, that is not -- the question is too simplistic to give a yes or no answer to.

MS. LUCKHARDT: Isn't it true that all power plants of any type, sort or kind can have unscheduled outages?

MR. POWERS: Yes.

1 MS. LUCKHARDT: They could occur at
2 anytime?
3 MR. POWERS: Correct.
4 MS. LUCKHARDT: And could require backup
5 power from the grid at anytime?
6 MR. POWERS: Depends on the nature of
7 operation, but your point is -- I understand your
8 point, that a mechanical device could be in forced
9 outage mode at some point, and that is true.
10 MS. LUCKHARDT: How many CHP units are
11 you aware of that are under development in San
12 Diego County right now?
13 MR. POWERS: I know that I'm personally
14 associated with approximately 30 megawatts of CHP
15 that are under development. I do not know the
16 complete range of CHP proposals. I know that
17 there's a big hotel development here with a CHP
18 system that I'm not directly engaged in.
19 So we have CHP underway all the time. I
20 don't know how many applications, though, are in
21 the hopper at this time.
22 MS. LUCKHARDT: In reference to your
23 comments about commercial photovoltaic units. Do
24 you include the cost of transmission or
25 distribution upgrades in those costs?

MR. POWERS: No. And the reason for that is SCE doesn't include any costs for transmission or distribution upgrades. Their program will not require those upgrades.

MS. LUCKHARDT: This is a utility program you're referring to, correct?

MR. POWERS: Correct.

MS. LUCKHARDT: That's a program in which Edison will own the units, correct?

MR. POWERS: That's their proposal.

MS. LUCKHARDT: Therefore, they're correcting to their own --

MR. POWERS: I'll make another point, since we're talking about this. I refer to the Energy Commission's December 2007 comparative study of generation technologies. They talk about gas turbines, they talk about 50 megawatt gas turbines; identify the installed cost of the system at about $1000 a kW. And they identify the cost of the linears at about $21 a kW.

So, no, I don't go into the distribution or transmission element of this, which would be considered a linear in this business. But it's a de minimus expense, or identified as a de minimum expense for a simple cycle gas turbine.

1 MS. LUCKHARDT: Isn't it true that every
2 interconnection requires an individual
3 interconnection study?
4 MR. POWERS: In the context of a CHP or
5 a larger power plant, that would be true. In
6 terms of -- there would have to be an
7 interconnection process with the PV, as well.
8 MS. LUCKHARDT: And isn't it true that
9 you don't know the true cost of interconnection
10 until you conduct that study?
11 MR. POWERS: Yes, that's true. But you
12 have to look at it in the context of the past.
13 How much cost has interconnection been in the
14 context of price of a power project. Generally
15 it's been a very small component of the project.
16 There's no reason to expect that it would be even
17 as big as it has historically been for other power
18 projects.
19 MS. LUCKHARDT: Are you aware of the
20 current situation with the Cal-ISO interconnection
21 queue?
22 MR. POWERS: Could you be more explicit?
23 MS. LUCKHARDT: Are you aware of the
24 number of projects and the change of the
25 processing of interconnection applications at the

1 California ISO?
2 MR. POWERS: Am I aware of the number of
3 projects that are in the queue at the ISO?
4 MS. LUCKHARDT: Are you familiar with
5 the interconnection application process at the
6 California ISO?
7 MR. POWERS: For transmission?
8 MS. LUCKHARDT: For transmission.
9 MR. POWERS: Yes.
10 MS. LUCKHARDT: Are you aware of the
11 number of projects that have applied for an
12 interconnection study in the last couple of years?
13 MR. POWERS: I know there are many.
14 MS. LUCKHARDT: Are you aware that the
15 California ISO is changing the way in which it
16 studies these projects?
17 MR. BUNDY: I think all of these
18 questions assume things that are not in evidence
19 unless there is some other exhibit of Mr. Powers
20 that you --
21 MS. LUCKHARDT: Well, Mr. Powers has
22 claimed that there is a very low cost associated
23 with interconnecting power projects in California.
24 The recent experience of power plant developers is
25 that that is not the case.

MR. BUNDY: Are you -- I would object to the counsel testifying.

MS. LUCKHARDT: Well, if Mr. Powers is not familiar with what's going on with the interconnection queue --

HEARING OFFICER RENAUD: This is an expert witness. He can correct any facts in the questions that he feels are incorrect.

MR. BUNDY: All right.

MR. POWERS: If I can answer that question, I am familiar with the fact that the ISO has categorized the queue into early-comers and late-comers. But I'm also aware that the ISO has done that for large-scale projects.

How the ISO would deal with a situation that fundamentally doesn't involve the ISO, this is a distributed generation project. There's no transmission for the ISO to be concerned about. The ISO, I would presume, would look at this as distributed or demand reduction.

This is just shedding load, permanently shedding load. And that's a different animal than a project in the queue to put 500 megawatts of PV in Imperial County.

(Background chanting.)

1 MS. LUCKHARDT: The last statement that
2 you made, I assume that's referring to fairly
3 small projects, say 1 megawatt or smaller?
4 MR. POWERS: But that's the nature of
5 this beast. The SCE project is 1 and 2 megawatt
6 projects spread over a relatively large area. And
7 that is the nature of the example in my testimony,
8 which is the Otay Mesa warehouse district. It's
9 very similar, putting 1 to 2 megawatt systems on
10 top of individual roofs.
11 I hear these questions about the
12 interconnection agreement, but I have to
13 underscore that we now have, if not hundreds,
14 dozens and dozens of 800 kw, 1 megawatt, 1.2
15 megawatt PV systems all over California.
16 And I haven't been in on the
17 interconnection element of it, but I have not
18 heard of interconnection of these PV systems as
19 being a problem at all.
20 MS. LUCKHARDT: So is it your assumption
21 that 50 or more 1 megawatt PV installations would
22 be of a similar cost to this project?
23 MR. POWERS: Yes. That interconnection
24 is rolled in, for example, to the SCE cost. And I
25 said earlier the SCE costs I consider conservative

1 based on what that same thin film PV manufacturer
2 has already done in other projects.
3 MS. LUCKHARDT: Isn't it true that you
4 proposed similar solutions involving
5 photovoltaics, CHP, energy efficiency in the
6 Sunrise Power Link process and that the
7 environmental impact report found all those
8 alternatives infeasible?
9 MR. POWERS: I do take credit for
10 attempting to follow the California Energy Action
11 Plan in my proposal. And I do also want to point
12 out that my involvement in the Sunrise case post-
13 dated the -- if we're talking about the draft
14 environmental impact report, where they did look
15 at those elements.
16 And I can assure you that I don't agree
17 with that conclusion.
18 MS. LUCKHARDT: But isn't that the
19 conclusion that that analysis reached?
20 MR. POWERS: Well, that was the
21 conclusion of the draft environmental impact
22 report. That was one of the purposes for my
23 involvement as a party in the case. We have not
24 seen the final environmental impact report, nor
25 have we seen the Administrative Law Judge's

1 preliminary decision in the case.
2 We will see to the extent that that
3 information carried the day or did not carry the
4 day.
5 MS. LUCKHARDT: Shifting back to CHP,
6 isn't it true that CHP units, by their very
7 nature, are not quickstart?
8 MR. POWERS: Can't hear you.
9 MS. LUCKHARDT: Oh, I'm sorry. Isn't it
10 true that CHP units, by their very nature, are not
11 quickstart peaking units?
12 MR. POWERS: CHP is not quickstart. CHP
13 is essentially the equivalent of energy
14 efficiency. You're just removing load from the
15 system.
16 MS. LUCKHARDT: Thank you, that's all I
17 have.
18 MR. POWERS: Thank you.
19 HEARING OFFICER RENAUD: All right. Any
20 other cross-examination?
21 MR. BELL: For better or worse I believe
22 that Ms. Luckhardt has stolen most of my thunder.
23 (Laughter.)
24 MR. BELL: I do have a couple of
25 questions that I do want to ask.

1 CROSS-EXAMINATION
2 BY MR. BELL:
3 Q Your comments seem to be not criticizing
4 the analysis that staff actually did, but you seem
5 to be -- would it be fair to say that you are
6 critical of staff for not analyzing this from a
7 perspective of conservation and demand side
8 management alternatives?
9 MR. POWERS: Well, I do have one
10 explicit criticism, and that is the question was
11 asked about CPUC decision 71032. That decision,
12 71032, quotes the draft 2007 IEPR, which was
13 issued two weeks before they issued that decision.
14 And they say, we concur with the CEC, we concur
15 that the target needs to be 100 percent energy
16 efficiency. And they issued that decision.
17 Then the response to my testimony from
18 the CEC is all of that was rolled into our
19 forecast, demand response, energy efficiency was
20 rolled into our forecast. Therefore, this is all
21 fine, but since we dealt with it in the forecast,
22 we're not going to deal with it here.
23 A good portion of my testimony saying,
24 wait a second, the CPUC acknowledges your draft
25 IEPR, which was issued two weeks before their

1 decision, but you do not acknowledge in your 2007
2 IEPR, which was issued two months later, that they
3 issued this landmark energy efficiency decision,
4 which, interestingly enough, the IEPR contains the
5 two graphs that I put in my testimony.
6 The CEC tells us what is going to happen
7 now as a result of that decision. However, the
8 data that the CEC relies on to dismiss energy
9 efficiency/demand response is four-year-old data.
10 The energy forecast is relying on a 2004 energy
11 efficiency targets for the utilities.
12 So my point is you dismissed my
13 testimony based on information that was obsolete
14 when your forecast was issued. And so you need to
15 take another look at dismissing the top three
16 tiers of the loading order based on an obsolete
17 forecast.
18 And each one of the documents that --
19 there are three documents that the CEC is
20 essentially relying on in making this assertion
21 that you can dismiss it. In each case those
22 documents were published at least six weeks, and
23 in one case two months, after the PUC issues the
24 decision.
25 That's my point, that I don't agree with

1 your determination because you were using obsolete
2 information. But this is a very important thing
3 because if you use current information, what you
4 show is energy demand in California is declining.
5 And what you also show is that peak demand, if not
6 declining, is not going up.
7 So how can you -- if you make the
8 decision to acknowledge that we're going to get
9 there, it's almost like the RPS, you acknowledge
10 we're going to get there, then you just have to
11 work with that. That's reality.
12 If you acknowledge that what the PUC
13 said is real, and we're going to get there in
14 2020, then you've got to acknowledge that we're
15 either on a flat energy demand situation that's
16 heading to decline and that our peak load is flat
17 and heading to decline. And then it begs the
18 question for any peaker here in California --
19 MR. BELL: Thank you, Mr. Powers. Once
20 again, your criticism then --
21 HEARING OFFICER RENAUD: He wasn't
22 finished, I don't think, Mr. Bell.
23 MR. BELL: No, actually -- I'm sorry.
24 HEARING OFFICER RENAUD: Were you
25 finished?

1 MR. BELL: No, at this point I would
2 interpose an objection that his answer is
3 nonresponsive.
4 HEARING OFFICER RENAUD: Were you
5 finished? You may finish.
6 MR. POWERS: I must protest. I mean the
7 answer is completely responsive.
8 What I'm saying is even for PV the
9 response from CEC Staff was, we've taken care of
10 that. It's in our demand response, it's in our
11 forecast. Look at the forecast.
12 And, wait a second, I can at least
13 accept that if you're talking about demand side
14 management, that you're talking about efficiency
15 and demand response. But I can't accept that you
16 direct me to the forecast when I'm talking about
17 PV and CHP.
18 And it almost appears that someone was
19 just hitting copy, copy, copy on each one of the
20 points, and they all came out the same, saying,
21 we've looked at the forecast and so we're not
22 going to deal with it here.
23 That's -- my response is a bit lengthy,
24 but I think it's completely on point to what your
25 question was.

1 MR. BELL: It's fair to say you disagree
2 with staff's approach?
3 MR. POWERS: That's a good summary.
4 MR. BELL: Thank you. Would you agree
5 with this statement? Let me read this to you.
6 Staff need not consider an alternative whose
7 affect cannot be reasonably ascertained, and whose
8 implementation is remote and speculative. Would
9 you agree with that statement?
10 MR. POWERS: That any of the supposed
11 remedy or the proposed remedies would be
12 speculative?
13 MR. BELL: With respect to alternatives
14 analysis for this project, alternative sites,
15 would you agree with that?
16 MR. POWERS: Oh, I had no comment on the
17 alternative sites. I was focused on alternative
18 ways of achieving that load.
19 One final comment on that, which is
20 important in the context of PV, is that the LM6000
21 Sprint is a good turbine --
22 MR. BELL: I would object, there's no
23 question pending at this point. And it goes far
24 beyond the scope of what I just asked.
25 HEARING OFFICER RENAUD: Why don't you

1 proceed with your questioning and we'll see, Mr.
2 Powers will get an opportunity to give his remarks
3 at a later time.
4 MR. BELL: Now, in the Palomar Energy
5 project, you actually intervened in that case,
6 didn't you?
7 MR. POWERS: I was an intervenor in
8 Palomar.
9 MR. BELL: In Palomar your concern was
10 for a strategic resource standpoint, you weren't
11 concerned with conservation --
12 MR. POWERS: I can't hear you.
13 MR. BELL: -- and demand side management
14 at that time, were you?
15 MR. POWERS: You're going to have to get
16 closer to the microphone, I can't hear you.
17 MR. BELL: Oh, I'm sorry. In the
18 Palomar case you weren't concerned with
19 conservation and demand side management at that
20 time, were you?
21 MR. POWERS: No.
22 MR. BELL: No. And, in fact, in the
23 Palomar matter you actually argued the benefits of
24 dry cooling, correct?
25 MR. POWERS: That is correct.

1 MR. BELL: And have you taken a look at
2 the actual proposal for this facility here in
3 Chula Vista?
4 MR. POWERS: Unrelated. This is a
5 simple cycle installation; that was a combined
6 cycle installation.
7 MR. BELL: Correct. But there's no
8 cooling tower here, correct?
9 MR. POWERS: Correct.
10 MR. BELL: Okay. Now, do you know if
11 our conditions of certification for the Palomar
12 facility allow for the operation of that facility
13 in simple cycle only?
14 MR. POWERS: It's an emergency
15 condition. It's not a normal operating condition.
16 MR. BELL: Correct. The question is do
17 you know if our conditions of certification allow
18 for that facility to operate in single cycle only?
19 MR. POWERS: I don't think that was even
20 an issue in the proceeding. In fact, none of us
21 were even aware that Palomar could operate as a
22 simple cycle unit until we did a discovery request
23 in the Sunrise proceeding.
24 MR. BELL: So the answer is no, you
25 don't know if the conditions of certification

1 would even allow for that?
2 MR. POWERS: I read it, I don't recall
3 any -- if that issue had been in that document, I
4 would know it. And so I presume that it is not in
5 there.
6 MR. BELL: Okay. Thank you very much.
7 I have no further questions.
8 HEARING OFFICER RENAUD: Any more cross-
9 examination? Redirect?
10 MR. BUNDY: Yes, I will try to make this
11 very brief out of respect for the folks who are
12 sitting waiting for public comment.
13 REDIRECT EXAMINATION
14 BY MR. BUNDY:
15 Q We've had a lot of specific questions
16 about specific parts of your testimony, but in
17 your view could some of the proposals you
18 recommend feasibly be combined to meet the peak
19 power demand that this --
20 MR. POWERS: Yes.
21 MR. BUNDY: -- project would --
22 MR. POWERS: That would be the ideal.
23 MR. BUNDY: All right. And let's see,
24 there was a question about how the solar peaK does
25 not match load peak. Could a solar system address

that sort of discontinuity between the solar peak and the load peak, and how would that work?

MR. POWERS: I talk about two different ways that it could work in my testimony. And if it is appropriate, I would like to clarify this issue of the LM6000 Sprint. And it relates to the size of the system that I'm going to talk about, is that this unit at 100 degrees Fahrenheit is a 36 megawatt unit. It is not a 50 megawatt unit.

And we don't normally go much beyond 100 degrees here, but it's important to know that the nameplate capacity of the unit is not going to do you much good during the period of time it is driving the need to permit peakers.

MR. BUNDY: Just to clarify. That's because the nameplate capacity is at 59 degrees? Is that correct?

MR. POWERS: Right. It's at 59 degrees Fahrenheit. Turbine's performance degrades quite markedly as the temperature goes up. The reason I bring that up is I talk about comparing everything to a 50 megawatt turbine. And I was remiss in my testimony because I had failed to recall, as I was putting it together, that at high temperature you're going to get much less power out of the

1 turbine.

2 But to get back to the main point, is

3 that you have a couple of options. One is the

4 utility, San Diego Gas and Electric, assumes that

5 you get 50 percent reliability out of your PV

6 system because of that issue of the peaks not

7 matching up.

8 So, one option is just to, if your

9 objective is to match that same amount of peak

10 power, and being fair about it, maybe 40 megawatts

11 or 35 as opposed to 50, because that's when that

12 peak need is there, that you can put in 35 or 40

13 megawatts of PV, add enough storage so that you

14 can shift that peak so it covers through 5:30,

15 6:00. Or increase the size of the PV array so

16 it's simple, no moving parts, you've got 75

17 megawatts of PV. Out of it you get 36, 38

18 megawatts of reliability.

19 MR. BUNDY: Okay.

20 MR. POWERS: This only works

21 economically because of thin film PV. Because of

22 this dramatic drop in the cost of PV, the

23 economics work. It would have been a much harder

24 statement to make even two years ago about

25 comparing those two options.

1 MR. BUNDY: And in terms of the cost
2 of -- the questions you asked about the cost of
3 transmission and distribution, is there any way to
4 use demand response or other strategies to address
5 potential overloads in transmission with
6 distributed --
7 MR. POWERS: There are. And I think
8 that the, knowing core element to this is you have
9 to have the utility cooperation. In the SCE
10 system it is, they're proposing a project; they
11 make the statement that because we own the
12 distribution, transmission distribution system, we
13 can balance the loads, use demand response to make
14 sure that we don't get overloads at the
15 substations, and address all of the issues. In
16 fact, they present it in a very positive,
17 straightforward way, that we can handle all of
18 this.
19 It is implicit that when I do the cost
20 comparison it's presumed the utility does not own
21 the PV. This presumes that a third party power
22 purchase agreement just like MMC is being used
23 because a problem with the utility approach is it
24 costs you four times as much as if you use the
25 PPA.

However, the presumption is you've got to have utility cooperation. The utility cannot make it difficult to tie in 40 or 50 megawatts. And that, in addressing your question, when SCE is putting in the system and they own the system, this is straightforward. It is possible for the utility to make it very difficult for this to work.

