

JOINT COMMITTEE STATUS CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Petition to Amend the Commission ) Docket No.  
Decision Approving the Application ) 01-AFC-7C  
for Certification for the Russell )  
City Energy Center )  
-and- )  
Application for Certification for ) Docket No.  
the Eastshore Energy Center in ) 06-AFC-6  
Hayward by Tierra Energy of Texas )  
\_\_\_\_\_ )

HAYWARD CITY HALL  
COUNCIL CHAMBERS  
777 B STREET  
HAYWARD, CALIFORNIA 94541

WEDNESDAY, JUNE 6, 2007

3:02 p.m.

Reported by:  
Richard A. Friant  
Contract No. 170-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John L. Geesman, Presiding/Associate Member

Jeffrey D. Byron, Presiding/Associate Member

HEARING OFFICER AND ADVISORS

Susan F. Gafter, Hearing Officer

Paul Kramer, Hearing Officer

Gabriel Taylor, Advisor

Raoul A. Renaud

STAFF AND CONSULTANTS PRESENT

Caryn J. Holmes, Staff Counsel

Eileen Allen

William Pfanner

Lance Shaw

Dale Edwards

PUBLIC ADVISER

J. Mike Monasmith  
Associate Public Adviser

APPLICANT

Greggory Wheatland, Attorney  
Ellison, Schneider and Harris

Mike Argentine  
Calpine, Inc.

Jane E. Luckhardt, Attorney  
Downey Brand Attorneys, LLP

Gregory Trewitt, Vice President  
Tierra Energy

APPLICANT

David A Stein, Vice President  
Douglas M. Davy  
CH2M HILL

INTERVENORS

Paul N. Haavik, Property Manager  
Checkaboard Square Rentals, Inc.

ALSO PRESENT

Scott Galati, Attorney  
Galati Blek, LLP

John Crosson  
Marino Monardi  
Pacific Gas and Electric Company

Chris Parman, District Director  
on behalf of Assemblymember Mary Hayashi

Jesus Armas, City Manager  
City of Hayward

Barbara Halliday  
Hayward City Council

Scott Raty, President/CEO  
Hayward Chamber of Commerce

Joanne Gardiner

Harry Deane

Michael Toth

Rachel Henderson

Chris Lam

Delores Fontenberry

Barbara Vierra

Juanita McDonald

ALSO PRESENT

Bob McDonald

Shirley Bos

Linda McDaid

Charlie Cameron

Melinda Alfaro

Connie Jordan

John Kyle

Steve Bristow

Bob Williams  
Williams Electric

Kevin Gillan

John McCarthy

Brian Frank

Teresa Frank

Adaberto Ramirez

Pete Quevedo

Juanita Gutierrez

John Sullivan

Jack Wu

Allen Bertillion

Han Lukito

Ocha Kelete

Hermes Aleman

Karen Kramer

ALSO PRESENT

Ernest Pacheco

Albert Jordan

Myrna Marquez

Robert Riendeau

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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

2 3:02 p.m.

3 PRESIDING/ASSOCIATE MEMBER GEESMAN: I'd  
4 like to welcome you all to this joint status  
5 conference of the California Energy Commission's  
6 two siting proceedings in Hayward. The projects  
7 are known as Russell City and Eastshore Power  
8 Plant.

9 I'm John Geesman, a Member of the  
10 Commission, and the Presiding Member of the  
11 Russell City siting case. Two, actually three  
12 seats to my right is my colleague, Commissioner  
13 Jeffrey Byron; he's the Associate Member on the  
14 Russell City proceeding, and the Presiding Member  
15 on the Eastshore proceeding. I am the Eastshore  
16 Associate Member.

17 To my immediate right is Paul Kramer,  
18 the Hearing Officer on the Russell City  
19 proceeding. To his immediate right, Susan Gefter,  
20 the Hearing Officer on the Eastshore Power Plant  
21 proceeding.

22 It's a little bit cumbersome because we  
23 don't ordinarily have two proceedings pending at  
24 the same time in the same locality. But because  
25 of the interconnection of the issues in these two

1 proceedings, we are going to try and deal with  
2 them both today in this status conference.

3 I'm going to turn the proceeding over to  
4 Mr. Kramer initially, as the Hearing Officer in  
5 the Russell City proceeding. Paul.

6 HEARING OFFICER KRAMER: The first order  
7 of business is to introduce the various parties  
8 and Members of the Committee. One person up here  
9 with the Committee we haven't introduced yet is  
10 Mr. Gabe Taylor, who is an Advisor to Commissioner  
11 Byron.

12 And then as an observer we have a new  
13 member of our Hearing Office, Raoul Renaud, who is  
14 sitting at my left end of the dais. He's here  
15 today merely as an observer.

16 Now we'd like to ask the parties to  
17 introduce themselves. We'll begin with the staff.  
18 Ms. Holmes.

19 MS. HOLMES: Thank you, Mr. Kramer. My  
20 name is Caryn Holmes. I'm --

21 HEARING OFFICER KRAMER: Your mike?

22 MS. HOLMES: Pardon me? My name is  
23 Caryn Holmes and I'm the Staff Counsel assigned to  
24 the Eastshore project; I'm also sitting in today  
25 for Dick Ratliff who is the Staff Counsel assigned

1 to the Russell City project.

2 To my left is Lance Shaw, who is the  
3 Project Manager for the Russell City project; and  
4 to my right is Bill Pfanner, who is the Project  
5 Manager for the Eastshore project.

6 We also have other members of staff who  
7 may participate if necessary later on.

8 HEARING OFFICER KRAMER: Thank you. Mr.  
9 Wheatland for Russell City project.

10 MR. WHEATLAND: Yes, I'm Gregg  
11 Wheatland; I'm counsel for the Russell City Energy  
12 Center. And sitting behind me is Mike Argentine,  
13 who is the Project Manager for this project.

14 HEARING OFFICER KRAMER: And Ms.  
15 Luckhardt for Eastshore.

16 MS. LUCKHARDT: I think someone turned  
17 my mike on for me, which was very nice. My name  
18 is Jane Luckhardt and I am Project Counsel for  
19 Eastshore. Sitting behind me is Greg Trewitt who  
20 is the Project Manager for the Eastshore Energy  
21 Center; as well as David Stein, who is our Project  
22 Manager from CH2M HILL.

23 HEARING OFFICER KRAMER: Okay, we have a  
24 representative here from the Public Adviser's  
25 Office at the Commission. That's Mr. Mike

1 Monasmith. He's in the back raising his hand.

2 If any members of the public want some  
3 information about how to participate in either of  
4 these proceedings, please see him as your first  
5 resource in that regard.

6 Let's see, is Mr. Haavik -- I'm sorry if  
7 I've mispronounced your name. He's an intervenor  
8 in the Eastshore case.

9 MR. HAAVIK: Yes. Paul Haavik; I'm the  
10 intervenor for the Eastshore Energy project.

11 HEARING OFFICER KRAMER: And then we  
12 also have several representatives from PG&E in the  
13 audience since they have an interest in this case  
14 and the Committee asked that they be present to  
15 help resolve some issues. Mr. Galati, could you  
16 introduce yourself.

17 MR. GALATI: My name is Scott Galati  
18 representing PG&E. And with me I have John  
19 Crosson and Marino Monardi.

20 HEARING OFFICER KRAMER: Thank you. And  
21 I see in the audience City Manager Jesus Armas is  
22 here with us. I want to thank you for providing  
23 this really wonderful facility for our use today.

24 The format of today's proceedings will  
25 be from 3:00 to 5:00 p.m. the Commissioners,

1 parties and the agencies will discuss technical  
2 issues to identify the information that's  
3 necessary for further review, and the timelines  
4 for providing the information.

5           During this portion of the meeting the  
6 Committee will ask -- we're asking members of the  
7 public to write down any questions that you have  
8 that you want to ask later. You can use the blue  
9 cards that Mr. Monasmith has provided as a place  
10 to do that.

11           Later we'll be asking you to turn those  
12 in. And we're hoping that if you identify subject  
13 areas that you're interested in talking about on  
14 those cards, then we can organize the public  
15 comment that will come later by subject. I think  
16 it will help things go more smoothly when we get  
17 to that point.

18           We will be opening the floor for public  
19 comments beginning at 6:00 p.m. If for some  
20 reason you can't stick around until then, you  
21 could submit a written statement to Mr. Monasmith,  
22 and then we will take that into the record later.

23           Regarding the Eastshore project we've  
24 received nearly 1500 letters already opposing it,  
25 including some letters from your elected officials

1 and legislators.

2 Commissioner Byron, did you want to make  
3 a statement about one of those communications?

4 PRESIDING/ASSOCIATE MEMBER BYRON: Yes,  
5 I'd be glad to. I'd also like to welcome everyone  
6 that's here today and to thank the City, as well,  
7 for providing the facility for us to meet in.

8 My notes that I wanted to make sure that  
9 I included, so I thank you, Mr. Kramer. I was  
10 asked by Assemblymember Hayashi if I would meet  
11 with her. And I did yesterday. I will be  
12 disclosing that in a public document that we'll  
13 docket here shortly.

14 But basically the gist of the meeting  
15 was she wanted to express to me her interests and  
16 concerns about the siting of the Eastshore Power  
17 Plant, and also I would say that she was primarily  
18 looking out for the interests of her constituents  
19 in our meeting.

20 I expressed to her our concern, as well,  
21 about all the issues that have been raised by the  
22 public; and assured her about the process at the  
23 Energy Commission that we'll be pursuing. And I  
24 think I'll defer what that process is until the  
25 staff is talking, and they can describe that in

1 more detail.

2 But that we will be considering all  
3 information and input from the parties and the  
4 public; and that that's primarily why we're  
5 holding this hearing here today is to make sure  
6 that everyone's voice is heard.

7 HEARING OFFICER KRAMER: Thank you.  
8 Where we stand in the process for these two cases  
9 is that we are still -- we're aware of public  
10 concerns regarding the environmental and economic  
11 effects of the two power plants proposed to be  
12 located in Hayward.

13 We are still reviewing all the  
14 information and at a later time we'll be  
15 conducting public evidentiary hearings, most  
16 likely later this year, to consider the evidence  
17 on those issues.

18 The decisions in the two cases will be  
19 based solely on the evidence presented in those  
20 future evidentiary hearings.

21 Our task is to review the evidence so we  
22 can determine whether the proposed power plants  
23 comply with the applicable laws. And the evidence  
24 submitted by the parties will consist of technical  
25 and scientific studies, expert testimony and

1 government agency recommendations.

2 The most recent status reports the  
3 parties have filed in the two cases are available  
4 on the table outside the room. And our intent  
5 today is to focus the discussion on the issues  
6 that are raised in those reports.

7 At this time, to more fully educate the  
8 public about the process, Mr. Pfanner is going to  
9 make a presentation outlining the review process  
10 that's gone to this point, and that will proceed  
11 beyond today.

12 MR. PFANNER: Thank you, Mr. Kramer. My  
13 name is Bill Pfanner and I'm the Project Manager  
14 for the Eastshore project. And we've had  
15 introductions, but just briefly, again, we have  
16 Caryn Holmes, who is staff counsel; Mike Monasmith  
17 with the Public Adviser's Office; and Susan  
18 Gefter, who's the Hearing Officer, who are all  
19 critical components of the process.

20 Typically when an application for  
21 certification comes in there is a site visit and  
22 information hearing where a detailed presentation  
23 is made explaining the siting process. We have  
24 subsequently made a similar presentation at the  
25 March 19th data response workshop, and at the May

1 23rd workshop. So, for those of you who have seen  
2 it before, bear with me, I've done an abbreviated  
3 version for those people that might be hearing it  
4 for the first time. It's important to understand  
5 the Energy Commission's process.

6 So the Energy Commission permits thermal  
7 power plants of 50 megawatts or greater and  
8 related facilities. So, such things as electronic  
9 transmission lines, water supply pipelines,  
10 natural gas pipelines, access roads, waste  
11 disposal facilities, all come under the umbrella  
12 of the analysis of the Energy Commission.

13 And the Energy Commission is the lead  
14 agency for the California Environmental Quality  
15 Act. Now, many of you may not be familiar with  
16 the Energy Commission's process, but you are  
17 familiar with CEQA. So we do a CEQA-equivalent  
18 process. And we are the lead agency.

19 It's a three-step licensing process at  
20 the Energy Commission. The first step involves  
21 data adequacy, where staff reviews the application  
22 for certification to determine if there is a  
23 minimum requirement to accept the application.  
24 And the Eastshore project was accepted as data  
25 adequate.

1                   And that puts us to where we are now,  
2                   which is the staff discovery and analysis phase.  
3                   And in this phase staff conducts data requests of  
4                   the applicant and agencies. We conduct issue  
5                   identification workshops. We have public  
6                   workshops. And the product of that is a  
7                   preliminary and a final staff assessment, which  
8                   the terms we use are a PSA and an FSA.

9                   So, if you're familiar with CEQA  
10                  language, it's similar to an EIR and a final EIR.

11                  The third step which we'll be  
12                  transitioning into in the future will be the  
13                  Committee evidentiary hearing and decision. And  
14                  under that step in the licensing process the  
15                  evidentiary hearing is held based on the final  
16                  staff assessment and other information.

17                  The Committee produces the Presiding  
18                  Member's Proposed Decision, which is the PMPD.  
19                  And the PMPD goes before the full Commission for  
20                  decision.

21                  So, in graphic terms where we are right  
22                  now in the process you can see the center of this  
23                  wheel is the California Energy Commission Staff.  
24                  And the staff is advisory; we are gathering  
25                  information at this phase. And the spokes of the

1 process, what feeds into staff's analysis are the  
2 public, the intervenors and the interface that is  
3 provided by the Public Adviser's Office, the  
4 applicant, local, state and federal agencies. And  
5 this information feeds into staff's analysis of  
6 the environmental impacts of a project.

7           During this phase staff determines if a  
8 proposal complies with laws, ordinances,  
9 regulations and standards, which is LORS, another  
10 term that we use.

11           We conduct engineering and environmental  
12 analysis to identify issues, evaluate  
13 alternatives, identify mitigation measures and  
14 recommend conditions of certification.

15           During this phase we facilitate the  
16 public and agency participation; and staff  
17 produces the preliminary staff assessment and the  
18 final staff assessment. And we are at that phase  
19 now where staff is in the process of gathering  
20 information for the preliminary staff assessment.

21           With the preliminary staff assessment  
22 staff will make a recommendation to the Committee.  
23 Staff does not make a decision; staff is the  
24 objective environmental review gathering technical  
25 information to present to the decisionmakers.

1           When the evidentiary hearings occur it's  
2           a different graphic picture where you see the  
3           center is the Committee and the proposed decision,  
4           with the full Commission making the final  
5           decision.

6           The spokes feeding into their decision  
7           are the staff with their testimony, the  
8           intervenors and the public, again, with interface  
9           with the Public Adviser's Office, the applicant  
10          and local, state and federal agencies.

11          The evidentiary hearing and decision  
12          process, the Committee conducts hearings on all  
13          information; issues the Presiding Member's  
14          Proposed Decision. And that will contain findings  
15          relating to environmental impacts, public health,  
16          engineering, project's compliance with LORS, and  
17          recommended conditions of certification; and a  
18          final recommendation of whether or not to approve  
19          the project.

20          It is ultimately a full Commission  
21          making a decision. And then after the decision is  
22          made, the Energy Commission monitors compliance  
23          with all conditions of certification for the life  
24          of the project, including facility closure.

25          Important to the process is

1 participation. Ways that people can participate  
2 is to submit written comments -- and if you pick  
3 up a handout of this presentation in the back, it  
4 gives the detailed information of how to submit  
5 information -- provide oral comments at public  
6 meetings, and to become a formal intervenor. And  
7 that can be done through contacting Mike Monasmith  
8 at the Public Adviser's Office. Or you can  
9 provide written comments on the PSA, the FSA and  
10 the PMPD.

11 So, specific contacts. I am the Project  
12 Manager for the Eastshore project, so  
13 communication should go through me directly. I  
14 have asked staff at workshops and events not to be  
15 discussing substantive issues in the hallway; that  
16 communications should go through the project  
17 manager so that it gets into the formal record.

18 For the Commission hearings, Susan  
19 Gefter is the contact person. And for all, the  
20 Public Adviser's information, Mike Monasmith.

21 I've also provided contact information  
22 for Tierra Energy, who's the applicant on this,  
23 where Greg Trewitt, the Vice President, or David  
24 Stein, the AFC Project Manager, will be available  
25 to answer questions, also.

1 I'd be happy to answer any questions you  
2 might have.

3 PRESIDING/ASSOCIATE MEMBER GEESMAN: Are  
4 we still on track to get your staff assessment  
5 June 8th?

6 HEARING OFFICER KRAMER: You're talking  
7 about Russell City now?

8 PRESIDING/ASSOCIATE MEMBER GEESMAN:  
9 Yes.

10 HEARING OFFICER KRAMER: First, let me  
11 clarify what Mr. Shaw -- as I understand it,  
12 Russell City will not involve a preliminary and  
13 final analysis. You will just be issuing a final  
14 analysis, is that correct?

15 MR. SHAW: That is correct.

16 HEARING OFFICER KRAMER: And  
17 Commissioner Geesman wants to know if you're -- I  
18 think we'll get to that in a minute --

19 PRESIDING/ASSOCIATE MEMBER GEESMAN:  
20 Okay.

21 HEARING OFFICER KRAMER: -- when they  
22 report their status.

23 Okay, so now we will go on to consider -  
24 - first, let me tell you what we're going to be  
25 doing between 3:00 and 5:00 in a little more

1 detail.

2 We're going to begin with a discussion  
3 of the Russell City case, specifically the Russell  
4 City applicant's concerns about the speed at which  
5 the staff analysis is being completed.

6 They, in their recent status report,  
7 were concerned that there was danger if the report  
8 and Commission decision isn't released fairly soon  
9 that they will have a difficult time coming online  
10 in June of 2010 when they are required to do so  
11 under their contract with PG&E.

12 Then I'll let Ms. Gefter explain the  
13 issues to be discussed for the Eastshore case,  
14 since that's hers.

15 HEARING OFFICER GEFTER: Okay. Well,  
16 the Eastshore issues that we'll discuss today are  
17 those regarding the site's incompatibility with  
18 the City's general plan and zoning ordinance. And  
19 we're going to hear from Jesus Armas and the  
20 parties regarding that particular issue.

21 We'll also talk about the status of an  
22 alternatives analysis and the feasibility of the  
23 Eastshore facility sharing a site with the Russell  
24 City facility.

25 And that's the reason why we are

1 actually having a joint status conference today,  
2 since both projects being proposed in the City of  
3 Hayward has raised a lot of questions in the  
4 community. And so we thought it would be really  
5 more efficient to have the parties here together  
6 with the Commissioners.

7 But we'll go on with the Russell City  
8 issues right now.

9 HEARING OFFICER KRAMER: Okay, so let me  
10 ask staff and Mr. Wheatland, would it be better  
11 for staff to go first? I know that there was a  
12 workshop held down here on Monday, and we've  
13 received no reports about what happened there yet,  
14 or how that may affect --

15 MR. WHEATLAND: I'd be pleased to start  
16 out.

17 HEARING OFFICER KRAMER: Okay. Mr.  
18 Wheatland, then go ahead.

19 MR. WHEATLAND: Okay. Well, I  
20 mentioned, I'm Gregg Wheatland, counsel for  
21 Russell City. There's good news and bad news, I  
22 think, that we have for you today.

23 The good news is that part one of the  
24 staff assessment has been issued. We have had  
25 workshops on the issues that'll be contained in

1 part two of the staff assessment. And we, in  
2 these workshops, are working with the staff toward  
3 resolution of these issues.

4 In each staff assessment there are 20  
5 technical areas that are analyzed by the staff.  
6 There is general agreement between the staff and  
7 the applicant on 16 of the 20 technical areas.  
8 And we're working toward resolution of the others.

9 There hasn't been any comment from  
10 public agencies or from the public that would  
11 contest those 17 areas where there's general  
12 agreement. So there is a pretty good consensus on  
13 a majority of the issues that would affect the  
14 Russell City amendment.

15 The bad news though is that we are in  
16 the seventh month of a process that we had hoped  
17 would be a six-month licensing process. And so we  
18 are very anxious to have a timely decision that  
19 would allow us to begin construction of the  
20 project and to bring it online in the summer of  
21 2010.

22 Rather than going back over the reasons  
23 why there have been delays, I'd like to consider  
24 that as water under the bridge and try to focus on  
25 a resolution of this issue that I think both the

1 applicant and the staff would agree to.

2 At the workshop on Monday the applicant  
3 provided the staff with some additional new  
4 information regarding modeling issues. And this  
5 information has the potential for changing, we  
6 believe in a positive way, one of the important  
7 findings that the staff is making in their staff  
8 assessment.

9 The staff has asked us to provide  
10 additional supporting documentation with respect  
11 to the information that we provided to them.  
12 We've agreed to do so, and we will be providing  
13 that information to them this Friday.

14 It's my understanding, in discussing  
15 with staff counsel, that the staff would like  
16 three additional weeks to, after receipt of this  
17 information on June 8th, in which to issue  
18 complete their staff assessment as a final staff  
19 assessment on all of the issues in this case.

20 And we would be able to agree to that  
21 extension if we can work out a schedule with the  
22 staff and the Committee to move forward in a  
23 timely way then to bring this case to resolution.

24 And what I believe that the staff would  
25 be willing to jointly recommend with me, and

1       certainly they'll correct me if I'm wrong, but is  
2       that we would recommend that the staff assessment  
3       could be issued on June 29th. That the public  
4       comment period would close on July 13th; that is  
5       the 14-day public comment period that has been  
6       provided in the previous scheduling orders of the  
7       Russell City Committee, and that's also the  
8       typical comment period in a six-month AFC.

9               And then we would jointly recommend to  
10       the Committee that it would schedule an  
11       evidentiary hearing and prehearing conference for  
12       the week of July 16th, hopefully July 16, 17 or  
13       18.

14              And if we could move forward on that  
15       schedule we believe that would be a timely  
16       processing and it is a schedule that we could  
17       support.

18              MS. HOLMES: We concur with that  
19       proposal.

20              HEARING OFFICER KRAMER: If you have the  
21       prehearing conference on the same day as the  
22       evidentiary hearings, is that going to present any  
23       problems with getting witnesses to attend or in  
24       other words, have you cleared those dates?

25              MS. HOLMES: Has staff cleared the date

1 of the 16th, 17th and 18th?

2 HEARING OFFICER KRAMER: Right. Because  
3 normally the prehearing conference is supposed to  
4 be in advance of a hearing that's somewhat later.  
5 And the purpose of the conference is to decide who  
6 the witnesses are going to be, when they're going  
7 to come and that sort of thing.

8 MR. WHEATLAND: Right. While that is  
9 true there have been a number of cases in which  
10 both the prehearing conference and evidentiary  
11 hearing have been jointly conducted, including the  
12 original Russell City proceeding.

13 There may be a need for a telephonic  
14 scheduling conference in advance of that date,  
15 perhaps, but the applicant is available with its  
16 witnesses on whatever date the Committee would  
17 set.

18 PRESIDING/ASSOCIATE MEMBER GEESMAN:  
19 Sounds to me like you may have made some  
20 assessment as to the number of contested issues  
21 between the staff and the applicant in suggesting  
22 this schedule?

23 MR. WHEATLAND: That's right. We  
24 believe there's only really two outstanding issues  
25 that haven't been resolved. One is the air

1 quality area, and we have been making good  
2 progress toward resolution of that. There may be  
3 some minor differences, but we don't believe they  
4 would be substantive.

5 And this new additional information  
6 we've provided the staff we're hoping will resolve  
7 the last outstanding issue in a way that both  
8 parties will be able to support.

9 PRESIDING/ASSOCIATE MEMBER GEESMAN: And  
10 that relates to air quality. Does the issue touch  
11 on the FAA plume analysis that --

12 MR. WHEATLAND: Yes, it does.

13 PRESIDING/ASSOCIATE MEMBER GEESMAN:  
14 Okay.

15 MR. WHEATLAND: And we have provided the  
16 staff with a new plume analysis, and we'll be  
17 providing them with the backup documentation of  
18 that on Friday.

19 HEARING OFFICER KRAMER: What would be  
20 the point at which you would know whether you had  
21 a major disagreement about some issue, or whether  
22 things seem to be worked out between the two of  
23 you? Would it be some point prior to that week of  
24 July 16th?

25 MR. WHEATLAND: We should know

1 immediately upon issuance. As soon as we've  
2 received and had an opportunity to read the staff  
3 assessment we should know if there's any  
4 substantive areas of disagreement.

5 MR. EDWARDS: I can provide a little  
6 more detail on that. We have a staff consultant  
7 that works with us --

8 HEARING OFFICER GEFTER: Identify  
9 yourself for the record, please.

10 MR. EDWARDS: Dale Edwards, Staff with  
11 the CEC, Compliance Program Manager. I work with  
12 Lance Shaw.

13 I would believe that as far as once we  
14 receive the document that's been proposed be  
15 submitted to us this Friday, that approximately  
16 one week after that we should have enough  
17 information from our consultant who specialized in  
18 plumes to know whether we have an issue or not, or  
19 disagree or agree. And so we can start talking or  
20 providing information at that point to the  
21 applicant, as well as others, about what we find  
22 in that particular document.

23 So it doesn't have to wait until we  
24 issue on 6/29.

25 HEARING OFFICER KRAMER: Thank you. And

1 do you have any estimate as to the maximum amount  
2 of time you would need for a hearing? Are you  
3 talking about a day, a half a day?

4 MR. WHEATLAND: If, as we hope and  
5 expect, there are very few contested issues, the  
6 format we've used in previous proceedings has  
7 allowed us to complete the evidentiary hearing in  
8 much less than one day.

9 Generally we go through a process of  
10 marking and identifying the testimony, stipulating  
11 to its admission, and making witnesses in certain  
12 key areas available to questions from the  
13 Committee or the public.

14 And generally that process for projects  
15 such as Los Esteros or the original Russell City  
16 project has taken less than a day.

17 HEARING OFFICER KRAMER: Okay. We will  
18 take your comments under advisement. We'd, of  
19 course, want to hear from the public this evening  
20 before we made any decision.