MR. BUNDY: Okay, thank you. One final question. Mr. Bell asked you about your criticisms of the staff's approach in the FSA. And I just wanted to clarify that you were talking about the staff's specific response to your comments, is that correct?

MR. POWERS: That is correct.

MR. BUNDY: Okay, thank you. And I don't have anything further.

MS. LUCKHARDT: I have one recross.

RECROSS-EXAMINATION

BY MS. LUCKHARDT:

Q You mentioned just a little bit ago about the need for utility cooperation in some of these. Isn't that true regarding most, if not all, of the proposals you have, alternative solutions you have? It would require utility

1 cooperation?

2 MR. POWERS: It is a presumption.

3 MS. LUCKHARDT: Aren't many of these

4 energy efficiency measures typically conducted

5 through the utility?

6 MR. POWERS: They are. I would like to,

7 since you have brought that up, on -- and this is

8 the CEC's forecast, they have a table, IOU demand

9 response and interruptible load programs. And

10 they list the three utilities. They show SCE at

11 nearly 1300 megawatts. PG&E at about 1200

12 megawatts; the CEC hasn't included a recent air

13 conditioning cycling program. And SDG&E is at 100

14 megawatts.

15 SDG&E is one-fifth the size of SCE. And

16 if you were to just proportion it, if we were

17 pacing SCE we would have in the vicinity of 250

18 megawatts of demand response. We've got just over

19 100 megawatts.

20 And so, you're right, the utility does

21 have control over that. But our utility is badly

22 lagging in that. So we're in a situation we're

23 about to permit a peaking gas turbine to cover a

24 load that if we were just keeping pace with the

25 other utilities in California, we would have

eliminated.

MS. LUCKHARDT: And that's a utility responsibility, a utility program, correct?

MR. POWERS: Yes.

(Pause.)

MS. LUCKHARDT: I just have one last question for you. Do you agree that peaking generation will be required to address the intermittent nature of solar and wind generation, as those levels increase in California?

MR. POWERS: No. I think storage will be needed. I think storage is the solution.

MS. LUCKHARDT: So it's your assumption that items like you've referenced, such as battery storage, will resolve that issue?

MR. POWERS: Right. I think in some ways it's self defeating to add peaker turbines on top of renewable generation that a facility like this would be an excellent first step to have an integrated PV storage system as a peaker. There's no question that we can do it.

MS. LUCKHARDT: I have nothing further.

HEARING OFFICER RENAUD: Right. Is there any further testimony on alternatives?

MR. BUNDY: No.

1 MR. BELL: No further cross on behalf of
2 staff.
3 MS. LUCKHARDT: We have a couple
4 rebuttal questions that I would like to ask based
5 on the testimony of Mr. Powers.
6 HEARING OFFICER RENAUD: All right. Who
7 are you addressing them to?
8 MS. LUCKHARDT: Mr. Scarborough.
9 HEARING OFFICER RENAUD: All right.
10 MS. LUCKHARDT: Are you ready for that?
11 HEARING OFFICER RENAUD: Go ahead, I
12 believe he's been sworn.
13 MS. LUCKHARDT: Yes.
14 DIRECT EXAMINATION
15 BY MS. LUCKHARDT:
16 Q Mr. Scarborough, were you the plant
17 manager at Pastoria?
18 MR. SCARBOROUGH: Yes, I was.
19 MS. LUCKHARDT: And did you have
20 situations where you had Pastoria operate in
21 simple cycle mode?
22 MR. SCARBOROUGH: We did have certain
23 opportunities when that did occur. We had
24 unexplained forced outages on the steam turbines.
25 The plant was in a configuration of what's known

as a two-by-one and one-by-one power blocks with two 7FAs supplying a D11 steam turbine and a one 7FA turbine supplying an A10 turbine.

MS. LUCKHARDT: And can you describe what happens when you move to a simple cycle mode?

MR. SCARBOROUGH: It's a situation that, as far as a combined cycle plant, you don't want to find yourself in that particular situation. And exactly what happens is that in the case of a two-by-one power block where you have two 7FA turbines supplying one steamer, the steam turbine trips offline. And immediately what happens is you tend to lose control of your drum levels. You have three basic drums in each of the HRSGs.

So, for an operator, your first immediate corrective action is to try and stabilize that plant. You're immediately taking that steam and dumping it off into a cooling tower under full load rejection, or in the case of plants that are air cooled, into the air cooled condensers.

Unfortunately, even though plants are normally designed to accept full load rejection, the reality is that most of the time steam will have to be vented to the atmosphere. And if any

1 of you have ever been near a power plant to where
2 they're venting 1800 pounds steam to the
3 atmosphere, the noise level approaches in excess
4 of 120 decibels. You're far beyond double hearing
5 protection. You will know when that plant's
6 operating in a simple cycle mode.
7 In addition, it's not a straight
8 calculation when that steamer drops off the line
9 that you just lose the steam turbine. You also
10 have to derate those combustion turbines because
11 of the responsibility of trying to equalize and
12 stabilize that steam flow when you're looking at
13 six different drums between two HRSGs.
14 So it's an extremely complicated
15 process. In doing so, of derating those
16 combustion turbines, I might add, also, that it's
17 very difficult to maintain those combustion
18 turbines within the emission permitting limits.
19 Because you're continuously lowering the firing
20 temperature of those turbines in order to
21 stabilize the plant.
22 MS. LUCKHARDT: And what happens to the
23 heat rate of those units as you drop the load down
24 to stabilize the plant?
25 MR. SCARBOROUGH: The heat rate will

1 incrementally increase.
2 MS. LUCKHARDT: And, Mr. Scarborough,
3 Mr. Powers, in his testimony, claims that 1700
4 megawatts of expected new generation will come
5 online before the potential online date for this
6 project.
7 Are you aware of projects in SP-26 that
8 are delayed?
9 MR. SCARBOROUGH: Yes, I can speak
10 specifically to projects which I know they have
11 been made public. And one would be the, as
12 addressed earlier, the Wellhead Margarita project
13 has been delayed. It most likely will not reach a
14 2009 commercial operation date.
15 The J Power Pala project, which was 100
16 megawatts, which was originally under an SPPE
17 permitting process, has now gone the AFC route.
18 And most likely will not make a 2009 COD.
19 The Calpine Otay Mesa project,
20 originally was supposed to be available next
21 summer. Now will not be available until at the
22 earliest October '09.
23 As far as the Inland Empire project,
24 according to the California Energy Commission's
25 webpage, unit 1 was due to go online this month.

1 There's already technical problems with the
2 turbine. It's doubtful whether or not that unit
3 will stay commercial before the end of this year.
4 The second unit at Inland Empire is due
5 to go online at the earliest March of '09.
6 So, virtually, to answer your question
7 there's very little generation and there's
8 absolutely none in the San Diego region, so to
9 speak, that has come on in 2008 or will come on in
10 2009.
11 MS. LUCKHARDT: Thank you.
12 HEARING OFFICER RENAUD: Further
13 questions?
14 MR. BUNDY: I was -- is it okay for Mr.
15 Powers to respond to the discussion of the simple
16 cycle?
17 HEARING OFFICER RENAUD: Please.
18 FURTHER REDIRECT EXAMINATION
19 MR. BUNDY: I believe that's what you
20 wanted --
21 MR. POWERS: Yes.
22 MR. BUNDY: -- to address?
23 MR. POWERS: Just a couple of quick
24 points. I appreciate the former plant manager
25 giving us the description of what goes on at

1 Pastoria. I'm not familiar with the design of
2 Pastoria. I don't think the former plant manager
3 is familiar with the design of Palomar or at Otay
4 Mesa.
5 SDG&E did not include a voluminous
6 description of why they can't go to simple cycle.
7 They simply said that we can go to simple cycle in
8 their response to us.
9 In 2008 summer forecast from the CEC and
10 the ISO, they indicated a reserve margin of over
11 20 percent in southern California. Whether or not
12 we get 1700 megawatts next year, we were still
13 over 20 percent in 2008.
14 To the best of my knowledge, informally
15 our peak load in San Diego this year has been a
16 few hundred megawatts lower than it was last year.
17 We may still get a heat wave that will drive us up
18 near where it was, but we are not in a situation
19 where we have this relentless rise in peak. We
20 have had a mild summer down here.
21 And I think that's it.
22 MR. BELL: I have nothing further for
23 Mr. Powers.
24 MS. LUCKHARDT: Okay. I would like Mr.
25 Scarborough to have an opportunity to respond to

1 the statements made by Mr. Powers most recently.
2 REDIRECT EXAMINATION
3 BY MS. LUCKHARDT:
4 Q Mr. Scarborough, are you aware of the
5 configuration of Palomar and Otay Mesa and how
6 those compare to Pastoria?
7 MR. SCARBOROUGH: Palomar was basically
8 designed right off of the same criteria as the
9 Pastoria two-by-one power block, using the exact
10 same turbines, steamer, as well as the combustion
11 turbines. Both were capable of bypassing the
12 entire load from rejection to cooling towers.
13 MS. LUCKHARDT: Okay, Mr. Powers just
14 made some statements about the excess generation
15 that may be available in SP-26. Can you describe
16 how many times the Chula Vista project has been
17 dispatched this year?
18 MR. SCARBOROUGH: The current
19 configuration of the Chula Vista plant's been
20 dispatched roughly 50 times this year. Each
21 dispatch period is roughly one hour.
22 As an example, the Chula Vista Energy
23 project was dispatched yesterday for a seven-hour
24 run.
25 MS. LUCKHARDT: And in addition, Mr.

1 Powers has referred often to load in SP-26. Are
2 you aware of the projected load growth for the San
3 Diego constrained load pocket?
4 MR. SCARBOROUGH: I think that the
5 unique situation that San Diego and the Chula
6 Vista area comes into is that we are at the very
7 end of a radial, as I think Mr. Powers is aware
8 of. And that really places some unique demands
9 upon the grid down in this area, that it must rely
10 on local generation resources rather than trying
11 to depend upon constant imports either coming from
12 out of state or through SP-26.
13 On numerous occasions the MMC Chula
14 Vista plant is dispatched not necessarily due to a
15 hot day, but due to congestion management on the
16 grid. Meaning that the Cal-ISO is having an
17 extremely difficult time trying to get that power
18 down from the north into the San Diego, and
19 eventually down to the Chula Vista region.
20 MS. LUCKHARDT: Thank you.
21 MR. BUNDY: I know we could go back and
22 forth on this, but I'm not going to ask anything
23 further from --
24 MR. POWERS: Final point.
25 MR. BUNDY: I know there are people

1 waiting to speak --

2 HEARING OFFICER RENAUD: Why don't you

3 ask your witness to give his final point --

4 FURTHER REDIRECT EXAMINATION

5 BY MR. BUNDY:

6 Q I would like you to give your final

7 point, and then I'd like to --

8 MR. POWERS: I would just refer you to

9 the two graphs that are in my testimony, is that

10 that's the future. We have many obsolete

11 forecasts of steady growth, growth, growth. But

12 the future is flat peak growth at most.

13 HEARING OFFICER RENAUD: All right,

14 thank you.

15 All right, is there any further evidence

16 on alternatives from anyone?

17 MR. BUNDY: Oh, actually I had a couple

18 of exhibits, but in light of the changes that have

19 been made to the final staff assessment addendum,

20 I don't think -- actually I would like to offer

21 623 and 624 into evidence. These are -- there was

22 an old provision of the Public Resources Code that

23 had been repealed in 2002 that was cited in the

24 assessment. I think this has been resolved in the

25 addendum, but I would like to go ahead and offer

1 those into evidence.

2 HEARING OFFICER RENAUD: Is there any

3 objection?

4 MR. BELL: None.

5 MS. LUCKHARDT: No.

6 HEARING OFFICER RENAUD: All right,

7 they're admitted then.

8 MS. LUCKHARDT: There was a question

9 that was posed to Mr. Darvin sometime ago. He

10 does have an answer to that question if you would

11 like to get it on the record; he is available and

12 can provide the greenhouse gas emissions based on

13 4400 hours of operation, if you would like.

14 HEARING OFFICER RENAUD: Let's do that

15 briefly.

16 FURTHER REDIRECT EXAMINATION

17 MR. DARVIN: Based on 4400 hours of

18 operation the combined CO2 or greenhouse gas

19 emissions would be 218,426 metric tons per year.

20 MR. BUNDY: And I just have one question

21 about that.

22 RECROSS-EXAMINATION

23 BY MR. BUNDY:

24 Q Can you explain very briefly why that

25 number differs from both of the other numbers in

the testimony?

MR. DARVIN: The higher number originally was based on 5000 hours of operation, which was about 250,000 metric tons. The 198,000 metric tons was based on 4000 hours of operation.

MR. BUNDY: Thank you.

HEARING OFFICER RENAUD: All right, thank you for clearing that up.

Okay, we have been going for four hours solid, and folks up here need a break. We're going to take about a 20-minute break. Then we'll come back and take care of a few loose ends, and then we'll move into our public comment period.

Thank you all for your patience. Be back here at 7:52.

(Brief recess.)

HEARING OFFICER RENAUD: We want to move right along. I did say 7:52, so I'm going to start talking. We, I believe, are finished with alternatives. Were there any further exhibits or testimony on alternatives?

MS. LUCKHARDT: We discussed a couple of exhibits while we were on the break that had not been moved in yet. And that is the Environmental Health Coalition's exhibit 614, I believe, is that

1 correct, --

2 MR. BUNDY: 613 and 614, they're

3 related.

4 MS. LUCKHARDT: Oh, okay. This is the

5 declaration, yeah. Okay, 613 and 613. And

6 applicant's exhibit 26. We will stipulate that if

7 both go in, we have no objection to EHC's exhibit.

8 HEARING OFFICER RENAUD: All right, is

9 there any objection to the admission of those?

10 All right, they're admitted then, thank you.

11 MR. BUNDY: Thank you.

12 HEARING OFFICER RENAUD: All right.

13 Anything else on alternatives? All right.

14 That concludes the evidentiary portion

15 of the hearing. We do have to establish a

16 briefing schedule. And I don't think we'll do

17 that right now, in the interests of letting the

18 folks who've been waiting so patiently have their

19 turn to speak.

20 But I would like to hear from counsel or

21 representatives, very briefly, as to topics that

22 should be in the briefing schedule. I know land

23 use and alternatives are already among them. Are

24 there any others?

25 MS. LUCKHARDT: The other areas where

there is testimony and may, if the Committee would like to receive briefs, would be environmental justice/public health, depending on where you put Ms. Williams' testimony.

MR. BELL: Staff could see some application in the areas of air quality and public health. I do note that we do have testimony that has been admitted into the record in the executive summary with respect to environmental justice. And, of course, staff will be pulling from that testimony. Oh, and socioeconomics. I believe that there was some cross-over there, as well.

HEARING OFFICER RENAUD: All right. Well, the Committee will issue an order shortly -- yes, I'm sorry.

MR. BUNDY: I just wanted to make sure that we're heard on that, too. Air quality, public health, socioeconomic resources, and I may have a very brief issue on noise and vibration because we had recommended a condition in our prehearing conference statement that I might like to address.

HEARING OFFICER RENAUD: All right.

MR. BUNDY: And then land use and alternatives.

1 HEARING OFFICER RENAUD: All right.
2 MS. LUCKHARDT: And when you're
3 referring to socioeconomics, I assume you're
4 referring to the environmental justice aspects of
5 it, as opposed to the adequacy of fire services?
6 HEARING OFFICER RENAUD: I'm sure that's
7 what was meant.
8 MR. BUNDY: Correct.
9 HEARING OFFICER RENAUD: All right. The
10 Committee will issue an order shortly establishing
11 a briefing schedule and establishing the topics.
12 And it will also deal with other various
13 housekeeping matters that we need to do in order
14 to close things out and start preparing the
15 opinion, the decision.
16 But other than that I think at this time
17 we will declare the evidentiary record closed,
18 unless there's any further --
19 MR. BUNDY: One point of clarification.
20 I believe that there was a document that Ms.
21 Williams brought up in her testimony, that there
22 was discussion about leaving the record open.
23 This was the draft --
24 HEARING OFFICER RENAUD: So that she
25 could get it.

1 MR. BUNDY: So that we could get that
2 in. Can we have an opportunity to get that
3 document to you?
4 HEARING OFFICER RENAUD: Yes, subject to
5 receipt of that document that Ms. Williams
6 referred to in her testimony.
7 And bear in mind that reopening the
8 record is not really a difficult matter if someone
9 has a good reason to do so. We do that all the
10 time, so don't worry that you'll be foreclosed
11 from putting something in that you aren't thinking
12 of right now.
13 MR. BUNDY: All right, thank you.
14 HEARING OFFICER RENAUD: Okay. Thank
15 you.
16 Now, the public. A lot of you or most
17 of you probably haven't been here all day like we
18 have. We started at 10:00. So you may not even
19 know who we are. We did do introductions, but I
20 think we're going to do them again very quickly
21 here.
22 I'm Raoul Renaud; I'm an employee of the
23 California Energy Commission, and I'm the Hearing
24 Officer, kind of the traffic policeman to make
25 sure all this hearing runs and we get a legally

1 sufficient record upon which the Commission can
2 base a decision on this application.
3 To my right is Jackalyne Pfannenstiel,
4 who is the Chair of the Energy Commission and the
5 Chair, also, of the two-Commissioner Committee
6 that has been appointed to decide this matter.
7 To my left is Jim Boyd, who is the Vice
8 Chair of the Energy Commission, and is the Second
9 Member of the Committee.
10 To his left is Susan Brown, his Advisor.
11 And to Ms. Pfannenstiel's right is Tim Tutt, her
12 Advisory.
13 Beyond them we have Christopher Meyer
14 from the Energy Commission Staff. And counsel for
15 the Energy Commission, Kevin Bell.
16 Beyond them we have Scott Tulloch, the
17 Assistant City Manager, and Michael Meacham, also
18 with the city.
19 Going the other direction we have to Ms.
20 Brown's left Kevin Bundy, counsel for the
21 Environmental Health Coalition. Then Jane
22 Luckhardt, the counsel for the applicant, MMC.
23 And Doug Davy, who is one of the consultants for
24 MMC.
25 The proceeding has been televised. It's

still being televised on the local cable network. And what we're going to do now, as we do at every Commission hearing, is give members of the public an opportunity to comment.

Now, the hour is late and we have over 100 requests to speak.

(Applause.)

HEARING OFFICER RENAUD: Which is fine. That's fine. And we're here to listen to you. It's not about our time, it's about yours. So, that's what we're here for.