21 Does anyone else among the parties wish  
22 to provide any additional comment on this topic,  
23 the Russell City scheduling?

24 PRESIDING/ASSOCIATE MEMBER GEESMAN: Are  
25 you suggesting that we hold such a hearing here in

1 Hayward?

2 MR. WHEATLAND: Yes. All of our  
3 previous hearings have been here. But, if there  
4 is scheduling constraints from the Committee that  
5 may be a factor in the location that's set. But  
6 if it's convenient to the Committee's schedule, we  
7 would support having it here.

8 PRESIDING/ASSOCIATE MEMBER GEESMAN:

9 Does staff share that?

10 MS. HOLMES: Yes.

11 PRESIDING/ASSOCIATE MEMBER GEESMAN: Do  
12 you have a view as to whether it should be a  
13 daytime or an evening hearing?

14 MS. HOLMES: For the --

15 PRESIDING/ASSOCIATE MEMBER GEESMAN:  
16 Without a census to what contested issues there  
17 are, it's difficult for us to make --

18 MS. HOLMES: It is difficult to know.  
19 Typically staff recommends that not only the  
20 hearing be held in the community for which the  
21 project is proposed, but that it be designed to  
22 maximize the opportunity for public comment if  
23 there is public concern about the project.

24 So if there were to be public concern  
25 about the Russell City project, then I think staff

1 would recommend that we at least incorporate an  
2 opportunity for members of the public to comment  
3 in the evening after work hours.

4 PRESIDING/ASSOCIATE MEMBER GEESMAN:

5 Well, let's wait and see what types of comments we  
6 get from the public this evening.

7 HEARING OFFICER KRAMER: Of course,  
8 again, we'll be taking public comment this  
9 evening, so I believe that unless the parties tell  
10 me otherwise, I think that's all we need to  
11 discuss as far as Russell City is concerned.

12 And we'll turn the hearing over to Ms.  
13 Gefter for the Eastshore project.

14 HEARING OFFICER GEFTER: On the  
15 Eastshore project we were focusing on the comments  
16 of the parties in the recent status reports. And  
17 one of the issues that -- the main issue that we  
18 wanted the parties to address was the concept of a  
19 common site for Russell City and Eastshore or an  
20 alternative site for the Eastshore project.

21 So, focusing on that particular  
22 question, because that seems to be key and the big  
23 concern of the local residents here in Hayward,  
24 I'll ask the applicant to begin the presentation  
25 on those topics.

1                   And if you want to expand with respect  
2                   to the status report, you know, we have the  
3                   written status report, so I think it speaks for  
4                   itself. And let's focus on the site and the  
5                   location, and the concerns regarding the  
6                   inconsistency with the City's general plan and  
7                   zoning ordinance.

8                   MS. LUCKHARDT: We're trying to figure  
9                   out how to get the mike on. So maybe I'll just  
10                  speak loudly and hopefully that'll be enough until  
11                  we figure that out.

12                  I'm not sure exactly what you would like  
13                  me to go through on this. If you are looking for  
14                  our position on locating at an alternative site,  
15                  if that's what you would us to cover initially.

16                  At this point we feel that we have  
17                  looked at alternative sites and have not found  
18                  another site that provides -- meets the project  
19                  objectives and that would have less environmental  
20                  impacts.

21                  Of course, we don't yet have a staff  
22                  assessment, and so we are working simply off the  
23                  assessment provided in the application. But we do  
24                  not believe that we will have significant  
25                  environmental impacts from the location of this

1 project at this site.

2 And so as far as finding another site  
3 that has fewer significant environmental impacts,  
4 we're not aware of any other site that would  
5 provide that.

6 We do have concerns about extended  
7 delays for this project because there are  
8 requirements that this project be online in  
9 accordance with the contract with Pacific Gas and  
10 Electric Company. And Eastshore is committed to  
11 meeting the requirements of that contract and its  
12 obligation to PG&E.

13 And then I'm not sure, there may have  
14 been something else that you wanted me to cover.  
15 I want to make sure I'm covering everything.

16 HEARING OFFICER GEFTER: Also, -- well,  
17 let's stay on this subject for a moment. The  
18 applicant has raised the concern regarding the RFO  
19 process and the contract with PG&E, and a  
20 particular online date. Can you give us that  
21 online date?

22 MS. LUCKHARDT: I'm looking at PG&E  
23 because I'm not sure exactly what portions of the  
24 contract are confidential and what portions are  
25 not. And I am not comfortable, in my position,

1 without getting affirmation from PG&E as far as  
2 what specific things we can say about that  
3 contract.

4 I think in the context that we were  
5 talking about, the contract is that at some point  
6 if the project gets moved beyond its ability to  
7 support that contract it becomes essentially the  
8 no-project alternative because the project will  
9 not go forward.

10 HEARING OFFICER GEFTER: Well, I think  
11 we probably, just for purposes of the public  
12 understanding this process, we need to back up a  
13 little bit and talk about how this site was chosen  
14 and there was some information in your  
15 alternatives analysis that you filed with the  
16 Committee regarding a Black Hills Energy Company  
17 that did a lot of the vetting of the site prior to  
18 the Tierra Energy taking over this project.

19 And we were wondering whether -- one of  
20 the questions is whether Eastshore has access to  
21 the data on site selection that went into the  
22 choice of this particular location. Do you have  
23 that information from Black Hills Energy?

24 MS. LUCKHARDT: Yeah, we've received  
25 some information from the previous owner of this

1 project and the previous developer of this  
2 project. All the information that we were able to  
3 obtain from that entity is in our filings, either  
4 in the application or supplemental filings, in  
5 response to data requests.

6 I've also been reminded by my astute  
7 colleagues that we have already said that the  
8 online date is May 2009. So it's out in the  
9 public arena.

10 HEARING OFFICER GEFTER: Thank you.  
11 Now, with respect to the site selection, when you  
12 were involved in the RFO process with PG&E, and I  
13 don't know whether you personally, but whether the  
14 company came to PG&E with this particular site  
15 already chosen, or whether you worked with PG&E to  
16 find the appropriate site?

17 MS. LUCKHARDT: No. As part of the RFO  
18 each RFO respondent was required to identify a  
19 site, a location, a project and various other  
20 parameters about their proposal to PG&E. And the  
21 site that was proposed was the site on Clawiter  
22 from the initial proposal to PG&E in the RFO  
23 process.

24 HEARING OFFICER GEFTER: I'm going to  
25 ask you the obvious question because these are the

1 questions that the local residents have asked,  
2 which is why was this site chosen for this  
3 particular project in the City of Hayward when  
4 there was also Russell City being proposed, and  
5 also at that point in time the AFC was pretty much  
6 well along before they filed their amendment.

7 So can you give us information as to why  
8 this site was chosen as the best site to meet the  
9 RFO requirements?

10 MS. LUCKHARDT: Well, based upon -- in  
11 the application for certification there is  
12 included an alternative site analysis. And those  
13 were the other sites that the previous developer  
14 of this facility looked at and considered in  
15 selecting this site.

16 It's our understanding that this  
17 location is considered -- is a good location, and  
18 I think this shows up in the interconnection  
19 study, from an interconnection standpoint, because  
20 there are very few upgrades that are required to  
21 connect this facility.

22 And so that would mean that the  
23 facility, this location, this substation can take  
24 the power and needs the power, and there isn't a  
25 lot of additional cost.

1           We also believe that that may have been  
2 a factor in PG&E's consideration because, of  
3 course, PG&E ultimately has to pay those costs  
4 back to the project developer. So we believe that  
5 that would probably have been a factor for PG&E.

6           HEARING OFFICER GEFTER: Given that  
7 Eastshore Substation was chosen by the developer  
8 to be the interconnection point, was there another  
9 location in Hayward or near the Eastshore  
10 Substation that might work, as well, and then the  
11 interconnect at the substation?

12           MS. LUCKHARDT: At this point or at the  
13 time that it was --

14           HEARING OFFICER GEFTER: At the time  
15 that the site selection process was going on.

16           MS. LUCKHARDT: At the time the site  
17 selection process was going on, a variety of  
18 sites, like I said initially, all of the  
19 alternative sites in the application were  
20 considered and evaluated by the original  
21 developers of this project.

22           They looked at the site next to the PG&E  
23 Substation and they looked at a variety of other  
24 locations and other sites. And decided on the  
25 Clawiter site for various reasons that made it

1 beneficial from a developer's perspective.

2 It's very close to the gasline; it has a  
3 short transmission line; it was an available site,  
4 unlike the site next to the PG&E Substation where  
5 PG&E was not interested in sharing that. I mean  
6 there were various factors that were taken into  
7 account in that alternatives analysis.

8 HEARING OFFICER GEFTER: One of the  
9 other questions, an obvious question, again that  
10 we keep hearing is if the City has found that this  
11 particular site is inconsistent with the general  
12 plan, and also, you know, doesn't comply with the  
13 zoning ordinance, was the previous developer and  
14 was Tierra Energy talking with the City at the  
15 time you were choosing this site for this project.

16 MS. LUCKHARDT: Yeah. I'll let Greg  
17 answer that since he was the primary one  
18 conducting those.

19 MR. TREWITT: I can comment from May  
20 2006 on. To my knowledge, and Jesus can probably  
21 confirm this, as well, I don't think anybody had  
22 contacted the City before June of 2006.

23 Tierra Energy purchased the project  
24 around April of 2006 and I saw down with Jesus --  
25 I came onboard with Tierra in May 22nd of 2006.

1 And I met with Jesus around April 9th, I believe,  
2 the date is, for the first time. And talked to  
3 Jesus about the project in detail.

4 I can look it up; it's in June of 2006.

5 MS. LUCKHARDT: Yeah; you said April 9.

6 MR. TREWITT: I'm sorry, June.

7 HEARING OFFICER GEFTER: June of 2006 is  
8 the first time you met with the City regarding the  
9 site --

10 MR. TREWITT: That's correct.

11 HEARING OFFICER GEFTER: -- and its  
12 consistency with the general plan.

13 But when was the RFO approved by the  
14 CPUC?

15 MR. TREWITT: What was that date,  
16 Marino? November of 2005 timeframe.

17 HEARING OFFICER GEFTER: So, in other  
18 words, what you're saying is that the previous  
19 developer brought the site to PG&E. They entered  
20 into the RFO process prior to vetting whether or  
21 not the site was consistent with the City's  
22 general plan?

23 MS. LUCKHARDT: Well, I think there's a  
24 little more to it than that at this point, to say  
25 whether it's consistent or not, with the general

1 plan.

2 And I can't speak for the previous owner  
3 because I did not represent them. But I can say  
4 that based upon what was done for Russell City,  
5 that I would expect a developer would consider  
6 this site to be consistent with the Hayward zoning  
7 ordinance and general plan based upon the  
8 decisions that were made for Russell City, since  
9 the zoning for both project is the same.

10 HEARING OFFICER GEFTER: Okay.

11 PRESIDING/ASSOCIATE MEMBER BYRON: May I  
12 ask a question?

13 HEARING OFFICER GEFTER: Yes, I was  
14 going to ask if the Commissioners had questions.

15 PRESIDING/ASSOCIATE MEMBER BYRON: I'd  
16 like to ask if PG&E could help answer some  
17 questions here with regard to why you selected the  
18 Eastshore Center facility.

19 MR. GALATI: Sure. Scott Galati  
20 representing PG&E. And I have with me a lot  
21 smarter people than me, which is not hard to find.  
22 But I found some really smart guys anyway.

23 Let me first -- I think I have to, at  
24 least at this point in time, in addressing you for  
25 the first time in a project in which we are not a

1 party, at least to explain why we're here and why  
2 you don't see us a lot participating in this  
3 project.

4 PRESIDING/ASSOCIATE MEMBER BYRON:  
5 Right, and thank you for being here, by the way.

6 MR. GALATI: Thank you very much. We  
7 did file a letter in all of the projects, which are  
8 the RFO projects, in which we tried to explain  
9 that there's sometimes PG&E wears different hats  
10 depending on whether it is -- its level of  
11 involvement in a project.

12 So, again, I'm saying this for the  
13 record. I know some of you know this. In the  
14 Humboldt project where we are the applicant and  
15 are the owner and will be the operator and the  
16 developer, we're sitting at the table in the same  
17 place that the applicant to this project is. And  
18 that's why we may be participating at a different  
19 level than you would see in a case like this.

20 In the Colusa project, that is a project  
21 in which the CPUC has allowed us to purchase the  
22 plant once it is permitted, built and operational.  
23 So we will be the owner and operator. So in that  
24 particular case, since we will be the owner and  
25 operator, we've petitioned to intervene and we are

1 sitting at the table participating in that  
2 project, as well.

3 For the other projects located in the  
4 Fresno area, in the Bay Area here, these are  
5 projects where we merely are the purchaser of  
6 electrons. So we are not the applicant, nor are  
7 we the developer, nor will we be the owner or the  
8 operator of these projects. So that's why we are  
9 not participating at the same level.

10 So I just wanted to make sure that we  
11 understood that so it isn't more confusing than I  
12 think the projects already are.

13 In answer to your question about how  
14 were these projects selected. As you know,  
15 there's a 2004 long-term RFO process. And in that  
16 process there are several stages which are vetted,  
17 some in public, some that are confidential.  
18 Eventually at the California Public Utilities  
19 Commission there is a proceeding in which  
20 documents are filed, testimony is provided as to  
21 why particular projects are chosen.

22 In this particular case what we can tell  
23 you is that there was a need for power to be put  
24 into the Bay Area. The Russell City project and  
25 the Eastshore project both met that need.

1           What we have is the pool of offers that  
2           are submitted to us to select from. We are not in  
3           the business anymore to be able to go out and say  
4           this is a good place for a power plant, and this  
5           is how the transmission planning will work. There  
6           are specific standards of conduct prohibiting that  
7           sort of interaction. And most people don't really  
8           understand that, but PG&E cannot do that. Nor did  
9           we do that for either one of these projects.

10           But with the pool of projects that were  
11           selected we made the determination, and we believe  
12           it was supported by an independent auditor at the  
13           Public Utilities Commission, that we chose this  
14           project because it was, quite frankly, just the  
15           best choice for our customers that was provided to  
16           us.

17           I don't think that I can go through and  
18           provide you a ranking. And I know that people  
19           would love for that to happen. What I can tell  
20           you is that when it comes to environmental issues  
21           PG&E understood that this project, the Russell  
22           City project, would have to come to the California  
23           Energy Commission and get a license.

24           Now, I personally know, and PG&E knew,  
25           that's a rigorous process. And not only is it a

1 rigorous process, the Commission doesn't issue  
2 licenses where there's impacts, where there's not  
3 compliance with LORS very frequently, if at all.

4 And so in that case, from our  
5 perspective, we felt that the project that we  
6 would eventually take power from would meet all  
7 the requirements of the California Energy  
8 Commission.

9 So I'm not sure if that answers your  
10 question to the detail that you would like, and be  
11 more than happy to expand on that if we can.

12 PRESIDING/ASSOCIATE MEMBER BYRON: Thank  
13 you; that's a very good start, and I think that  
14 will suffice for now. But we may need to get into  
15 this in a little bit more detail.

16 MR. GALATI: Thank you.

17 HEARING OFFICER GEFTER: I do have a  
18 question.

19 PRESIDING/ASSOCIATE MEMBER BYRON: Oh,  
20 there are some.

21 HEARING OFFICER GEFTER: We have  
22 questions here. Yes.

23 PRESIDING/ASSOCIATE MEMBER GEESMAN: The  
24 statute under which the procurement is conducted  
25 speaks to the utility applying a least-cost/best-

1 fit methodology. Is that what PG&E did with this  
2 particular site?

3 MR. GALATI: Now I'm going to ask for  
4 some smart people to help me.

5 (Laughter.)

6 MR. CROSSON: John Crosson. Yes, that's  
7 the methodology we used in selecting the overall  
8 portfolio projects that we selected. And that was  
9 decided in the CPUC proceedings approving these  
10 projects.

11 PRESIDING/ASSOCIATE MEMBER GEESMAN: And  
12 is there more elaboration of what those criteria  
13 mean, or what that methodology contains that could  
14 be made available to us?

15 MR. CROSSON: Sure. I mean essentially  
16 we evaluate the projects across using cost, value  
17 to customers, as well as a range of other  
18 criteria, including the viability of the project,  
19 credit. I mean there's a whole range of criteria  
20 that are considered in the evaluation of the  
21 projects. It's across all that range of criteria  
22 we select the projects that provide the best fit.

23 PRESIDING/ASSOCIATE MEMBER GEESMAN: And  
24 you make some form of judgment, no matter how  
25 general, as to the likelihood of the project

1 meeting environmental requirements?

2 MR. CROSSON: There's a general review  
3 of that, yes.

4 PRESIDING/ASSOCIATE MEMBER GEESMAN: And  
5 this project not only survived that competitive  
6 process, but somehow emerged near the top of the  
7 list; and you elected to enter into a contract  
8 with it.

9 MR. CROSSON: That's correct.

10 PRESIDING/ASSOCIATE MEMBER GEESMAN: So  
11 it conformed to whatever your least-cost/best-fit  
12 criteria are?

13 MR. CROSSON: That's correct.

14 PRESIDING/ASSOCIATE MEMBER GEESMAN:  
15 Thank you.

16 MR. GALATI: If I may, if I could just  
17 expand a little bit on that answer, especially on  
18 the environmental side.

19 During the long-term RFO process we  
20 didn't have time to do the type of exhaustive  
21 review that would be done at the Energy  
22 Commission, but when we say we looked at it from  
23 an environmental perspective, we looked at a very  
24 high-level, fatal-flaw sort of analysis. And we  
25 also rely very much on the information that's

1 provided by the applicant. So, yeah, that  
2 analysis did not show that the project had some  
3 fatal flaws.

4 PRESIDING/ASSOCIATE MEMBER GEESMAN:  
5 Well, you said you wanted a project in the Bay  
6 Area. I presume your methodology is more fine-  
7 grained than simply saying anywhere in the nine-  
8 county Bay Area is fine with us.

9 MR. GALATI: How that works out is once  
10 the applicant provides a system impact study to  
11 us, and a feasibility study, all of how that  
12 affects the transmission system is taken into  
13 account.

14 So we did know that in the Bay Area  
15 transmission-constrained grid, putting power  
16 outside the Bay Area and bring a transmission line  
17 into the Bay Area was probably not going to  
18 provide both the cost, or be able to be  
19 permittable.

20 So we were looking for projects in the  
21 Bay Area because we thought that that would be the  
22 best way to have power injected into that part of  
23 the system. We think those are reflected in the  
24 system impact study and the feasibility studies  
25 and the costs associated with that.

1                   PRESIDING/ASSOCIATE MEMBER GEESMAN: So  
2 starting with that consideration that you wanted  
3 projects in the Bay Area your least-cost/best-fit  
4 methodology narrowed consideration substantially.  
5 And somehow you came to the conclusion that a  
6 project in Hayward at this site satisfied your  
7 least-cost/best-fit criteria?

8                   MR. GALATI: Right, of the projects that  
9 were bid in, that's correct.

10                  PRESIDING/ASSOCIATE MEMBER GEESMAN:  
11 Thank you.

12                  PRESIDING/ASSOCIATE MEMBER BYRON: We've  
13 all, we've heard terms like RFO and PRG and I  
14 think we would all benefit from a brief  
15 description of the procurement process that PG&E  
16 follows.

17                  MR. GALATI: I will do my best. The  
18 term RFO is a request for offers; and this is the  
19 point in time where we send a general solicitation  
20 for people who want to build a power plant and  
21 sell us electricity, to be able to bid into a very  
22 public process as to how they would do that.

23                  For example, both applicants bid in the  
24 projects that you see and where the interjection  
25 points were.

1           Part of what we did was -- and, again,  
2           the RFO, itself, the request for offer document,  
3           itself, is approved by the California Public  
4           Utilities Commission. And then that begins a  
5           process -- once we select a project, that begins a  
6           process that's public at the Public Utilities  
7           Commission.

8           There is a process where we use a  
9           procurement review group and an independent  
10          auditor to help with the selection of the process.

11          I don't know how much more I can provide  
12          detail, not being involved in that. And it might  
13          be something that I think can probably take a long  
14          time to describe. I'll ask my colleagues if they  
15          have anything else to add. But I'm not sure that  
16          I can explain the whole process. It did take  
17          almost two years to go through.

18                 PRESIDING/ASSOCIATE MEMBER GEESMAN: I  
19          think there's one thing that you probably can  
20          explain, Mr. Galati, and I see on our staff's  
21          status report the indication: PG&E notified staff  
22          that it declined to participate in the May 23,  
23          2007 workshop."

24                 Now, because of the involvement of PG&E  
25          in this project, and the site selection, it's

1       curious to me as to why you wouldn't participate  
2       in one of the siting workshops. Is there some  
3       reason for that?

4               MR. GALATI: Yes, there actually is some  
5       reason for it. For the first and foremost, I  
6       would have to respectfully disagree that we were  
7       involved in any way, shape or form, the site  
8       selection process. We selected the project that  
9       they bid in.

10              And so the idea that we selected a site;  
11       or that we even selected an interjection point, I  
12       think, is confusing. And while it may look like  
13       that from the outside, it's not really what  
14       happened.

15              There's a pool of projects. They have  
16       different interjection points. We evaluate those  
17       and we selected the best. That's how we did. We  
18       didn't say, because, again, there is this  
19       prohibition of planning. We didn't say, hey,  
20       there's a better site over here and it would be  
21       great if you can interconnect there. We are  
22       prohibited from doing that.

23              PRESIDING/ASSOCIATE MEMBER GEESMAN: But  
24       from those that were bid in you did make a  
25       selection, and you did determine that this

1 particular project satisfied your least-cost/best-  
2 fit criteria?

3 MR. GALATI: That's correct,  
4 Commissioner.

5 PRESIDING/ASSOCIATE MEMBER GEESMAN:  
6 That's not to say that there might not be some  
7 other site somewhere in the Bay Area that would  
8 have been better, from your standpoint. But you  
9 did, nevertheless, of those that you had in front  
10 of you, make a selection?

11 MR. GALATI: That is correct.

12 PRESIDING/ASSOCIATE MEMBER GEESMAN:  
13 Now, in light of that role, why wouldn't you  
14 participate in our staff workshop?

15 MR. GALATI: Well, first and foremost,  
16 in participating in the staff workshop we thought  
17 it would be confusing to the public. Once again,  
18 the public believes that we are somehow an  
19 applicant or an owner or developer. We thought --  
20 we first were approached by staff asking for some  
21 specific information like this to help them do  
22 their alternatives analysis.

23 We met with staff twice, and then we put  
24 a letter together that we thought satisfied those  
25 concerns. We thought it also resulted in a status

1 report by staff that they felt that they had the  
2 information necessary to go with an alternatives  
3 analysis.

4 It wasn't something that PG&E thought we  
5 could offer to the public. Or, in this setting,  
6 anything more than what was in that letter. And  
7 so it is with that, maybe reluctance on my part,  
8 to participate in a public workshop that involved  
9 somebody else's project, of which we buy  
10 electrons, and again, we already had the public  
11 process on why that project was selected.

12 So that's why we chose not to  
13 participate.

14 PRESIDING/ASSOCIATE MEMBER GEESMAN:

15 Well, I have considerable respect for your legal  
16 judgment. But I would question your public  
17 relations judgment. I do think PG&E is a real  
18 party-in-interest here. And that the public would  
19 benefit by your participation in our process.

20 I understand the limited nature of the  
21 role that the company has played. But I do think  
22 it would be better for everyone if you would see  
23 to it that the company continuously explains just  
24 what that role was, and the limited decisions that  
25 you were actually called upon to make in selecting

1       this project.

2                   MR. GALATI: Understand, and I  
3 appreciate that, and I take that responsibility.

4                   PRESIDING/ASSOCIATE MEMBER BYRON: And I  
5 share Commissioner Geesman's concern and interest  
6 here. Because PG&E is the provider of electricity  
7 for this city, of this service territory. I think  
8 you do have a role here, and in answering  
9 questions; and I do want to say, again, thank you  
10 all for being here today. I hope you'll stay for  
11 this evening's fireworks.

12                   MR. GALATI: Yes, we certainly will.  
13 But if I could just one other thing, too. We  
14 intend to continue to purchase power in the same  
15 manner. We certainly want to try to make a  
16 distinction of when we're responsible for  
17 developing the project, and how we do do, versus  
18 when we purchase electricity.

19                   Any more, I can take more.

20                   HEARING OFFICER GEFTER: And I want to  
21 get back to the details of this particular project  
22 with respect to the RFO contract that now has been  
23 approved by the PUC; and according to the  
24 applicant here, they're concerned about any delay  
25 in getting this particular project certified would

1       affect their online date, and then would affect  
2       the agreement with PG&E.

3               And whether you can answer this  
4       question, you know, I don't know, but how would  
5       this affect the RFO process?  Would you have to  
6       start a new one if the Energy Commission  
7       recommends to the applicant that they find a  
8       different site for building this project?

9               MR. GALATI:  First and foremost, we do  
10       have a contract that's approved.  I think a change  
11       like that would require an amendment to the  
12       contract.  And whether or not PG&E is willing to  
13       even enter into an amendment like that, let me  
14       just describe that there clearly would be a PUC  
15       approval process.

16               There's a couple of things that I think  
17       are most important to us, and most important to  
18       our relationship and how we work with the CPUC,  
19       and that is to insure that it's fair.

20               And so at the time of entering into the  
21       contracts and people providing PPAs, it was a  
22       requirement that the project needed to show site  
23       control.  And so if we were to allow this  
24       particular applicant to amend -- and I'm not  
25       saying that we are or aren't, I'm just telling you

1        what the consequences would be -- we would have to  
2        take a good hard look at whether or not the RFO  
3        process was still fair.

4                    And I know that the CPUC would, were  
5        there applicants that were not chosen because they  
6        didn't have site control. If we would allowed  
7        other applicants to move their site, would they  
8        have fared better? How would that affect the  
9        costs associated with it.

10                   So, it's not a simple answer. We do  
11        have this contract. We do expect them to perform  
12        under their contract. And we understand you have  
13        a CEQA obligation. And we think that you're going  
14        to discharge that obligation. And we're going to  
15        respond however you discharge that obligation.

16                   HEARING OFFICER GEFTER: Okay. I know  
17        that the intervenor, Mr. Haavik, has a question.  
18        But let me follow up on this for one minute, and  
19        then I'm going to let Mr. Haavik ask the question.

20                   Earlier in your discussion with us you  
21        mentioned that when the PG&E reviewed this  
22        particular project you looked at the fatal flaw  
23        analysis and found that basically it was unlikely  
24        that this project presented any fatal flaw  
25        potential.

1                   But if, in fact, it turns out that that  
2                   is the case, what happens to your contract?

3                   MR. GALATI: From our perspective that  
4                   is the developer's risk. We probably are made  
5                   whole under our contract and we probably would  
6                   have to contract for some additional power.

7                   HEARING OFFICER GEFTER: And then what  
8                   about amending your online date with the  
9                   applicant. Is that a possibility just between  
10                  PG&E and Tierra Energy, or do you have to go back  
11                  to PUC to amend the contract to change the online  
12                  date?

13                  MR. GALATI: I apologize, I don't know  
14                  the answer to that question. I'm not sure that we  
15                  do. I think we're going to have to caucus with  
16                  the CPUC attorneys to determine whether that is a  
17                  change that would require -- I know that we would  
18                  be subject to, at least from PG&E's own  
19                  perspective of is that fair to the bidders that  
20                  were not selected.

21                  HEARING OFFICER GEFTER: Could we ask  
22                  how many bidders there were in the entire process?  
23                  Can you give us that information?

24                  MR. GALATI: Yeah, 54.

25                  HEARING OFFICER GEFTER: Fifty-four.

1 And how many were chosen out of the 54?

2 MR. GALATI: Seven.

3 HEARING OFFICER GEFTER: Okay, but these  
4 are not all just Bay Area. This --

5 MR. GALATI: No.

6 HEARING OFFICER GEFTER: -- was 54 in  
7 the PG&E service area?

8 MR. GALATI: Yeah, two in the Bay Area,  
9 so that would be three in the Fresno area, the  
10 Humboldt Bay Repowering project, and the Colusa  
11 project, inclusive.

12 HEARING OFFICER GEFTER: Thank you. Mr.  
13 Haavik.

14 MR. HAAVIK: Thank you, Susan. Scott,  
15 in the least-cost/best-fit scenario that was  
16 described earlier, did you apply that also to the  
17 other successful bidders? Obviously I've been up  
18 and met with you at Humboldt Bay Repowering. I  
19 can understand that that is on the same site. I  
20 am not familiar with Colusa. I am familiar with a  
21 few of the other sites that have been chosen or  
22 had successful RFOs.

23 Was the same least-cost/best-fit  
24 scenario applied? The reason being as I've been  
25 to a couple of other plants that are now in

1 operation. They've been in relatively rural  
2 areas, number one. Number two, close to a major  
3 transmission and gas line. And right near a  
4 substation. Very same scenario we have here.

5 So, again, it looks as though from my  
6 perspective, looking at it from a public eye, that  
7 it looks like the least-cost/best-fit is certainly  
8 applied across the board. I just want to know if  
9 you did that.

10 And I understand that if you're  
11 purchasing another one in Colusa, was that fit,  
12 also?

13 MR. GALATI: Probably the better answer  
14 is I think we applied the same methodology that we  
15 would apply to select projects.

16 Second of all, there is, at least the  
17 best of my ability, be able to direct you to the  
18 California Public Utilities Commission record,  
19 both with our testimony, independent auditors'  
20 report, and there is a lot of information about  
21 why projects were selected.

22 MR. HAAVIK: All right. You didn't  
23 answer my question, but I can certainly --

24 MR. GALATI: No, and --

25 MR. HAAVIK: -- gain that information --

1 MR. GALATI: -- I can't, I can't, and --

2 MR. HAAVIK: Scott, that's all you have  
3 to say.

4 MR. GALATI: Yeah, and so i'm trying to  
5 provide you where you can go get that information  
6 because that's where I believe it probably will  
7 be.

8 MR. HAAVIK: Thank you.

9 HEARING OFFICER GEFTER: Anything else  
10 for Mr. Galati at this point? Okay, I'm going to  
11 ask -- the applicant has a question?

12 MS. LUCKHARDT: I just would like to  
13 clarify some dates. We were kind of shuffling  
14 earlier to see if we have the right dates. And in  
15 that time we've been able to pull them.

16 According to the public records, PG&E  
17 announced the bid winners on April 11, 2006. The  
18 project was sold to Tierra Energy on April 28,  
19 2006. The first meeting with the City of Hayward,  
20 with Jesus Armas, our records show June 8, 2006.

21 The RFO was approved, the RFO bid  
22 winners were approved by the California Public  
23 Utilities Commission on November 30, 2006.

24 HEARING OFFICER GEFTER: I think that in  
25 order to facilitate the discussion further, unless

1 staff has something to add at this point, I was  
2 going to ask Mr. Armas to come forward and talk to  
3 us about the City's process for determining that  
4 this project was, in fact, inconsistent with your  
5 general plan and your zoning ordinance.

6 MR. ARMAS: I would like to do that.  
7 But before I do that, first let me welcome both  
8 Commissioners Byron and Geesman. We appreciate  
9 your coming to Hayward to listen not only to the  
10 agencies, but later this evening to the public.  
11 And to Mr. Kramer and Ms. Gefter, thank you for  
12 your assistance in making sure that this works for  
13 everyone.

14 I will also speak to that question. But  
15 I think I must first beg your indulgence and  
16 participate a bit on the exchange you've had over  
17 the last few minutes.

18 Because from the City's standpoint, we  
19 find the remarks offered by PG&E, at the least,  
20 disingenuous. We know that the PUC did solicit  
21 and did receive -- or authorize, excuse me, the  
22 solicitation of request for proposals. And has  
23 indicated over 50 were received.

24 In the May 9, 2007 letter to the  
25 Commission from a Les Guliassi, I believe, Director

1 of State Agency Relations, from PG&E, there's a  
2 recital of five projects that PG&E has entered  
3 into power purchase agreements. And then, two in  
4 which PG&E will be the owner/operator.

5 The five and the other two were all  
6 announced, as indicated by the Tierra Energy  
7 representative, in the April 2006 timeframe.

8 I was listening to the news conference  
9 because the Russell City Energy application was  
10 before it, and we were taking great pains to  
11 understand what was being considered.

12 I must also say that when the others  
13 were announced, the only identification was Black  
14 Hills. It did not have a geographic location.  
15 The remaining six identified either a city or a  
16 county, in most cases Fresno, Humboldt, and of  
17 course, with respect to Russell City, Hayward. So  
18 it was impossible for us to discern that a second  
19 facility was being considered in Hayward.

20 As indicated, the vetting process, from  
21 our perspective, is fatally flawed. Black Hills  
22 ownership never contacted the City so far as I'm  
23 aware. I do want to acknowledge the point that  
24 Mr. Trewitt made that shortly after Tierra Energy  
25 became involved, he did come in to talk to me. I

1 did relate to him that there would be a number of  
2 issues and concerns from the City's standpoint,  
3 taking into account the land use perspectives.

4 I do not recall whether at that point  
5 Tierra Energy had site control; that is, whether  
6 the contract to purchase the property had actually  
7 been -- whether the time period had actually  
8 concluded. I thought it was a bit later in the  
9 summer. But I did understand that they were  
10 moving toward acquiring the property.

11 So, clearly, a number of decisions were  
12 made well in advance of understanding whether the  
13 land use considerations would be satisfied.

14 It seems to me that a fatal flaw  
15 standard and criteria would examine whether it  
16 could otherwise satisfy local land use  
17 considerations. That's a fundamental  
18 determination and basic to how we transact  
19 business in California. To suggest that somehow  
20 that was not taken into account, I think, is  
21 short-sighted, at best.

22 PG&E represents that this site was the  
23 least costly. But it's my understanding that it's  
24 virtually impossible to make that determination  
25 because much of that information is confidential.

1 So to be able to judge whether, in fact, that's a  
2 fair determination or whether there were other  
3 variables, would suggest that there have to be a  
4 more transparent process which, again as I  
5 indicated, it's my understanding that that  
6 information is not readily available.

7 In fact, the newspaper that covers  
8 Hayward, The Daily Review, reported today that  
9 under a variety of public records requests, it did  
10 receive documents; much of that information,  
11 however, was redacted.

12 And so we think the questions you were  
13 posing, Mr. Geesman, are critical, and yet we're  
14 unable to make an independent determination as to  
15 the validity of the representation.

16 I also think it's a bit disingenuous for  
17 PG&E to simply say we really have no role in it.  
18 I think the fact that it is the party that is  
19 ultimately buying the product conveys a critical  
20 role to it. And it should have been more actively  
21 involved throughout this process.

22 I appreciate and respect the distinction  
23 that PG&E needs to make. That, however, begs the  
24 question.

25 With respect to the question of the

1        suitability of siting of the Eastshore Energy  
2        Center at the 25101 Clawiter property that it has  
3        acquired, we went through an extensive process of  
4        valuing it, as we would any application before,  
5        initially through our planning staff; subsequently  
6        at a public hearing before the planning  
7        commission; and then ultimately on March 6th at a  
8        public hearing before the City Council. The staff  
9        report is very extensive; has been submitted and  
10       has been part of the record.

11                It's noteworthy that power plants are  
12       not listed expressly in our zoning ordinance.  
13       There is no entitlement, either as a primary use  
14       or a secondary or subsequent uses. When such a  
15       situation arises our zoning ordinance indicates  
16       that unless a determination can be made, that it  
17       is consistent with another use, by definition, it  
18       is excluded. And either an amendment to the  
19       zoning ordinance has to be pursued, or a judgment  
20       has to be made that it is consistent with another  
21       use that is otherwise allowed.

22                As part of the zoning ordinance we must  
23       take into account contextual factors, including a  
24       variety of surrounding uses and the like, policies  
25       that appear in our general plan, because for

1 certain we are not going to be arbitrary or  
2 capricious in making such a determination. It is  
3 one that has undergone some extensive analysis.

4 The City Council was presented as record  
5 as thick as this with considerable testimony  
6 offered by a variety of interests. And we did  
7 present to the Council a number of reasons why we  
8 believe it is not consistent with our zoning  
9 ordinance and our general plan.

10 Let me highlight a couple for you. We  
11 have a residential use that the closest one is  
12 about 1100 feet, a single family home. Within  
13 1800 feet there's a 300-unit apartment complex.  
14 Within 3000 feet there's an elementary school and  
15 a middle school. Those are not the kind of uses  
16 that we would look as being compatible with a more  
17 industrial use such as the Eastshore Energy  
18 Center.

19 We also looked at what our general plan  
20 speaks to and zoning ordinance speak to with  
21 respect to the character and integrity of the  
22 zoning district. And we find that it is, given  
23 the 70-foot tall, 14 stacks that are proposed, and  
24 some of the other characteristics of this plant,  
25 that it is not consistent with the underlying

1 zoning.

2 In March we also raised issues about  
3 public health, safety and general welfare owing to  
4 air quality and hazardous material. And, again,  
5 owing to proximity to some of the other more  
6 sensitive uses nearby, we concluded and the  
7 Council concurred, that it is not appropriate for  
8 that location.

9 Now, lastly, in citing some provisions  
10 in our general plan, we noted to the Council that  
11 we did not find it consistent with a series of  
12 policies in the general plan that speak to  
13 promoting and protecting the business and  
14 technology corridor in which this facility is  
15 proposed to be located.

16 So, on the weight of the various factors  
17 considered the Council adopted a resolution  
18 determining that it is not consistent with our  
19 general plan, that it is not consistent with our  
20 zoning ordinance. The resolution was transmitted  
21 to the Energy Commission.

22 With respect to one of the questions  
23 that the Commission was also asked to consider,  
24 and that is is it feasible to site the Eastshore  
25 Energy facility near or adjacent to the Russell

1 City Energy Facility, we believe not. And we've  
2 communicated that point.

3 I'll be happy to respond to any  
4 questions.

5 HEARING OFFICER GEFTER: The obvious  
6 question again is whether Black Hills proponent  
7 ever contacted the City about their proposal to  
8 site the project at the Clawiter site.

9 MR. ARMAS: No.

10 HEARING OFFICER GEFTER: So the first  
11 you heard about it was when Tierra Energy  
12 contacted you in June of '06?

13 MR. ARMAS: I'm relying on his comment  
14 that it was June, but the first I heard of it was  
15 when Mr. Trewitt came in. It's noteworthy that it  
16 was reported that the initial decision was made on  
17 April 11, and two weeks later it was sold to  
18 Tierra Energy.

19 HEARING OFFICER GEFTER: Is the City  
20 aware of any other site that might be a potential  
21 site for this project where they could still  
22 interconnect at the Eastshore Substation?

23 MR. ARMAS: Well, I think -- let me  
24 borrow the phrase that PG&E used about fatal  
25 flaw -- I think to suggest that it has to be

1 connected to the Eastshore Substation is a fatal  
2 flaw. We've heard testimony at the workshops that  
3 it is absolutely not necessary that it be there.

4 In fact, again I'm quoting from the May  
5 9, 2007 letter from PG&E, the PG&E representative  
6 expressly says that location was not specified nor  
7 a consideration. And that so long as it basically  
8 was located anywhere in the Bay Area region, in  
9 close proximity to a substation, that was  
10 responding to the need which is to provide power  
11 to the Bay Area. It is not to provide power to  
12 Hayward, per se. It is not to provide power to  
13 the 880 corridor, per se.

14 So we believe that the alternatives  
15 analysis first contained in the AFC, and then  
16 conducted to date, is wholly inadequate.

17 HEARING OFFICER GEFTER: And that leads  
18 me to a question to PG&E as to whether or not this  
19 project has to interconnect at the Eastshore  
20 Substation, separate and aside from the RFO  
21 contract, which identifies that as part of this  
22 particular project.

23 MR. GALATI: I'm sorry, I lost the last  
24 part of your question. Are you saying -- the  
25 contract does provide that they have to

1 interconnect exactly how they said they would. So  
2 an amendment would be needed if that  
3 interconnection did not occur that way.

4 HEARING OFFICER GEFTER: Could PG&E tell  
5 us now whether or not it's necessary to have the  
6 interconnection at the Eastshore Substation, or  
7 could there be another substation where  
8 interconnection could be held, and you could still  
9 use the transmission of electricity, in this case  
10 a peaking plant transmission, at a different  
11 substation in the Bay Area?

12 MR. GALATI: I don't think I can answer  
13 that question. But I would like to tell you why.  
14 I don't think I can say where else it could be.  
15 What I can say is there was a locational advantage  
16 given to these two projects because they deliver  
17 power directly into the Bay Area system. If there  
18 were other projects that did the same, they  
19 probably would have enjoyed a similar locational  
20 advantage.

21 One thing I will tell you is we did have  
22 conversations with staff, and we believe that  
23 staff is working with Cal-ISO to determine if  
24 there is any local system benefits and effects.  
25 And we think that that's the appropriate way to

1 get the information because then we don't run  
2 afoul of what we consider for 2004 issues.

3 I see Commissioner Geesman moving to his  
4 microphone and I'm terrified.

5 (Laughter.)

6 PRESIDING/ASSOCIATE MEMBER GEESMAN: If  
7 I understand your earlier answers, though, at some  
8 point if the configuration of this project changes  
9 it becomes a different project. And then from  
10 PG&E's perspective there's a question of whether  
11 you could simply amend the contract with this  
12 project and still have treated the other  
13 applicants in your RFO fairly?

14 MR. GALATI: That is one part of it.  
15 And the other part of it is whether the CPUC would  
16 see it the same way. So there might be a long  
17 process, a short process, I really can't tell you.

18 PRESIDING/ASSOCIATE MEMBER GEESMAN:  
19 Understood.

20 MS. HOLMES: Ms. Gafter, at this point,  
21 I'd just like to make one follow-on comment to  
22 what Mr. Galati had to say. Staff is performing a  
23 local system effects analysis. And that will  
24 provide some information about whether or not  
25 there are local benefits.

1                   Staff will not, because it cannot, be  
2                   assessing whether or not it would be equally  
3                   beneficial to interconnect at other substations.  
4                   My understanding from our transmission staff is  
5                   that that requires a level of transmission  
6                   information that takes a great deal of time and  
7                   money to develop, and we don't have that  
8                   information.

9                   So we cannot be providing an assessment  
10                  that would indicate whether it would be equally  
11                  beneficial or have the same type of effect for a  
12                  project of this size to be interconnecting at  
13                  another substation. That's an analysis we cannot  
14                  do.

15                  HEARING OFFICER GEFTER: Could you  
16                  explain why the staff can't do that analysis?

17                  MS. HOLMES: Again, this is my  
18                  understanding, is that it requires a very high  
19                  level of detail about power flows and other things  
20                  that are going on at each individual substation.  
21                  A lot of information about how a specific project  
22                  would interconnect.

23                  An we don't -- those are the types of  
24                  studies that they do, the system impact study and  
25                  the facility interconnection study, that take

1 months to develop and cost a great deal of money.  
2 And we don't do those for alternative sites for  
3 projects. We don't have the information, and it  
4 would be extremely time consuming to do that.

5 HEARING OFFICER GEFTER: Is that  
6 information that PG&E has, or that Cal-ISO has?

7 MR. GALATI: I apologize, I wasn't  
8 listening to that last part. Information about  
9 what would be the system effects at other  
10 locations?

11 Once again, can't do that. What happens  
12 is somebody has to file a system impact study and  
13 coordinate with the Cal-ISO to determine what the  
14 effects would be interconnecting anywhere else.  
15 One thing we can tell you is at this location  
16 there were no upgrades necessary. We don't know  
17 if there's other locations where there's no  
18 upgrades necessary, and there's no way for us to  
19 sort of plan that.

20 HEARING OFFICER GEFTER: So what both  
21 PG&E and our staff are saying is that it has to  
22 come from a project developer to contract out for  
23 a system impact study from Cal-ISO and PG&E.

24 MS. LUCKHARDT: These are extremely  
25 expensive, time-consuming studies that are done

1 for specific locations. It is a requirement of  
2 the bidding process that it be to a certain point  
3 before you submit.

4 And that's the kind of study that Ms.  
5 Holmes has been discussing here, and Mr. Galati,  
6 as well. These are the typical interconnection  
7 studies that the Cal-ISO performs where they do  
8 all the different N-1, N-2 criteria. And these  
9 are not inexpensive efforts, nor are they  
10 something that can be done in a short period of  
11 time.

12 HEARING OFFICER GEFTER: I think what  
13 this -- actually this is a good segue into the  
14 next topic.

15 PRESIDING/ASSOCIATE MEMBER BYRON: If I  
16 may, however.

17 HEARING OFFICER GEFTER: Okay.  
18 Commissioner Byron.

19 PRESIDING/ASSOCIATE MEMBER BYRON: Mr.  
20 Armas, I'd like to acknowledge your excellent  
21 presentation, but I also have a question for you.  
22 I'm trying to understand these two power plants  
23 inject power into the same substation for  
24 different purposes, one's baseloaded and one's a  
25 peaking unit essentially.

1                   And I've been to both sites. And I  
2 understand that they're not that far apart. I  
3 would like to just understand better if you could  
4 explain why one is acceptable to -- forgive me, I  
5 may not use the correct terminology -- but one is  
6 acceptable with your city plan, general plan, and  
7 one is not.

8                   MR. ARMAS: And it's a question that the  
9 CEC Staff has also submitted to us, and we  
10 provided an extensive letter for the record  
11 responding to that point.

12                   Let me try to expand on my earlier  
13 remarks. The Russell City facility is next door,  
14 adjacent to our wastewater treatment plant. The  
15 wastewater treatment plant is on the east, some  
16 oxidation ponds are on the west, radio towers are  
17 on the south and wrecking yards are on the north.  
18 It's traditionally a heavy industrial use without  
19 any residential uses or other sensitive activity  
20 nearby.

21                   That's not the case as it regards to  
22 Eastshore Energy Facility. We believe that it is  
23 substantially closer to some of the other uses  
24 that are of greater concern, and some of the  
25 conflicts that arise when you have uses,

1 potentially incompatible uses in that close  
2 distance to one another.

3 So we went through a process of making  
4 an assessment of the pluses and minuses associated  
5 with location because that becomes a critical part  
6 when an item is not otherwise enumerated in our  
7 zoning ordinance.

8 And so weighing those factors we reached  
9 a conclusion that the Russell City facility was  
10 more consistent with our zoning ordinance, in  
11 light of the fact that it's not an enumerated use.

12 The second thing that I think is  
13 important is we are now dealing with some  
14 cumulative effects of another facility. That was  
15 not the case when the Russell City was first  
16 considered.

17 And I should note that we believe that  
18 from the standpoint of responding to the energy  
19 needs in our region, Hayward has done more than  
20 its share. In fact, when the Russell City plant  
21 was first being considered, my understanding was  
22 that the ownership of Russell City was looking at  
23 other locations and was not successful in working  
24 with that community to have it sited.

25 Hayward took a different position and

1       took a look at how we might be able to contribute  
2       in a positive way to addressing energy needs.  And  
3       so we think we've done more than our share.

4                To then say, not only have you done your  
5       share, but you have to do more, in light of our  
6       zoning and our general plan and our whole economic  
7       development strategy seem, to us, to be  
8       inappropriate.

9                PRESIDING/ASSOCIATE MEMBER BYRON:  Thank  
10       you.

11               HEARING OFFICER GEFTER:  Mr. Galati.

12               MR. GALATI:  I apologize, I just have to  
13       address something, okay.  I understand, very much,  
14       Commissioner Geesman, that you think public  
15       relations-wise we should have done something  
16       different.  And I also understand that there may  
17       be disputes about how the CPUC process works.

18               But I must tell you I got to take  
19       exception to PG&E being called disingenuous, okay.  
20       We are here; we used a PRG, a procurement review  
21       group; we had an independent auditor; and yes,  
22       there is information that's confidential.  But  
23       that doesn't mean we're disingenuous.

24               And I don't think I can stand here and  
25       allow my client to take that hit.  I do apologize

1 if that seems confrontational, but I don't think  
2 PG&E has been disingenuous.

3 PRESIDING/ASSOCIATE MEMBER GEESMAN:

4 Well, I think just so everybody has the  
5 opportunity to say what's on their minds, you're  
6 well aware, PG&E is, I think, even more aware of  
7 the long-standing concerns that the Energy  
8 Commission has expressed in its Integrated Energy  
9 Policy Report with the PRGs and with the entire  
10 way in which procurement has been conducted in  
11 this state for the last several years.

12 I don't think any of those issues really  
13 touch upon our jurisdictional responsibility here  
14 in determining whether a particular application  
15 satisfies the various environmental, public health  
16 and safety requirements. But as long as these  
17 bigger-picture issues have come into play, I think  
18 that the company is well advised to take the  
19 concerns that this Commission has expressed in  
20 past years about the inadvisability of relying on  
21 the PRGs and the undue opaqueness of relying on  
22 confidential information to make these types of  
23 procurement decisions.

24 It's just not a good idea. And I think  
25 it's one of the reasons why this community appears

1 to be so aroused about the decisions that were  
2 made in this case.

3 MR. GALATI: And I understand that, and  
4 I believe that is for another forum. And, you  
5 know, I know the company's going to continue to  
6 work on along those lines.

7 But to bring it back to this case, once  
8 again this case is about, we believe, the project  
9 that is proposed to you by Tierra Energy. And our  
10 decision to come to -- to enter into a contract,  
11 in my opinion, should have no bearing on your  
12 decision to discharge your CEQA obligations.

13 And I think there is a cross-over here  
14 that gets us into forums where we can't have the  
15 dialogue we need to. So, I do appreciate, and  
16 thank you very much, Commissioner Geesman. I will  
17 certainly make sure the company hears that.

18 MR. HAAVIK: Ms. Gifter, I'd like to ask  
19 a question of Scott, again, please. Sorry, Scott.  
20 Tried to catch you.

21 Ms. Luckhardt, please refresh me on the  
22 dates. Tierra procured from Black Hills on 4/28,  
23 is that correct?

24 MS. LUCKHARDT: Yes, that is correct.

25 MR. HAAVIK: And the award was made on

1 May 11, is that correct?

2 MS. LUCKHARDT: The announcement was  
3 made on April 11th.

4 MR. HAAVIK: Oh, April, I'm sorry, April  
5 11. Okay. Not May 11. Is it customary with this  
6 that -- it looks as though the award of the RFO  
7 was made under the name Black Hills. And I do  
8 know, I reviewed the 70- or 80-page RFO that was  
9 provided by your website and others.

10 And then it's customary that I assume  
11 there's some approvals for the sale? And do you  
12 go through the same evaluation process as you  
13 might have done with Black Hills with Tierra? Or  
14 is that just a very opaque issue, also?

15 MR. GALATI: I don't know of any  
16 approval of the sale that's required, PG&E  
17 approval or CPUC approval. I think that's  
18 private.

19 MR. MONARDI: Prior to filing the --

20 HEARING OFFICER GEFTER: Please identify  
21 yourself.

22 MR. MONARDI: My name is Marino Monardi;  
23 I'm with PG&E. Prior to filing the application to  
24 the CPUC for approval of our contracts Black Hills  
25 notified us that they were working on an

1 arrangement to actually sell the power plant. And  
2 they asked us to keep that information  
3 confidential for a certain number of days.

4 We understood that. We had a need to  
5 get the application filed because the application  
6 triggered the obligation of the various other  
7 counterparties that we signed contracts with.

8 We went ahead; we filed it; we  
9 identified this as -- they asked us to maintain  
10 confidentiality. Once Tierra came forward and  
11 signed and took over the obligations, they  
12 basically signed the same contract that Black  
13 Hills did.

14 And once they took over that obligation  
15 they were basically the assignee to the project.  
16 Therefore, they were on the hook to provide that  
17 power plant in the same timeline, in the same  
18 manner with the exact same characteristics. And  
19 therefore, that satisfied our need.