On the other hand, let's say we were to give each of these 100 people three minutes. That would be 300 minutes, that would be five hours, which would mean we'd be here till at least 1:00 in the morning. I don't think anybody wants to do that.

We have been trying to think of a way to make sure everyone's opinion is in the record, but also make sure everybody can get home at a reasonable hour.

Here's my suggestion, and I think this is what we're going to do. I will read the name on the card, and if you want to speak, come forward and you'll have three minutes. If you no

1 longer wish to speak, I will still state whether
2 you would speak in favor or in opposition to the
3 project. That way your name and your position
4 will be in the record.
5 So, let's proceed that way. Let me show
6 you how the three minutes will be -- there it is.
7 Okay? And I think there's some kind of lights,
8 there's maybe green, yellow and red, that will
9 show here on the podium. There, okay. So that
10 you'll have an idea of how much time you have
11 left.
12 All right, I am going to try to call
13 these names in the order in which the cards were
14 presented. And the first one is Theresa Acerro,
15 who would speak in opposition, as a representative
16 of the Southwest Chula Vista Civic Association.
17 MS. ACERRO: And I need more time than
18 that; I'm sorry. And I also have 74 more
19 petitions here to --
20 HEARING OFFICER RENAUD: In fairness to
21 your neighbors we are going to allow three minutes
22 for each speaker.
23 MS. ACERRO: That's not fair.
24 HEARING OFFICER RENAUD: It's fair to
25 all your neighbors.

1 MS. ACERRO: Because I'm representing a
2 lot of people.
3 (Audience comments.)
4 MS. ACERRO: Thank you, guys.
5 HEARING OFFICER RENAUD: How many people
6 would be yielding their time?
7 (Audience comments.)
8 HEARING OFFICER RENAUD: Let me count.
9 Keep your hands up.
10 (Audience comments.)
11 HEARING OFFICER RENAUD: All right, Ms.
12 Acerro, how much time do you think you would need?
13 Sounds like quite a few people would like you to
14 have more time. So, --
15 MS. ACERRO: Right, well, probably a
16 half hour.
17 HEARING OFFICER RENAUD: Well, now, Ms.
18 Acerro, at previous meetings --
19 (Audience comments.)
20 MS. ACERRO: Yes, right.
21 HEARING OFFICER RENAUD: -- you have
22 been reading a statement that you handed out.
23 And --
24 MS. ACERRO: Well, I'm adding to the
25 statement, and I also have visual things for you,

too, which I handed out to you --

HEARING OFFICER RENAUD: All right, Chairman.

PRESIDING MEMBER PFANNENSTIEL: Ms. Acerro, let me just offer this. We're here, and we are here and we will listen and that's why we're here at this hour.

I do ask you to be respectful of your neighbors. They are people who have been here all day. So, clearly we want to hear from as many people as we can. And, you know, the later it gets the harder it is for everybody.

So, you have your time, but I do ask you to be respectful.

MS. ACERRO: Yeah, I will talk as quickly as possible. Okay. To start with, if staff had spent any time at all evaluating the condition of the area around this location they would agree with what has been presented by the Environmental Health Coalition that this is an environmental justice issue.

This is an environmental justice community that has been neglected, has special circumstances of two or three miles, or even one mile around this location clearly show the

1 neighborhood has been neglected, treated unfairly
2 for many many years.
3 Here is a map, you've got a map showing
4 parks, the orange are parks. And you can see this
5 is 805, all the parks are on the east; very few
6 are in the west. And the one in the southwest is
7 biggest is actually underneath those high voltage
8 lines. It has no restroom. Which is where kids
9 have to practice soccer. And they have to get
10 rides to the coach's home in order -- if they have
11 to go to the bathroom.
12 Then, as you -- the parks. And then in
13 a one-mile circle there are three parks. One over
14 in San Diego, two in southwest Chula Vista.
15 Now if you look at the colors on the
16 pavement maps you will see that most of the
17 streets that are red or orange, which means
18 they're failed streets, are in the southwest. One
19 red and five orange are within a mile of this
20 site. And then $4 million of the drainage
21 problems are on the drainage chart, are within a
22 mile of this site. And all the rest of them, or
23 most of the rest of them are in the southwestern
24 part of Chula Vista, south of L Street.
25 There are quarter-mile circles around

the schools show the needed pedestrian structure, and they show close to $50 million of the repairs needed within a mile of this site. The largest amount of need, again, is in the southwest, south of L Street.

Our neighborhoods in the southwest that were annexed earlier also have suffered from the lack of concern of the city. So it's not just the ones for 24 years have been neglected.

Our neighborhood deserves equal treatment. Targeting us for a heavy industrial use such as this is totally unacceptable. This is a heavy industrial zone. This is basically, as you look at the map, a residential area. This does not belong here.

We ask the state to help us since the city obviously does not respect the community at all. The state needs to step in and protect us from this.

Our zoning ordinances are supposed to protect us against heavy industrial uses in a light industrial zone. We have lots of light industrial zones that are right next to residential on the southwest, not just here. And if this is allowed in this light industrial zone,

we are afraid of what will be allowed in some of those other ones.

There is one within two blocks of my house and there's a vacant lot there. And I don't want to see a heavy industrial use there. And neither does anybody else in the southwest. This will just degrade our community more than it's already been degraded, basically by neglect.

The number one problem I have with this project, other than it's in the wrong place, is it violates the laws and policies of the City of Chula Vista. I don't care if the city's willing to lie for money or not, and its employees are afraid of losing their jobs if they disagree with the Mayor the Councilmen who only care about money.

We are tired of being dumped on. In 2000 the city had absolutely no concern for the residents. If you read the minutes of the various meetings held about that existing power plant you will see they didn't even mention the residents, except for one, in passing. And there was absolutely no community participation.

And I remember reading vaguely something about a peaker plant. I didn't know what a peaker

1 plant was. I didn't know where it was going to
2 be. I didn't know -- had no idea what they were
3 planning.
4 But I tell you, I worked at Montgomery
5 High and I drove by your way every day. And as
6 soon as I saw that thing, I started complaining.
7 What in the world did you allow this there for. I
8 mean it was practically in the riverbottom.
9 Obviously didn't belong there. They had nothing
10 in the newspaper that ever explained what was
11 going on or anything.
12 And so I didn't say anything, and I
13 didn't know what to do. And the people who
14 actually live near there, who called and asked,
15 well, what is this about, they were told, oh,
16 don't worry about it, it's just going to keep your
17 lights from going off. It's nothing to get
18 concerned about.
19 And I mean, we were lied to. We were,
20 again, dumped on because we are mostly minority
21 neighborhood, and low and moderate income. This
22 is just -- this is typical throughout the state,
23 unfortunately. And we just have to draw a line
24 here and say no, not anymore, you know.
25 (Applause.)

MS. ACERRO: This unfortunately is typical of the way we've been treated by the city. They'll stick anything down here and just hope no one notices or says anything until it's too late.

Well, the community has had it with this attitude. Over 1200 people have signed petitions. Hundreds of people have gone to rallies and protests against this peaker. We've spoken at council meetings, at the Energy Commission hearings, the people are aroused. They are mad; they've had it. We're asking for your support.

We see clearly our community is being attacked by this New York company. And the city does not care about or respect our community enough to stand up and fight for us. We're pleading with the Energy Commission to listen to the residents.

The residents have come together to fight this injustice finally. They need to win this. We deserve to win this. This is clearly a huge, ugly, heavy industrial use. This is clearly an area designed light industrial. And it is just not appropriate in this spot. And there are alternative places to put it.

If the city were handling this, it would

have to have a cut. That would mean more public hearings, it would mean commissions would have to make certain findings, which we don't believe they could make.

I mean when this is county, there are fertilizer factories across the street from people's homes; chemical plants. Those are now gone. But, you know, we were told that things like this would not happen if we voted for annexation in the Otay area, where I live.

But unfortunately, this seems to be happening. This is not acceptable. It's not an appropriate location. And we are really really really concerned that if this is allowed to go in here, in this light industrial area, what are they going to put down there next.

I mean the ISO said to you they need 1000 megawatts more. They're going to put another one somewhere down there? I mean they wouldn't put it anywhere else in Chula Vista. But they don't care about our community.

The staff report admits the new plant will produce the addendum that 7.35 tons of nitric oxide, et cetera, essentially about 12 tons of pollutants. We don't need any more pollutants.

It's not acceptable when we deal now with visible pollution from a cement factory, as well as a huge number of diesel trucks and buses and their exhaust fumes.

Our neighborhood has more than enough negative impacts. We don't want any more. Any more are significant impact, just because of what we deal with now. The placement of this heavy industrial use in a light industrial zone with two 70-foot-tall exhaust vents will lower our property values or prevent their coming back from the situation now.

I'll be able to see this from my backyard, as will other residents who are higher up than the plant. And everyone is going to be able to see the exhaust vents from, who are within 1000 feet.

They're going to label our neighborhood as a ghetto. We already cringe at that word when people see the condition of our alleys and streets, because I hear it a lot when I go around and talk to people. And we're not a ghetto. We don't want to be a ghetto, and we don't want a heavy industrial use in our neighborhood, which will just devalue our property more and devalue

the opinion that people have of our neighborhood.

The peaker is contrary to six goals of the current five-year redevelopment plan. I'm not going to go through them because of time. But I mean it's ridiculous. The whole point of it is to eliminate blight, stimulate economic growth. This will not provide jobs; it's not going to stimulate economic growth, or at least not the kind of economic growth we want to see in our neighborhood, which is a more positive like light industry or retail, commercial, not heavy industrial.

It will not protect local businesses. We've got businesses that are like 40 feet away from this. And they are very upset. If you looked at the GVD I did, they testified to the fact how upset they are about having this as a neighbor. And how it will affect their business negatively and also the fact that they bought those condos over there. And the value of their property.

It's definitely not quality design. It is certainly not going to promote compatible development because we don't want other things like this. This is not compatible development.

It better not be compatible development.

It does not positively relate to adjacent land uses, particularly on the east and the south. And it certainly is not quality design for our area. It belongs somewhere else. And there are other alternatives.

The peaker just, you know, it violates also our general plan, which is avoid siting new or repowered energy generation facilities and other major toxic polluting air emitters within 1000 feet of a sensitive receptor.

I was on the general plan committee that helped write this thing. And we specifically were thinking about that little peaker that's sitting there now, practically in the riverbottom when we wrote that and when we insisted it be in here. Nothing has been done to avoid this siting.

So how the city can say that somehow because they got money from MMC, oh, there's no conflict. That's ridiculous. Avoid siting is very specific here. Nothing is done to avoid this.

There is an I zoned lot at the end of Energy Way. There is the landfill. Although I don't know why the city would want something like

1 this anywhere within its city limits, personally.
2 And some other general plan provisions
3 are also violated. Objective E20, insure facility
4 storing and handling hazardous materials or waste
5 do not result in significant adverse effects. I
6 mean we think this is a significant adverse
7 effect.
8 And I'll skip through this. Yes, it is
9 a large generating facility, you know. And it
10 certainly is an adverse effect upon Modello
11 Designs that is like 40 feet across the road from
12 this. They actually had international conferences
13 when they were in National City where people came
14 to find out their techniques and things. And
15 they're very very concerned. Who in the world
16 would want to come from Europe to be across the
17 driveway from something like this. Nobody.
18 This is an incompatible land use for
19 what now is adjacent to it. It was always
20 incompatible with the homes and schools. And the
21 council realized that when six months after the
22 peaker was okayed, PG&E wanted to enlarge it, and
23 they fought RAMCO hard. And won.
24 The regional plant was approved in a
25 hurry with no discussion of the nearby homes and

1 schools. No one realized what it was until it was
2 too late. And as soon as we realized what it was,
3 people started complaining. The council
4 immediately asked for expansion.
5 It is a visual blight from Byer Way,
6 from Montgomery Headstart, Montgomery High,
7 Montgomery Adult, the homes on the Ridge and the
8 river. And until the warehouses were built it was
9 a visual blight, the existing one, for the
10 residents. Now they can't see it, but they can
11 hear it at night when it operates, and they know
12 it's there. And that makes them very
13 uncomfortable, as it should. And, of course, the
14 existing one does have a plume that you can see
15 when it's operating.
16 On Avoca, actually, there is a gap
17 between those warehouse buildings. And because
18 this thing will be further north, they are going
19 to be able to see part of it from that street most
20 likely.
21 This new plant is not consistent with
22 the current development pattern. Intensifying
23 industrial development is totally contrary to the
24 development plan for the area. Most of the
25 occupants of the new warehouses are of a more

retail/commercial nature. There's one small machine shop on the west, which has a cap and is totally contained within this building. There is nothing else that is of an industrial nature.

An electrical generating plant belongs in a heavy industrial zone, just like our zoning ordinances say. Not in a limited industrial zone that is being developed with import businesses, a vitamin store, construction supply store, computer store, paint store, design studio, print shop and things of that nature.

The uses on the west have a back to it, but on the east they're only 40 feet across the driveway from their front doors. This does not help local businesses.

An intensification of the peaker, an addition of two 70-foot-tall towers will lower property values and development potential in the area since surrounding uses have radically changed since 2000. And all the other.

And then 16.8, I was told to bring this up, there is no guarantee people will not be negatively impacted by the transport of ammonia. The county gave 80 percent credit for containment of the ammonia due to the polybolus. But I was

1 told when I was over there talking to them that
2 this is a controversial technology. So there is
3 no evidence that this will actually help in the
4 event of a spill to prevent impacts to the
5 surrounding businesses or even the residential.
6 We find any more risk, just as staff
7 said in the FSA, that they're totally right, any
8 more risk is totally unacceptable to us. We don't
9 care how small they say the risk is from these
10 ammonia trucks or from those 12,000 gallon tank of
11 ammonia. It does not need to be in that spot.
12 And it's not consistent with the other
13 policies, either, that I have here, but I'll skip
14 those.
15 And go on to, well, on the zoning
16 things, of course. Specifically in 19.46.020
17 permitted uses in the industrial zone, the general
18 industrial zone, which would be heavy industrial,
19 E is electrical generating plants and liquified
20 natural gas plants. They are specifically
21 mentioned in the heavy industrial zone. That is
22 where they belong, not in our light industrial
23 zone.
24 The existing plant violates that
25 ordinance, as well as another ordinance about

1 cessation of use, and as well as the ordinance
2 about enlargement, extension or reconstruction as
3 totally prohibited for nonconforming uses.
4 Our ex-city manager and our ex-planning
5 director at the zoning workshop last month
6 reiterated there are absolutely no flexibility in
7 the policy about nonconforming uses not being
8 allowed to continue, not being allowed to expand,
9 and needing to be eliminated. I mean they both
10 made that very clear. And, of course, no one's
11 paying attention to it now.
12 And now as far as location goes, there's
13 a gentleman here who doesn't want to speak,
14 obviously, who works for another company that is
15 much more ethical and much more concerned about
16 people apparently, that builds peaker power
17 plants.
18 And he confirms that they are building
19 one over in Fresno, and there were farmworkers
20 living within 1000 feet. They leased that
21 property for 15 years and relocated those
22 farmworkers before they would build that peaker.
23 And there is another case that I read on
24 the website of the CEC where there was a house 350
25 feet away. They bought that house and they tore

it down before they built that peaker. This is what is commonly done because these things are usually in agricultural areas, and there's usually just one property that's a problem. And they eliminate the problem because they would like to avoid building these things near people's homes.

If you look at this list that I have here of Larkspur, closest resident two and a half miles away. These are the only ones that the data was still on the CEC website when I was researching this in 2007.

CalPeaker, three homes 3000 feet away. CalPeak, Escondido, over 2640 feet away. Orange Grove, San Diego County, more than a mile away. Sun Valley, Riverside, there's one 1000 feet east. Walnut Creek, Los Angeles, 1109 feet away. Riverside Energy Resource more than a mile away. Henrietta, more than a mile away. Calpine, Gilroy, 1400 feet. Niland, Imperial County, three houses 1600 feet away. Wildflower, Indigo, a mile away. Hanford, 3200 feet away. San (inaudible), Riverside, one mile northeast. Rancheros (phonetic) Hydro, more than a mile.

And MMC, Chula Vista, 350 feet. I mean this is an anomaly. Why our neighborhood? Why

our neighborhood?

(Audience comments.)

MS. ACERRO: Right. No mitigation is acceptable. And the same with schools. At one of the -- yeah, why in this case are 50-plus families within 1000 feet not even being considered? These families count. They're tired of being ignored. They are entitled to the security within their homes. They're entitled to the protection of the government. If the city won't protect them, it's the responsibility of the Energy Commission to do that.

There are negative impacts. We don't care if they meet the level of significance or not. They are cumulatively significant. And they are negative health effects, as well as negative socioeconomic effects to our property values.

The two research papers cited by staff are not consistent with the experience of local brokers and appraisers, who agree with me that if they try to sell a property near a peaker they expect it would be much harder to sell, and that it would probably end up going for less.

We want to be treated like the residents in an affluent community. We want our zoning

1 ordinances actually used to protect us. We want
2 to make it 100 percent clear the city never made
3 any effort to work with the community on this
4 issue.
5 The city never held a meeting of any
6 kind. In fact, the mayor told us several times at
7 council meetings that, oh, this is not our
8 responsibility, so we're not going to do anything.
9 They never ever talked to any of the residents.
10 The city negotiated in secret with MMC without any
11 community input.
12 After we complained about the city's
13 letter, 129 protesters appeared at city hall. The
14 city sent staff out to try to -- the city then
15 sent staff out on a Saturday to try to convince
16 people living within 1000 feet to take the money
17 offered by MMC.
18 The people we talked to, well over half
19 of the residents, and I've got copies there of the
20 paper that they signed, that they completely
21 rejected the city's offer and felt insulted by it.
22 And I tried to convince them that it would be a
23 good thing to have energy upgrade things and maybe
24 you could write down that you would do that after
25 all this is over, and only two of them would even

1 agree to that because they were so upset and
2 insulted by the city's offer and the city actually
3 doing essentially MMC's dirty work for them.
4 But the city's efforts certainly did
5 help us to organize people. Right?
6 (Audience comments.)
7 (Applause.)
8 MS. ACERRO: When staff was questioned
9 about this they acknowledged they only listened to
10 comments made at public meetings. But they did
11 not listen at all to the comments made at public
12 meetings. Because the vast majority of the
13 comments dealt with the negative health effects
14 expected and the demand for another location.
15 The city never negotiated avoidance of
16 this site, or minimization of impacts at all.
17 This is typical behavior of the city when dealing
18 with our community, a total lack of respect and an
19 attitude that we're a bunch of stupid, uneducated
20 people whose opinions don't count.
21 (Audience comments.)
22 MS. ACERRO: The residents don't accept
23 the deal worked out by the city with MMC at all.
24 It is an insult to our community for the CEC Staff
25 to even mention it in the FSA at all.

1 Visual blight is a subjective thing,
2 also, in this visual. We see Larkspur and this
3 plant as visual blight because we see what they
4 represent, and we don't want this in our
5 neighborhood.
6 Our general plan and zoning ordinance
7 were written to protect us from things like this.
8 We are insulted and outraged that the city won't
9 enforce them.
10 Staff's analysis is totally inadequate
11 because it ignores the emotional reaction people
12 have toward this proposed plant. This makes even
13 a glimpse of a stack a very significant negative
14 impact. I can see the top of the existing plant
15 from my backyard now. Others can see a large part
16 of the existing plant because their property's
17 higher than mine. We know we would be able to see
18 a substantial part of this new plant. And this is
19 totally unacceptable.
20 The staff is correct, we won't accept
21 any risk from ammonia or ammonia trucks. We don't
22 want 12,000 gallons stored in our neighborhood.
23 We don't want any ammonia trucks on our roads.
24 We also don't want the Otay substation
25 upgraded. It's big enough already. It should

1 never have been built where it's been built, right
2 next to the rec center, right next to the school.
3 Those transmission lines are old. They form a
4 honeycomb of wires in the alleys and streets all
5 over Otay town. They're already a source of
6 visual blight. If you looked at that DVD you see
7 that condition of those alleys and all these
8 wires.
9 It's also a hazard because they short
10 out. We were standing there by Otay Elementary
11 School two weeks ago and there was a fire on the
12 lines, the higher voltage lines. I mean it was
13 large, it was a big fire. And we were just
14 staring at it and all of a sudden there's an
15 explosion. And the explosion goes bup, bup, bup,
16 all the way down to the substation.
17 And I asked them, because the SDG&E
18 people were there, and he says, oh, there's just a
19 short in the line. And this happens because these
20 lines are old and they're decrepit. They don't
21 need any more voltage being put into them. They
22 had to shut off the electricity, of course, to fix
23 the problem, which happens -- how often does that
24 happen? Every couple of months or so?
25 But a year ago a helium balloon landed

in the substation. It caused a very large fire. These things do not belong in residential neighborhoods, even the substation.

We don't believe anything MMC or its employees say. Twice we had meetings set up and advertised, and Josie (phonetic) refused to allow a representative of the company to come, because we would be too negative. Well, I mean, they've been misleading in everything they have said and done. Or at least their representative has been.

We tried hard to not make a hasty conclusion. We tried to get the company to come. It was only after two rejections we decided to take a position anyway based upon what we had heard at the meeting the company held at Otay Rec Center.

And the more I have learned by reading all the documents, and visiting Larkspur especially, the more opposed I am to this plant, and the more opposed I've become. And the more furious with the city about its position.

Also the more people that have gotten involved and the more furious they have become. The city has totally destroyed any possibility of ever having a positive relation with this

1 community by refusing to say the truth, that in
2 this location the proposed plant violates the new
3 general plan and existing ordinances.
4 A heavy industrial use does not belong
5 in a light industrial zone that is adjacent to
6 residential. It does not matter what the use is.
7 The land use compatibility section is ridiculous.
8 This use and the existing peaker are totally
9 incompatible with existing uses. The towing yard
10 may not be the most attractive use, but those cars
11 just stay put. It has no negative emissions,
12 noise or any other negative impact upon the
13 community. It is able to mostly hide its cars
14 from view. It is not compatible with a heavy
15 industrial use, either, with acknowledged
16 emissions.
17 The sewing factory is just sewing
18 machines operated by people. It is not compatible
19 with a peaker power plant in any shape or form. I
20 can't believe that staff wrote that in that FSA.
21 That's ridiculous.
22 Now, depending on the applicable code
23 close proximity is defined within 1000 feet of the
24 school, the California Health and Safety Code, or
25 within .25 miles of a sensitive receptor under

1 CEQA. Sensitive receptors are too close by these
2 laws.
3 All right, I guess I'm done.
4 HEARING OFFICER RENAUD: Thank you very
5 much.
6 (Applause.)
7 HEARING OFFICER RENAUD: All right,
8 thank you. Okay. You submitted a handout up here
9 which will be docketed and will become part of the
10 record, as well as your stated comments. Thank
11 you.
12 Okay, --
13 (Applause.)
14 HEARING OFFICER RENAUD: I have a
15 request to speak from Councilman Ramirez. Are you
16 here? All right. David Dantu (phonetic). Okay,
17 thank you, yes. Member of the Southwest Chula
18 Vista Civic Association in opposition.
19 Sharon Ward.
20 MS. WARD: Good evening. Thank you for
21 being here. We appreciate all of your input and
22 listening.
23 My name is Sharon Ward and I live at
24 3324 Incurza (phonetic) Way. I have lived in my
25 home for 38 years, and my home is within 400 feet

of the proposed power plant.

I also worked at Montgomery Elementary School for 29 years. That school is within a quarter of a mile of the existing plant. I've raised my six children in this home and my six grandchildren.

Most of my neighbors are original owners. We know each other very well. If they have passed on their children now live in their homes, and even their grandchildren. We are a unique community in ourselves.

We also are a small, isolated part of Chula Vista. There is only one street that leads into that neighborhood that is within 400 feet of the power plant. One street in, one street out. If there was some kind of a spill or an emergency, we would all have trouble getting out of there.

When I first bought my home I was pleased to be in it. I love my neighbors, I love my community. We were very pleased at first when we were finally incorporated into the City of Chula Vista, given lots of promises.

In my community some of the promises came to fruition. We have street lights, we have city services, street cleaning, and finally we got

1 sidewalks. Not all of southwest Chula Vista have
2 them.
3 Most recently a ten-mile strip of land
4 called a green belt, which goes from the ocean all
5 the way out to the Otay Dam was turned into a
6 regional park. This is a beautiful, beautiful
7 park. It has several open areas that have
8 bathrooms and parking facilities. There's walking
9 trails, jogging trails. There's several ponds,
10 especially behind where I live there are two
11 ponds. I've always referred to my neighborhood as
12 the riverbottom.
13 If there was to be some kind of a
14 problem I would be very concerned that this
15 beautiful park that I've waited over 30 years for,
16 could be damaged in some way. The existing peaker
17 power plant is less than 50 feet from part of this
18 park.
19 I know, and I think we all agree, we
20 need more power. But at whose expense? Isn't
21 there cleaner ways for us to get power into the
22 City of Chula Vista? And I face the city staff, I
23 blame you. You guys have allowed for building to
24 continue in the east. There are larger and larger
25 homes, apartments out there. There's schools and

1 shopping centers and parks all needing power.
2 When those buildings were being put in
3 out there, wasn't it ever thought to have an
4 infrastructure out there to service them? At the
5 time, --
6 (Applause.)
7 MS. WARD: -- when those places were
8 being built and you were moving roads and moving
9 hills and all those things that I grew up as,
10 since I was four years old living in Imperial
11 Beach, and the rolling hills all the way out to
12 the dam when we would go for our picnics, they've
13 all been moved and changed, and streets have been
14 put in and lights have been put in, that's all
15 well and fine. But whoever thought of building a
16 power plant out there to service them? Why should
17 it be in my backyard or my frontyard?
18 (Applause.)
19 MS. WARD: Why should --
20 HEARING OFFICER RENAUD: I'd like to
21 remind you, you've gone past your three minutes.
22 MS. WARD: I'm sorry.
23 HEARING OFFICER RENAUD: If you could
24 finish up --
25 MS. WARD: All right, --

HEARING OFFICER RENAUD: -- and let someone else -- let somebody else speak.

MS. WARD: -- small community and we feel that the expansion is inappropriate and we would like to have it stopped.

HEARING OFFICER RENAUD: Thank you.

(Applause.)

HEARING OFFICER RENAUD: Diana Vera. Diana Vera speaking in opposition.

MS. VERA: California Energy Commission, thank you for being so patient. Experts have testified about the pros and the cons in regard to the plant. But the experts are the community members being affected by the proximity of the plant.

We are not against progress or the MMC. We are against the location. It's way too close to home.

I know that the decision will impact our community forever. I pray to God that the right decision will be made to protect all of Chula Vista communities.

Thank you very much.

HEARING OFFICER RENAUD: Thank you.

(Applause.)

1 HEARING OFFICER RENAUD: Ashley Campos
2 speaking in opposition.
3 MS. CAMPOS: Thank you for allowing me
4 this time. My name is Ashley and I used to --
5 HEARING OFFICER RENAUD: Come up to the
6 microphone.
7 MS. CAMPOS: -- I used to attend Otay
8 Elementary School, and we always had at least once
9 a week, how do you say, an evacuation practice for
10 just in case anything were to happen with that
11 little power source that was right there.
12 So I just think building something close
13 to my house, close to where I used to go, close to
14 where my cousins go to school, and it's not that
15 far away from my high school, either. I attend
16 Castle Park and it's not that far away from Castle
17 Park Middle School, either.
18 So I just think that's just totally
19 wrong for the kids that are going to come up, and
20 could possibly do something better than what we
21 are doing today.
22 Thank you.
23 HEARING OFFICER RENAUD: Thank you.
24 (Applause.)
25 HEARING OFFICER RENAUD: Patricia Vega

1 speaking in opposition. Jessica Gomez, are you
2 still here? Speaking on behalf of Congressman Bob
3 Filner.
4 (Applause.)
5 MS. GOMEZ: Good evening; thank you for
6 allowing us to speak on behalf of this important
7 issue.
8 My name is Jessica Gomez; I am the
9 representative for Congressman Bob Filner.
10 Unfortunately, the Congressman could not be here
11 tonight because of pressing issues in D.C., so I
12 will be reading a letter that he wrote to the CEC,
13 which you probably have a copy of now.
14 "I'm writing today to encourage you to
15 deny the application for certification of the MMC
16 Energy Incorporated Chula Vista Energy Upgrade
17 project, CVEUP. This CVEUP proposal would place
18 an unnecessary burden on the people of the South
19 Bay. The plant, which is located in an under-
20 served community, is within 350 feet of the
21 residential area, less than 1500 feet from Chula
22 Vista Elementary School District prekindergarten,
23 the Otay Elementary School and the Albany Avenue
24 Headstart building."
25 "If approved it would significantly

increase the hours of operation and produce more than double the megawatt output. Such an increase would only add to an already suffering community with high rates of asthma and chronic obstructive pulmonary diseases, COPD. The community's welfare and safety must always be at the forefront, and it is clear that CVEUP project does not benefit the community."

"The CVEUP proposal would only violate the Chula Vista zoning and general policy as well. Originally the plant tried to expand in 2001. The city council acknowledged that it was too close to homes and businesses, and not in the best interest of the community. Furthermore, the community, the Southwest Chula Vista Civic Association, the South Bay Forum, the Environmental Health Coalition, EHC, and other local community groups will be directly impacted by this proposal, feel that their city council this time did not take their concerns into consideration before a final decision was taken."

"As you review the CVEUP proposal, please consider this, the burden that will be placed on the community who resides in that area. Thank you."

1 (Applause.)

2 HEARING OFFICER RENAUD: Thank you.

3 Hector Vega in opposition. Maria Pizarro,

4 opposition. Graciella Miguel, opposition. Susan

5 Luzzaro, opposition. Raul Gonzalez in opposition.

6 Ramona Sufle, opposition. Raoul Miranda,

7 opposition. Carina Lopez, opposition.

8 (Applause.)

9 MS. LOPEZ: Good evening, Commissioners.

10 Thank you for your time. The community is opposed

11 to this peaker plant expansion for various

12 reasons, but I just wanted to list a couple of

13 reasons.

14 One, it violates our zoning ordinances.

15 We must protect our zoning ordinances. They are

16 there to protect the community. Having an

17 expansion to 100 megawatts is designated as heavy

18 industrial. We cannot ignore that fact.

19 Our city government has chosen to not

20 take the leadership and back the community and it

21 has ignored the zoning. Just by writing a letter

22 magically the zoning ordinances disappear. But

23 we're not ignoring that. They need to be

24 protected. We need to protect our zoning

25 ordinances.

1 Furthermore, we need to protect the 2005
2 general plan created by Chula Vista leaders. This
3 violates Chula Vista 2005 general plan which says
4 explicitly that no newly built toxic emitter shall
5 be placed near sensitive receptor. We are all
6 sensitive receptors here. We are human beings
7 that breathe in this air.
8 So, furthermore, one of the most
9 important investments will be placed at risk, our
10 homes. A lot of people use their homes for their
11 retirement, hopes to sell them. I spoke to many
12 California-licensed appraisers. They have stated
13 that if this power plant is built it will
14 significantly depreciate and devalue the homes in
15 that community. That's too much of a risk to
16 place on the community. This is their investment,
17 this is their retirement, and this will be placed
18 at great risk.
19 Lastly, but certainly not least, this is
20 too close to homes. It's too close to people, too
21 close to our kids, too close to Otay Elementary
22 School. It's 1200 feet away from the elementary
23 school, 350 feet away from people's homes. We
24 must create a standard of how we treat people.
25 And I'm afraid having two pollution smoke stacks

1 and 100 megawatts is not creating a standard of
2 how we're treating our community.
3 We ask for your leadership, Honorable
4 Commissioners, in hopes that you can deny a
5 permit. I know it's been awhile since a permit
6 has been denied, but if there's ever one to deny,
7 it's this one right here.
8 (Applause.)
9 MS. LOPEZ: The health effects that it
10 will have on the community, I have my graduate
11 degree in public health and I'm very concerned, as
12 a public health professional. Children breathe in
13 more air per unit body weight at rest. They spend
14 more time outdoors. They have greater risk. They
15 can have the greater risk for the particulate
16 matter. Asthmatic children are more susceptible
17 to the respiratory impacts of outdoor air
18 pollution. Many studies have shown consistent
19 associations between the ambient particulate
20 matter levels and cardiovascular, respiratory
21 effects.
22 And total deaths among elderly people.
23 There's a lot of elderly people that live in the
24 community. We need to protect elderly people.
25 The risks of this plant outweigh the

1 benefits. Please examine that. Five more
2 seconds, please. Particulate matter releases
3 chemicals that result in respiratory inflammation.
4 This inflammation can significantly change the
5 ways our genes are expressed, and can turn on
6 those genes for inflammation. That, over time,
7 can lead to increased blood clots. that, over
8 time, can lead to increased stroke and
9 cardiorespiratory illnesses. This is from the
10 Archives of Internal Medicine. This is a reputable
11 journal from the Journal of American Medical
12 Association. This is a great risk.
13 One more statement. Particulate matter
14 is associated with increased stillbirths, SIDS and
15 early childhood respiratory deaths. For children,
16 in terms of respiratory illnesses, there is no
17 threshold for them. No threshold exists, so
18 there's no dose response curve for children.
19 I just want you to use that as a
20 guidance, please. The risks outweigh the
21 benefits. Thank you.
22 HEARING OFFICER RENAUD: Thank you.
23 (Applause.)
24 HEARING OFFICER RENAUD: Lupe Rodriguez,
25 opposition. Michael Zamora, opposition. Jonathan

1 Goetz, opposition. Maria Montes in opposition.
2 Did you give up your time to Mr. --
3 MS. MONTES: I'm just going to say this.
4 To me this is a time bomb waiting to blow up in
5 our face. The first casualties are going to be
6 the kids. They're going to get asthma, they're
7 going to get lung disease. And the older folks
8 will be the next people to go of cancer.
9 You guys don't care because you don't
10 live here. If you lived here you would care. You
11 have got to care, please.
12 (Applause.)
13 HEARING OFFICER RENAUD: Thank you. Ada
14 Chan in opposition. Andrew Reyes, opposition.
15 Octavio Miranda in opposition. Mark Rojas in
16 opposition. Isabel Miranda, opposition. Alice
17 Coronado in opposition. Robert G. Boyd in
18 opposition. Sir.
19 MR. BOYD: Well, maybe I've changed my
20 mind and I've decided that I favor this, despite
21 everything that I've heard. I've been here since
22 4:30, I know you guys have been here working on
23 this a lot longer.
24 But listening to the testimony, being a
25 reasonable person and a resident of Chula Vista, I

can't help but think how hard some people are working here to fit a square peg into a round hole, with that community being a round hole. I've lived in that community, too; I've lived all over Chula Vista.

And I couldn't agree more with what has been said. I can just imagine that going in in my neighborhood. I live close by here. And if we re-purpose one of these parking lots like the one over by the county assessor's building, you know, put in a nice big building so we can get all that parking there. And put up a peaker there or put up a peaker in your neighborhood, you know. Put up a peaker in the neighborhood where your children go to school.

(Applause.)

MR. BOYD: That goes for everybody here, doesn't it? Isn't that why we should sanely consider this and say this is not the right thing to do?

After hearing just a little bit of history that this was considered and denied by the city seven years ago, that city staff has allowed it to get this far this time, what insanity has overtaken us?

1 Thank you.
2 HEARING OFFICER RENAUD: Thank you.
3 (Applause.)
4 HEARING OFFICER RENAUD: Jose Gonzales
5 in opposition. Mary Lou Franzen in opposition.
6 Elias Vera in opposition. Petra Garza in
7 opposition. I understand Councilman Ramirez is
8 back. We called you earlier, you weren't here, so
9 why don't you come forward now.
10 (Applause.)
11 COUNCILMAN RAMIREZ: Well, thank you.
12 Thank you for your hard work. I know it's been a
13 long day for all of you, so I appreciate all of
14 your hard work. And I appreciate the presence of
15 all of these dedicated members of our community
16 who have come out here and stayed this long to
17 have their voices heard.
18 You know, one of the interesting things
19 when I was filling out the speaker's card, the
20 speaker slip, is that, you know, it asks you who
21 are you representing. And it made me think for
22 awhile. I mean, really, who am I here
23 representing. Am I representing the City of Chula
24 Vista. I mean I'm certainly representing myself.
25 And I guess I should tell you that technically

1 speaking I'm representing my office.
2 As you now know I'm -- or you're aware,
3 I am a City Councilman here. And just to give you
4 a little bit of background I've lived in this
5 community all my life. I grew up in southwest
6 Chula Vista. I graduated from high school at
7 Castle Park High School. I think a lot of the --
8 (Applause.)
9 COUNCILMAN RAMIREZ: -- the people here
10 in the audience are Castle Park alum. And it's a
11 community I'm very proud of, and I'm very proud to
12 serve them as their elected representative.
13 I also live, stayed in the community, I
14 live in southwest Chula Vista. Not very far from
15 that high school. I have a business here, also.
16 And so I feel that I represent this community in
17 particular and their interests. I'm very familiar
18 with it, know the businesspeople in the community,
19 know a lot of the residents there. And so I
20 certainly feel like I'm representing them and
21 their interests in being here today.
22 I wanted to just give you a little bit
23 of background on how I really got involved in
24 politics at the municipal level here. It wasn't
25 that long ago, maybe four years ago, five years

1 ago when we started the general plan update.
2 I had been around, you know, city hall
3 in other capacities, but was asked to come and
4 represent southwest Chula Vista on the general
5 plan update. And so I was part of that process.
6 It was a process that went on for about two years.
7 And we had lots of discussions. It
8 started with surveys throughout the community, all
9 of Chula Vista, some 6000 surveys that were
10 completed where the residents of Chula Vista
11 expressed to all of us on the committee their
12 vision for the future of Chula Vista.
13 And as you now know, I know you've heard
14 a lot of testimony on the matter, we, in our
15 general plan, we stated what we want and what we
16 didn't want. And I believe that this peaker plant
17 expansion in this neighborhood is exactly what we
18 did not want. And it was expressed in many
19 different ways --
20 (Applause.)
21 COUNCILMAN RAMIREZ: And so, as I'm here
22 speaking to you today, I feel like I'm
23 representing most of Chula Vista. Because this
24 document that we created is a commitment that we
25 made to all of the residents of Chula Vista. And,

as I said, we're expressing our vision of what it is we want in our city. And this peaker plant is not it.