20 At the point of signing we made it  
21 public that Tierra Energy was the actual  
22 counterparty to that site.

23 MR. HAAVIK: So if I understand  
24 correctly, then, the award was made on, again,  
25 4/11, Jane?

1                   MS. LUCKHARDT:  Yes.  It was announced  
2                   on 4/11.

3                   MR. MONARDI:  Let me be clear --

4                   MR. HAAVIK:  It was announced on 4/11 --

5                   MR. MONARDI:  We filed with the CPUC on  
6                   April 11th.

7                   MS. LUCKHARDT:  Okay.

8                   MR. MONARDI:  That's the date we filed.

9                   And that was the day it was made public.

10                  MR. HAAVIK:  What I'm actually trying to  
11                  get to or ask, and try to have PG&E answer, is, in  
12                  fact, in reviewing the RFO as a layperson, there's  
13                  several questions about the company and about the  
14                  history and what goes on in a normal application.

15                  And I assume during the review process  
16                  with a third party, that was done, is that  
17                  correct, gentlemen?

18                  MR. MONARDI:  Third party?  You mean the  
19                  independent --

20                  MR. HAAVIK:  Your third party --

21                  MR. MONARDI:  -- you mean the  
22                  independent --

23                  MR. HAAVIK:  -- auditor, your --

24                  MR. MONARDI:  -- you mean the  
25                  independent evaluator?

1 MR. HAAVIK: The independent evaluator.

2 MR. MONARDI: He, the independent --

3 MR. HAAVIK: Okay.

4 MR. MONARDI: -- saw all our data; did  
5 his own evaluation. He examined our evaluation;  
6 reviewed all the contracts we signed; partook in a  
7 number of meetings -- partook in all the meetings  
8 with the PRG; sat through the CPUC hearings, as  
9 well as actually met with many of the developers,  
10 also.

11 And he ended up validating our decision.  
12 He basically did his own analysis and came up with  
13 the same set of conclusions.

14 MR. HAAVIK: All right. Then simply  
15 said, if this review process took, you said, what,  
16 two years, Scott?

17 MR. MONARDI: The solicitation process  
18 had a lengthy process. We actually had to put it  
19 on hold for awhile until we got some direction  
20 from the CPUC. It started in late 2004. We  
21 notified the bidders we were going to have a  
22 solicitation. We had to put it on hold until we  
23 got some direction from the CPUC. Well, until  
24 the -- after the CPUC came out with a decision we  
25 had to readjust the process, I should say.

1                   So we put the process on hold. We  
2 readjusted it. We re-sent out our bid package.  
3 Asked the parties to submit, and they started  
4 submitting in 2005, I think it was starting -- in  
5 April of 2005.

6                   So that was the original 54  
7 counterparties. And then we went through our  
8 decisionmaking process. Short-listed. And then  
9 we actually began negotiations and we filed with  
10 the CPUC in April.

11                   So it actually really, I would say it  
12 probably took closer to a year.

13                   MR. HAAVIK: Okay, and so within the  
14 year there was many evaluations done. And then  
15 within a month Black Hills notified you or  
16 notified the -- someone that Tierra would come in.

17                   It just seems, again I'll use the word,  
18 and I apologize, Scott, disingenuous of whoever is  
19 running this that you have one applicant that goes  
20 through the entire process and then within a few  
21 weeks or months another applicant, or a purchaser  
22 slips in.

23                   I don't see how that really is  
24 appropriate in the entire process.

25                   MR. GALATI: I can see --

1 (Applause.)

2 MR. GALATI: -- how you might think  
3 that. But let me ask you something, though. It's  
4 the same site, the same power, the same price and  
5 they signed all the terms of the same contract.  
6 So, one way is the commercial transactions get  
7 developed is different parties take risk and  
8 different parties put up either money or security  
9 or other things associated with risk.

10 So, are you asking us whether we made a  
11 determination that Tierra had the capability of  
12 carrying out the obligations of Black Hills?

13 MR. HAAVIK: Absolutely.

14 MR. GALATI: And we had no reason to  
15 believe they did not or do not. And we expect  
16 them to continue to carry out the responsibility  
17 of Black Hills.

18 MR. HAAVIK: Thanks, Scott.

19 HEARING OFFICER GEFTER: Any more  
20 comments on that topic? Any other parties?

21 Okay, I want to move on then to the next  
22 issue, which, regarding the noncompliance with  
23 local LORS. It's a big issue in this case.

24 And typically the Energy Commission will  
25 defer to the local authorities; our regulations

1       require us to give due deference to local agency  
2       determinations.  And in this case we have a  
3       situation where the local agency, the City of  
4       Hayward, has found so far that this project is  
5       inconsistent with its general plan, and therefore  
6       would be in violation of local LORS.

7                 However, the Energy Commission has the  
8       authority to override the findings of the local  
9       agencies.  And the override process is long and  
10      complicated and requires a heavy burden of proof  
11      by the applicant in establishing that the Energy  
12      Commission should override the local findings.

13                And I wanted to address that right here.  
14      Obviously this is not the evidentiary hearing,  
15      we're not requiring you to put on your case.  But  
16      I wanted to hear from the applicant as to your  
17      overview of whether or not we need to proceed with  
18      an override and how we should go about it.  What  
19      sort of evidence -- you don't have to name it, but  
20      what sort of evidence you believe would be  
21      necessary to establish an override.

22                MS. LUCKHARDT:  it is our opinion that  
23      the project is consistent with the local zoning  
24      and general plan.  And we would hope to be able to  
25      present that evidence in the land use portion of

1 the evidentiary hearing for this project.

2 And we have been preparing for that  
3 since the City of Hayward City Council acted. We  
4 are not unaware of the, you know, issue that's  
5 presented before this project.

6 And we also know that we will not know  
7 how this Committee or the Commission will rule on  
8 the land use issue for quite some time.

9 Therefore, it has been our intent the  
10 entire time to provide the information that you  
11 would need to make a finding of overriding  
12 considerations during the hearing process if you  
13 decide to act in that direction.

14 Therefore, based on the information that  
15 has been provided in previous cases, such as  
16 Metcalf, Los Esteros 2, El Segundo, we noted that  
17 in those cases the previous applicants had  
18 provided information about environmental impacts.  
19 It is our belief that the environmental impact  
20 information will already be provided, as is  
21 typically provided in any application proceeding.

22 So we will have an alternatives  
23 analysis; staff will have an alternatives  
24 analysis. We will analyze every subject area. So  
25 we believe that that will be covered.

1           We are also, as staff is preparing a  
2           local system impact analysis, and we plan to  
3           present that in the transmission system  
4           engineering section of the evidentiary hearing,  
5           and in addition, we will be presenting evidence on  
6           the consumer benefits associated with that  
7           analysis.

8           So, we are preparing to present all of  
9           that information to you in the evidentiary hearing  
10          process and do have that analysis underway.

11          HEARING OFFICER GEFTER: Thank you.  
12          And, staff, are you preparing also for that  
13          particular possibility?

14          MS. HOLMES: I don't know that a  
15          decision has been made yet by the staff as to  
16          whether we would be preparing information on an  
17          override. Typically that decision gets made after  
18          a PSA comes out and we have a chance to try to  
19          resolve certain issues.

20          I think if there is a possibility that  
21          the Committee will be considering an override,  
22          certainly the staff would be amenable to preparing  
23          evidence with its own recommendations in that  
24          regard.

25          HEARING OFFICER GEFTER: Then, for the

1 members of the public who aren't familiar with the  
2 concept of override, the law, it's Public  
3 Resources Code section 25525; it's in the statute  
4 that authorizes the Energy Commission to license  
5 power plants.

6 And what that does is provides that the  
7 Energy Commission, if we make a finding that there  
8 are not more prudent and feasible means of  
9 achieving public convenience and necessity  
10 regarding the interconnection of this power plant  
11 at the Eastshore Substation, if we can't find that  
12 there are more prudent and feasible means, then we  
13 have the authority to override the local finding  
14 that this is an inconsistent land use for siting a  
15 power plant at this location.

16 So, I think we need to start talking  
17 about that issue at this point in time, because I  
18 know that because of so much local involvement and  
19 concern about this project, I want to put you on  
20 notice that that is a possibility.

21 One of the questions I have, though,  
22 regarding the local effects analysis that Ms.  
23 Holmes referred to earlier, where you indicated  
24 that the staff doesn't have the resources or the  
25 funding to look at the costs of interconnections

1 at other substations because of the requirement to  
2 work with Cal-ISO for a system impact study at  
3 each of those substations, it occurs that -- just  
4 another obvious concern is that for us to look at  
5 whether or not there is a more prudent and  
6 feasible means of achieving the goals of this  
7 project, we might need that information to do our  
8 override analysis.

9 And I wanted to know whether staff has  
10 any view on that, or whether you've thought about  
11 that, or --

12 MS. HOLMES: Staff has never prepared  
13 those kinds of analyses, itself. Typically it's  
14 something that an applicant prepares. My  
15 understanding is that it takes months to pull  
16 together.

17 And my understanding also is that it's  
18 very project-specific. You have to know how a  
19 project is going to operate. You have to know  
20 exactly what the capacity is. You have to know  
21 whether it's baseload or load following or  
22 peaking. There's a number of factors that go into  
23 that kind of an analysis. Staff has never  
24 prepared one; we've never been a project  
25 proponent, obviously.

1                   We do review them; and we do consult  
2 with the ISO and the ISO reviews them in  
3 individual siting cases.

4                   I can't say more than that. I mean I  
5 cannot say that staff has the resources to prepare  
6 that kind of a study. And I guess the question  
7 would come up, how many such studies would be  
8 required. It's a difficult question.

9                   PRESIDING/ASSOCIATE MEMBER BYRON: Ms.  
10 Gefter, I've not participated in one of these  
11 override situations. And the implication is that  
12 we're already proceeding down this path. Could  
13 you help me understand, isn't it the applicant's  
14 responsibility to request or petition for an  
15 override?

16                   HEARING OFFICER GEFTER: That's correct.

17                   PRESIDING/ASSOCIATE MEMBER BYRON: Okay.  
18 Thank you.

19                   HEARING OFFICER GEFTER: And also I know  
20 that staff has never been required to provide a  
21 system impact study. I'm just raising that for  
22 the benefit of the local community to understand  
23 the process. And also to raise a question as to  
24 whether or not staff is going to be satisfied with  
25 the one system impact study that you do have with

1       respect to the Eastshore Substation. Or whether  
2       staff might request the applicant to provide  
3       additional studies at other substations because  
4       the applicant, in its alternatives analysis, sort  
5       of the initial alternatives analysis that you've  
6       already submitted to the record, you list several  
7       other substations in the area, and tell us why you  
8       can't interconnect at those substations.

9               MS. LUCKHARDT: I guess I'd just like to  
10       make a couple points here. In our review of  
11       previous override cases we have not found one  
12       where that has been done, where that extensive  
13       analysis has been done.

14              The type of system impact study or local  
15       system analysis that we're talking about is  
16       looking at the power flows from this project at  
17       this interconnection location.

18              And I would also note that we don't feel  
19       at this point that it would be necessary to do  
20       that, because changing substation interconnection  
21       locations would require a new application to Cal-  
22       ISO, would require a new queue position, would  
23       require an entire new application. This project  
24       would never make the online dates required under  
25       the PG&E contract.

1                   And therefore, what we are essentially  
2                   looking at is the no-project alternative. The  
3                   project would not go forward. So, we fail really  
4                   to see why spending the money that it would take  
5                   to do this would be worthwhile.

6                   PRESIDING/ASSOCIATE MEMBER GEESMAN: I  
7                   guess, and somebody should correct me if I'm  
8                   wrong, but my impression is that the queuing  
9                   process at the Cal-ISO, which is governed by FERC  
10                  tariff, is designed for what are considered to be  
11                  real projects, as opposed to hypothetical  
12                  alternatives.

13                  So I'm not certain that it's necessarily  
14                  a good fit for our CEQA process to expect that  
15                  that type of analysis could be done.

16                  HEARING OFFICER GEFTER: Can someone  
17                  please turn your phone off.

18                  MS. HOLMES: Commissioner Geesman, if I  
19                  could just make a followup comment on that. I  
20                  think from the staff's perspective there may be  
21                  differences in the level of information that's  
22                  needed for a CEQA alternatives analysis, and for  
23                  information that's required for an override.

24                  And I think it's fair to say that staff  
25                  would typically -- would potentially certainly

1 prepare a more detailed analysis for an override  
2 type of situation than it would for a CEQA  
3 alternatives analysis, depending in part on  
4 whether or not staff had identified significant  
5 adverse impacts with the project for which the  
6 alternatives were being analyzed.

7 But in neither situation can I imagine  
8 that staff would recommend that a system impact  
9 study level of analysis be prepared. I don't  
10 think it's something staff has the ability to do.

11 HEARING OFFICER GEFTER: Does anyone  
12 have any other questions, staff, applicant, Mr.  
13 Haavik, PG&E or Mr. Armas, of each other at this  
14 point?

15 All right. One of the things that we  
16 also are looking at is a schedule. The Eastshore  
17 applicant submitted their proposed schedule for  
18 the remainder of the proceeding. And staff has  
19 also submitted a proposed schedule.

20 I'm sorry, Mr. Galati.

21 MR. GALATI: Before you do I want to let  
22 you know that PG&E will be available during the  
23 public comment session.

24 HEARING OFFICER GEFTER: This evening.  
25 Thank you very much. We really appreciate your

1 staying because I'm sure there'll be a lot of  
2 questions for PG&E later this evening, as well.  
3 Thank you very much.

4 At this point, before we wind down,  
5 let's discuss the proposals for the schedule in  
6 the Eastshore case. Mr. Pfanner.

7 MR. PFANNER: Yes. I've requested  
8 Eileen Allen, who is the Energy Facility Siting  
9 Program Manager, to be here today to discuss our  
10 schedule issues.

11 MS. ALLEN: Good afternoon to the  
12 Hearing Officers, and the Commissioners. I need  
13 to provide a bit of background on the Energy  
14 Commission's siting staff's workload before I  
15 discuss the schedule for the Eastshore project  
16 that the staff is looking at.

17 Between August and November of 2006 the  
18 energy facility siting staff received applications  
19 for certification for six PG&E request for offer  
20 projects. Mr. Galati has mentioned several of  
21 these projects a few minutes ago.

22 We also received the Russell City major  
23 amendment petition during that time that this  
24 group is familiar with. Five of the six RFO  
25 projects are still very active, along with the

1 Russell City amendment.

2 Three of these proceedings are extremely  
3 complicated. Staff is also working on six active  
4 southern California AFC projects. It's not a  
5 surprise that we're now struggling with multiple  
6 overlapping deadlines for publishing the PSAs on  
7 the PG&E RFO projects.

8 Furthermore, I'm expecting two more AFCs  
9 for projects in different areas of California to  
10 be filed this month, sometime within the next two  
11 to three weeks, along with one or two applications  
12 for small power plant exemptions. Mid-summer  
13 promises to be equally busy.

14 So, with that background staff is  
15 working on publishing an Eastshore PSA in July.

16 HEARING OFFICER GEFTER: Okay. So,  
17 you're proposing about another month beyond the  
18 existing schedule that we have already adopted?

19 MS. ALLEN: Well, I can't commit tonight  
20 to July 6th, but --

21 HEARING OFFICER GEFTER: No, I'm saying  
22 that you're asking for another month. And one of  
23 the things, too, is that, you know, the schedule  
24 that we have adopted for the Eastshore project is  
25 a performance schedule.

1           So, you know, based on the applicant  
2           providing information that staff needs, it's no  
3           longer just key to particular dates. So at this  
4           point it seems that if applicant and staff are  
5           working together perhaps you could come up with a  
6           mutual date for issuing the PSA. I don't believe  
7           that, you know, we are holding you to a particular  
8           date.

9           MS. LUCKHARDT: I think our concern is  
10          obviously proceeding in a manner that works from a  
11          project perspective for meeting our online date  
12          should you decide to certify the project. I think  
13          we also are concerned about the impact to everyone  
14          in the process should we lose a Committee Member  
15          part way through. So, we're trying to take  
16          advantage of what time remains to do that. And we  
17          are amenable to changing the schedule, but we'd  
18          like to, if at all possible, maintain our full  
19          Committee.

20          HEARING OFFICER GEFTER: I'm sorry, say  
21          that again? Maintain your full --

22          MS. LUCKHARDT: Our full Committee.

23          HEARING OFFICER GEFTER: In other words  
24          you want to make sure you want Commissioner  
25          Geesman and Commissioner Byron on your Committee

1 towards the end?

2 MS. LUCKHARDT: I just think that with a  
3 controversial project like this, that it's nice if  
4 you can have both Committee Members all the way  
5 through the project, as opposed to having  
6 Commissioner Byron be left with this project as  
7 Commissioner Geesman carries on to other pursuits  
8 at the very end of the process when you have, you  
9 know, controversial, you have to present it to the  
10 full Commission.

11 PRESIDING/ASSOCIATE MEMBER BYRON: I'd  
12 like to assure the applicant that I've been fully  
13 involved in this even as the Associate Member.  
14 And remind you, of course, that it will be the  
15 full Commission that will be making the decision  
16 on this.

17 MS. LUCKHARDT: No, and I'm aware of  
18 that. And actually in our case you are the  
19 Presiding Member. And Commissioner Geesman is the  
20 Second Member, you know, --

21 PRESIDING/ASSOCIATE MEMBER GEESMAN: But  
22 I'm right behind you, Jeff.

23 (Laughter.)

24 PRESIDING/ASSOCIATE MEMBER BYRON: And  
25 I'm behind you, Commissioner.

1                   PRESIDING/ASSOCIATE MEMBER GEESMAN: I  
2                   guess the concern I have is that in terms of the  
3                   proposals that both the applicant and the staff  
4                   have made, a two-week difference in the release of  
5                   the PSA turns out to be as much as a two-month  
6                   difference in the release of the FSA.

7                   And I'm wondering if the two of you  
8                   can't get together and try and promote a little  
9                   more convergence between both the timing of the  
10                  PSA, but more significantly, the timing of the  
11                  FSA.

12                  And that obviously relates to what  
13                  issues you think will be contested between you.  
14                  But I think both Commissioner Byron and I would  
15                  like to get to evidentiary hearings as soon as we  
16                  can on those contested issues.

17                  MS. LUCKHARDT: We'd be happy to work  
18                  with staff on that.

19                  HEARING OFFICER GEFTER: So at this  
20                  point we'll take your recommendations under  
21                  advisement. We'll pend hearing from the staff and  
22                  the applicant. Perhaps you can get together and  
23                  make a joint proposal to us as to how you see the  
24                  rest of the schedule in this case.

25                  PRESIDING/ASSOCIATE MEMBER BYRON: Ms.

1 Allen, if I may ask, has the staff received all  
2 the necessary information they need to prepare the  
3 preliminary staff assessment?

4 MS. ALLEN: I'll defer to Mr. Pfanner on  
5 that.

6 MR. PFANNER: Yes, we are still  
7 coordinating with the Russell City issues. I will  
8 not that on May 23rd staff conducted a very  
9 successful data response issues identification  
10 workshop here in Hayward, which a number of  
11 additional topics were brought up that staff is  
12 addressing. And staff has said they will try to  
13 make sure that that does not delay the publication  
14 of the PSA.

15 But, as you know, as new topics come up  
16 there are more complications. So, yes, we are  
17 trying to get it done within the schedule  
18 provided, but for new issues coming up.

19 PRESIDING/ASSOCIATE MEMBER BYRON:  
20 Right. And I noted that in your status report  
21 that you're, at the public's request, that you're  
22 taking on a couple of additional analyses.

23 MR. PFANNER: Correct.

24 PRESIDING/ASSOCIATE MEMBER BYRON: And I  
25 commend you for that. I think that's very good to

1 be responsive to the public.

2 MS. ALLEN: Rest assured, we are  
3 interested in getting the PSA out for the public,  
4 also.

5 HEARING OFFICER GEFTER: So we'll be  
6 looking for a joint proposed schedule from the  
7 parties. And that way I think that if the parties  
8 can agree that's probably a much better schedule  
9 than having a schedule imposed by the Committee at  
10 this point.

11 Okay, if there are any other further --  
12 does anyone have any further comments or  
13 questions? Because we're going to adjourn at  
14 5:00. And then actually we're going to recess at  
15 5:00, because we're going to reconvene at 6:00 to  
16 allow public comment.

17 So, if we have no more questions right  
18 this minute, let's adjourn -- or recess. Right.  
19 We are still in hearing, but we're recessing.

20 (Whereupon, at 4:52 p.m., the afternoon  
21 session of the Joint Committee Status  
22 Conference was adjourned, to reconvene  
23 at 6:00 p.m., this same day.)

24 --o0o--

25

## 1 EVENING SESSION

2 6:05 p.m.

3 PRESIDING/ASSOCIATE MEMBER BYRON: Good  
4 evening, everyone, and welcome to a hearing of the  
5 -- joint hearing actually of the Eastshore project  
6 and the Russell City project.

7 I'd like to introduce myself. I'm  
8 Commissioner Byron and I'm the Presiding Member on  
9 the Eastshore siting project for the Energy  
10 Commission. And with me this evening is my fellow  
11 Commissioner Geesman. John Geesman is the  
12 Associate Member on that project. And then he's  
13 also the Presiding Member on the Russell City  
14 license amendment that's before us, as well.

15 You may also know that we did meet  
16 earlier today from about 3:00 to 5:00, and we took  
17 a brief adjournment in anticipation that we'd have  
18 some more members of the public here this evening.

19 I wanted to just begin by welcoming you  
20 and letting you know that I've checked with  
21 Commissioner Geesman and he tells me he has  
22 nothing on his calendar until 9:00 a.m. tomorrow  
23 morning --

24 (Laughter.)

25 PRESIDING/ASSOCIATE MEMBER BYRON: --

1 and that being the case, that we are here to hear  
2 from you and we will stay as long as we need to  
3 this evening.

4 But I'd also like to introduce just a  
5 few other folks on the dais before I turn it over  
6 to our Hearing Officers. To my right is my  
7 Advisor, Gabriel Taylor. And I think we have a  
8 guest here, as well, from the Energy Commission,  
9 Raoul, I forget your last name.

10 MR. RENAUD: Renaud.

11 PRESIDING/ASSOCIATE MEMBER BYRON: --  
12 Renaud. He's just observing the proceedings this  
13 evening. And then we have our two Hearing  
14 Officers for each of the two cases, and I think I  
15 will turn it over to them, Paul Kramer and Susan  
16 Gefter.

17 HEARING OFFICER GEFTER: We're going to  
18 take public comment in just a minute, but I want  
19 to welcome everyone. This is a joint status  
20 conference on the Russell City and Eastshore  
21 proposed power plants that the Energy Commission  
22 is now considering. We haven't made a decision on  
23 either project yet. What we're waiting for is a  
24 staff assessment in both projects. And they will  
25 be published in a few weeks.

1 I'm going to introduce the panel  
2 tonight. We have representatives from Russell  
3 City, and perhaps you could start, and introduce  
4 you and your group.

5 MR. WHEATLAND: Well, good evening. I'm  
6 Gregg Wheatland; I'm the attorney for the Russell  
7 City Energy Center.

8 HEARING OFFICER GEFTER: And then Ms.  
9 Luckhardt for Eastshore.

10 MS. LUCKHARDT: Yes, my name is Jane  
11 Luckhardt, and I'm the attorney for the Eastshore  
12 Energy Center.

13 HEARING OFFICER GEFTER: And for staff.

14 MS. HOLMES: Thank you. My name is  
15 Caryn Holmes; I'm the staff counsel assigned to  
16 the Eastshore project, and I'm also sitting in for  
17 Dick Ratliff, who is the staff counsel for the  
18 Russell City amendment.

19 To my right is Bill Pfanner; he's the  
20 project manager for Eastshore. And to my left is  
21 Lance Shaw, who is the project manager for Russell  
22 City.

23 HEARING OFFICER GEFTER: And also we  
24 have an intervenor in the Eastshore project, Mr.  
25 Haavik.

1                   MR. HAAVIK: Yes, Paul Haavik,  
2                   intervenor for the Eastshore Energy project.

3                   HEARING OFFICER GEFTER: Thank you.  
4                   Okay, I wanted to quickly go over the difference  
5                   between the Commissioners who are sitting here,  
6                   and the Commission Staff.

7                   The two Commissioners here are assigned  
8                   to the Committee. There are five Commissioners  
9                   appointed by the Governor who are working  
10                  Commissioners at the California Energy Commission.

11                  We have authority to site power plants  
12                  in the State of California. Generally we defer to  
13                  local agency determinations. However, there is a  
14                  provision in our statute that allows us to  
15                  override local determinations if we find that it  
16                  means a necessity for the State of California.

17                  However, in this case we haven't decided  
18                  anything because we're still waiting for the  
19                  Commission Staff to do their analysis. And that's  
20                  the difference. We're the fact finders. We want  
21                  to hear from everybody and we're going to look at  
22                  the evidence presented by everybody who's  
23                  concerned about this case.

24                  The staff is going to write up a staff  
25                  assessment based on the information they get from

1 the application, information they get from the  
2 expert agencies including the City of Hayward, and  
3 all the other state and local agencies involved in  
4 an environmental and engineering analysis.

5 Staff will also be responding to public  
6 comment. And I know that many of you have  
7 attended the workshops and the other meetings that  
8 staff has conducted. And we know that you have a  
9 lot of questions which you feel have not been  
10 answered yet.

11 What happens is in a CEQA process, an  
12 environmental review process, the staff answers  
13 those questions in their assessment. So a lot of  
14 the questions that have been raised on this  
15 project regarding air quality, transportation,  
16 impacts on aviation, land use issues, all of those  
17 issues are going to be addressed in the staff  
18 assessment.

19 That document will be made available to  
20 the public; it will be on our website. It will be  
21 sent to the local libraries. The City of Hayward  
22 will have copies. If you want copies you can  
23 contact our staff and they'll tell you how to  
24 reach them.

25 But this document will not be published

1 now, probably not till maybe July. We haven't  
2 even determined the date for that yet.

3 In the meantime today we're here to hear  
4 from you, members of the public. We've got quite  
5 a few of these blue cards that people have filled  
6 out. And what I've done is kind of organized them  
7 by topic.

8 Right now it seems like I have a lot of  
9 cards dealing with air quality, so I'll call the  
10 names of the people who are interested in that  
11 topic. And perhaps among several of you, you can  
12 pick one or two people who can make the  
13 presentation. Because in order to save time we  
14 don't need to hear the same thing over and over.

15 But before I do that we have  
16 representatives from your elected officials here.  
17 We have a representative from Assemblymember  
18 Hayashi present, Mr. Chris Parman. And he has  
19 indicated he'd like to address the Committee and  
20 the public.

21 So, Chris, if you'd like to come forward  
22 now, we'd like to hear from you. Thank you.

23 PRESIDING/ASSOCIATE MEMBER BYRON: Mr.  
24 Parman, before you begin, I would like everyone  
25 else that's here this evening to know that I did

1 receive a call, I think on Friday, from  
2 Assemblymember Hayashi. And I did meet with her  
3 on Monday, and Chris was in that meeting with me  
4 and my staff, as well.

5 And she obviously expressed a great deal  
6 of concern about this. And I have a feeling  
7 that's what you're going to talk about here.

8 MR. PARMAN: Correct, and thank you.  
9 Thank you, Officer Gefter, for allowing me to  
10 speak tonight. My name is Chris Parman; I'm the  
11 District Director for Assemblymember Mary Hayashi.  
12 And she has a public statement that she would like  
13 for me to read:

14 Dear Commissioners Byron and Geesman,  
15 Mr. Pfanner, CEC Staff, Intervenor Haavik, Mayor  
16 Sweeney and the City of Hayward, and residents of  
17 Hayward.

18 It was my hope to be with you today in  
19 person at this very important hearing to discuss  
20 the construction of another power plant being  
21 built in Hayward. Unfortunately I remain in  
22 Sacramento in order to meet a constitutional  
23 deadline and move legislation from the Assembly on  
24 to the Senate.

25 I have written to you urging the

1 California Energy Commission to reject Tierra  
2 Energy of Texas' application to build the  
3 Eastshore Energy plant for many reasons.

4 Most important is the plant's close  
5 proximity to homes, schools and business  
6 districts. It will create enormous environmental  
7 problems and adversely impact the region's air  
8 quality, resulting in higher rates of respiratory  
9 illness, such as asthma, among our seniors and  
10 children.

11 According to the California Department  
12 of Health Services more than 37,000 Californians  
13 sought hospital care due to asthma in 2000. Those  
14 most affected were children under five, women and  
15 seniors.

16 Although African-Americans represent  
17 only about 10 percent of the state's population,  
18 they represent 40 percent of the state asthma  
19 deaths and 30 percent of the state  
20 hospitalizations.

21 The 2007 Asthma Disparity Summit, held  
22 in Berkeley, reported that low-income communities  
23 and communities of color experience disparities in  
24 asthma prevalence, hospitalization and deaths.  
25 Reasons given were access to health care,

1 differences in asthma medication and environmental  
2 injustice their communities face.

3 The Eastshore Power Plant is  
4 particularly problematic due to its lower elevated  
5 emission stack design which will create low-level  
6 air pollution directly affecting those who live  
7 nearest to the plant.

8 In addition, the Eastshore project will  
9 be the second power plant sited for Hayward. The  
10 residents of Hayward and the surrounding  
11 communities have done their fair share in  
12 shouldering the burden of local power plants.

13 Finally, the City of Hayward tried to  
14 reach an agreement with Tierra Energy of Texas on  
15 a site for the proposed plant that made sense to  
16 the community as well as the residents of Hayward.  
17 Unfortunately, the company decided to go to the  
18 CEC rather than continue to find a solution with  
19 the City.

20 Subsequently the Hayward City Council  
21 voted unanimously against the issuance of a  
22 permit, determining that the plant is not  
23 consistent with the City's general plan and zoning  
24 ordinances.

25 Once again, I urge you to reject Tierra

1 Energy of Texas' application to build the  
2 Eastshore Energy Plant in Hayward.

3 I thank you for your consideration.  
4 Assemblymember Mary Hayashi.

5 (Applause.)

6 MR. PARMAN: And I have --

7 HEARING OFFICER GEFTER: If you have a  
8 copy of that statement could you leave it with our  
9 reporter so --

10 MR. PARMAN: And I have copies for the  
11 audience, as well.

12 HEARING OFFICER GEFTER: Okay, thank  
13 you. Also, I want to mention that a  
14 representative from Senator Ellen Corbett's Office  
15 is here, Kathleen DeJong-Wilson. Kathleen, do you  
16 want to just stand up and wave and show everyone  
17 where you -- okay. Kathleen indicates she doesn't  
18 have a statement, but she's here to listen. And  
19 if anyone wants to speak to her, she's available.

20 Also I wanted to ask if the Mayor of  
21 Hayward is here? Mayor Sweeney, are you here?  
22 Not. Okay. But we do note Jesus Armas is here,  
23 the City Manager. And I don't know if you have  
24 any comments to make before we get started.

25 MR. ARMAS: I'll be brief because I did

1 have an opportunity this afternoon to convey to  
2 the Commission and others the remarks.

3 We simply want to first welcome you to  
4 Hayward, and once again reiterate our appreciation  
5 to the Committee for convening this session so  
6 that you can hear firsthand the remarks that the  
7 staff has heard over the last number of weeks.

8 And want to encourage you to give  
9 careful consideration and thought to what the  
10 residents will have to say this evening.

11 And look forward to future hearings that  
12 you can conduct here in our community so the  
13 public has an opportunity to express its  
14 sentiments at that time.

15 HEARING OFFICER GEFTER: Thank you, Mr.  
16 Armas. Also I wanted to let everyone know that  
17 representatives from PG&E are also here. Mr.  
18 Galati, sitting in the front row; he's the  
19 attorney for PG&E. And some representatives also  
20 from PG&E, Mr. Marino Monardi, and also Mr. John -  
21 - I forgot your last name, sorry.

22 MR. CROSSON: Crosson.

23 HEARING OFFICER GEFTER: John Crosson.  
24 And if anyone has questions for PG&E you can talk  
25 to them privately; or we'll see if we get to a

1 point where they have to answer questions as you  
2 bring them up.

3 But I think the best thing is for us to  
4 take the comments. And if you want to speak to  
5 any of the parties separately you can do that off  
6 the record.

7 I also wanted to introduce Scott Raty,  
8 who is from the Hayward Chamber of Commerce. I  
9 got a blue card from you. I don't know where you  
10 are. Over there. Do you have a comment that  
11 you'd like to make to the Committee?

12 MR. RATY: Sure.

13 HEARING OFFICER GEFTER: Thank you.

14 MR. RATY: I, too, would like to be very  
15 brief. And I welcome you here to Hayward, as  
16 well. And on behalf of our Board of Directors we  
17 just wanted to reiterate our support for this  
18 project today, because of our concern to help  
19 provide energy that fuels industry, lights homes  
20 and drives the local economy.

21 This 115 megawatt station would directly  
22 support PG&E's substation here; put state-of-the  
23 art, rapid-fire technologies to work to benefit  
24 the community, itself, here for improved  
25 reliability, added safeguards against blackouts

1 and brownouts. And by contract, be limited to a  
2 backup energy role only.

3 And we appreciate the very comprehensive  
4 job that you, as the CEC, and the Bay Area Air  
5 Quality Management District, are doing to insure  
6 that the project meets or exceeds all air quality  
7 standards.

8 And with that conclusion, we believe the  
9 location, near the center of Hayward's industrial  
10 district, is appropriate and consistent with the  
11 manufacturing uses in the area. And, in fact, the  
12 City of Hayward reached that very same conclusion  
13 in 2001 with Russell City, with a determination  
14 that energy production is a manufacturing use and  
15 appropriate for the area. And to this day we  
16 remain puzzled by the City's about-face with its  
17 own zoning conclusions.

18 So we again just thank you for the  
19 opportunity, and with your blessings to the air  
20 quality and the health safety issues, we think  
21 this makes good sense. Thank you.

22 HEARING OFFICER GEFTER: Thank you. I  
23 think it's time to open the floor to public  
24 comment. Several people have indicated their  
25 concern about air quality. I'm going to list the

1 names I have, and then perhaps one or two of you  
2 can come forward and summarize what your  
3 colleagues are concerned about.

4 Jeanne Gardiner from Advantage Realty;  
5 Michael Toth; Rachel Henderson; I have somebody  
6 from Richard Promotional Products, but they didn't  
7 put their name down; Harvey Dean and Charlie  
8 Cameron. And those are folks who indicated  
9 they're very concerned about air quality here.

10 You know, maybe you all can line up and  
11 you can talk among yourselves for a minute and  
12 decide, you know, whether you all have something  
13 different to say, or you want to try to combine  
14 your comments. But go ahead and tell me your name  
15 when you come up to the podium.

16 MS. GARDINER: I'm Joanne Gardiner.

17 HEARING OFFICER GEFTER: Okay.

18 MS. GARDINER: I'm a real estate broker  
19 here in Hayward, a resident for over 40 years. I  
20 do not believe that these power plants, either one  
21 of them, should be approved for Hayward.

22 Earlier today when PG&E stressed that  
23 they looked at the least-cost/best-fit methodology  
24 in selecting which company they would buy their  
25 power from, both of which were -- I believe there

1 was two that were -- had sites here in Hayward.

2 And PG&E, nor anyone so far, has taken  
3 into consideration the 200,000 residents who  
4 densely populate Hayward and around Hayward where  
5 this westerly prevailing wind and southeasterly is  
6 going to carry this discharge, this 55 tons of  
7 ammonia and however many other contaminants.

8 I happen to be asthmatic which is  
9 incidental, but when I mentioned this to my asthma  
10 doctor he said, how soon are you moving. He said  
11 asthma people should never be breathing that.

12 Another thing that I find it so contra-  
13 productive is the City of Hayward has a brand new  
14 residential development up in the Hayward Hills.  
15 It's a huge development. They have a country club  
16 coming there. The air that's coming off of these  
17 plants is going to be carried right up to these  
18 new developments.

19 So we're creating on one -- trying to  
20 create a better economic environment for Hayward.  
21 And on the other hand we're quickly destroying it.  
22 And I think the only reason that the Russell City  
23 Power Plant was approved without any fanfare --  
24 without all these people being told --

25 (Applause.)

1 MS. GARDINER: -- what, because of --

2 HEARING OFFICER GEFTER: I'm going to  
3 ask the audience to refrain from clapping,  
4 cheering or booing. It takes up a lot of time and  
5 it's not productive. And please refrain. Thank  
6 you.

7 MS. GARDINER: Anyway, I think the  
8 reason that the Russell City Plant was approved  
9 was because of a \$10 million donation to the  
10 library system of Hayward; not because anybody  
11 took into consideration the myriad of people and  
12 disease and ailments that are going to be bestowed  
13 upon Hayward people.

14 If you're only looking at what is most  
15 profitable for PG&E, what is most profitable for  
16 Tierra, what is most profitable, and yet it's the  
17 people that they're contaminating that are going  
18 to be paying the bill for them to be most  
19 profitable. Does it make any sense?

20 Does it make sense that Tierra will get  
21 credits to go and clean up other air in other  
22 communities when it already contaminated air,  
23 because they get approved to be here in Hayward  
24 and contaminate our air. Where is the sense in  
25 that? I don't see it. And I don't think the

1 residents of Hayward see it.

2 And that's about all I have to say. I  
3 truly beg you all to reconsider and withdraw any  
4 approval for either one of the plants in Hayward.  
5 Thank you very much.

6 HEARING OFFICER GEFTER: Thank you, Ms.  
7 Gardiner. Okay, now, does anyone have anything in  
8 addition to add to Ms. Gardiner's comments on air?  
9 Okay, sir, please come forward; tell me your name.

10 MR. DEANE: My name is Harry Deane. I'm  
11 a former state employee on disability, retired. I  
12 was a heavy equipment mechanic and I reached a  
13 lead worker position when I got injured.

14 I started at the Bay Bridge and after I  
15 was doing smogs there and getting 16 parts per  
16 million of hydrocarbons, they put a ventilation  
17 system in to save mechanics. Okay.

18 Of six of my fellow workers, we were  
19 lead workers, in this district for Caltrans, two  
20 of them died in 2003 and '4. So they saw that I  
21 was sick from taking medication and my injuries.  
22 And the state retired me, I feel because they were  
23 afraid of cancer. One of my colleagues is buried  
24 up here in Hayward. And I just don't see any  
25 reason to have, build this new generation of

1 hydrocarbons and all the other pollutants right in  
2 my front yard.

3 Because we are right next to the Bay and  
4 personally, you know, one of our most qualified  
5 mechanics, he was a lead worker, Pat Reno; he  
6 lived in San Leandro, and he lost his life to  
7 liver cancer. Struggled, but that's the reason  
8 that I, in their names, I'm trying to keep our air  
9 as clean as we can.

10 And I think this thing belongs -- like  
11 you wouldn't put a runway pointed at a school, you  
12 wouldn't take and put a power plant pointed at a  
13 city, especially of working class people that have  
14 poor health from the pollution they work in.

15 Thank you.

16 HEARING OFFICER GEFTER: Thank you, Mr.  
17 Deane. Does anyone else have something in  
18 addition to add on air quality? Okay, come on  
19 forward please, and tell me your name.

20 MR. TOTH: Hi, my name's Michael Toth; I  
21 live in the Eden Garden section of Hayward, about  
22 a half-mile downwind from the plant.

23 Just a couple of specific things  
24 regarding air quality that I want to mention. One  
25 is more related to public health; it's kind of a

1 cross-over. And it's more related to things that  
2 we don't know.

3 The health risk analysis that both the  
4 Air District does and the CEC does, is basically  
5 it's based on data that gets plugged into a model.  
6 And the output of the model gives you a certain  
7 indication of what the health risk is.

8 I took the liberty of -- basically the  
9 Air District, Bay Area Air Quality District, has  
10 issued a preliminary determination of compliance  
11 in which they run a model. And I took the liberty  
12 of going through this model and looking at the  
13 data source from the California Air Resources  
14 Board. They have a database which includes  
15 engines and the emission factors of those engines.

16 To be brief, for this particular engine,  
17 in the Air Resources database there's only two  
18 sources. The data involved in the health risk  
19 analysis is based on two measurements. Now, in  
20 other cases it's based on five or six. The Air  
21 Resources Board rates these numbers.

22 And so I would like to suggest that  
23 regardless of what actual numbers the model turns  
24 out, that the Commission understand that the base  
25 data for this model is very sparse. We have a

1 very limited indication of whether the engines  
2 actually tested in the class of 650 horsepower and  
3 above are actually relevant to the 11,000  
4 horsepower engines that they're putting in this  
5 plant.

6 And in the case where there is  
7 insufficient data to really make a strong  
8 conclusion, that that not be taken with a bias  
9 towards approval of the plant.

10 HEARING OFFICER GEFTER: Well, I  
11 appreciate your comments on the preliminary  
12 determination of compliance, the PDOC, issued by  
13 the Air District. It's still in the comment  
14 period on the PDOC, and you're welcome to file  
15 your comments with the Air District, as well as  
16 put your comments in with our staff regarding that  
17 particular document.

18 Because again, the expert agency in this  
19 case is the Air District. And so if you have  
20 comments and you have questions I would recommend  
21 that you file your comments right now during the  
22 comment period on the PDOC.

23 MR. TOTH: Right, I have, I --

24 HEARING OFFICER GEFTER: Okay, and also  
25 with --

1 MR. TOTH: -- have sent in my comment on  
2 that.

3 HEARING OFFICER GEFTER: -- our staff.

4 MR. TOTH: Another topic related --

5 HEARING OFFICER GEFTER: Thank you.

6 MR. TOTH: -- related to air quality is  
7 there was a study done in 2002, published in the  
8 Journal of the American Medical Association, that  
9 strongly linked particulate matter, not specific  
10 to diesel, just ambient particulate matter with a  
11 cancer risk.

12 And I am told that this study has not  
13 been factored into a health risk analysis because  
14 possibly it was too new for the existing  
15 regulations to take into account. And so I would  
16 urge the Commission to actually figure out a way  
17 to consider this in a health risk analysis to some  
18 extent.

19 I mean as we move on we learn more. And  
20 hopefully we won't take an excessive risk just  
21 because the law has lagged several years behind  
22 where research is.

23 HEARING OFFICER GEFTER: Are you  
24 including that in your comments on the PDOC?

25 MR. TOTH: Yes, I did.

1 HEARING OFFICER GEFTER: Yes. And also  
2 you're aware of the ARB's new regulations on  
3 diesel emissions?

4 MR. TOTH: This is not related to  
5 diesel. This is related to particulate matter  
6 from all sources.

7 HEARING OFFICER GEFTER: All right, so  
8 if your comments have been filed more specifically  
9 with the Air District, and also you've talked with  
10 our staff or written your comments to our staff?

11 MR. TOTH: Yes, I've talked with Dr.  
12 Greenberg.

13 HEARING OFFICER GEFTER: So those --  
14 your questions, which are very good, your comments  
15 excellent. I think they'll be addressed both by  
16 the Air District and by our staff.

17 MR. TOTH: Thanks. I do have a comment  
18 on land use. Should I wait, or should I --

19 HEARING OFFICER GEFTER: No, now that  
20 you're here tell me your comment on land use.

21 MR. TOTH: Okay. So, you know, it seems  
22 that this is a situation where a company bought a  
23 piece of land without doing adequate diligence to  
24 determine that there would be issues regarding  
25 land use and the public with regard to the

1 application they wanted to use that land for.

2 They've entered into contracts; they've  
3 set deadlines for themselves. Now they would come  
4 to the Commission asking that the proceedings be  
5 expedited even though that the information from  
6 PG&E and other cases is not available, or is  
7 supposedly prohibitively expensive to obtain, or  
8 time-expensive to obtain based on the alternate  
9 siting.

10 And I would just hope that the fact that  
11 we cannot do a complete alternatives analysis  
12 because this information is confidential and cost  
13 prohibitive or time prohibitive to obtain would  
14 not in any way prejudice the Commission towards  
15 approval of this project. Or towards the granting  
16 of a override in terms of the land use decision by  
17 the city council.

18 And that's all I have to say; thank you  
19 very much.

20 HEARING OFFICER GEFTER: Thank you, Mr.  
21 Toth. Does anyone else have comments on air  
22 quality that we haven't heard already? Okay, tell  
23 us your name, please.

24 DR. HENDERSON: My name is Rachel  
25 Henderson. I know you've heard a lot already.

1 There's many many issues with this, as you're well  
2 aware of.

3 I'm a resident of the Eden Gardens  
4 neighborhood. I'm also a scientist; I'm a  
5 biologist. So I've been looking at the data and  
6 going to the workshops. And I'm just very  
7 concerned with the Eastshore project, how many  
8 issues there are, particularly with air quality.

9 One of the things that hasn't been  
10 brought up yet was a discussion in the workshops  
11 about particulate matter and the fact that Tierra  
12 said they were going to be emitting X amount of  
13 particulate matter. And then they had to lower  
14 it. So, they said, no, we'll lower that.

15 And it hasn't been any change in the  
16 technology, but it's been based on a guarantee  
17 from Wardsilla (phonetic) who's the manufacturer  
18 of the engines.

19 And so I've been told at these meetings,  
20 you know, if they exceed their warranty, you know,  
21 what they're guaranteeing as their particulate  
22 matter emissions, they'll be taken offline.

23 But the question is, how do we know that  
24 they're exceeding it. And the Bay Area Air  
25 Quality Management District hasn't been able to

1 tell us how often they're going to monitor. You  
2 know, they say, well, we do it maybe once a year,  
3 once every three years. But we haven't gotten a  
4 real answer on how often.

5 So, to me, you know, if the  
6 manufacturer's guaranteeing that doesn't give me a  
7 whole lot of faith that that's really what's going  
8 to be happening. And since --

9 HEARING OFFICER GEFTER: Let me  
10 interject.

11 DR. HENDERSON: Yeah.

12 HEARING OFFICER GEFTER: Of course, that  
13 is a concern that you have and I'm sure the  
14 residents have. A mitigation condition can be  
15 included in the, you know, in the decision in  
16 staff's assessment, in which we can identify how  
17 often the emissions will be inspected. And, you  
18 know, that can be certainly -- you know, you don't  
19 have to rely on what the Bay Area says; we can  
20 include a condition if that -- and you can  
21 participate in helping to draft that condition  
22 with staff and with the applicant.

23 DR. HENDERSON: That's great; that's  
24 very reassuring. That's a concern that many  
25 residents have, is the adequate monitoring of PM

1 and also of the toxic air contaminants.

2 Other issues I guess have been brought  
3 up are the credits, the use of credits. The Bay  
4 Area -- Hayward is already in excess of amounts of  
5 certain air contaminants and pollutants already.  
6 So we know that. We're getting Russell City and  
7 we're getting Eastshore on top of that. It  
8 doesn't make us feel any safer that credits for,  
9 you know, these plants that have been offline for  
10 20 years, or these different industries in  
11 different areas, not even in Hayward, where these  
12 credits are being purchased for. You know, that  
13 doesn't make us feel any better about our health.

14 Some of the mitigation methods are, you  
15 know, I mean credits are paper mitigation. The  
16 fireplace retrofit, I really think is not a good  
17 method, to put in gas inserts in people's  
18 fireplaces. People are going to use them. I have  
19 one of those in my house. We use the gas to light  
20 the wood and then we turn it off, because we're  
21 not going to be paying PG&E to be burning gas in  
22 our fireplaces. So I think that's just silly.

23 And there's no, I mean, the CEC Staff,  
24 themselves, have said, you know, there's really no  
25 way to monitor are people really using wood or

1 what are they using.

2 So, you know, listening to the  
3 discussion earlier this afternoon with, you know,  
4 what's the benefit of putting this plant here.  
5 Why do we need it in Hayward, why do we need it to  
6 connect to the substation.

7 And what I heard is that the benefit is  
8 to Tierra because they save costs. And that cost  
9 benefit is then passed on to PG&E. They do a cost  
10 analysis. And, you know, to me, I know that real  
11 estate is cheaper in Hayward than it is on the  
12 Peninsula. I also know that I believe there are  
13 no power plants on the Peninsula.

14 So, to me it seems an issue of, you  
15 know, it's cheap in Hayward. Maybe the people  
16 won't protest. You know, we have this other power  
17 plant going, and let's see how many other power  
18 plants we can stick in there and save money.

19 And you don't get anything for free.  
20 And so I think Tierra and PG&E want to save money,  
21 as they should, you know, they're companies,  
22 that's what they do. But we don't want to pay for  
23 it with our health. And I'm just concerned about  
24 all these issues. If there weren't any health  
25 concerns I wouldn't be concerned about it. But

1       there are a lot of health concerns. So I ask you  
2       to really very carefully look at this data that  
3       they're presenting to you.

4               HEARING OFFICER GEFTER: Thank you very  
5       much.

6               DR. HENDERSON: Thanks.

7               HEARING OFFICER GEFTER: Anything -- I  
8       see a lot of people on air quality still. And you  
9       haven't -- is this going to be a new issue that  
10      hasn't been raised before?

11              MR. LAM: No, actually I put in a card,  
12      but might as well, if I may.

13              HEARING OFFICER GEFTER: Okay, and what  
14      is your name, please?

15              MR. LAM: Chris Lam.

16              HEARING OFFICER GEFTER: Okay. Go  
17      ahead, Mr. Lam. Thank you.

18              MR. LAM: Good evening, Commissioners.  
19      Thank you for your time that you spend for  
20      listening to us regarding this project.

21              I'm the President and CEO of Pucci  
22      Foods. We have about 15 employees. I'm a Member  
23      of the Chamber of Commerce, as well as Board of  
24      Directors. But I'm not attempting to speak for  
25      the Chamber, as well as the Board of Directors. I

1 speak as a business owner in Hayward, as well as  
2 for my employees.

3 We operate 24 hours a day; we have 15  
4 employees; and we process food. And our major  
5 concern is we spend more than eight hours a day  
6 working at our company, which is downwind from the  
7 plant. We share a parking space with Life  
8 Chiropractor, and our major concern is air quality  
9 of the plant.

10 We ask if there's a guarantee that is  
11 not going to affect our health by this plant being  
12 put in, and there's yet to be a guarantee that  
13 it's not going to happen.

14 So therefore, until I get that guarantee  
15 I recommend -- or I urge that you vote against  
16 having the plant. And that's our position. And I  
17 will send you a letter reinforcing our position.  
18 Thank you very much.

19 HEARING OFFICER GEFTER: Thank you, Mr.  
20 Lam. Thanks for your comments.

21 Okay, we're still on the air quality  
22 topic, yes? Okay. And tell us your name, please.

23 MS. FONTENBERRY: My name is Delores  
24 Fontenberry. I'm just a regular old citizen, a  
25 homeowner. And I'd like to ask a couple of

1 questions, if I may.

2 First of all, whether any other sites  
3 besides Hayward that were looked at?

4 HEARING OFFICER GEFTER: And that is a  
5 question that we have also asked the applicant.  
6 And they say they have. And I'm sure you -- have  
7 you been to the workshops where you can also --

8 MS. FONTENBERRY: No.

9 HEARING OFFICER GEFTER: Okay.

10 MS. FONTENBERRY: The second question is  
11 where is the nearest air monitoring station  
12 located?

13 HEARING OFFICER GEFTER: Those are good  
14 questions, and I can't answer those questions  
15 right now because I don't have all the information  
16 before me. But the staff and the applicant can  
17 answer your questions. And I think we'll do that  
18 off the record, so I would ask you at some point  
19 you could go over and talk to them while people  
20 are, you know, --

21 MS. FONTENBERRY: Okay.

22 HEARING OFFICER GEFTER: -- coming up  
23 and making comments.

24 MS. FONTENBERRY: One more.

25 (Audience members speaking)

1 simultaneously.

2 HEARING OFFICER GEFTER: People want  
3 those questions answered?

4 (Audience members speaking  
5 simultaneously.)

6 HEARING OFFICER GEFTER: Okay. All  
7 right. Okay. All right. Because I don't want  
8 to, you know, spend a lot of time. But I'll ask  
9 the applicant, if you could answer the question  
10 very succinctly as to whether other sites were  
11 looked at before this site was chosen.