And so --

(Applause.)

COUNCILMAN RAMIREZ: -- you know, we don't need to get any more into the technical testimony. You've been doing that all day. I don't have a whole lot of the technical information for you.

But this is not right. This plant should not be expanded in this neighborhood. We can do better in Chula Vista. We can do better. And we do not need to jeopardize the health of our residents in order to generate power.

So I hope that you will take that into consideration. And thank you for being here in Chula Vista.

(Applause.)

HEARING OFFICER RENAUD: Elvia Naranjo, speaking in opposition. Pardon my pronunciation if I mess any of these up. I'm doing my best. Beatriz Zamora in opposition. Carolina Ramos, opposition. Okay.

(Applause.)

1 MS. RAMOS: Good evening, members. I
2 have heard facts of how MMC peaker plant is going
3 to affect my community over and over, as yourself.
4 What actions and decisions are we going to take to
5 stop this injustice? Are the actions and our
6 decisions moral or immoral? Just or unjust?
7 It is clear to me that many in power in
8 our City of Chula Vista and the New York company
9 proposing this evil project are clearly not taking
10 moral and just decisions, and are indeed inspired
11 by greed, arrogance, selfishness and mainly
12 ignorance.
13 I want to ask you members, I want you to
14 let you be inspired by God. I ask you what values
15 do you have? What do you value as important? I
16 ask you today to make the just, moral decision.
17 Value life. Life is a gift. Don't take away the
18 gift of life from us given to us by God, not from
19 you or not from anybody else.
20 Also I want to say this. There are two
21 sides to everything; the turning of the will to
22 our fleeting satisfaction and the turning away
23 from everlasting value.
24 As regards to the first, the principle
25 of all sins can be called lust. Lust in its most

1 general sense, namely the unbridled desire for
2 one's own pleasure.
3 As regards to the second, the principle
4 is pride. Pride in its general sense, the lack of
5 submission to God. This said by St. Thomas
6 Aquinas, inspired by God.
7 Okay, California Energy Commission
8 Members, I want you to consider the following, as
9 well. Consider God's generosity towards you, that
10 in your own unworthiness in his sight, living his
11 strength rather than in the thoughts of your own
12 weakness. This is said by St. Vincent de Paul,
13 inspired by God, as well.
14 But suggestion for you, and also my
15 community members, and for myself, as well,
16 vigilance and prayer are the safeguards of
17 chastity. You should pray often -- to be
18 preserved from temptations against purity and for
19 the grace to overcome them. This said by St. John
20 the Baptist de la Salle, inspired by God, as well.
21 Lastly, okay, I want to say this. This
22 is said by St. Jose Maria (inaudible). But now,
23 my poor son, the hurricane has come and you feel
24 you are being shaken by force that could uproot
25 century-old trees. But you must remain confident,

for your faith and your love cannot be uprooted. Nor can you be blown away from your way if you remain in unity with the head, which is God.

If you support the power plant, Energy Commission Members, you will not be sacrificing yourself for the well being of all, but instead killing us. If, in turn, you deny the application for the MMC expansion, it will benefit you because you'll be at peace to know that you are making your planet a better place for everyone.

Okay, and you see this cross, it mean sacrifice. And I learned to do that. Please sacrifice yourselves to making the right decision for us, okay? Thank you.

(Applause.)

HEARING OFFICER RENAUD: Thank you. Reyna Montano, speaking in favor. Alma Bibiano in opposition. Francisco Bautista in opposition.

(Applause.)

MR. BAUTISTA: Good evening, and thank you for your time and for waiting for every speaker. I'm just saying a few things real quick.

I'm a veteran of Operation of Enduring Freedom, and I'm very proud to have served my country, to protect the people here, protect our

1 freedom and our way of life.
2 And it makes me real sad just to come
3 home and see that our own city, they're not
4 protecting my family and our people. Like right
5 in my mom's backyard --
6 (Applause.)
7 MR. BAUTISTA: -- they're going to build
8 this thing right in the backyard of my mom's
9 house. And my little brother goes to school right
10 there, like real close; like all his friends, and
11 they just play over there all the time.
12 So, I've lived here for a long time,
13 too. I've gone to Castle Park High School, and I
14 just think it's not fair for everybody to be doing
15 this, you know, get all this, the peaker or
16 whatever you guys call it.
17 But I don't understand much about the
18 turbines and all that. I just know that about the
19 simple cycle mode thing that I heard. It's like
20 it's not good if it happens, you know. And god
21 forbid it happens, but if it does happen it's
22 going to be bad for like a lot of people,
23 especially like right next to the thing.
24 So, I'm just opposing it, and you know,
25 I just -- that's my talk, thank you very much.

1 HEARING OFFICER RENAUD: Thank you.
2 (Applause.)
3 HEARING OFFICER RENAUD: Ruth Bucio, in
4 opposition. All right, I'll put her aside.
5 Daniel Robledo in opposition. Yasmin Campos in
6 opposition. Isabel Tutiven-Shogren in opposition.
7 (Applause.)
8 MS. TUTIVEN-SHOGREN: What I can say is
9 I can't believe this is happening in a country
10 that is leading environmental regulations. I
11 can't believe it's happening here.
12 (Applause.)
13 MS. TUTIVEN-SHOGREN: If it's -- I have
14 to work tomorrow, my kid have to go to school, and
15 I am still here. I have five- and six-year-old
16 kids. But I believe it's most important me stay
17 here for the future of my kids. We are living
18 here. I come from other country but I am citizen
19 now, and I'm very concerned about the future of my
20 kids living here.
21 I can't believe in my backyard going to
22 be building heavy industry like that. We are
23 human being. We are no plants and animals.
24 Mitigation can be done, and even we main stay the
25 (inaudible) can become. We cannot play with that

1 life.

2 And as a human, put yourself in our

3 shoes. Thinking about in your backyard have heavy

4 industry like we will have in that. It is

5 unacceptable. It is not a thing about the

6 project, no, we do not say that. You human

7 beings, you shouldn't have said that.

8 I feel many limitation in my language,

9 but that's all I can say. There is nothing that

10 has been said enough. As educate people as you

11 are, you know that long-term consequences and

12 short-term consequences to having that heavy

13 industry like that.

14 Thank you.

15 (Applause.)

16 HEARING OFFICER RENAUD: Thank you. Did

17 we get Ruth back?

18 MS. SPEAKER: She left, she had --

19 HEARING OFFICER RENAUD: All right. She

20 was speaking in opposition. J. Antonio Salda¤a in

21 opposition. Edgar Gardini in opposition. All

22 right. Lisa Cohen speaking in favor.

23 (Applause.)

24 MS. COHEN: Good evening, Honorable

25 Commissioners and City Staff. My name is Lisa

1 Cohen; I'm the CEO of the Chula Vista Chamber of
2 Commerce. Our Chamber is 81 years old community
3 organization that serves as the voice of over 1000
4 local businesses that provide jobs, generate tax
5 revenue, build infrastructure and provide consumer
6 services to the City of Chula Vista.
7 I'm here today to reiterate our support
8 for this important proposed project, as we did a
9 few weeks ago. As you know, the California
10 Independent System Operator has designated the San
11 Diego region as a reliability constrained area.
12 Meaning that local peak power generation is needed
13 to support the local demand of electricity.
14 To that end we are pleased to support
15 the effort of MMC Energy to upgrade its existing
16 peaker plant to increase generating capacity to
17 help meet the region's need for electricity.
18 This project is a win/win for our
19 community. By utilizing --
20 (Audience comments.)
21 HEARING OFFICER RENAUD: Let her speak.
22 Let her speak. Respect her right to speak.
23 MS. COHEN: By utilizing the latest
24 technology the plant will decrease its carbon
25 emissions while generating more power for the

1 region.
2 The upgrade is designed to minimize
3 noise and air pollution and will include
4 construction of a fence and soundwall combined
5 with specialized landscaping to minimize any
6 potential impacts.
7 More importantly, from a health
8 standpoint, an expert hired by the Chula Vista
9 Elementary School District concluded that no
10 significant health risk impacts are anticipated as
11 a result of the proposed project.
12 Additionally, the peaker plant will
13 utilize existing facility and infrastructure
14 already onsite, including gas supply, water
15 supply, electrical interconnection, and will
16 enhance the buffer between the plant and the Otay
17 Valley River -- excuse me? -- the Otay Valley
18 Regional Park to the south of the site.
19 This upgrade will create 120 to 150
20 short-term construction jobs, and bring new
21 redevelopment dollars to our City of Chula Vista.
22 New capital investment of roughly $90 million,
23 which will result in approximately $850,000 in
24 property taxes annually.
25 And since the upgrade is in a

1 redevelopment area, the City of Chula Vista would
2 receive approximately $110,000 to $330,000 to the
3 redevelopment agency in taxes where it can be
4 invested in improvement to our community.
5 The MMC peaker upgrade will be cleaner,
6 more efficient, more reliable, of a greater
7 economic value to the City of Chula Vista in its
8 commonsense approach to enhancing energy
9 reliability for our community.
10 We are pleased to support this important
11 project which is not only good for business, but
12 good for our community. We also support the
13 Sunrise Power Link which will bring 100,000
14 megawatts of renewable energy to our region with
15 wind, solar and geothermal energy.
16 The Chamber of Commerce thanks you for
17 your attention to our energy reliability needs,
18 and we respectfully ask for your support.
19 (Applause.)
20 HEARING OFFICER RENAUD: Thank you.
21 Gihan, or Gihan -- it's hard to read this,
22 Gulastar speaking in opposition. Mary Ann Rivera
23 in opposition. Summer Leal in opposition. Bertha
24 Valles in opposition. Is that you? No.
25 Carlos Lopez, opposition.

1 (Applause.)

2 MR. LOPEZ: Good evening, Commissioners.

3 When I became aware of this through my daughter,

4 who happens to be basically very involved with

5 this situation, I was basically retired and taking

6 care of my granddaughter, who happens to be over

7 there.

8 And, you know, I looked at the children

9 from the Otay Elementary School, and I said to

10 myself, you know, it would have been a lot easier

11 for me just to go home and with my granddaughter,

12 side by side, and you know, just enjoy my life.

13 I'm retired. I'm a Vietnam veteran. I

14 retired from teaching about five years ago. And

15 now I'm here, spending all this time and all this

16 money that I really don't have. And my wife

17 constantly tells me, you know what, you know, the

18 vacations that we were going to take, now we're

19 spending a lot of money on our stuff here, you

20 know. These signs are not, you know, very -- you

21 know, they're very expensive and a lot of the --

22 just a lot of the materials that went into

23 basically getting a lot of these people that

24 unfortunately they left because they have children

25 and they have commitments at home.

1 (Applause.)

2 MR. LOPEZ: And I really think a lot of

3 these people work very hard. And I know the

4 Chamber of Commerce may tell us that, oh, we need

5 the energy. But the facts are that most of this

6 energy is going to go somewhere else and it's not

7 going to be used here, because they don't have a

8 contract with the San Diego Gas and Electric.

9 Now, the other thing is that we are

10 exposing our children. And I always believe that

11 our children are our future. Not only that, but

12 also, you know, this situation here it puts

13 children at risk. I know our dollar is being

14 devaluated in Europe, you know, we don't purchase

15 as much. But what about our moral conduct? You

16 know, shall we devaluate that? Shall we place

17 children at risk like they do it in third-world

18 countries? You know, they don't care about their

19 children, they don't care about their students.

20 And they go ahead and put this kind of

21 plants 350 feet away from children that are, you

22 know, susceptible to all this, you know,

23 situations.

24 You look at my granddaughter and I'm

25 telling you, I been at the elementary school and I

1 seen those faces. And I see them play, and I say,
2 should we, you know, would I want my granddaughter
3 to be playing there with this plant that is going
4 to be putting, you know, all this pollution next
5 to her.
6 I know that the Chula Vista Elementary
7 School went ahead and got a study done, a two-page
8 study or three-page study, whatever. They didn't
9 even mention the particulate matter, you know.
10 They did not even -- they said that no significant
11 risk. Well, that's because children are not as
12 significant to them as they should be.
13 (Applause.)
14 MR. LOPEZ: So, in that sense this here,
15 we're asking, you know, our politicians, some of
16 them came and basically show the courage, and we
17 thank them for it. Councilman Rudy Ramirez came
18 out. Pamela Bensoussan, that she's running for;
19 hopefully she'll be on the city council. There's
20 going to be, hopefully, a new infusion of good
21 people, people of good will.
22 And we are hoping --
23 (Applause.)
24 MR. LOPEZ: -- we are hoping that the
25 people right here in Chula Vista see these as an

example of basically a council in measure that are totally unattached with the people that have no respect for our community, they have shown it time and time again.

And we're asking you to basically deny this project. Because you are basically in that situation. And I hope you will.

Just one more thing.

HEARING OFFICER RENAUD: You have gone over your three minutes, sir, if you would finish up, please.

MR. LOPEZ: Okay. Thank you. And the only thing I could tell you, that the greatest failure in leadership is not protecting those children that we are entrusted with. Thank you.

HEARING OFFICER RENAUD: Thank you.

(Applause.)

HEARING OFFICER RENAUD: Eduardo Gutierrez speaking in opposition. Aramis Vera in opposition. Isidro Morales in opposition. Delfina De la Rocha in opposition. Belkis Gares, sorry I can't read that very well, speaking in favor. Russell Coronado in opposition. Diana Garcia, opposition. Joselin Fuller, opposition.

(Applause.)

1 MS. FULLER: Hi, good evening. Well,
2 first of all I just wanted to speak for someone
3 who had to leave because she has kids. They all
4 attend Otay Elementary. Her oldest son and my
5 youngest brother are both on the soccer team
6 there. They actually go to the Otay Rec Center
7 every day after school, a little bit before they
8 go to practice, on the weekends.
9 We're always outside in parks walking,
10 but close to our house. About very few feet away
11 from where you're trying to build that plant.
12 And she moved from L.A. because of gang
13 violence. She comes here and finds out they're
14 trying to build a power plant practically right
15 next to where she moved.
16 I don't know if they're using our tax
17 dollars for this, or even if they're not, why
18 can't this go to wind turbines or solar panels or
19 why can't we just not do this at all?
20 (Applause.)
21 MS. FULLER: And correct me if I'm
22 wrong, but I heard this was originally going to be
23 built in La Jolla, but those people opposed and
24 said, no, do it here. I don't know if I'm wrong,
25 like I said, correct me if I'm wrong, but that's

1 what I heard. I think it was on a newspaper.
2 I have a -- I'm the oldest of three
3 kids. And my brother, the middle one, he's
4 asthmatic. And I have lots of friends that are
5 asthmatic. And this would just make things worse.
6 He's already allergic to -- right now he has an
7 eye infection from all of the smog he's been
8 exposed to. And we thought his asthma was out of
9 control, but we went to the doctor; and no, it's
10 from smog and dust.
11 And I have lots of friends that are
12 asthmatic. People on both sides of my family
13 suffer from asthma. So I could get it at anytime
14 probably, like develop it, pneumonia and things
15 like that.
16 And it's just this is -- this just seems
17 like nonsense to try to do something like this.
18 It's late, I'm kind of tired, so I forgot a lot of
19 the things I was going to say. And I'm just going
20 to let it -- thank you for listening. And I hope
21 the rest of your night goes well.
22 HEARING OFFICER RENAUD: Thanks a lot.
23 Thank you.
24 (Applause.)
25 HEARING OFFICER RENAUD: Alissa Calderon

speaking in opposition. All right.

(Applause.)

MS. CALDERON: Good evening. My name is Alissa Calderon. I'm 15 years old and I am here on behalf of everyone here to put my foot down against the peaker plant.

It's funny, because it seems that no matter how much evidence we place in front of you, no matter how many of us speak, and no matter how much we ask you to say no, you guys don't listen.

I thought you were supposed to make choices that would support the well being of the people. You're the voice of this community and many others at that. Ignoring us was never part of this equation.

Even our city council won't back us up. And has instead sold us for $210,000 with the exception of our Councilman Ramirez.

Open your eyes and take a good look. It's 1300 feet from an elementary school; it's 350 feet from homes. Already that plant is spewing out enough toxic chemicals, as it is.

And another thing, why us? Stop and think for a second. Can you picture a peaker plant put up in La Jolla or Eastlake, Bonita,

1 Orange County, or perhaps Sacramento? Of course
2 you wouldn't.
3 We're people like everyone else. We
4 have rights equal to everyone else. Our lives are
5 just as special as anybody else. All of us, as a
6 single voice, are simply asking that you hear us
7 out one last time. Please don't take our words
8 for granted, because in the end we'll be the ones
9 living with your decision. I guess you could say
10 that our fates are in your hands.
11 There's a fine line between the right
12 choice and the smart choice. And like I said
13 once, if that plant gets expanded, sure, it will
14 generate power, but it'll generate a lot more
15 problems than it does good. Our health is not for
16 sale.
17 Thank you for your time.
18 (Applause.)
19 HEARING OFFICER RENAUD: Jaime Cueva
20 speaking in opposition.
21 (Applause.)
22 MR. CUEVA: Hi, my name is Jaime Cueva
23 (inaudible). And I'm an educator. I used to live
24 in Solano Beach in the olden days. I went to CSD
25 1970-something, 1974.

1 And I remember, I did swim teaching at
2 San Diego High School. You probably know the area
3 a little bit. And where Tony Hawk went to school.
4 And I know they would never even conceive of
5 putting that plant, even half a plant of a peaker
6 plant over there. And I know the whole community
7 would come, because I know how the people think.
8 I also worked in La Jolla at Midland
9 Junior High School. They would never -- what an
10 offense. How dare you even conceive of that.
11 When I heard of this, I mean I'm
12 teaching full time and I'm going to school, also.
13 I went to San Diego State and (inaudible) College.
14 And I'm here, this is like almost 9:00.
15 I should be grading my papers and reading. I have
16 to read chapter 5 and 6, you know, for my school.
17 And here I am we're arguing about something that's
18 very anachronistic. We are behind the times.
19 A whole set of people, all of you
20 including us, all of us are part of the hard time.
21 And we are failing to see, we're failing to see a
22 lot of things that are environmental. Everybody
23 knows that particulates -- where's Mr.
24 (inaudible), he left, okay. I was asking him
25 about the particulate. He says, I don't know what

they're made of. I go, how dare you, you're being paid to protect the environment. You are the voice of the environment. You are the educated people who are supposed to consider all the variables, thinking of field theory, you know, how everything affects everything else, everything's connected.

You and us are not disconnected. We're all part of the same field. And so you are supposed to represent us. You are supposed to be the voice, the information. And we're supposed to have a dialogue with you.

This is the third time I come here. I mean, it's totally untenable that I'm here spending my time. I feel like nobody listens. And I don't even know who's on which side anymore. Really. I'm confused, to tell you the truth.

I was sitting right there. I was following to every single word that Mr. Powers said. Even while I listen, you know, because they speak so not very clearly, because what they're saying may not be true. And I thought he was an enemy, I didn't even know until I listened, and then I didn't know who was who, because you guys don't have titles, everybody just there, you know.

1 So if I don't understand it probably the
2 community doesn't understand. So it has to be
3 transparency. We need to have this environmental
4 consciousness, which we are very in a deficit. We
5 have a nature deficit, that's how they call us at
6 Claremont College. A human society, the way we're
7 handling it, is going to negative course. We're
8 not improving.
9 And China, for example, is developing
10 and creating jobs. They're the most polluted,
11 they're the most polluted.
12 I think somebody yielded the three
13 minutes to me. I just heard the -- and so if
14 China is not an example of progress, is it because
15 we get a couple jobs. The price we pay
16 biologically, do you think it will be by Chopra
17 and all these people that are coming out with a
18 new psychosomatic theories and all this theories
19 of the environment.
20 Al Gore won a Nobel Prize. What else?
21 How many more signs do we need that the
22 environment is in danger? How many more signs do
23 we need to understand, you know, we have to
24 develop that consciousness?
25 I mean ever since the '70s, when Friends

of the Earth came out, in the '70s, and they said we need to have an Earth Day. People used to laugh, yeah, yeah, yeah, oh, yeah, yeah, they're crazy.

Now the statistics are there. Roger ReBell from ReBell College at UCSD, which is (inaudible) city in the United States, reputed with hard science, proved that, yeah, there's pollution, there's warming, there's a lot of things.

And people refused to -- in the olden days they said asbestos was fine for brakes. And 20 years later, oh, yeah, -- I'm sorry.

And then they said then cigarettes were fine. And then later, finally came around, after a lot of suits, a lot of people get, you know, give us more money in the suits, and you kill more people per day.

The same happened with lead in the paint. We used to use lead in every house. Now we like woke up 30 years later.

We don't want to wake up 30 years later and tell everybody here, we're sorry that the peaker plant was bad for you, okay?

(Applause.)

1 MR. CUEVA: And another thing, you know,
2 when I --
3 HEARING OFFICER RENAUD: Sir, you've
4 used your three minutes, you've gone quite a bit
5 after --
6 MR. CUEVA: Ten seconds, ten seconds?
7 HEARING OFFICER RENAUD: Ten seconds, go
8 ahead.
9 MR. CUEVA: I think solar, what Joselin
10 Fuller, she's my student, there's a lot of
11 students in here, solar, wind. There's a lot of,
12 the technology is there. All the science are
13 there. We have to look at them and consider them
14 and compute them into a new vision that we have.
15 And that's the new America that we have
16 to live for, because we're all in this together,
17 okay. Thank you very much. My name is Jaime
18 Cueva.
19 (Applause.)
20 HEARING OFFICER RENAUD: Thank you.
21 Cindy Gomppers Graves speaking in favor.
22 (Applause.)
23 MS. GRAVES: I am Cindy Gompper Graves.
24 I'm here on behalf of the South County Economic
25 Development Council. I do want to talk to you

about the future of our children. I do want to talk to you about social economic injustice. A little different perspective.

I want to make sure that when our children grow up they have a place here in south county to work. They're not commuting out of the region, they're not stuck in traffic on highway 5, highway 805 for half hour, sometimes hours on end, polluting our air. It's very simple.

And part of what I need to make that happen is energy. To insure that we have companies that are locating in eastern Chula Vista around the newly proposed university. To make sure that our bayfront is enjoyed by not only visitors visiting Gaylord, but the people who live in Chula Vista, so it's a walkable, pedestrian-friendly kind of thing. Where the kids can work; where they can grow into adults and they can work. Where they can work in south county, in Chula Vista, in National City and in Otay.

And part of that need is energy to insure that our companies have that necessary infrastructure to survive. I have been in economic development long enough to know that many other states try and raid our companies all the

time.

As a matter of fact it wasn't too long ago when the State of Michigan was passing out flashlights to companies here in San Diego County and saying, come to Michigan, we'll leave the lights on for you, because we did not have enough energy in the state to look forward and make sure that those companies could survive. And you have that in front of you right now.

I already heard that the MMC peaker plant, in its current -- by the way, it does exist -- in its current form had to be fired up recently because we didn't have enough energy in the grid. And you know what, we are a fast-growing community here. In south county this is the place where companies are going to grow. This is the place where people are moving to because pretty much the rest of the region is built out until you get way way out there. This is the future of the region and I need the peaker plant to go ahead and provide that infrastructure for those companies to come.

When you talk about social economic injustice, it's not just about a peaker plant location. It's about a whole systematic approach

1 to people's lifestyles, to people's economic
2 prosperity, which is part of that lifestyle.
3 And I want to make sure that those
4 people work here in south county. And I need your
5 help, and I need that peaker plant to make sure
6 that those companies come here --
7 (Audience comments.)
8 MS. GRAVES: I'd ask the Chair to call
9 for order.
10 HEARING OFFICER RENAUD: You may
11 continue. They're quiet.
12 MS. GRAVES: Thank you. Thank you. I
13 ask you to sit here and look and decide if you
14 want to be part of the solution of what's going on
15 at our federal level, at our state level and our
16 county level and at our subregional level here in
17 south county, in Chula Vista.
18 I'm here on behalf of South County
19 Economic Development Council. We recognize that
20 the peaker plant is part of the necessary
21 infrastructure. We support it, and we request
22 your support. Thank you very much.
23 (Audience comments.)
24 HEARING OFFICER RENAUD: Thank you. All
25 right.

1 (Applause.)
2 HEARING OFFICER RENAUD: Okay.
3 Shakeenah Shapazz speaking in opposition.
4 (Audience comments.)
5 HEARING OFFICER RENAUD: All right.
6 Eric De la Rocha in opposition. Robert Gonzales
7 in opposition. Carolina Perez, opposition.
8 Aurelia Rivera in opposition. Maria Zamora-
9 Felkins in opposition. Maria Zamora in
10 opposition. Rosa M. Garcia in opposition. Juan
11 Carlos Hernanda, opposition. Bernardo Vasquez in
12 favor. Looks like Jasmine Cuevas in opposition.
13 (Audience comments.)
14 HEARING OFFICER RENAUD: All right,
15 thank you. Yeah, I think I already found two of
16 yours. That's all right.
17 (Laughter.)
18 HEARING OFFICER RENAUD: Jose Preciano
19 in opposition.
20 (Applause.)
21 MR. PRECIADO: Good evening,
22 Commissioners. My name is Jose Preciado and I'm
23 President of the South Bay Forum. And I come here
24 to ask that you deny the application for MMC to
25 expand their facility.

As genuine as both the Chamber of Commerce representative and the South County Economic Development Council representative are with their remarks, I think it's very inappropriate and a disservice to the south county region to hear inaccuracies and misrepresentations of that nature.

But beyond that, I want to invite you and encourage you to encourage municipalities throughout the state not to re-do, reform, mitigate, change, ameliorate or bastardize in any way their general plan during the application process before you.

If the general plan had been changed before the application process started, or if they would be engaged, the city would be engaged in activities with its community to change the general plan in the usual manner, then I would find it acceptable to see this.

But here we have a local, a municipality, a local government engaged in very high stakes politics over a project. I think it's irresponsible. The State Legislature needs to know about this, and we will be advocating with Senator Christine Kehoe, the Chairwoman of the

1 Energy Committee of the State Senate, to hopefully
2 bring forward legislation that will prohibit
3 localities, like the City of Chula Vista, from
4 making changes to their general plan or creating
5 concessions. We believe this is inappropriate.
6 We don't believe that MMC means wrong by
7 bringing energy to the State of California. We
8 don't believe that MMC is looking to harm our
9 community. We believe that MMC has been
10 misinformed by its surrogates, by the elected
11 officials in this community, and by the Chamber
12 Boosters, the business boosters, that, oh, it's
13 okay, this city is ours, it's for sale, and it
14 doesn't matter what community it affects.
15 We invite you to send a strong message
16 to every locality. When the State of California
17 created and gave you and entrusted you the power
18 to be the sole agency, one of the things that it
19 expected is when you evaluated the LORS
20 requirement, that those weren't going to be played
21 with to meet the expectations or the needs of a
22 specific project.
23 I think it's shameful that our elected
24 officials in this city have directed their staff
25 to somehow provide documents, memos, I think four

1 letters have been generated, two for and two
2 against. Who are we to believe? I believe in the
3 professionalism of the city staff here, but I
4 don't believe that under the political climate of
5 this city they are able to exercise their
6 professionalism. There is undue pressure on them
7 to present the facts that they are presenting.
8 And I think you need to send a message
9 to all the localities in the State of California
10 not to amend, change or bastardize the general
11 plans that they have. Because they have not
12 allowed us, the citizens, to contribute to the
13 development of that general plan.
14 I thank you very much for you time.
15 (Applause.)
16 HEARING OFFICER RENAUD: Thank you.
17 Bianca Java, Jara, speaking in opposition.
18 Octavio Jara in opposition. Gary Sallis, I think
19 this is, in favor.
20 MR. SALLIS: Thank you this evening for
21 letting me speak. My name's Gary Sallis. I'm
22 here for Tomm Lemmon this evening. He had an
23 emergency so he couldn't make it this evening.
24 We're part of the San Diego Building
25 Trades Council here in San Diego. And we support

this project. Okay.

Some of the reasons we support this project is because it's going to bring good jobs t the area. We have 171 members in my local union here in San Diego that live right here in this town. They like working down here. They don't like driving 80 miles up the road to get a job. So they'll enjoy working in their own city. Okay.

This plant's going to improve the area. The pollution rate is going to go down, not up; it's going to go down. I've built these things before. I've worked on them time and time again. The people don't have a clue yet how quiet this thing's going to be. They will find out as it's built.

MMC is a very good developer. They run a good safety record. They run good jobs. They run good developments. They're very proud of what they do, and we're proud to be with them in the building of this plant here in Chula Vista.

The other thing that it provides is health benefits for a lot of people and their children, okay, as well as retirement, as well as we also help our retired members who live here in Chula Vista, National City, San Ysidro and Otay,

1 all over this town down here.
2 So, the Building Trades has 35,000
3 construction workers here in San Diego and we
4 support this 100 percent. Thank you.
5 HEARING OFFICER RENAUD: Thank you.
6 (Applause.)
7 HEARING OFFICER RENAUD: Maria Euenia,
8 in opposition. Eugene Yepis in opposition.
9 Cynthia Ordaz, opposition. Irma Serna,
10 opposition. Jessica Villalba, opposition.
11 Francisco Izaguirre, opposition. Daniel Cardoso,
12 opposition. Gabriel Leuh, opposition. Laura
13 Hunter, opposition. Josh Bakh, opposition. All
14 right.
15 (Applause.)
16 MR. BAKH: Well, I don't know how to say
17 this, but I was born with a congenital heart
18 defect. And to be specific, it was VIC,
19 ventricular septal defect.
20 In the last five years they've shown a
21 lot of research that particulate matters, 10 or
22 2.5, both link to those heart defects.
23 The financial, emotional and physical
24 stress that I went through with my family was
25 just, it was just not worth it. And especially if

1 it's -- it was caused by something that could have
2 been prevented.
3 You hear people say like they would work
4 in this factory when he doesn't understand how
5 much research is out there saying the kind of
6 stuff that they would be exposed to, and the
7 amount of risk they're putting themselves into, is
8 it worth it. Can you put a price on that?
9 I'm here representing UCSD School of
10 Medicine Post Bac. Most of my colleagues are
11 studying, but another three are here, and we're
12 all against it.
13 Thanks a lot.
14 HEARING OFFICER RENAUD: Thank you.
15 (Applause.)
16 HEARING OFFICER RENAUD: William
17 Lansdown, opposition -- I'm sorry, favor, speaking
18 in favor, William Lansdown. Ricardo Montoya in
19 opposition.
20 (Applause.)
21 MR. MONTOYA: I'm a Gulf War veteran,
22 eight years in the military. And going bachelors
23 now, Post Bac for medical school.
24 I know you guys are tired and everybody
25 wants to go home, and you know, get all these

three minutes done quick and everything, but I mean I've traveled the world, and I've been to a lot of places where quality of air in other places is a lot better than in California. Especially when I'm from L.A. It's a lot worse pollution than they've got here.

And I was on a nuclear ship and they did a lot of tests on us and everything. It was all funded by the government. And I think it was all biased. And, again, you know, a lot more scientific research done than having somebody, you know, hire -- some elementary school hire someone to do research for, you know, for the air quality or the quality for the plant that's around the elementary school.

I think it's wrong to play with people's lives. And humanity is not anything to play with. And hopefully, you know, some of you guys were listening and not on your computers, can, you know, think about what you're doing.

You have a lot of power in your hands, and I'm pretty sure you know how to use it. I'm not from here, I'm not from San Diego, I'm from L.A. Just moved here, so, I mean, I don't know who's on whose side or what here.

1 But hopefully you guys will make the
2 right decision, and not let this particulate
3 matter, all these air pathogens affect these
4 people. Because you and I are people. If this
5 was your neighborhood, if you guys were under-
6 represented, how would you feel? Exactly.
7 You know, I mean I see a lot of people
8 here that are for it, and they're dressed all
9 nice, they got the little ear-piece and
10 everything, the little suits, you know. Everybody
11 else here is poor as hell who's against it, you
12 know.
13 (Audience comments.)
14 MR. MONTOYA: Hmm, there must be some
15 kind of, you know, discourse here, isn't there?
16 Thank you.
17 (Applause.)
18 HEARING OFFICER RENAUD: Thank you.
19 Juan Diaz, speaking in favor.
20 MR. DIAZ: Good evening, Commissioners.
21 I'm a 20-year resident of Chula Vista. I served
22 with the general plan update, environment, open
23 space and sustainable development subcommittee of
24 the City of Chula Vista. I was a member of the
25 city's resource conservation committee.

1 The subcommittee's primary role was to
2 assist with identification and discussion of
3 issues and concerns, opportunities and constraints
4 and key values and objectives related to
5 environmental and sustainable development
6 considerations for the general plan update.
7 I disagree with EHC's interpretation of
8 the general plan. I could go on on a three-page,
9 but I'm not. You know the technical. I
10 appreciate the opinions over here and the opinions
11 over here.
12 I want to put it a little bit more into
13 perspective. You have to realize, we, as
14 citizens, have to be prepared. As all of you
15 know, the United States is at war. And there's
16 some very nasty groups out there. And you never
17 know when they might hit close to home.
18 Especially the SDG&E power plant.
19 So, wouldn't it be good to know that we
20 have a power plant back here? Or, let's say, it
21 does hit. We're going to have to crank up that
22 little plant up there to provide power. Wouldn't
23 it be good if you had a better upgraded plant?
24 That's it. Thank you.
25 HEARING OFFICER RENAUD: Thank you.

1 (Applause.)
2 HEARING OFFICER RENAUD: All right.
3 Jeanniffer Prieto in favor. Diana Garcia -- I'm
4 sorry, it's getting late. Jeanniffer Prieto is in
5 opposition. Excuse me. Diana Garcia, in
6 opposition. Maria Ochoa in opposition. Ryan, I
7 really can't read the last name, opposition.
8 April Lopez, opposition. Vladimir Garcia,
9 opposition. Earl Jentz, I believe that is, in
10 opposition.
11 MR. JEATZ: Can you show -- I'd like
12 to show this.
13 (Pause.)
14 MR. JEATZ: Let me begin and hopefully
15 it will come on. I'd like to thank the
16 Commissioners and staff --
17 MR. SPEAKER: Brendan, you're on the
18 wrong one.
19 (Laughter.)
20 HEARING OFFICER RENAUD: All right. I'm
21 going to start your three minutes again.
22 MR. JEATZ: Thank you, sir.
23 HEARING OFFICER RENAUD: Technical
24 difficulties.
25 MR. JEATZ: I'd like to thank the

1 Commissioner and the staff for your patience and
2 for your grace this evening. I know it's been a
3 long time and we're all tired.
4 I'd like to speak in support of Theresa
5 Acerro and many other speakers that have spoken
6 this evening in opposition to the peaker plant.
7 To me the bottomline is that the site is
8 just too close to the residences. You can see
9 here on the map where the peaker plant is, and the
10 houses over here. Right there. How close they
11 are. There's just one lot that separates them.
12 I believe that there's other available
13 sites in Chula Vista that they could also provide
14 sites for peaker plants. And that would still
15 provide a way for jobs and for tax increment.
16 And I'd ask you to come to the
17 commonsense decision at the end of the evening to
18 deny the application that doesn't comply with the
19 2005 general plan. Thank you for your time.
20 (Applause.)
21 HEARING OFFICER RENAUD: Thank you.
22 Jennifer Montano in favor. Enriqueta Vasquez,
23 opposition. Juan Antonio Vasquez, in opposition.
24 Ana Gabriela Jara in opposition. Umberto Vasquez,
25 opposition. Graciela Martinez, opposition.