12 And then if we have anybody on air  
13 quality who can answer where an air monitor is. I  
14 don't think we have our air quality expert here.  
15 But perhaps the applicant can answer the question  
16 about the sites in a very succinct answer.

17 MS. LUCKHARDT: We're checking on the  
18 monitoring station right now. The --

19 HEARING OFFICER GEFTER: In the  
20 meantime, I believe our staff can get back to you  
21 on that question, because we don't have the air  
22 quality expert here tonight. But they can get  
23 that information and publish it --

24 MS. LUCKHARDT: Okay. Ozone is  
25 monitored in Hayward and other pollutants are

1 monitored in Fremont?

2 MR. TREWITT: Mostly Fremont.

3 MS. LUCKHARDT: Fremont.

4 HEARING OFFICER GEFTER: Okay, so they  
5 have the information for you.

6 And what about the site, whether there  
7 were other sites looked at before this site was  
8 chosen.

9 MS. LUCKHARDT: There were seven other  
10 sites looked at before this was chosen.

11 MS. FONTENBERRY: I'd like to know what  
12 sites they were. Certainly not in Concord or  
13 Walnut Creek or Orinda.

14 MS. LUCKHARDT: They're in the  
15 application.

16 HEARING OFFICER GEFTER: They are listed  
17 in the application for certification. In the big  
18 document that the applicant filed.

19 MR. HAAVIK: Excuse me, Ms. Gefter, --

20 HEARING OFFICER GEFTER: Do you have the  
21 answers?

22 MR. HAAVIK: I might shed a little light  
23 on that.

24 HEARING OFFICER GEFTER: Okay.

25 MR. HAAVIK: I believe she's asking the

1 question were there any sites looked at outside of  
2 the City of Hayward.

3 MS. FONTENBERRY: Yes.

4 HEARING OFFICER GEFTER: That's your  
5 question? Does anyone on applicant's side can  
6 answer that question right now, or --

7 MS. LUCKHARDT: The initial sites that  
8 were evaluated before the project were proposed  
9 were all in Hayward.

10 HEARING OFFICER GEFTER: They were all  
11 in Hayward.

12 (Audience Members speaking  
13 simultaneously.)

14 HEARING OFFICER GEFTER: Okay, please  
15 don't make a lot of noise because we have one  
16 person speaking at a time. Okay. Thank you.

17 MS. FONTENBERRY: Okay, one more  
18 question.

19 HEARING OFFICER GEFTER: Yes.

20 MS. FONTENBERRY: I'm reading here that  
21 these two companies are concerned that they won't  
22 be able to meet their purchasing power agreement  
23 with PG&E. What kind of business plan is it that  
24 you have an agreement with PG&E but don't have a  
25 site for the plants?

1 HEARING OFFICER GEFTER: Well, that's  
2 one of the things that we're looking at, as we're  
3 looking at all the facts that they are presenting  
4 to us. We haven't come to any conclusion. We're  
5 just looking at what they're presenting. So I  
6 can't answer that question.

7 MS. FONTENBERRY: Yeah. Well, if you  
8 have a business -- okay. As the representative  
9 from Mary Hayashi's Office stated, I'm African-  
10 American; I'm a senior citizen; and I have asthma.  
11 I oppose the building of these plants. Thank you.

12 HEARING OFFICER GEFTER: Thank you for  
13 coming and speaking to us this evening. Anyone  
14 else on the air quality? Please tell us your  
15 name.

16 MS. VIERRA: Barbara Vierra. Okay, I  
17 just have a few things to say. Mrs. Gardiner said  
18 that it would affect 200,000 people. It would  
19 actually affect 500,000 people, because you're  
20 going to put this in where five major cities are.  
21 You've got Hayward, Union City, Fremont, Castro  
22 Valley, San Leandro and Dublin. And CalState  
23 Hayward has 13,000 students, okay.

24 And so we're looking at something like a  
25 huge population. We're not just a little tiny

1 Texas town, okay. And our medium home prices are  
2 \$600,000. This isn't small potatoes, okay. This  
3 is like the Bay Area. You just can't plop down  
4 this environmental disaster thing here, okay.

5 And also the Alameda County Health  
6 Department said that Alameda County has the  
7 highest rate of breast cancer. And we don't need  
8 any more discharge in our air because of that.

9 And that's all I have to say.

10 HEARING OFFICER GEFTER: Thank you for  
11 your comments. One minute, Ms. Vierra. The  
12 reporter needs your name and how to spell it. You  
13 can just go over and tell him.

14 And the next person please come forward  
15 and tell us your name.

16 MS. McDONALD: This one? Hello.

17 HEARING OFFICER GEFTER: Yes.

18 MS. McDONALD: I gave a blue card, so I  
19 have a card there. But it was on the air  
20 pollution. So, --

21 HEARING OFFICER GEFTER: Want to tell me  
22 your name, please?

23 MS. McDONALD: Juanita McDonald.

24 M-c-D-o-n-a-l-d.

25 HEARING OFFICER GEFTER: Right, and also

1 I have a Bob McDonald. Is that your husband?

2 MS. McDONALD: Yes, but he's going to  
3 talk on another subject.

4 HEARING OFFICER GEFTER: Okay.

5 MS. McDONALD: I am a Hayward resident  
6 and I am an asthmatic. I raised three asthmatic  
7 sons in Hayward. I know asthma. They spent half  
8 their life in allergy clinics or in emergency  
9 rooms. And this was without any type of proposed  
10 energy center.

11 If you were out today you would know  
12 that the closer you get to the Bay, we have strong  
13 winds. They were up to 40 miles per hour  
14 yesterday. They will blow upon us. And we live  
15 close to the Bay.

16 Someone asked at last Wednesday's  
17 meeting why Hayward. My answer, and several other  
18 people's answers, were because they thought they  
19 could get away with it. We're not a wealthy city  
20 like Marin and other people with a lot of money.  
21 And we feel they thought they could come here and  
22 we wouldn't yell.

23 Well, we happen to be a minority city,  
24 working city. Hayward, according to The Daily  
25 Review, has the largest minority or diverse

1 population -- their quote was "diverse population"  
2 -- in California. And according to Ms. Hayashi,  
3 our children, especially our minority children are  
4 getting more and more asthma. This will simply  
5 add to it.

6 We figure that -- they figure that the  
7 wealthy cities would object. Well, as a diverse  
8 minority city, so do we.

9 HEARING OFFICER GEFTER: Thank you, Mrs.  
10 McDonald. Anybody else on air quality? Yes, sir,  
11 come forward, please. Please tell us your name.

12 MR. McDONALD: My name is Bob McDonald.  
13 And I'm here tonight to talk for myself and also  
14 for those who cannot talk. And they may shriek,  
15 quack or otherwise vocalize. But no thought in  
16 any of the literature that has been handed out do  
17 I see any thought has been given to them.

18 They, of course, reside in the salt  
19 water marsh very close to the power plants. And  
20 they are in danger, great danger, from the  
21 emissions of ammonia. Because the ammonia will  
22 attack the small fish; that is what they feed on  
23 in the tidal marshes.

24 And they are several orders of magnitude  
25 less that they can stand in ammonia than people.

1 And nothing has been published about this.  
2 There's been no talk about the tidal marshes,  
3 which I don't understand, because that's a federal  
4 protected for the migratory wild water fowl.

5 And if the water fowl lose the fish on  
6 which they feed, then they will also suffer great  
7 damage. So I hope that something can be done to  
8 look into this. They are very susceptible to the  
9 ammonia. And --

10 HEARING OFFICER GEFTER: I wanted to  
11 tell you, Mr. McDonald, the staff's assessment  
12 will include a biology section. In that section  
13 they will address most of the biology concerns you  
14 might have regarding wildlife --

15 MR. McDONALD: But the amount of ammonia  
16 you're talking about is not just a little bit that  
17 is going to be dumped. It's 64 tons. Or to put  
18 it into something we more easily understand,  
19 that's 128,000 pounds per year that is going to be  
20 dumped into the air.

21 And if it so happens on a rainy day, a  
22 lot of that particulates of ammonia will fall down  
23 and wash right into the tidal marshes. Something  
24 must be done.

25 I thank you.

1 HEARING OFFICER GEFTER: Thank you for  
2 raising that topic with us. More on air quality?  
3 Okay, please come forward. Tell us your name,  
4 please.

5 MS. BOS: Yes, Shirley Bos. This has  
6 been addressed a little bit, but I'd like to  
7 really emphasize it. I'm a resident of Hayward  
8 Mobile Country Club, and as an educator with the  
9 San Lorenzo Unified Schools, I represent the  
10 voiceless silent citizens, mainly the elderly and  
11 children.

12 My focus point is that school  
13 absenteeism is directly connected to the progress  
14 that a child makes. Therefore, increased lung,  
15 respiratory, breathing and asthmatic problems  
16 potentially caused by another power plant in  
17 Hayward would rob children of the privilege and  
18 necessary skills of education and empowerment for  
19 future success as adults.

20 Thank you.

21 HEARING OFFICER GEFTER: Thank you for  
22 your comments. Comments on air quality? Please  
23 come forward. Please tell us your name.

24 MS. McDAID: Linda McDaid. My question  
25 to the Commission here is when you look at peaker

1 power plants --

2 HEARING OFFICER GEFTER: Wait, wait one  
3 minute, Lynn. Could you spell your last name for  
4 me?

5 MS. McDAID: M-c-D-a-i-d.

6 HEARING OFFICER GEFTER: McDaid, okay.

7 MS. McDAID: When you look at peaker  
8 power plants what we're talking about when they  
9 operate is going to be, let's say it's all spare-  
10 the-air-days, is that not correct? I mean for the  
11 most part.

12 So, when we're talking about peak  
13 emissions from those plants, it's on a spare-the-  
14 air day. So is it a recommendation of this  
15 Commission that the people that live in that area,  
16 and the schools, should stay inside so that they  
17 don't put their health at risk and be susceptible  
18 to asthma and things that happen during those  
19 days? Is that the recommendation of the  
20 Commission?

21 HEARING OFFICER GEFTER: The Commission  
22 doesn't have a recommendation at this time because  
23 we haven't adopted any decision. We haven't  
24 approved anything, --

25 MS. McDAID: Okay, I just --

1 HEARING OFFICER GEFTER: -- we're  
2 just --

3 MS. McDAID: -- want to make that point,  
4 because we have to be clear that these are the  
5 critical days that those plants will operate at  
6 peak capacity, right? So it is a very important  
7 point.

8 HEARING OFFICER GEFTER: That's a very  
9 good point. Thank you very much.

10 MS. McDAID: Thanks.

11 HEARING OFFICER GEFTER: Anybody else on  
12 air quality. We already heard from you; let's  
13 give someone else a chance.

14 Okay, there are other questions I have  
15 here, from Mr. Charlie Cameron. Are you here, Mr.  
16 Cameron? I don't -- okay. Is that Mr. Cameron  
17 over there? Okay, please come on up to the --

18 MR. CAMERON: Yes, good evening,  
19 Commissioners. I brought up under --

20 THE REPORTER: Your name for the record,  
21 please.

22 MR. CAMERON: Charlie Cameron. I  
23 brought up under a number of workshops instructing  
24 mostly the Eastshore development applicant, to  
25 look at all the delays, mostly A/C Transit

1 deadheading buses will have in the Hayward yard.  
2 They did not even know where the bus yard is and  
3 was. They didn't even know where the bus routes  
4 run in their neighborhood.

5 I tried to explain to Mr. Stein, but he  
6 just doesn't understand -- the project manager --  
7 just to be constructively helpful. Maybe it is  
8 possible to possibly combine the two plants in the  
9 west part of the west area of Hayward. Maybe it  
10 is possible.

11 But just have to get the traffic right  
12 during construction; it's going to be a bear. But  
13 they just don't get it, and they don't know how to  
14 understand it. Thank you.

15 HEARING OFFICER GEFTER: Thank you very  
16 much. I also wanted to take a moment. I  
17 understand that Council Member Barbara Halliday of  
18 the City Council in Hayward is here. Do you have  
19 any questions or would you like to make some  
20 comments to the audience? Here she is.

21 And would you spell your name for the  
22 reporter.

23 COUNCIL MEMBER HALLIDAY: Hi, thank  
24 you. I hadn't actually planned to make comments,  
25 but I was here to listen. And --

1 HEARING OFFICER GEFTER: Please --

2 COUNCIL MEMBER HALLIDAY: I'm sorry, my  
3 name is Barbara Halliday, H-a-l-l-i-d-a-y. I am a  
4 Member of the City Council. We did consider this.  
5 I think the thing I would like to say to you is  
6 that our City Council looked at this very  
7 carefully and we determined that it was not  
8 consistent with the zoning for the area.

9 A power plant requires a use permit; it  
10 is not a right under industrial zoning. And when  
11 we -- and I, you know, I spent many years on the  
12 Planning Commission, and the Council now, looking  
13 at these zoning questions very carefully.

14 And this power plant is in an area that  
15 is so close to, you know, several schools. I mean  
16 these are our young people. We do not need to be  
17 exposing them to this kind of pollution.

18 And when we looked at Russell City, and  
19 I know there are concerns with that, too, and I  
20 think Hayward is saying we're willing to do our  
21 part to supply the energy to this area, but, you  
22 know, we are not willing to be the only ones to do  
23 that. When there are cities surrounding us that  
24 are not doing anything.

25 And Russell City is out closer to the

1 Bay. I do love that Bay shoreline. We have done  
2 more than most cities to preserve our shoreline  
3 for recreation and for the wildlife that is out  
4 there. And we really do enjoy it. And it has  
5 issues.

6 But the Tierra Plant is right in the  
7 middle of an area that is changing. It is not  
8 your typical industrial area. It has schools; it  
9 has homes very close by. And so when we made that  
10 determination we made it very seriously and for a  
11 very good reason.

12 And I just would hope that you would  
13 respect, you know, the local opinion in this case.  
14 So, thank you.

15 HEARING OFFICER GEFTER: Thank you for  
16 being here today. Also, I got blue cards from two  
17 people who said they didn't receive notice of this  
18 event. Connie Jordan and also Melinda Alfaro, --  
19 pronouncing your names correctly. If you want to  
20 come forward, please, and address us.

21 And I also wanted to tell you to get  
22 notice you need to put your name on the list that  
23 the Public Adviser has out there by the door. If  
24 you write your name and address down then you will  
25 receive the notices --

1 MS. ALFARO: Okay, I did that. Thank  
2 you.

3 HEARING OFFICER GEFTER: Okay, and tell  
4 us your name first.

5 MS. ALFARO: Melinda Alfaro.

6 HEARING OFFICER GEFTER: Okay, thank  
7 you.

8 MS. ALFARO: And I want to thank you for  
9 being here to listen to our concerns. Okay, now  
10 this is just partial of a community. Hayward is a  
11 very big city with a lot of people from a very  
12 diverse communities.

13 I'm concerned that prior to this, or  
14 anything about this whole energy, even the Russell  
15 City energy project, I was never aware of that.  
16 Nor were some of my neighbors. It wasn't until a  
17 friend of mine emailed me and said, do you know  
18 about this power plant. I'm like, what are you  
19 talking about. I was very concerned about it.

20 The other thing is that I also am  
21 representing the Spanish-speaking community  
22 because, you know, adequate information has not  
23 been given to them. They are the majority of this  
24 City; they are a growing population. And I think  
25 that if they were here -- I mean if they would

1 have gotten notices, they also would have been  
2 here to voice their concerns.

3 I'll put an example to you. This  
4 afternoon when we took the break, a lot of you, I  
5 saw a lot of you across the street at La Salsa  
6 (phonetic) getting a bite to eat. I noticed that  
7 the cashier, the waitress, was looking like,  
8 what's going on in the corner. She saw the ladies  
9 with the signs and everything.

10 And I told her, I said, do you know  
11 what's going on over there. Pretended that I  
12 didn't know what was going on. So, she says, no,  
13 I don't know, but what's happening. So I told  
14 her, did you know about the energy plant -- where  
15 do you live? I live in Hayward. Did you know  
16 about the power plant? No.

17 So, that tells us a lot. Okay, so the  
18 communities that we should be reaching are not  
19 being reached, so that they also can have the same  
20 opportunity that we're having right now to be able  
21 to voice these things to you.

22 Now, with some of these people that are  
23 coming here, how many of you live in Hayward? No,  
24 no, no, no, I know you guys --

25 (Laughter.)

1 MS. ALFARO: The gentlemen that are here  
2 representing this project for Tierra, do you live  
3 in Hayward?

4 UNIDENTIFIED SPEAKER: We do not  
5 represent Tierra.

6 HEARING OFFICER GEFTER: Okay, well,  
7 this is -- these people are from PG&E right here  
8 in the first row.

9 MS. ALFARO: Okay, well, do you? Do  
10 you? Any of you live in Hayward?

11 HEARING OFFICER GEFTER: The company is  
12 sitting up there.

13 MS. ALFARO: So, see, that, you know,  
14 like prior comments, like, you know, we're already  
15 pulling -- even Russell City should have never  
16 been approved. I don't know why it was approved  
17 to begin with. Maybe we would not have to be  
18 dealing with this second project that we're  
19 discussing right now. So that's a very big  
20 concern for me.

21 I would like to also add, when the staff  
22 does the assessment, if they can also go out into  
23 the communities, different communities in Hayward  
24 and also get assessments from those residents, as  
25 well, that are not able to be here, or have no

1 clue about what's going on. That's a fair thing  
2 to do.

3 HEARING OFFICER GEFTER: And that's a  
4 very good point. And I would recommend that you  
5 speak with Mike Monasmith, who is the Public  
6 Adviser for the Energy Commission. And that's his  
7 Office's job, is to do outreach.

8 MS. ALFARO: Great, because --

9 HEARING OFFICER GEFTER: And he was the  
10 one out there who gave you the blue card --

11 MS. ALFARO: Oh, okay.

12 HEARING OFFICER GEFTER: -- when you  
13 first walked in the door.

14 MS. ALFARO: Right, okay.

15 HEARING OFFICER GEFTER: And if you  
16 would speak to him and tell him what your concerns  
17 are, and maybe work with him to try to identify  
18 the community that needs information. That's what  
19 his job is, is to reach the community.

20 MS. ALFARO: Right, because -- okay,  
21 because the other thing, too, is that, you know,  
22 we have ways of the media letting us know. Never  
23 in the news, The Daily Review has been talking  
24 about it, and we read about it, but not everybody,  
25 mainly the monolingual Spanish-speaking or other

1 languages, they don't have the same, what is it  
2 called, that they cannot read English, let alone  
3 speak English.

4 HEARING OFFICER GEFTER: So you might  
5 ask Mike to have notices translated into Spanish  
6 and whatever else you would like to share with  
7 him. And work together with him and his office.

8 MS. ALFARO: So I really, you know, want  
9 to really plead with you not to accept this  
10 project, or even the other Russell City project,  
11 because we really don't need these projects.  
12 There's so much, you know, pollution in the air  
13 and people are already sick. And they could get  
14 sicker.

15 Thank you very much.

16 HEARING OFFICER GEFTER: Thank you very  
17 much for being here tonight. Tell us your name,  
18 please.

19 MS. JORDAN: Hello; my name is Connie  
20 Jordan. I agree with the last speaker, also. And  
21 I have a question. Your method of notification is  
22 troublesome to me. What is the radius that you  
23 notify residents and other property owners or  
24 businesses? Does anybody have a --

25 HEARING OFFICER GEFTER: Well,

1 originally when the application is first served on  
2 the local community it is the adjacent landowners  
3 to the property, itself; and all the city agencies  
4 that might be involved in the review.

5 And then as time goes by people add  
6 their names to the list in the community. And so  
7 at this point the Public Adviser is making a list;  
8 every time the staff has a workshop they add to  
9 the list.

10 MS. JORDAN: Right, but isn't there a  
11 certain amount of feet that you notify residences  
12 and businesses? Isn't there a radius?

13 HEARING OFFICER GEFTER: The adjacent  
14 landowners is the first list --

15 MS. JORDAN: So if your nearest house in  
16 Russell City -- to the Russell City Power Plant is  
17 one home, Doris, Jim Doris on Depot Road was the  
18 only home notified. And unless people hear about  
19 your meetings, and I sure as heck don't know how  
20 because they're not published in the newspaper  
21 under the public meeting section, I had to explain  
22 that to Mike Monasmith, how to do his job. That's  
23 a free service. Nobody knows about these  
24 meetings. It's unfair.

25 And I don't think Russell City would

1 have gotten this far. I think everyone would have  
2 been here in 2001 had we known.

3 Thank you.

4 HEARING OFFICER GEFTER: That's a very  
5 good point. Thank you very much. I have -- there  
6 are several people who were concerned about the  
7 airport and the impacts on the airport. So I  
8 would ask those folks, Mr. John Kyle and Mr. Steve  
9 Barstow?

10 MR. KYLE: My name is John Kyle.

11 HEARING OFFICER GEFTER: Okay, come up  
12 here to the --

13 MR. KYLE: (inaudible) priest, rabbi  
14 or --

15 HEARING OFFICER GEFTER: Okay, Mr. Kyle,  
16 thank you.

17 MR. KYLE: I'm a 46-year resident of the  
18 City of Hayward. I was on 16 or 17 ad hoc  
19 committees, task force, you name it, for the  
20 school district and the City. I'm pretty well  
21 informed.

22 The three air monitors that were  
23 questioned here earlier, one of them, the most  
24 efficient one technology-wise is five miles east  
25 of the airport. There's one in Fremont and one in

1 Oakland up at the San Leandro/Oakland city line.

2 Last March, I guess it was, there was a  
3 public meeting; and there was a comment made to  
4 the effect that the new plant, the Sierra Plant,  
5 will not affect the Hayward Executive Airport.  
6 And having been picker of nit, working in a bank  
7 as a real estate appraiser, you know what an  
8 appraiser is, he's the guy who made all the bum  
9 loans, and the loan officer on the commission, he  
10 only made the good loans.

11 So I became a picker of nit. And I said  
12 to myself why are they concerned with the Hayward  
13 Airport when they're not concerned with the  
14 Oakland Airport. Because if you pull out any map  
15 from AAA or anybody else and draw a straight line  
16 down runway 29, you will discover that it flies  
17 right over the site, the Sierra site.

18 And you have not addressed the question  
19 of air turbulence. When you turn on 14 engines  
20 there's going to be air turbulence. How would an  
21 unsuspecting pilot know this, as he made the  
22 approach from south of Hayward, highway 92, where  
23 he's supposed to be able to maintain 2500 feet and  
24 frequently does not. And they descend to about  
25 2000 feet as they pass the golf course at the

1 northwest end of the Hayward Airport.

2 So, it's a guess and by-golly. He has  
3 no idea when those things turn on. He might fly  
4 through that and three minutes later the second  
5 flight from Southwest Airline is going to fly  
6 through the turbulence and be surprised.

7 So a suggestion was made to the effect  
8 that you inject water into the stacks and create a  
9 little steam which would alert the pilots. And  
10 then there was another objection to the fact that  
11 the chemistry changes and now you got a problem  
12 with the pollutants settling down on the cities  
13 and is thereby much faster than might thought be  
14 the case.

15 So I wrote a letter to the FAA. And  
16 back comes a response: We have examined the  
17 Russell City thing and we don't see any problem  
18 with it interfering with operations at the Hayward  
19 Executive Airport.

20 And back went my letter, that's not the  
21 question I raised. The question I raised was to  
22 do with carrier aircraft approaching Oakland  
23 International Airport. Would you please address  
24 that.

25 And since then I have not heard a word

1 from the FAA. Not a single word. No letter of  
2 response. But I took the time and trouble to send  
3 a copy to the Western Pacific Director whose  
4 office is in L.A. And then I sent one to the  
5 person in charge of the FAA, as well as the  
6 Department of Transportation. No response.

7 What are you going to do about that? I  
8 challenge you to understand what's happening. If  
9 you don't inject the water into the stacks when  
10 those engines kick in, how is the pilot to  
11 understand that there may be air turbulence ahead?

12 HEARING OFFICER GEFTER: Are you  
13 referring to the Russell City Plant, or both  
14 plants?

15 MR. KYLE: Beg your pardon?

16 HEARING OFFICER GEFTER: Are you  
17 referring to the Russell City project or both  
18 projects?

19 MR. KYLE: I just oppose the one that  
20 has the 14 stacks with all the accumulated air  
21 pressure ascending to god knows how high. It's  
22 going to interfere with the approach to runway 29  
23 at the International Airport. Thank you.

24 HEARING OFFICER GEFTER: Okay, thank you  
25 very much. And Steve Barstow, I believe?

1 MR. BRISTOW: No, it's Bristow.

2 HEARING OFFICER GEFTER: Bristow, okay.

3 MR. BRISTOW: Steve Bristow.

4 HEARING OFFICER GEFTER: Sorry, Bristow.

5 MR. BRISTOW: I'm also a resident of the  
6 City of Hayward.

7 HEARING OFFICER GEFTER: Thank you.

8 MR. BRISTOW: Retired union president.  
9 Primarily I just babysit these days.

10 HEARING OFFICER GEFTER: Okay, do you  
11 want to spell your name for the reporter so we can  
12 get your name spelled right.

13 MR. BRISTOW: Like it's on the card,  
14 B-r-i-s-t-o-w.

15 HEARING OFFICER GEFTER: Thank you.

16 MR. BRISTOW: And when I'm not  
17 babysitting I get to play golf. I also worked for  
18 the City of Oakland for awhile. I was downtown  
19 Oakland at 7th and Broadway on the ninth floor  
20 looking out the window when the Loma Prieta  
21 earthquake hit. There was a pair of binoculars by  
22 the window. I reached for them. I don't know  
23 why. Looked out from there, from 7th and Broadway  
24 you can see the Cypress structure.

25 At that moment is when the Cypress

1 structure came down. And it was at that position  
2 on the freeway that those 50-some-odd people were  
3 killed instantly.

4 Not too far ago that I was at the golf  
5 course at Sky West; fairly safe, you think you're  
6 pretty safe on the golf course. It's right next  
7 to the airport. And on the 18th fairway, this is  
8 at the airport's Lear Jets and small aircraft and  
9 helicopters take off. It's not the approach; it's  
10 where they take off. You'd think it would be  
11 pretty safe there at the airport.