1 Martin Martinez, opposition.
2 Jasmin Lopez, in opposition. Miguel
3 Lopez, in opposition. Brandon Lopez in
4 opposition. Carlos Torres in opposition. E.B.
5 Durante in favor. Alexis Cano in opposition.
6 Juan Antonio Vasquez, Sr., in opposition. Jenny
7 Huerta in opposition.
8 (Applause.)
9 MS. HUERTA: Good evening,
10 Commissioners. I came here with a present for
11 you. These two packages are packages, again, of
12 over 1000 petitions of people in the community
13 that oppose this power plant.
14 They gave us permission to use --
15 (Applause.)
16 MS. HUERTA: -- their names and to give
17 these to you. And I've got many more of them to
18 take back to all the other Commissioners to show
19 them that these community people are in opposition
20 of this power plant.
21 I want to speak on a couple notes.
22 Earlier today community members weren't here, but
23 the city staff said that the $210,000 mitigation
24 fee was left open to the public, that we weren't
25 left out of the process. But we were. We weren't

1 completely left out of the process. That decision
2 was made behind closed doors in chambers.
3 And the mitigation process and the
4 mitigation fee is not valued -- it's not good
5 enough of a value for these people's health.
6 These people's health is at risk. Their
7 children's health is at risk. Their
8 grandchildren's health is at risk.
9 I wanted to also speak on another point.
10 The city chambers talked about economic
11 development. As environmentalist, a social
12 justice environmental organization, EHC, we are
13 not opposed to economic development.
14 You know, solar panels would bring
15 enough energy, if there's energy efficiency in
16 this community was implemented. And it could be
17 implemented. Then we wouldn't need more power
18 plants in this area.
19 Also, national security, yes. National
20 security is a huge issue. It's a huge issue
21 that's going on because of our reliability on
22 infinite sources. Sources that aren't finite --
23 I'm sorry, not infinite, but finite resources for
24 energy production.
25 Solar panels will bring -- the sun gives

us energy throughout the day. You know, until there's a super nova it's going to give us energy. That secures national security. We're not going to be relied on foreign oil and processes from foreign oil to secure energy needs. That is a huge, huge concern.

What about the concern of these people's safety if there's ever a fire in that area? Has that been considered?

I also want to speak on the part of labor. This power plant is only going to provide two part-time jobs. It's not going to bring any public benefits to these people. $800,000 in users, utility tax fees are only assessed if the plant is assessed at $80 million. There is nothing, nothing written in stone that this plant is going to be assessed at $80,000 (sic). We don't know that yet.

I also want to speak on the behalf of labor, that there is different leaders in labor organizations that have supported our opposition towards this plant, because the jobs are only temporary and they're only going to bring two part-time jobs to these community members.

I also want to speak on behalf of Mark

1 Yepis. He did state a public commentary card in
2 there. And he is unable to be here because of
3 extenuating circumstances with his family. But I
4 want to read what he has said.
5 And he said, currently the economy has
6 devalued everyone's home. Those in less developed
7 portions of Chula Vista, like Otay, even more.
8 Putting the peaker plant near our homes will
9 reduce the value tremendously.
10 Therefore, it's beyond belief that our
11 elected representatives that are supposed to have
12 the best interests of our community, are willing
13 to dismiss our community and throw it into a
14 greater economic turmoil.
15 It is not fair that our community is
16 being disenfranchised because of its perceived
17 notion of uneducated people. It appears that the
18 council has decided that our community is
19 expendable.
20 Please be aware that our community is
21 made of hard-working educated people, and that we
22 will fight this until the end.
23 This is a community member --
24 (Applause.)
25 MS. HUERTA: -- whose home is being

1 violated because -- from this plant because his
2 home is protected by the general plan. And
3 currently the city is not standing by these
4 community members. These are hard-working
5 community members.
6 I go door-to-door to these people's
7 homes and see children suffer from asthma; see
8 children that have to stay home, over-achievers of
9 this community, that have to stay home because of
10 bad air quality, and because of their asthma
11 rates.
12 And this power plant is not going to
13 give them health care. This power plant is not
14 going to give them inhalers. This power plant is
15 not going to be there when these families are
16 suffering.
17 And you have the power, you have an
18 unprecedented decision to make to deny this
19 application. And you have the power to stand up
20 for this community and support us on this.
21 And if you have any problems, right
22 here, you can call all these people, because
23 they've given us permission to give you their
24 information, to let you know that they are
25 standing up now and that they don't want this

power plant here.

Support our community. Support our health. You know, back in the days -- I'm going to take you back 40 years -- DDT used to be sprayed on everybody. And we remember what happened to DDT, right? They made that illegal because of all the harm that it was causing, not only to the environment, but to the people. Many people were affected.

Don't make the same mistake. Don't make the same mistake. This is not right. Support our communities.

HEARING OFFICER RENAUD: Thank you.

(Applause.)

HEARING OFFICER RENAUD: Would you give those to the Public Adviser. She'll make sure they get into the record. Thank you.

All right. Javier Saunders, speaking in favor.

(Applause.)

MR. SAUNDERS: Good evening and thank you for this opportunity to speak, and for your patience. And the work that you are doing tonight is very important.

My name is Javier Saunders. I'm a

1 member of the Mexican-American Business and
2 Professional Association. And although the
3 membership is regional in nature, a majority of
4 the members are professionals in the South Bay
5 area and in Chula Vista.
6 The Mexican-American Business and
7 Professional Association is in support of the
8 replacement of the old peaker plant. Replacement
9 of the peaker plant will provide community, city
10 and regional benefits.
11 Most importantly, the replacement of the
12 old peaker plant with state-of-the-art technology
13 will create a more efficient plant that will
14 reduce air emission levels and produce cleaner air
15 for the region.
16 The Air Pollution Control District, in
17 independent studies, have determined that there
18 are no significant environmental impacts. The
19 Chula Vista School District conducted an
20 independent study by Jones and Stokes, a very
21 reputable environmental firm, and confirmed that
22 no significant health effects are anticipated for
23 the community with the replacement of the peaker
24 plant.
25 Based on data from similar plants,

1 replacement of the peaker plant with clean
2 technology will reduce carbon monoxide emissions
3 by approximately 85 percent and other air
4 emissions up to 30 percent based on 600 hours of
5 annual operation.
6 The peaker plant will provide needed
7 power during peak summer demands, and will also
8 move the city one step closer in removing the old
9 South Bay Power Plant along the bay. And will
10 also help the city meet its long-term development
11 goals.
12 Replacement of the peaker plant is
13 clearly a betterment for the city and the
14 community. Not only will this reduce air
15 emissions, but will produce twice the power needed
16 for the region.
17 And as a result of the many community
18 benefits of this project, the Mexican-American
19 Business and Professional Association requests
20 your support. And I do want to thank you for this
21 time, thank you very much.
22 HEARING OFFICER RENAUD: Thank you.
23 (Applause.)
24 HEARING OFFICER RENAUD: All right,
25 Jenny Huerta, in opposition. That was you? Oh,

1 sorry. Okay. Santiago Baltazar in opposition.
2 Kevin O'Neill in favor.
3 MR. O'NEILL: Thank you, Commissioners.
4 It's been a long night. I had the opportunity to
5 speak to you three weeks ago when you were here,
6 and I don't want to be repetitive of that.
7 Presently I'm Chairman of Chula Vista's
8 Growth Management Oversight Commission, and I'm
9 Vice Chairman of the Otay Valley Regional Park
10 Citizens Advisory Commission. Prior to that I
11 spent eight years on the Planning Commission. And
12 I speak for myself tonight.
13 But it has been brought up by Councilman
14 Ramirez when he stood in front of you that this is
15 some sort of a zoning code part of this, and you
16 know, it is interesting, at least to me, that
17 Councilman Ramirez, a month or so ago, proposed a
18 moratorium on our code enforcement in that area
19 because of complaints by businesses up and down
20 Main Street that they weren't complying and that
21 they were being bounced by code enforcement.
22 And I also sat on the general plan
23 steering committee with a couple of the people,
24 Ms. Acerro and Councilman Ramirez. And I guess we
25 all have some selective memories as to what our

1 intent was and how things went along.
2 I guess this is sort of a greater good
3 issue. Lack of power is, I think, a bigger
4 impediment to health and well being than the
5 potential of a certain amount of particulate
6 matter at times that the plant runs.
7 And the one thing I learned in
8 industrial hygiene class was that second only to
9 the -- mix the poison was that first you try to
10 avoid the hazard. And then you engineer it out.
11 And, you know, the height of the smoke stack is
12 going to do that to a great extent to the houses
13 that around it. And particularly those that are
14 downwind. Some of the houses that were
15 illustrated to you are actually upwind of that in
16 the prevailing wind.
17 So I don't want to take too much of your
18 time. It's going to be a hard decision. We do
19 need a reliable source in this area. As I said
20 before, I own the property just to the east on
21 Main Street. That is zoned industrial. That
22 could, by right, have a full power plant.
23 I'm happy to have another one there, but
24 we have one here. And not to allow upgrades, you
25 perpetuate the dirty, less-efficient plant. So,

it makes some sense to upgrade this plant even though it may not be in the most ideal location.

When it was sited there, and the difference in 2001 where a council was against upsizing it, and now, is, of course, the gaming of our energy system and the rolling blackouts that we had, and the decision on the must-run on a much dirtier plant, the South Bay Power Plant. And I live there and grew up underneath that one.

So, a hard decision, but I think you're going to have to look at it from a pragmatic standpoint.

Thank you.

HEARING OFFICER RENAUD: Thank you.

(Applause.)

HEARING OFFICER RENAUD: Okay. Isela Castillo, in opposition. Marin Moya, in opposition. Elizabeth West in favor.

MS. WEST: Hi. I'm actually here just representing -- I'm a mom of three. I live in the City of Chula Vista. You've actually rescued me from football practice this evening, so I kind of want to say thank you, even though this is really gripping.

I actually am a resident of east Chula

1 Vista, but I have lived in other parts of Chula
2 Vista. And I have friends all over, in southwest
3 Chula Vista, very good friends. So I do travel,
4 and I work down here in South Bay.
5 I do know the importance of power and
6 the need for power in Chula Vista. And I actually
7 have been sitting here since about 3:30 today. So
8 I was listening to a lot of the expert witness
9 testimony which seems to contradict a lot of what
10 I'm hearing from the opposition side.
11 So, I mean, you can go both ways.
12 You've got your pros, you've got your cons, your
13 people for and people against. And the bottomline
14 is the City of Chula Vista, before this turn in
15 our economy hit, was the seventh fastest growing
16 city in the United States.
17 We expect to be out of this housing
18 market in probably the next couple of years. And
19 it's going to grow even faster. People that have
20 lost their houses to foreclosures and short sales
21 are going to be scrambling to get out of the
22 apartments and the rentals that they're in. Their
23 credit will be cleared in a couple of years,
24 because that's all it takes for a short sale.
25 In east Chula Vista the housing prices

1 will still be low. Interest rates will still be
2 low. And you're going to see a boom again. And
3 Chula Vista is going to grow. And it's going to
4 continue to grow. And where are we going to be
5 without an infrastructure to back us up.
6 The bottomline is we need to have that.
7 We need to put it in place before. You don't
8 build a city without freeways and roads. You
9 don't put in massive infrastructure, houses,
10 shopping, businesses, universities without power
11 to back that up.
12 I'm the president of the football
13 association in eastern Chula Vista. And half the
14 time we can't get power to the snack bar in the
15 middle of the day. We get it in the morning, we
16 get it late at night, but not in the middle of the
17 day. Why is that?
18 So, you know, everybody talks about, you
19 know, their backyard. We all have that. We had
20 that when the 125 went through east Chula Vista.
21 Nobody wanted the 125. They all threw fits about
22 the 125. Now it's in, everybody's glad it's in.
23 So nobody wanted PacTel (phonetic) Park
24 when that went in. They all threw fits about
25 eminent domain and the redevelopment of downtown.

1 Now PacTel Park is in and it's beautiful. And
2 that was a dump. And now look at it.
3 So, change is difficult, but it is
4 needed. And it's needed for growth and prosperity
5 of our city.
6 Thank you.
7 HEARING OFFICER RENAUD: Thank you.
8 (Applause.)
9 HEARING OFFICER RENAUD: Elias Vera in
10 opposition. Ernesto Ramirez in opposition.
11 Sergio Zamora in opposition. Celia Diaz in favor.
12 Leticia Chiang in opposition. Jesus Chiang in
13 opposition. Enrique Chiang in opposition.
14 Margaret Lopez in favor.
15 MS. LOPEZ: Good evening, my name is
16 Margaret Lopez. And I am a teacher, and I have
17 lived in this area for over 50 years. I am a
18 family of six. We had a very nice living in San
19 Ysidro.
20 I do believe that we need this energy.
21 That the peaker plant is run with natural gas.
22 And I think that this is fairly safe.
23 And, you know what, I'm not wearing a
24 three-piece suit, and I am a resident. And I do
25 believe in progress. And I think we need to stop

1 being afraid of change.
2 Thank you.
3 (Applause.)
4 HEARING OFFICER RENAUD: Thank you.
5 Hugo Salazar in opposition.
6 (Applause.)
7 MR. SALAZAR: Good evening. My name is
8 Hugo Ivan Salazar. I'm one of the representatives
9 of Communities Taking Action, a community group
10 here in Chula Vista.
11 But more importantly, I'm also a long-
12 term resident of southwest Chula Vista. I live
13 right now next to Castle Park High School, my alma
14 mater.
15 But I just want to say that I think you
16 heard many of the arguments tonight. And I think
17 to not be as repetitive, I just want to remind
18 everybody that the evidence is clear, it violates
19 our zoning, it violates our general plan.
20 The only people out here that are
21 supporting this expansion are the special
22 interests. I mean, come on, --
23 (Applause.)
24 MR. SALAZAR: -- I mean you don't need
25 to have a poster, you don't need hundreds of

1 people to come out here to remind you that this is
2 a wrong project. That legally it's wrong and
3 socially, environmentally it's wrong. It's clear
4 as night, clear as day.
5 And again, as a member of this
6 community, it's appalling that we have to
7 continuously remind not only the CEC, but our city
8 council, that our basic environmental, social and
9 human rights have to be protected.
10 There have been numerous studies that
11 suggest that particulate matter is bad for kids,
12 it's bad for all of us. I don't need to cite from
13 Harvard to whatever prestigious university you
14 need, to suggest that an increased amount of
15 particulate matter 350 feet from a residential
16 area, 1000 feet from another residential area is
17 wrong. I think you all know that very well.
18 And we, at Communities Taking Action,
19 understand that's wrong, and we listen to the
20 community. And if we have to take this, the CEC,
21 or take the city council in Chula Vista on to
22 fight for our basic human rights then we will.
23 Because it will do anything to protect the health
24 of our kids.
25 And you all have kids. When you go home

you make sure to look at them in the eyes and say, I made a decision today that affected the health of other kids just like you. Be a man, be a woman of respect. You're in the position you are in because people thought you have the capabilities and the judgment to make the right decisions. It is your opportunity.

It is your time to make action, to take the responsible choice and deny the expansion of this polluting power plant which will continue to perpetuate the social injustice that this community has endured for way too many years.

My name is Hug Salazar and I represent Communities Taking Action. Thank you.

(Applause.)

HEARING OFFICER RENAUD: Thank you. Brenda Garcia in opposition. Gilberto Garcia in opposition. Israel Soto in opposition. Robert Borboa in favor.

MR. BORBOA: May I (inaudible)

MR. SPEAKER: If you want to be on record, you --

HEARING OFFICER RENAUD: You need to speak to the microphone.

MR. BORBOA: Chairperson, may I allow

1 Lisa to talk before me? I'd also want to talk,
2 but she needs to leave.
3 HEARING OFFICER RENAUD: But I believe
4 she's already had her time. We called her before.
5 (Audience comments.)
6 MR. BORBOA: She's speaking on behalf of
7 Shirley Horton.
8 MS. COHEN: I'm reading a letter from
9 our Honorable Shirley Horton.
10 HEARING OFFICER RENAUD: I was going to
11 address that. That's a printed letter that we can
12 put in the record, but I think we want to be fair
13 and give people three minutes apiece. But, thank
14 you. We will put that in the record.
15 MS. COHEN: Okay.
16 HEARING OFFICER RENAUD: And I will say
17 what it is when we get to it, okay, that there's a
18 letter --
19 MS. COHEN: -- can hear it?
20 HEARING OFFICER RENAUD: I'm sorry?
21 MS. COHEN: You'll read from it so the
22 audience can hear it?
23 HEARING OFFICER RENAUD: I will read
24 that we have a letter and who it's from, and that
25 it will be put in the record. I will not read the

letter, itself. All right. Please go ahead, Mr. Borboa.

MR. BORBOA: Thank you. It's been a long evening and I think what we need to do is refocus and get on point.

I have been a resident of Chula Vista and South Bay. I've lived in both of the areas that are affected by the two power plants that we're going to discuss, or that I will talk about this evening.

Yesterday or last night I was thinking about what I was going to speak about to all of you, and what my message was going to be. And as I was doing that, it was 3:30 in the morning, and like clockwork the blast of the South Bay Power Plant, which I live just 1000 feet away from, was blasting away as I was thinking about what I was going to say.

I have endured soot, contaminants and particulates from that plant as they waffle over my home, which is located virtually across the South Bay Power Plant.