12 Well, stuff happens. And there I am on  
13 the 18th fairway, and I hear this little plane  
14 coming up over the fence, which is about this  
15 high, and it didn't make it. It cleared the fence  
16 and then went right across the fairway and then  
17 crashed into a tree. The plane crashed.

18 I notice in a report, the memo that's  
19 dated the first of June 2007, report number 06-  
20 AFC-6 status report number 4, not only, as stated  
21 earlier by Barbara Halliday from the Council, that  
22 they opposed it. The City brings up issues of, as  
23 stated in paragraph I think it's five on page 2 --

24 HEARING OFFICER GEFTER: Are you  
25 referring to the staff status report?

1                   MR. BRISTOW: Yes, ma'am. On that  
2 paragraph in the last sentence: Aircraft  
3 executing a missed approach, helicopters and small  
4 general aviation aircraft -- I presume they mean  
5 the Lear Jets and the single-prop, double-prop  
6 planes that come in -- fly that will potentially  
7 fly over the facility and could be exposed to an  
8 aviation hazard.

9                   Well, little planes fall down. My  
10 concern is, and I speak against the energy plant  
11 because of this, is that stuff happens. If a  
12 plane goes down because, as was stated by the  
13 gentleman that just preceded me, because of the  
14 turbulence we're going to be in for some problems.

15                   As I stated earlier, I'm a babysitter.  
16 That's basically what I do most of the time. My  
17 grandchildren go to school in Hayward. And one of  
18 them goes to one of those schools that's close to  
19 the energy plant, it's the Eastshore plant.

20                   The second thing that I'd like to bring  
21 up is on page 3, same memo. It's a report from  
22 the City, first paragraph says: Further, the City  
23 expects that any mitigation associated with  
24 exhaust plumes identified by the FAA -- blah,  
25 blah, blah -- will be funded by the Eastshore

1 applicant.

2 I could not find anywhere that that  
3 question had been addressed. And I presume it  
4 will be. We're to express our concerns, and  
5 you're to respond to that, is that correct?

6 HEARING OFFICER GEFTER: Right. And  
7 when the conditions of certification are written  
8 up, then staff would most likely propose that the  
9 applicant take responsibility for the financial  
10 situation.

11 MR. BRISTOW: Because, as a taxpayer,  
12 with a jurisdiction the size of the City of  
13 Hayward, that money's going to eventually be  
14 coming out of our pockets. So anybody that lives  
15 in the City or has business in the City would be  
16 concerned about that.

17 Thank you.

18 HEARING OFFICER GEFTER: Thank you very  
19 much. I have a comment here from Mr. Williams.  
20 Mr. Williams, Bob Williams?

21 MR. WILLIAMS: Hello. My name is Bob  
22 Williams. And I live about -- well, I live on  
23 Depot Road -- I live about two blocks from the  
24 proposed plant, you know, the 14-stack one.

25 And I can confirm that the Oakland

1 Airport traffic overhead does go right overhead  
2 there, because it goes right over my house, like  
3 five planes -- like about every five minutes.  
4 It's a big lumbering jet goes flying over. They  
5 fly pretty low.

6 And, you know, maybe they'll change the  
7 flight plan if we put this plant in; maybe they  
8 won't be flying over my house. They'll be flying  
9 over someone else's house, which I don't like,  
10 either.

11 But I've lived in Hayward -- you know, I  
12 was born in Hayward; I'm 55; lived in that house;  
13 my mom raised me in that house. And I see the  
14 neighborhood changing. And I was a kid when  
15 Russell City was basically a community of African-  
16 Americans and Latinos. And I remember that, you  
17 know, every maybe couple weeks someplace would  
18 burn down. Eventually, you know, the places would  
19 burn down, and they got rid of all the people  
20 there and they built this industrial complex out  
21 there.

22 And I always felt pretty privileged  
23 being a white person, you know, had some money,  
24 you know, that wouldn't happen to me. But I'm  
25 getting a sense of this corporate, you know,

1 power; comes in, doesn't matter if you're white,  
2 black, Latino, if you haven't got the bucks the  
3 corporation's going to want to make money, come in  
4 and just move in and siphon as much money out of a  
5 situation as possible.

6 And PG&E, you know, wants this to  
7 happen. It's not good enough for them to have one  
8 plant; they want to put two plants in our  
9 community, you know. Why are they going to be  
10 able to do that? In Hayward? Maybe because, you  
11 know, Hayward's not Pleasanton. You know, it's  
12 not like an affluent white community where people  
13 can really, you know, bring in the kind of power  
14 to bear to keep this from happening.

15 And, you know, this Tierra organization  
16 from Texas, you know, they use terms like, well,  
17 they're our neighbor, they're going to be good  
18 neighbors. Well, they are not good neighbors.  
19 It's a corporate entity coming in, you know, it's  
20 located in Texas. They don't care about my  
21 community or our community.

22 And this is just a money-making deal.  
23 So if they want to have another power plant, if we  
24 really need one, why should Hayward take the brunt  
25 of two power plants. I didn't even know about the

1 first one coming in.

2 And it is going to be a polluter. And  
3 there's a thing called credits, you know, and  
4 they're offsetting the pollution by some kind of  
5 credit system. Well, that means we're going to be  
6 breathing this garbage in our air.

7 And so we're the only ones here that can  
8 seem to stop this thing. And I would like to see  
9 it stopped.

10 HEARING OFFICER GEFTER: Thank you for  
11 your comments.

12 (Applause.)

13 HEARING OFFICER GEFTER: No, no  
14 clapping, please. It takes up too much time.  
15 Please. I have another -- we're on another topic.  
16 Mr. --

17 MR. GILLAN: I have an addendum to a  
18 card --

19 HEARING OFFICER GEFTER: I was just  
20 going to call you. Are you Mr. Gillan?

21 MR. GILLAN: I'm --

22 HEARING OFFICER GEFTER: Just a second,  
23 okay, I'm going to call Mr. Gillan who is going to  
24 speak on override.

25 MR. GILLAN: Thank you for the

1 opportunity, Commissioners. Kevin Gillan is my  
2 name; I'm a resident of Hayward. I have a small  
3 business in Hayward, as well, so I'm going to be  
4 affected 24/7 by these facilities. It's where I  
5 work and it's where I live.

6 Now, we're talking about the local  
7 community having made a decision to say no to this  
8 plant. That's already on the table; everybody is  
9 aware of it. In fact, it was unanimous.

10 The issue now is what does the  
11 Commission do in terms of overriding that local  
12 decision. What are the criteria that are used in  
13 order to make that decision. Is there specific  
14 benchmarks? What is it that you are going to use  
15 as a measure that would say, we're not going to  
16 pay attention to what the local people say;  
17 instead, what we're going to do is pay attention  
18 to what the power brokers say.

19 What are the criteria for an override?

20 HEARING OFFICER GEFTER: Are you asking  
21 us that?

22 MR. GILLAN: Yes.

23 HEARING OFFICER GEFTER: The override  
24 authority is contained in the law, Public  
25 Resources Code section 25525. And the standards

1 are written down in that particular statute. It's  
2 a state statute.

3 And there have been a number of cases  
4 that the Energy Commission has decided on the  
5 override issue, particularly the Metcalf case  
6 where we overrode the City of San Jose. And all  
7 that information is online on our webpage. You  
8 can look up Metcalf, and you can go to the  
9 override section. And the standards are explained  
10 in that decision.

11 MR. GILLAN: Are the standards  
12 consistent with what you saw in Hayward -- pardon  
13 me, in San Jose? Are those applicable to Hayward?

14 HEARING OFFICER GEFTER: The standards  
15 would be, but the evidence is different. And so  
16 we haven't heard the evidence yet. That's what  
17 the applicant is going to present to us at the  
18 evidentiary hearings which have not yet been  
19 scheduled. We have to look at the facts and see  
20 whether the facts actually comply with the  
21 standards.

22 MR. GILLAN: Okay. Thank you.

23 HEARING OFFICER GEFTER: Thank you very  
24 much. Okay, sir, in the back, if you would like  
25 to come forward, please. Please tell us your name.

1           MR. McCARTHY: My name is John McCarthy  
2 and I'm retired Army a couple of years ago. I've  
3 been living in the area for the last 25 years.

4           I have worked at the Hayward Air  
5 Terminal; I have serviced rotorcraft there. I've  
6 flown in military rotorcraft to the Hayward Air  
7 Terminal. I have a little over nine years worth  
8 of military aviation experience.

9           And I didn't see any indication  
10 regarding the FAA's reply specific to rotorcraft.  
11 So I have several questions.

12           Where does the FAA content reflect  
13 thermal plume effect on rotorcraft approach or  
14 departure, since they are more sensitive than  
15 fixed wing. It throws them into a panic  
16 practically.

17           What about previous info regarding  
18 insurance rate issues that I heard at a previous  
19 hearing, where it did, in fact, a local airport in  
20 a similar circumstance. And I believe the  
21 intervenor might recall hearing that. And there  
22 was another gentleman, Mr. Williams, I think, who  
23 I think may have brought this up at a previous  
24 hearing. I don't see any discussion of that in  
25 the FAA content here.

1                   Why wouldn't Hayward also be a  
2                   significant question here where the Hayward  
3                   Airport is likely to be a major staging site for  
4                   the next big one on the Hayward fault line, and  
5                   possibly other events, too?

6                   Anyway, going back to rotorcraft, if  
7                   you're in a fixed-wing aircraft going over sudden  
8                   thermal that you're unaware of, in addition to the  
9                   fact that you're getting a sudden lift, that's one  
10                  thing. You have some measure of stability with  
11                  the fact that you have a fixed glide ratio, your  
12                  wings stay in the same position. If you're in a  
13                  rotorcraft it could throw your whole wing  
14                  direction out of synch with your aircraft.

15                  And bear in mind that the lift isn't the  
16                  direction of the rotor, and not fixed with respect  
17                  to the rest of the aircraft. So that's something  
18                  to be considered. I really wish that they would  
19                  learn to spell rotorcraft in this material here.

20                  So, I have another issue, but it's on a  
21                  card. Thank you.

22                  HEARING OFFICER GEFTER: Okay. Well,  
23                  Mr. McCarthy, one minute. I'm sorry I didn't call  
24                  you before when we were discussing aviation  
25                  because it didn't say that on your card. But you

1 said something here about data access for staff.

2 Is that another issue that you have?

3 MR. McCARTHY: Yes. I was very  
4 concerned at the last hearing, which was a staff  
5 hearing, will data access from PG&E that  
6 apparently has not been available, will that  
7 require a subpoena to make it part of this  
8 process?

9 And why would the California State  
10 Assembly, or the Legislature, neglect that kind of  
11 an issue statutorily? It seems to me that it  
12 ought to be legal requirement as part of the  
13 process that if the data is not adequate, then the  
14 permitting cannot proceed.

15 And thirdly, on that issue, will the  
16 Governor need to respond to a subpoena for this  
17 kind of thing?

18 HEARING OFFICER GEFTER: Thank you.  
19 We're going to take a recess for about five  
20 minutes so we can stretch and drink some water.  
21 And so let us reconvene about let's say 7:30.  
22 Thank you.

23 (Brief recess.)

24 HEARING OFFICER GEFTER: We'd like to  
25 get started so we're not here all night. In the

1 interim I received a lot more -- several more blue  
2 cards from members of the public who would like to  
3 address us.

4 Before we do that I did want to indicate  
5 to those speakers who are concerned about the FAA  
6 and aviation impacts, that staff is going to  
7 follow up on your questions and contact the FAA  
8 about those, the Oakland Airport and the Hayward  
9 Airport, and the concerns that you raised, and try  
10 to get some answers. And indicate those answers  
11 in the staff assessment.

12 Okay, let's get started again. I got  
13 another question on air quality from Mr. Brian  
14 Frank. Mr. Frank, are you in the room here?  
15 Please come up.

16 MR. FRANK: Hello; my name's Brian  
17 Frank; I'm a resident of Hayward. And I've been  
18 coaching soccer in Hayward for seven years every  
19 Saturday between August and November at Martin  
20 Luther King Middle School, which is about a mile  
21 from the plant. There'll be between eight and ten  
22 games going on simultaneously from 9:00 in the  
23 morning until 3:00 in the afternoon; and that's  
24 just Saturday.

25 Monday through Friday there'll be over

1       60 teams within, you know, several miles of the  
2       plant, practicing. And we have teams that go  
3       year-round. And that's a lot of running, you  
4       know, so we are really concerned about the air  
5       quality.

6                I personally would not have moved into  
7       the neighborhood knowing that there was a power  
8       plant. So how is it going to be when it's time  
9       for us to sell our property. We have to disclose  
10      that there's a power plant, you know. Would you  
11      want to move into a neighborhood that had a power  
12      plant in it?

13              So I don't know if your kids are playing  
14      sports or anything like that, but would you like  
15      them playing next to a power plant?

16              So, that's just how I feel about it.

17              HEARING OFFICER GEFTER: Thank you, Mr.  
18      Frank. Is also Teresa Frank, are you related, Ms.  
19      Frank? You have another comment you'd like to  
20      add? Okay, please come forward.

21              MS. FRANK: Good evening, everybody.  
22      Thank you. My name's Teresa Frank. I'm also, as  
23      a mother I'm speaking; my child has asthma and  
24      it's very severe. Also, I am a teacher in the  
25      area. I'm speaking on behalf of a lot of

1 children, that they are really looking up to us.

2 As a teacher my responsibility is to  
3 look out for my students. And to, you know, to  
4 provide them with the best. And I surely am very,  
5 you know, I mean dismay that this can happen to  
6 our neighborhood. A neighborhood that we have  
7 worked so hard to keep it together. We're proud  
8 of this neighborhood. We're proud of our  
9 community. We are proud of our children.

10 And by putting this plant it's just  
11 going to kill us all. And you are in the power to  
12 be our hero. Please be our hero. Thank you.

13 HEARING OFFICER GEFTER: Thank you very  
14 much. Also on the same topic of effects on the  
15 children and schools, Mr. Ramirez. Please tell us  
16 your full name.

17 MR. RAMIREZ: Adaberto Ramirez.

18 HEARING OFFICER GEFTER: Thank you.

19 MR. RAMIREZ: I live in Hayward for  
20 about 20 years. About ten years ago we bought a  
21 home right behind Chabot College, within a couple  
22 miles from one of the plants.

23 Two of my children have mild asthma.  
24 And if I know anything about pollution and  
25 contaminants, I know any more pollution will not

1 make things any better.

2 To me the big question is, I mean, how  
3 can something like this be approved in the middle  
4 of neighborhoods. There's new home developments  
5 going up; there's a KB Home going up just down the  
6 street from there. And schools all around.

7 I think there's a real problem. I'm an  
8 engineer, I'm an electrical engineer. When we  
9 have to make decisions we look at all the  
10 information and then we try to make the best  
11 decision possible. I just don't understand how  
12 the planning process allows something like this,  
13 not to consider all these other effects.

14 I mean I understand that one of the  
15 reasons these plants are being planned in this  
16 area is because there is proximity to gaslines. I  
17 know that the developer is going to save millions  
18 of dollars. But is that worth at the expense of  
19 health of our children?

20 That's all I have to say.

21 HEARING OFFICER GEFTER: Thank you very  
22 much for your comments. Mr. Quevedo. Please tell  
23 us your name.

24 MR. QUEVEDO: Pete Quevedo. I'm a  
25 resident. Just a couple of questions. Welcome,

1 by the way; it's a little late.

2 I'd just like to know is who needs this?

3 Does the City of Hayward need this plant?

4 Obviously the area code 94545 doesn't need it.

5 That's where all these people are.

6 Also, does the Bay Area need this?

7 Probably. But if it really does need it, then I  
8 would suggest they refer the energy people to the  
9 water suppliers that it's coming from, Hetch  
10 Hetchy, to this area. I understand that most of  
11 the water comes from Hetch Hetchy. You know, they  
12 got a long big pipe I guess, to get that stuff  
13 down here. I guess they could just send one long  
14 big wire down here. You know, I think a lot of  
15 things would be a lot different, and people would  
16 probably appreciate it a lot more, be happy to do  
17 more business with the PG&E.

18 I think that's about it.

19 HEARING OFFICER GEFTER: Thank you very  
20 much for your comments. Okay, and also Mrs.  
21 Juanita Gutierrez. Hello. Could you please tell  
22 us your name.

23 MS. GUTIERREZ: Yes. I'm Juanita  
24 Gutierrez, Chairperson for the Mt. Eden Task  
25 Force; also a resident just a couple of blocks

1 away from the proposed plant.

2 HEARING OFFICER GEFTER: Could you tell  
3 us what the Mt. Eden Task Force is?

4 MS. GUTIERREZ: Mt. Eden Task Force is  
5 an organization that was formed by the City of  
6 Hayward to oversee actually the neighborhood plan  
7 of the whole area, which is next door where this  
8 proposed plant is. All the Mt. Eden neighborhoods  
9 comprised.

10 And your mission, ladies and gentlemen,  
11 is to protect us. As you said, we have not made a  
12 decision, we are going to look at the evidence.  
13 We are the evidence. We live there. Most of the  
14 people that you have here do not know, do not live  
15 in Hayward. We do, we live here.

16 And I have, like I said, -- and have you  
17 seen this, where this site is? I don't see why,  
18 as I said the last time that we had a meeting, we  
19 are doing all this, all this meeting, wasting our  
20 time, when the place is wrong. That's it. It's  
21 too small; it's too close to us; it's surrounded  
22 by schools. Why on earth waste so much time on a  
23 place that is so small that they would think to  
24 have been not, I don't hear that.

25 Also, I haven't heard also being

1 addressed the noise pollution. Right across from  
2 it is the Chiropractor College; then we have Heald  
3 College. We have many schools around. The noise  
4 is going to be just too strong. Chances are that  
5 this plant comes through the school will close  
6 because they won't be able to teach.

7 So, please do consider that first. Look  
8 at the place; it's the wrong place, too small, too  
9 close to us. And it will be too noisy. It will  
10 be a problem to all of us.

11 And do your job, protect us. Thank you.

12 HEARING OFFICER GEFTER: Thank you very  
13 much. Mr. Sullivan, John Sullivan. Could you  
14 please tell us your name.

15 MR. SULLIVAN: My name is John Sullivan.  
16 Good evening, Commissioners. I've maintained a  
17 business license in Hayward for several years.  
18 And I've been living and working in the East Bay  
19 long enough to know that reliable electrical  
20 source is really vital to our economy and, you  
21 know, to our general quality of life. None of us  
22 really relishes living in the fear of blackouts  
23 and brownouts and so forth.

24 This Eastshore Energy Center, as I  
25 understand it, is just a peak plant; and as such,

1       it's kind of an insurance policy against these  
2       blackouts and brownouts. And I think for that  
3       reason let's be proactive in safeguarding our  
4       access to good reliable energy source. I would  
5       encourage you to move forward with this energy  
6       center. I thank you.

7                   HEARING OFFICER GEFTER: Thank you for  
8       being here. Also, Mr. Jack Wu. Mr. Wu, are you  
9       still here? Yes. Thank you. Tell us your name,  
10      please.

11                   MR. WU: I am Jack Wu. I'm just here to  
12      remind you all of what God says in Leviticus,  
13      chapter 17, verses 17 and 18: Thou shalt not hate  
14      thy brother in thy heart. Thou shalt in anywise  
15      rebuke their neighbor and not suffer sin upon him.  
16      Thou shalt not bear any grudge or take vengeance  
17      upon the children of thy people. But thou shalt  
18      love thy neighbor as thyself."

19                   Tierra Energy isn't loving the neighbors  
20      of Hayward, the people of Hayward. What they're  
21      doing is sending a curse upon us. And bringing  
22      the wrath of God upon us.

23                   Well, actually, if you guys decide to  
24      approve this energy plan, then it means God is  
25      going to judge Hayward because it's a disaster

1 waiting to happen.

2 We have the Hayward faults; an  
3 earthquake could hit us at any time. And if the  
4 energy center is built, it could strike that and  
5 we'll have a big explosion and a lot of people  
6 could die.

7 So I'm also here to remind you that God  
8 standeth in the congregation of the mighty and he  
9 judgeth among the gods. You people here are the  
10 decisionmakers and you have a duty to the Lord,  
11 your God, and to the people of Hayward to do what  
12 is right and do what is acceptable unto the Lord,  
13 your God.

14 You have -- or else you're going to go  
15 to hell. And there's nothing you can do about it.

16 HEARING OFFICER GEFTER: Thank you. All  
17 right, Mr. Allen Bertillion. Please tell us your  
18 name.

19 MR. BERTILLION: Yes. My name is Allen  
20 Bertillion. And I'm a resident of the County.  
21 And were in an area that's within two blocks of  
22 the proposed Eastshore Energy Center.

23 And first I'd like to thank you, the  
24 Commission, for coming; and also PG&E, because  
25 PG&E at all of the work sessions, I attended two

1 of the work sessions and just a word about the  
2 work sessions.

3 There was a lot of questions that were  
4 brought up at the work session and it came down to  
5 questions that were not answerable because PG&E  
6 would not provide information to them. And this  
7 was quite a concern and a lot of the people that  
8 were asking questions were asking them of the  
9 applicant. The applicant didn't know. And so  
10 that was a problem.

11 The other thing was that Mike Mosier  
12 (sic), your public relations man, as I understand  
13 he has a budget of roughly \$10,000. You have  
14 currently 17 applicants that are in review. And  
15 so during the work sessions a lot of people came  
16 in and they had learned from a neighbor or from  
17 somebody else that just happened to find out about  
18 the work session, and they wanted to know why they  
19 weren't notified. And this was brought up  
20 earlier.

21 And so your public relations, here  
22 there's means through the newspaper; there's other  
23 media that can be notified where people in the  
24 area can be notified. But he doesn't have the  
25 budget for it. He's overworked, under, you know,

1 I just feel that your staff needs more assistance.

2 I was rather taken by your staff because  
3 they were very diligent, but they didn't have  
4 access to a lot of the questions that were asked  
5 of them. And in addition to not having the  
6 clients near the people that I think that were  
7 interested in attending had they known.

8 Anyway, so now we're on to -- I've just  
9 got a litany of things, and I don't want to spend  
10 too much time on them. But my main concern is the  
11 quality of our community. Being where I live,  
12 this area is being annexed by the City. There's  
13 five islands. There's a phase one and a phase  
14 two. And the KB Homes, which is there's 140 homes  
15 that are going in. That's probably within three  
16 blocks of the plant site.

17 On Depot Road there's an area that is  
18 being annexed into the City from the County. This  
19 was an area that was to be developed. So the area  
20 around the Eastshore Energy Plant, and I guess  
21 adjacent to Calpine, is an area that is intended  
22 to be developed. And right now it's County, so  
23 there's -- the reason I moved where I am is  
24 because I'm on a one-acre site. When I move I'm  
25 sure there's going to be somebody coming in and

1 putting in 20 homes, or now the houses are wall-  
2 to-wall, but -- so the area's developing and I  
3 think that's really important.

4 On air quality, one of the things that,  
5 here again, going over a little bit here on a  
6 major access between highway 880 and 92, these  
7 intersect between 3:00 and probably like 7:00 you  
8 have at least two miles of backup with cars that  
9 are just sitting, waiting to get onto Interstate  
10 880. And they're just sitting there idling, and  
11 so there's a tremendous amount of emissions.

12 There's the air traffic that goes over  
13 into Oakland, which is about every five minutes.  
14 There's corridors where they -- and it's right  
15 over this area where this plant is. There's also  
16 the local airport in that we're in a traffic  
17 pattern for that to come in.

18 And because of that, the emissions, as I  
19 understand, the Eastshore is pumping out over two  
20 tons of pollutants on an annual basis.

21 We have the, here again I'm sort of  
22 reiterating some of this other stuff, the  
23 population within a half mile, we have over three  
24 colleges, two junior colleges -- I mean two  
25 grammar schools; there's an intermediary school.

1       There's 550 units which are within a block of it.  
2       Plus the two colleges; there's a chiropractic and  
3       Healds College. And then the Chabot.

4               There's numerous homes that are being  
5       developed in the area, which I've already said.  
6       Eighty-five -- I'm on a water system; I'm on with  
7       Moreland Water on their Board of Directors. And  
8       we're concerned about the nitrates that will  
9       possibly filter down and over, probably not  
10      immediately, but this could go into the  
11      groundwater and have an effect on it.

12              And we use -- there's quite a number of  
13      people. It's a mutual water system and we all  
14      drink the water from the wells that are within  
15      this area of the site.

16              There's wetlands. There's a sanctuary  
17      that's just adjacent that's operated by Hart and  
18      East Bay Regional sort of jointly. There's two  
19      areas, and that's a wonderful area that's been  
20      developed. And the migratory birds are  
21      increasing. We're talking about the stacks and  
22      currents. That will have an effect. Plus, also  
23      the pollutants in the air.

24              There's hazardous waste. You've got two  
25      10,000-gallon ammonia tanks. And they happen to

1 be aqueous ammonia, which they've got it set of 19  
2 percent aqueous ammonia. At 20 percent they come  
3 under regulation. So they're just right under the  
4 bottom of where they're being under-controlled.

5 Lack of exploring alternative sites.  
6 This was in the work session. This was brought up  
7 a number of times and there really wasn't any --  
8 there were sites that were proposed within the  
9 group that were meeting in the work session.

10 One was Alameda. There's gas site  
11 there; there's the grid that is there. So there's  
12 a lot of other sites that could be proposed. But  
13 in all fairness, of the woman that was in charge  
14 of the alternative sites, she indicated there were  
15 three that were outside of Hayward. But for some  
16 unknown reason, most of the ones that were being  
17 considered were in Hayward.

18 I don't know if I've already said this,  
19 but it was brought up that because of the -- there  
20 was no representatives of the City -- of the PG&E  
21 that were in any of these workshops. And it would  
22 have been extremely helpful if they had been at  
23 these workshops, at least one representative.  
24 And, of course, your Committee, workshop Committee  
25 said that they would be present here to answer any

1 questions. But --

2 HEARING OFFICER GEFTER: Okay, and I  
3 wanted to stop you right there because I wanted to  
4 remind you that we do have representatives of PG&E  
5 here tonight. And if you would like to speak with  
6 them, or anybody else wants to speak with them off  
7 the record, they're available. They've been  
8 sitting here all evening. And so, you know, if  
9 you want to take a break and meet with the PG&E  
10 folks, you're welcome to do that.