I support the peaker plant project on many levels. My curiosity is especially piqued when I learn that opponents of the project conjure

1 up visions of soot and black smoke choking
2 neighborhoods surrounding the peaker plant.
3 The fact of the matter is that the
4 upgraded peaker will not emit smoke. The
5 heightened stacks are catalytic converters for
6 exhaust emitting heat, steam and combustion
7 products comparable or less in volume with the
8 projected 600 hours of use than the current plant
9 emits while generating energy approximately 200
10 hours per year.
11 Now, let's just take that into
12 consideration. The peaker plant is going to run
13 approximately 600 hours per year. While the South
14 Bay Power Plant currently runs 7696 hours per
15 year. It is a major toxic emitter. The MMC
16 project is not.
17 Therefore, they didn't have to adhere to
18 any type of mitigation measures, but MMC has not
19 only followed every regulatory requirement asked
20 of them, but has gone beyond the regulatory scope
21 to assure residents that they will be responsible
22 neighbors. The peaker air quality impacts are
23 less than Environmental Protection Agency
24 significant thresholds.
25 The good neighbor gesture is astonishing

1 considering that the Chula Vista Elementary School
2 District completed an independent review and
3 concluded that no significant health risk impacts
4 are anticipated as a result of the proposed
5 project.
6 What that means is that if it doesn't
7 impact children, will it then impact preschool,
8 daycares, residents young and old? You know, I
9 called the CDC -- if I can have just a couple
10 seconds here -- I called the CDC on Monday and I
11 asked, is there some type of incidence of asthma
12 in this particular area. And I talked to them
13 about what area I was referring to. And they said
14 to me, no, there is not. And I said, how do you
15 know this. And they said to me, because the
16 medical professional would alert us to the fact
17 that there were unusual amounts of asthma or upper
18 respiratory ailments in the area.
19 So, therefore, what has happening with
20 the peaker plant, and what that produces in terms
21 of pollutants does not cause an over-incidence of
22 asthma in that particular region. Or here in
23 Chula Vista. It just does not. It is not a fact
24 that that happens.
25 And, you know, it tugs at our emotional

1 strings when people, you know, bring their
2 children here and, believe me, you know, I don't
3 want people to suffer from asthma, I don't want
4 them to suffer from anything, but the fact is that
5 we need to look at the things that are true.
6 And you need to have the information
7 that is before you, and taken into consideration
8 practically; and look at it from the standpoint of
9 the greater good of the community.
10 HEARING OFFICER RENAUD: Please finish
11 up --
12 (Parties speaking simultaneously.)
13 MR. BORBOA: I believe that MMC has
14 conducted their due diligence responsibly and with
15 the best intentions. And I resoundingly support
16 the upgrade project, and urge the Commission to
17 move forward with its approval.
18 Thank you so very much.
19 HEARING OFFICER RENAUD: Thank you.
20 (Applause.)
21 HEARING OFFICER RENAUD: Mariana Lopez.
22 MS. LOPEZ: Good evening, Commissioners.
23 My name is Mariana Lopez. I'm a South Bay, south
24 west Chula Vista resident. I'm an independent
25 interpreter working for the city, and also with

most of the parties involved with this project. With MMC, I have done some work for them. Also with Theresa, Southwest Chula Vista Civic Association. And also with EHC.

And at this point I'd just like to state for the record that I have no position for this project, due to a conflict of interest. Thank you.

HEARING OFFICER RENAUD: Thank you.

All right, Stephanie Miguel in opposition.

(Applause.)

MS. MIGUEL: I don't know who these people are trying to, you know, see, whether they're trying to make us look -- think that we're dumb. I mean can any of these people realize what's going on? Petco (phonetic) Park, how people, they don't want the park to be there because of, again, San Diego and the stuff.

Okay, yeah, Petco Park brought enough jobs for the City of San Diego. But have you seen where it's located at? In downtown San Diego where the whole job is working, everybody's working down there. Not many people live down there. They do, it's in like condos and stuff.

1 You know, not many people go outside and have a
2 park there in downtown San Diego and squat in the
3 middle of downtown San Diego. And if they do,
4 it's Balboa Park. But it's outside.
5 Now, in the City of Chula Vista you're
6 surrounded by homes. It's suburbia. You're
7 surrounded by homes. You know, you see there like
8 you walk and you see the people, they're so nice.
9 I live there. I live on Montgomery Street, you
10 know, and I see every day how clean it is
11 sometimes, and sometimes it's not. Why? Because
12 I see that there's another peaker over there,
13 there's another plant over there that is
14 contaminating us.
15 Why put something here? Yes, because it
16 brings more energy, because we suffer from lack of
17 energy. I do live with candles; it's fine. I
18 can. Can you? I think you can live with candles,
19 too.
20 Oh, we can't live with candles, okay.
21 My bad. But --
22 (Audience comments.)
23 MS. MIGUEL: Okay, God forbid. But we
24 can live with solar panels. What's this about
25 going green and all this other stuff, all these

other years like they started telling us, going green. They go to our schools, go green. They put on tv, advertisers wasting their -- are they wasting their money telling us to go green. Telling all these celebrities to tell us go green. Let's all go green.

Yeah. Solar panels. They give us all these options. Instead of wasting your money in this, you know, when you can be using -- saving a lot of money by using solar panels, wind panels, all these things you can, you know, save your money on instead of putting this thing there. Squat in the middle of our city, you know.

And having all these people dying. And I'm not going to, you know, I'm not exaggerating, I'm telling you, too, dying. And increasing all these hospital bills. Why? Because some people are, you know, suffering lack of energy.

Okay, this energy's not even going to be here. This energy is going to go to Orange County. And don't you come telling me that it's not going to go to Orange County, because you know it's true.

(Applause.)

MS. MIGUEL: This isn't going to stay

1 here. And I don't mean to go lashing out on
2 people, but there's something that angers me so
3 much is that people try to look at me square in
4 the face and lie. You know, don't lie to me. We
5 all know what's going to happen if this is here.
6 We don't want this here.
7 And you already heard us. And I know my
8 time is up, but you know what, the fact of the
9 matter is I don't want this here, and it's not
10 going to be here. I'm going to assure you of
11 that.
12 (Applause.)
13 HEARING OFFICER RENAUD: Thank you.
14 Gissell Reyes in opposition.
15 (Applause.)
16 MS. REYES: Good evening. I know
17 everyone's really tired, but I wasn't actually
18 going to speak, but I really can't go home without
19 being on record.
20 And without sounding like a broken
21 record, let me make it really clear to all those
22 that are opposed to this, that -- I'm sorry, to
23 all those that are in favor of this expansion,
24 that those of us opposed to it, it doesn't mean
25 that we're opposed to progress. Of course, we

1 want progress. This is our city.
2 You think that, I mean just common
3 sense, to me, and to everybody else here, if this
4 was really going to benefit the people
5 economically and we were going to get the power
6 that we need, supposedly, why would we be here, as
7 volunteers, as community members, without being
8 paid like a lot of the people in the opposing
9 side --
10 (Applause.)
11 MS. REYES: -- I'm sorry, the side
12 that's in favor, we are here, you know, it's 10:30
13 at night, people have families, we have other
14 things to do, people work, and we are here because
15 this is an important cause, this is an injustice,
16 okay.
17 We are not getting anything from it.
18 And to the lady that was here earlier along with
19 Lisa Cohen, that were stressing that this is going
20 to help to provide more jobs for our community,
21 I'm sorry but what kind of efficient workers do
22 you think you're going to get when they've lived
23 and they've grown up in an environment that is
24 unhealthy. What kind of people are you going to
25 have filling those positions?

1 (Applause.)
2 MS. REYES: Those so-called positions,
3 because as far as we know there's going to be two
4 part-time jobs. And please correct me if I'm
5 wrong. Okay.
6 We are here because we are not going to
7 let -- you know, our city council hasn't supported
8 us, the Chamber of Commerce hasn't supported us.
9 Our superintendent of our elementary schools in
10 the city has not supported us.
11 You are our last hope. And I'm not, you
12 know, I don't mean to lash out at you or to
13 anything, but I wish that you can stand where
14 we're standing and see how frustrating this is for
15 us. Okay, this is a very frustrating situation.
16 Do you think that we don't want
17 something that's going to benefit our people? Do
18 you think that we would be fighting this hard if
19 everything that the side that's in favor is saying
20 was true? Why would we not want progress in our
21 community?
22 We know that Chula Vista has
23 historically been neglected. And lot of the
24 reason because we haven't come together and
25 mobilized as a community. Okay, but we are, we

1 are here now. And believe me, we only want
2 progress for the city. Okay.
3 And one other thing. What kind of
4 message are you sending to those children at Otay
5 Elementary and the surrounding schools? What kind
6 of values do you think that they're going to hold
7 with their own life? That they're disposable;
8 that it doesn't matter what kind of -- how their
9 health, what kind of effects that they have?
10 What kind of message are you sending?
11 What kind of message are you going to send to my
12 firstborn, my first baby that I'm having, that
13 I've taken every precaution to make sure that I'm
14 healthy, that my baby's healthy. And you're
15 devaluing everybody's life. You're putting
16 absolutely no value no the lives of these
17 children. And we're pleading with you to make the
18 right decision.
19 And one more thing. If you really do
20 take everybody that's in favor of this, I swear,
21 in a room and you tell them confidentially to tell
22 you why they're here, it's a special interest,
23 it's monetary compensation, okay. It's not for
24 the good of the people.
25 So, please, please listen to us. I know

1 everyone can go home and go to sleep. But please
2 take what we've said into consideration because we
3 are not a group of illogical people. Okay, we are
4 smart, intelligent, we're educated people. And
5 we're here to be heard. Okay.
6 (Applause.)
7 HEARING OFFICER RENAUD: Steve Palma in
8 favor.
9 MR. PALMA: Thank you. So everybody
10 knows, the Chairman didn't forget his mike was on.
11 I'm hard of hearing so I asked to just speak it up
12 and he did. I thank you for that.
13 My name is Steve Palma. I'm a 61-year
14 resident of Chula Vista. I was born about three
15 blocks from this building. As far as my part of
16 town, I've live in southwest Chula Vista for more
17 than half a century. And for the past 26 years
18 I've been and continue to be a volunteer.
19 As a matter of fact this weekend I'll be
20 at our Otay Community Park over there, do
21 cleanups, plant trees and a lot of things.
22 But I want to specifically mention my
23 community, which is Otay. It's the oldest
24 community in the City of Chula Vista. That's
25 where the peaker plant is located.

When I first addressed you at the Otay Recreation Center, which is kitty-corner from the peaker plant, I caused some heart palpitations for the peaker plant principles because in the year 2000 I was against the peaker plant. But I was alone. A lot of people have been here tonight, but I didn't see any of them back then.

I was against the peaker plant. I didn't have all of the facts, but I was Chairman of the Otay Valley Regional Park, which is a 12-mile park in front of the peaker plant. I thought it would cause damage. But in all the years I found it did not.

I live on a bluff that overlooks the peaker plant. I cannot see the plant, itself, but if it operates I can see a heat distortion.

I really want to thank this Commission for straightening out the facts, because a lot of people have come into my community, they outright lied. And that's what I'm here to do, is to fight those lies.

You realize that there were not 12,000 gallons of ammonia, as opponents were saying. Then they were doing the fear factor of what if the tank splits. This ammonia business was even

1 brought up in this chamber a couple of weeks ago.
2 But, of course, it is not 12,000
3 gallons. It's an aqueous solution, as you pointed
4 out. There's only about 1800 gallons there. And
5 we won't have all the truck deliveries and all
6 that kind of stuff.
7 As far as the peaker plant, it's been a
8 good neighbor. As far as the new one, I know it
9 will be -- it's not for me to say build it or
10 don't build it. My only concern is that in my
11 community I had too many people spreading just
12 outright falsehoods. We even had photo that was
13 sent around to my community that showed an
14 enormous plant. There's a picture of it out
15 there. It asks do you want to live next door to
16 this thing.
17 Well, the thing is that plant was never
18 intended by the peaker people. It has nothing to
19 do with what reality is. So I'm here to let you
20 know, as a long-time resident, community activist,
21 I saw two people tonight that I recognized from my
22 community. Ruth that just left awhile ago and
23 another person that told me she had illness from
24 the peaker plant. I told her, well, let you know
25 about it. I'd defend her right, if it was true

1 the peaker plant would leave California. Wouldn't
2 have it.
3 So my thing is if you make an
4 allegation, prove it. If you come before my
5 community, tell the truth.
6 That's really all that I had to say. I
7 thank you because you are our guardians. If the
8 peaker is built, the improved versions, you are
9 our guardians that will protect us. Because I
10 know for a fact there isn't anybody that can do
11 anything wrong. You will make sure whatever
12 projects come before you, to the best of your
13 ability and the science, will be correctly built.
14 So I thank you very much for that.
15 HEARING OFFICER RENAUD: Thank you.
16 (Applause.)
17 HEARING OFFICER RENAUD: And we have
18 received a letter from Assemblywoman Shirley
19 Horton, 78th State Assembly District, in support.
20 And that concludes the public comment period.
21 I wonder if either of the Commissioners
22 has any closing remarks.
23 (Audience comments.)
24 HEARING OFFICER RENAUD: Let me say I
25 did receive some cards with no name on them. It's

1 possible one of those is yours. Why don't you
2 come forward and give us your -- take your three
3 minutes, and then we'll --
4 MS. YASMIN: My name is Yasmin and I'm a
5 student at UCSD, also. I have class tomorrow, but
6 I'm here on behalf of my friends. I was with my
7 friends. I'm here on behalf of the youth. I'm
8 representing because we're not ignorant.
9 And I'm here and first of all I want to
10 say that our community is not a dump. There's so
11 much talent and smart people in our community.
12 And I think that it's not worth it doing this to
13 us. I came here to express that.
14 In a way I'm disappointed with our
15 government and our so-called democracy because I
16 think that it takes only a few businessmen and a
17 lot of money to outnumber a whole community.
18 Today you saw that there was more people opposing
19 the project than there was more people for the
20 project.
21 And yet I feel that we don't count. I'm
22 disappointed. I feel that we don't count. Yeah,
23 I feel that. I'm disappointed, and I don't know
24 what to say. That's all. I'm disappointed with
25 you guys because I know, and I hope you guys make

1 the right decision for us, for our future. And
2 for us people that are trying to become better
3 persons, that are trying to study hard and become
4 productive citizens.
5 And I hope you take into consideration
6 that we're doing it for our community, and we're
7 doing it for our -- and for our family. And I
8 think it's not fair. Thank you.
9 HEARING OFFICER RENAUD: Thank you.
10 (Applause.)
11 MS. CORNEJO: Hello; my name is Monique
12 and I received a bachelors a few months ago at
13 UCSC and I'm currently applying to medical school.
14 And I specifically want to become a doctor so that
15 I can come back to my community in Chula Vista and
16 serve them.
17 I just plead that the Commission really
18 looks at the material that both the MMC has given
19 and the EHC and their cooperations. And make sure
20 that you apply and see what is the reports and
21 what is validated and what is not. Because it
22 seems like a lot of the papers from MMC come from
23 research that is private, and not really validated
24 by a national associations. And I think that's
25 important to recognize.

1 And I just wanted to also say that our
2 people here in Chula Vista are really important.
3 And I think on the last, I think it was in August,
4 last month, we also had the same council meeting.
5 And somebody put it out that this place is called
6 Chula Vista, Chula meaning beautiful. And I think
7 that's important to keep it like this, beautiful.
8 Thank you.
9 HEARING OFFICER RENAUD: Thank you.
10 (Applause.)
11 HEARING OFFICER RENAUD: Did you submit
12 a card? All right. Come forward, please.
13 MS. NUNO: Hi. My name is Itzel Nuno.
14 And I'm just hear to make my voice be heard. I
15 want to speak to you guys from a humanistic level,
16 not authoritative, nonauthoritative.
17 I just want you guys to see it the way
18 we see it. I mean we can be here showing our
19 support, lots of us. We were here since, I don't
20 know, 2:30, outside, making posters, spending our
21 money on signs, stickers, passing out flyers, our
22 time.
23 But the bottomline is we can be here
24 uniting, helping each other out. But we need you
25 guys. And we need you guys to make the right

1 decision for us.
2 We're trying our best to be heard.
3 We're trying our best to show you guys the
4 evidence, the facts, the testimony, everything.
5 But the bottomline is it's up to you guys.
6 And we're hoping from the bottom of our
7 hearts that you guys will make the right choice.
8 Because we all know what the right choice is.
9 Putting business aside, money aside, everything,
10 just the moral responsibility that each of us have
11 as humans, can be made right, right now. And it's
12 up to you guys.
13 And we are here. Some of us may be mad,
14 frustrated. But we need you guys, and that's the
15 bottomline. Help us, please.
16 Thank you.
17 HEARING OFFICER RENAUD: Thank you.
18 (Applause.)
19 HEARING OFFICER RENAUD: All right. And
20 I'd like now to ask our Public Adviser, Elena
21 Miller, to read into the record the names of some
22 commenters whose comments were recorded, and which
23 will be placed into the record.
24 PUBLIC ADVISER MILLER: Right. The
25 following names are individuals that made comments

that were videotaped. The videos or DVDs have been docketed.

On DVD number 3 there were comments made by the following individuals, all in opposition: Hermes Vera; Maria Gailan; Myra Iranis; Maria Montes; Mr. Garcia; Graciella Martinez; Liz Bowman; Martin Martinez; Mr. Pancho Escovera; Raul Carranza; Sal Especto; Bianca Hara; Christine Roncero; Jose Garcia; Jessica Lopez; and J. Carravio.

And the following two people spoke, but did not express opinions in opposition: Monica Frank and Jose Tremont.

For DVD number 2, these are representatives of local business. The first speaker to comment in opposition was Mr. Eric Meyers on behalf of his company, Modello Designs, located at 3517 Main Street.

The second comment, also in opposition, was from a Mr. Alan Rezoki at the same location.

And the third comment was from an employee of Modello Designs named Kari Caldwell, also in opposition.

DVD number 1 are residents from the Palm Avenue area and Otay Township. All of the

1 following were in opposition: Irene Matthews;
2 Anna Valadez; Berta; Jasmine Lopez; Maria Zamora;
3 Ochil Perez; Diana Lozano; and Ruth Yakaneli.
4 That's all, thank you.
5 HEARING OFFICER RENAUD: All right.
6 Thank you. And before we conclude I'll just see
7 if the Commissioners have any final remarks. No?
8 Commissioner Boyd.
9 ASSOCIATE MEMBER BOYD: I really want to
10 thank everybody for their participation and their
11 endurance. We've been here for 12 and a half
12 hours today, and it's been interesting, to say the
13 least.
14 As you heard at the beginning of the day
15 we have to predicate our decision on what's in the
16 record. And as you obviously have surmised, we
17 have a very large task in front of us.
18 So, thank you, and appreciate all you've
19 said and all you've done, and your interest.
20 And just one commercial, if I might. A
21 lot of you have learned a lot about land use
22 planning in this process. And this is nothing to
23 do with this case or your community.
24 But in the future of California that's
25 going to be an incredibly significant and

1 important thing. It's the broken leg on the stool
2 of government in this state. And I encourage you,
3 in your interest in this subject, to pursue the
4 subject as it relates to all kinds of things.
5 Because I think land use planning issues
6 have led us into lots of the problems we're trying
7 to straighten out now. But the problems have been
8 made, so I encourage you, as some of us very old
9 folks step out of the picture, to pursue some of
10 these issues.
11 Thanks.
12 HEARING OFFICER RENAUD: Thank you. And
13 we'll adjourn the meeting. Thank you.
14 (Applause.)
15 (Whereupon, at 10:35 p.m., the hearing
16 was adjourned.)
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CERTIFICATE OF REPORTER

I, TROY A. RAY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of October, 2008.