11 MR. BERTILLION: Thank you. I  
12 appreciate them being here. I would have  
13 appreciated them being represented at the  
14 workshop.

15 HEARING OFFICER GEFTER: Okay, and I  
16 think we've discussed that already.

17 MR. BERTILLION: Okay.

18 HEARING OFFICER GEFTER: And so we have  
19 a number of other people who would like to address  
20 us.

21 MR. BERTILLION: Okay, I have just a few  
22 more things. One is the noise of the 14 engines,  
23 which has already been brought up.

24 As I understand, the Eastshore Energy  
25 has been given, that they're going to be given --

1 that they have to account for 150 tons for  
2 credits. And in the paper it was indicating that  
3 Continental Can, which was shut down in 1986,  
4 which is 20 years ago, will be selling 71 tons of  
5 credits to this Eastshore. And I don't understand  
6 why somebody that has been out of business for 20  
7 years can sell credits to an existing functioning  
8 plant that will be up and running.

9 The one last thing was the -- I've asked  
10 for a basic study of the plumes of emissions and  
11 the heat and noise that would be generated in the  
12 area, and I'm sure it's probably exponential, but  
13 what areas are going to be mainly affected as the  
14 wind. Because it's a pretty prevailing wind.

15 And I think that's about it. I'm sure  
16 there's probably some other thing -- oh, I didn't  
17 know whether the emissions, it's 1.5 MmBtus for  
18 thermal units. Does this unit comply with this?  
19 I wasn't sure whether they did or not. So that's  
20 a question.

21 HEARING OFFICER GEFTER: I think a lot  
22 of your questions, which I'm sure you've already  
23 raised to staff and the applicant, are going to be  
24 answered in the staff assessment.

25 MR. BERTILLION: Okay. And, again, I

1 thank you very much for coming today.

2 HEARING OFFICER GEFTER: And we  
3 appreciate your comments. And thank you very  
4 much.

5 Han Lukito. Mr. Lukito, please come  
6 forward. Thank you. I've just been calling the  
7 names of the people on the blue cards. I know  
8 everyone has -- a lot of people here have  
9 comments. And so we're just going card-by-card.  
10 But if we can summarize our comments that would be  
11 helpful so we don't have to be here all night.

12 Mr. Lukito, please tell us your name on  
13 the record.

14 MR. LUKITO: Yeah, my name is Han  
15 Lukito. I'm a resident; I live in Moore Drive,  
16 just a couple of blocks away. We're behind Chabot  
17 College from the proposer power plants.

18 My main concern here is why on earth  
19 would you guys choose an urban populated area with  
20 residents with kids. You know, if you live in the  
21 area, you know, you would know this is not right.  
22 That's why we are all here.

23 And you know there's going to be  
24 lawsuits if something wrong is going to happen.  
25 You know that, right? There's residents; there's

1 people around there. Why on earth would you guys  
2 put such a power plant, not only one, but two, you  
3 know, in a just a large population center?

4 You know, why couldn't you choose  
5 someplace more remote or less densely populated?  
6 That's my question. Can you answer that?

7 HEARING OFFICER GEFTER: We haven't  
8 chosen any power plant yet because we haven't made  
9 any decisions. And so I, you know, the question  
10 is -- I can't answer it.

11 MR. LUKITO: Yeah, I mean it is very  
12 simple --

13 HEARING OFFICER GEFTER: We haven't  
14 decided --

15 MR. LUKITO: -- yeah, it's really  
16 simple, you know. You have, within a block or two  
17 you have kids. I have my two children, very small  
18 children, attending school there, playing there,  
19 breathing this air in and out. Not only the  
20 danger of the earthquake like a lot of these  
21 people mentioned.

22 It just doesn't make sense, ma'am, you  
23 know. It really doesn't. And if you just put  
24 yourself in our shoes, a million of these guys  
25 will complain. And I'm going to continue to

1 spread the word to our neighborhood that this is  
2 totally doesn't make sense. Right, guys?

3 HEARING OFFICER GEFTER: Okay, thank you  
4 very much.

5 MR. LUKITO: Thank you.

6 HEARING OFFICER GEFTER: We appreciate  
7 your comments, and we're listening to what you  
8 say. Ocba Kelete. Good evening; please tell us  
9 your name.

10 MR. KELETE: Good evening. My name is  
11 Ocba Kelete. I just bought a house in that area  
12 about six months ago. And I said, me and my wife,  
13 our dream came true because we work hard for this  
14 to happen. And now I heard this news there is a  
15 power plant next block, the house that I just  
16 bought, my dream might become a nightmare.

17 I have small children, six years old  
18 daughter and four years old son. Please, stop  
19 this power plant. Thank you.

20 HEARING OFFICER GEFTER: Thank you for  
21 being here tonight. Thank you.

22 Mr. Hermes Aleman. Please tell us your  
23 name.

24 MR. ALEMAN: Yes. Hermes Aleman. And  
25 good evening, ladies and gentlemen and fellow

1 citizens.

2 I work in San Francisco as a private  
3 banker. I've been a resident of the City of  
4 Hayward for the past 24 years. I went to school  
5 here; went to CalState when it was CalState. Then  
6 I got my MBA from Notre Dame.

7 Working in private banking opened my  
8 eyes, because, like I say, I'm lucky to work with  
9 a lot of executives who make six-figure salaries.  
10 Average loan, a million and a half; average  
11 salary, \$250,000. I've been lucky that I've been  
12 invited to some of their homes. Beautiful views.  
13 Either the house is charming; it's really quiet.  
14 The neighborhood is safe. You can leave the door  
15 open, nobody will come in. Whatever it is, they  
16 achieved the American Dream.

17 Twenty-four years ago my parents came  
18 here looking for a better future. Seven years ago  
19 my wife and I, just like the gentleman before me,  
20 came; we bought our house, and, boy, you know, we  
21 scratch, you know, every penny, everything.  
22 However, through hard work, through education we  
23 moved up. Now we're lucky that my wife is able to  
24 stay home and watch over our kid. Seven months  
25 ago our son was born and that really changed me.

1                   And now, as we find out that this power  
2                   plant is going to be built, one thing comes to  
3                   mind. This is profits versus health. Bottomline  
4                   is not about colors, it's not about race,  
5                   religion, no. Profits and health.

6                   Now, if you could tell me that you live  
7                   five miles away from a power plant, if you could  
8                   tell me that you don't care about you children  
9                   breathing that air then I'll believe you that, you  
10                  know, that you are able to do that. Sleep at  
11                  night, and you are putting us through the same  
12                  thing.

13                  But I know is not that case, because you  
14                  want the best for your families. Same thing us.  
15                  We want the best thing for our kids.

16                  Now, we already pay the price with one  
17                  power plant. That's fine, you know, we have to  
18                  have that burden, that's fine. But a second one?  
19                  And then I forgot who mentioned here that Hayward  
20                  was the only site considered. Why?

21                  When I been to Marin, you know, the  
22                  families are very well organized. When I been to  
23                  some of the City, in some San Francisco  
24                  neighborhoods, boy, I mean those people will  
25                  protest for if the dog is barking, if the house is

1 the wrong color, if a tree is blocking my view. I  
2 mean I had a client that spent over \$100,000  
3 trying to remodel the deck; and the neighbor below  
4 he don't want it, you know, they didn't want to  
5 allow him to do that. That's just in legal fees.  
6 Let's not even include that.

7 Now, we're talking here about health.  
8 So, I'm here today, and also on behalf of my  
9 neighbors, to plead with you to please don't ruin  
10 our American Dream. Everyone wants to have that  
11 pursuit of happiness. Thank you.

12 HEARING OFFICER GEFTER: Thank you very  
13 much. Karen Kramer. Good evening; please tell us  
14 your name.

15 MS. KRAMER: Hi. I'm Karen Kramer; I  
16 grew up in Hayward, and I currently still live in  
17 a house about three blocks from the proposed  
18 second power plant.

19 Last week I came to the meeting and it  
20 was brought up that the -- I always gets the names  
21 mixed up -- Eastshore, which is the one close,  
22 three blocks from my house, of that type of  
23 reciprocating engine, there are only two other of  
24 those type that they could do any kind of health  
25 study about.

1                   So, to me, a study on two plants does  
2                   not constitute a study when it's regarding my  
3                   health. So, I don't see how they can determine  
4                   that it's safe when there are only two other of  
5                   those types of engines that they can even begin to  
6                   study, how they can determine that it is safe what  
7                   they emit.

8                   Because then I was shocked, not to  
9                   mention that I am a single mom, on disability,  
10                  with very much noise sensitivity and other central  
11                  nervous system problems, where I'm already  
12                  bothered by the airplanes going over. So I'm  
13                  concerned about the noise, of course, that the  
14                  power plant might make.

15                  And when I saw the paper today, and saw  
16                  that they have in here that the Eastshore Energy  
17                  Center would put out, per hour, almost 30 pounds  
18                  of carbon monoxide. Well, as I know it, carbon  
19                  monoxide is a poison. And you have to put up like  
20                  a fire thing in your house to make sure that your  
21                  heater isn't leaking any carbon monoxide, because  
22                  it could kill you in your sleep.

23                  So how can we be living three blocks  
24                  from something that puts out 30 pounds per hour?  
25                  That's only the one plant. That doesn't -- the

1 other one puts out more. Of course, it's a little  
2 further away.

3 And as they've mentioned, we have the  
4 highways nearby putting out all the pollution. We  
5 have the planes going over putting out the  
6 pollution; the Hayward Airport.

7 And being that my home is my only asset,  
8 and I'm ill, and I cannot move, I don't have the  
9 ability, I do not appreciate thinking about my  
10 only asset being lowered and me having to be stuck  
11 there suffering because I'm too ill to move and  
12 cannot lose, also, the amount of money.

13 But mostly I would like to know that  
14 there are more plants that they can study than  
15 two, to determine the health consequences of that  
16 plant.

17 And I do know that Life Chiropractic  
18 College, being right across the street, are very  
19 health minded people. And they would not  
20 appreciate something of that sort, either.

21 And as they say, it's probably a big  
22 revenue source there. So, please do more studies.  
23 Do not put it there until you can provide enough  
24 studies to show that it really is not health --  
25 there are not health consequences. Thank you.

1                   HEARING OFFICER GEFTER: Thank you very  
2 much. And as we said earlier, staff, who is  
3 sitting here, and the applicant have been doing  
4 quite a bit of the research and how a lot of the  
5 studies that they're going to look at. And staff  
6 will be issuing a staff assessment on all that  
7 research in a few weeks. I think maybe in July  
8 when the staff assessment's going to be published  
9 in the Eastshore. I think that's what we talked  
10 about earlier today.

11                   I notice that Rachel Henderson wanted to  
12 speak to us again, earlier. Do you want to come  
13 up and finish what you were going to tell us.  
14 Because I don't have any more blue cards, unless  
15 anyone else has comments.

16                   But I do want to encourage you to speak  
17 with the applicant, with the staff, and with PG&E  
18 when we go off the record, and you can ask them  
19 your questions directly.

20                   Ms. Henderson.

21                   DR. HENDERSON: Yeah, this is just  
22 really brief. I think it was Mr. McDonald brought  
23 up the issue of ammonia and the effects on the  
24 environment and on the fish.

25                   And I just want to point out, you guys,

1       you're going to be looking at this, I wanted to  
2       point out Tierra didn't even mention the ammonia  
3       in their biological analysis. I bugged the CEC  
4       about it. I don't know if they caught it on their  
5       own or not.

6                    But they've assured me they're going to,  
7       you know, address that in the PSA. But I just, I  
8       wanted to make that clear to you guys that that's  
9       one of the concerns. As a community, we see these  
10      big holes in the data. You know, we're not  
11      experts on this stuff. But if we catch, we happen  
12      to catch these things, it makes us very very  
13      nervous about this plant, the data they're  
14      producing.

15                   So, double, triple and check everything.  
16      And as the woman before me eloquently said, you  
17      know, don't put it here unless you can really  
18      prove that it's safe. That's all, thanks.

19                   HEARING OFFICER GEFTER: Thank you very  
20      much. Is there anyone else who would like to  
21      speak? Mr. Galati from PG&E would like to come up  
22      and talk to us.

23                   MR. GALATI: This is for those of you  
24      that were not here during the earlier portion,  
25      Commissioner Geesman made it very clear that he

1 would like PG&E to participate in this public  
2 process. We will be here for every public  
3 workshop from here on out. And we'll stay and  
4 answer any question we can answer for you for as  
5 long as you like, outside.

6 HEARING OFFICER GEFTER: Thank you very  
7 much. And we, again, thank you for being here.

8 MR. PACHECO: Excuse me, I'm sorry, --

9 HEARING OFFICER GEFTER: Do you have a  
10 blue card? Would you like to come forward?

11 MR. PACHECO: Yeah, I was just filling  
12 it out.

13 HEARING OFFICER GEFTER: Okay, come on  
14 forward.

15 MR. PACHECO: I have a simple question.

16 HEARING OFFICER GEFTER: You have to  
17 come to the microphone or we can't hear you. And  
18 tell me your name and give me the blue card.

19 MR. PACHECO: My name is Ernest Pacheco.

20 HEARING OFFICER GEFTER: Spell it at the  
21 microphone, please, thank you.

22 MR. PACHECO: I have a question and I'm  
23 sorry --

24 HEARING OFFICER GEFTER: Please -- okay,  
25 spell your name, please.

1 MR. PACHECO: Ernest Pacheco,

2 P-a-c-h-e-c-o.

3 HEARING OFFICER GEFTER: P-a-c-h-e-c-o,

4 thank you, Mr. Pacheco.

5 MR. PACHECO: I'd like to state that

6 neither the City of Hayward, the people in it have

7 a responsibility any more than any other community

8 in California to provide peak power for anyone.

9 I have a question, though. If the City

10 of Hayward or the people of Hayward were able to

11 come up with a plan that could provide some

12 percentage of peak energy through sustainable

13 means, would that be something that you'd take

14 into consideration when you're deciding whether or

15 not to override and force this upon us, should you

16 do so? Or whether or not you're going to approve

17 it.

18 If we come up and figure out how to

19 produce 2, 3 megawatts of sustainable power,

20 either through the City or through nonprofit

21 community group, would that be something that

22 you'd take into consideration?

23 HEARING OFFICER GEFTER: Well, that

24 would be another project, most likely. If you

25 were going to do a renewable project, or a project

1 based on sustainable energy, that would be a  
2 different project than this one.

3 MR. PACHECO: What I'm asking --  
4 absolutely -- what I'm asking is if that was  
5 presented to you before you made your final  
6 decision, and you saw, well, we're proposing these  
7 two power plants the community doesn't want. We  
8 don't want it, period. The City doesn't want it  
9 is what it's sounding like.

10 If we were able to say, hey, you know,  
11 talking about we're doing our part, not that we  
12 have any more responsibility than anyone else, but  
13 we do have responsibility, everyone does, and we  
14 could produce 2, 3 megawatts. Would that be  
15 something that you would take into consideration  
16 when you're deciding whether to force this down  
17 our throat, whether or not, hey, you know what,  
18 they're going to do their part; produce 2 or 3  
19 megawatts through sustainable energy, which, of  
20 course, we would have to develop and present to  
21 you in some form. And would it lessen the weight  
22 that you would consider to override like you did  
23 in San Jose with the Metcalf.

24 HEARING OFFICER GEFTER: I think that's  
25 a very interesting question. However, as I said,

1       it's a different project.  What we have here is a  
2       peaking plant that's going to be selling  
3       electricity to PG&E.  And that's what they're  
4       proposing.

5                 And if you're proposing a renewable  
6       plant that's based on renewable energy, that's a  
7       different kind of project, not necessarily a  
8       peaking project, not necessarily selling your  
9       electricity to PG&E.

10                So, it's a different project.  And it's  
11       a good idea, but it's different.

12                MR. PACHECO:  So it's not something you  
13       would take into consideration?

14                HEARING OFFICER GEFTER:  It's not part  
15       of this particular process.

16                MR. PACHECO:  Okay.  Like I say, I'm  
17       sorry, I only know what I read in the article  
18       today in the newspaper.  And sitting here, I'm way  
19       behind the curve on this.

20                You're trying to decide whether or not,  
21       I mean, obviously they haven't even released the  
22       study that you're going to study and look at, and  
23       there's going to be more meetings.

24                But when you're looking at the entire  
25       state of energy in California -- we're also

1 connected to the other states -- you're not at all  
2 concerned about the needs of the west coast of  
3 California. This is just purely a financial  
4 contract that they're trying to push through and  
5 get a profit going. You don't care about energy  
6 in California. You just care about whether or not  
7 this business can do its project and make this  
8 money.

9 Or do you care about creating energy for  
10 the grid here in California?

11 HEARING OFFICER GEFTER: Commissioner  
12 Geesman.

13 PRESIDING/ASSOCIATE MEMBER GEESMAN: We  
14 have a variety of different responsibilities. One  
15 of them is to do every two years an assessment of  
16 what the state's energy policies should be. And  
17 then every off-year we update that assessment.

18 And it's in that proceeding where we  
19 make recommendations to the Governor, to the  
20 Legislature, the Public Utilities Commission and  
21 to the utilities as to the appropriate policies  
22 they should pursue, the appropriate energy  
23 technologies, and other supply sources that they  
24 should pursue.

25 In some instances that leads to changes

1 of law; new responsibilities for us to enforce  
2 upon the utilities; new responsibilities for the  
3 PUC to enforce.

4 Completely separate set of  
5 responsibilities we have is in a case like this  
6 one, or these two actually; we have two cases in  
7 front of us tonight, the Russell City project and  
8 the Eastshore project.

9 In those instances our responsibility is  
10 to determine if the applicant has satisfied the  
11 various environmental and public health and safety  
12 laws. Included in that is a determination of  
13 whether the applicant has satisfied local  
14 ordinances, regulations and standards.

15 With regard to the local or state level  
16 ordinance, regulations or standards, we have the  
17 ability to override if we feel that the project is  
18 of public convenience and necessity. And that's a  
19 legally defined term. If we get to that point  
20 there's going to be a great deal of debate as to  
21 what do those words mean; how do you satisfy those  
22 standards.

23 But that siting decision responsibility  
24 is separate and apart from our energy policy  
25 responsibilities. That's the way the law is

1 written.

2 We have a variety of other  
3 responsibilities, as well, in terms of setting new  
4 efficiency standards for new construction and  
5 appliances, conducting R&D on alternative energy  
6 sources.

7 But what we're here tonight to do is to  
8 discharge our responsibility in determining if  
9 these applicants have satisfied the various  
10 environmental and public health and safety  
11 requirements.

12 MR. PACHECO: Okay.

13 PRESIDING/ASSOCIATE MEMBER GEESMAN:  
14 What we're going to do -- tonight is just a status  
15 conference. We're trying to determine where are  
16 we in the schedule. And I think Commissioner  
17 Byron told the tv station we're in the second  
18 inning.

19 And in my judgment we might be in the  
20 bottom of the first inning. We're going to have  
21 some public hearings to take evidence, as we get  
22 further into the process. Those will probably be  
23 in the summertime or early fall.

24 And what Commissioner Byron and I are  
25 responsible for doing is in areas where the staff

1 and the applicant or the intervenor disagree, our  
2 responsibility is to conduct a public hearing, go  
3 through the evidence, hear everybody's testimony.  
4 And then at the end of the process, seventh or  
5 eighth inning, we make a decision as to which side  
6 do we come down in terms of the evidence. And  
7 what is our recommendation to the full Commission  
8 as to whether a license should be granted or not.

9 MR. PACHECO: Okay. I need to do a lot  
10 more research to find out how this stuff works. I  
11 was listening earlier when you were talking about  
12 convenience and necessity and talking about the  
13 override with San Jose Metcalf.

14 That's where it sounds like there's a  
15 lot more of your interpretation. And I need to  
16 look up what the hell you meant last time in San  
17 Jose.

18 PRESIDING/ASSOCIATE MEMBER GEESMAN:  
19 That's correct. And we also did it in Los Esteros  
20 in San Jose. We've overridden twice in San Jose.

21 MR. PACHECO: If I might ask, I don't  
22 know if you can answer this, but had a plan, not  
23 only about whether or not the corporations that  
24 wanted to build the power plants and the City had  
25 the right to, whether or not they had due

1 diligence, whatever, filled out all the forms.

2 If you had been presented with  
3 alternatives that went towards producing energy  
4 without the plants, would that be something that  
5 at that stage, which that's maybe seven innings  
6 from now, but there'd be a lot of work to do to  
7 present you an alternative plan, or a  
8 supplementary plan. Would that have been  
9 something that you would have taken into account  
10 with Metcalf?

11 PRESIDING/ASSOCIATE MEMBER GEESMAN: It  
12 potentially could be. I wasn't on the Commission  
13 when we decided Metcalf. But I can tell you, in  
14 the City of San Francisco, we have spent a lot of  
15 time assessing proposed alternatives.

16 I should say that we sited a power plant  
17 in San Francisco last year. But the presentation  
18 of alternatives is something that we would  
19 consider relevant.

20 MR. PACHECO: Okay. All right. Thank  
21 you.

22 HEARING OFFICER GEFTER: Do we have any  
23 other people who would like to come up? It's  
24 8:15. So, yeah, please come forward. Let's have  
25 a couple more comments, and then I think we'll

1 wind up and give people time to talk with PG&E or  
2 staff or the applicant.

3 Please tell us your name and spell it.

4 MR. JORDAN: Does anybody want the card?

5 HEARING OFFICER GEFTER: Yeah. Thank  
6 you.

7 MR. JORDAN: My name is Albert Jordan,  
8 J-o-r-d-a-n. My family owns property at 2661  
9 Depot Road. We're about 1100 feet from the  
10 proposed site.

11 I had a hard time getting up here  
12 because I get so emotional over some of these  
13 issues. But there's something tonight that I just  
14 have to get off my chest.

15 A couple of months ago at a Planning  
16 Commissioners meeting, Commissioner Saks commented  
17 that people who live in this not even industrial  
18 area have chosen to do so. And the implication  
19 was that they, in doing so they chose to put their  
20 own health at risk. And that raised a lot of  
21 eyebrows in the community; and it caused me to  
22 draw a line in the sand and say, I'm going to  
23 fight this.

24 The Mount Eden area is rich in the  
25 history of Hayward. All one needs to do is go to

1 the Mount Eden Cemetery and you'll see names like  
2 Clawiter, Moore, Peterman, Soto, Brenquits,  
3 Liranzo, Mateos. These are the pioneers of the  
4 Mount Eden and the Hayward area, and we are their  
5 descendants that live in the Mount Eden area.

6 My father-in-law, Carl Liranzo, farmed  
7 the area that the current site is proposed on.  
8 Ten years before the building that is now there  
9 was built, he was a farmer and he grew tomatoes on  
10 this site. My inlaws migrated from Spain in 1911.  
11 Interestingly enough, they moved into and settled  
12 into Russell City. In the 1950s the City of  
13 Hayward condemned Russell City. And those  
14 families moved to Depot Road. They were farmers,  
15 and they farmed again all the way from West  
16 Whitten down to the 92.

17 And there was no Industrial Boulevard at  
18 this time. It is not that we chose to live in  
19 this area, but rather that the industrial  
20 development has enveloped us slowly over time.

21 And my message tonight is this, that  
22 they slowly took away our rural nature of our  
23 life. And now they are proposing to take away the  
24 quality of our life by building this power plant.

25 By building the power plant we will

1 worry every day about the air quality, the air we  
2 breathe. We will worry about potential for  
3 accidents that will occur from transporting  
4 hazardous waste into and from the site. We'll  
5 worry about an earthquake and the potential that  
6 that might cause for environmental hazard. And  
7 we'll worry about the contamination of the wells  
8 and the water that we drink.

9 Studies have shown that people who live  
10 in the shadow of power plants suffer high rates of  
11 anxiety and depression. And I think you can see  
12 the anxiety, you've heard the anxiety in this room  
13 tonight.

14 And what I would like to say is that  
15 anxiety and depression is something we will live  
16 with every day. And this is something that Tierra  
17 Energy cannot mitigate. Thank you.

18 HEARING OFFICER GEFTER: Thank you.

19 (Applause.)

20 HEARING OFFICER GEFTER: Okay, one more  
21 question or comment, please. Please, anybody  
22 else? We'll have one final comment. In the back  
23 there, yes. If you'd like to come forward and  
24 then we'll have to wind up; and we'll have time  
25 for you to meet with PG&E and the applicant and

1 the staff.

2 MS. MARQUEZ: I don't have a blue card.

3 HEARING OFFICER GEFTER: Okay, just tell  
4 us your name and spell it, please.

5 MS. MARQUEZ: My name is Myrna Marquez,  
6 M-y-r-n-a M-a-r-q-u-e-z.

7 HEARING OFFICER GEFTER: Thank you.

8 MS. MARQUEZ: I live on Yoshida Drive;  
9 and I work for a nonprofit organization that do  
10 research on cancer. And I just want to let you  
11 know that one of the major cause of cancer is the  
12 environment.

13 And I'm pleading to all of you to please  
14 disapprove the construction of this power plants.  
15 Thank you.

16 HEARING OFFICER GEFTER: Thank you very  
17 much. I have one last blue card. There was no  
18 name on it. It was representing Richards  
19 Promotional Products. Is that you?

20 UNIDENTIFIED SPEAKER: That's me.

21 HEARING OFFICER GEFTER: Do you want to  
22 come forward and --

23 UNIDENTIFIED SPEAKER: It was already --

24 HEARING OFFICER GEFTER: Okay, your  
25 question was addressed?

1 UNIDENTIFIED SPEAKER: A couple times.

2 HEARING OFFICER GEFTER: All right,  
3 thank you.

4 MR. RIENDEAU: May I -- may I make a  
5 comment?

6 HEARING OFFICER GEFTER: One more  
7 comment. Okay, sure. And after your comment  
8 we're going to close. Please tell us your name  
9 and spell it.

10 MR. RIENDEAU: Robert Riendeau,  
11 R-i-e-n-d-e-a-u. Just listening to everything  
12 that you're saying, and I realize that you look  
13 over all the evidence and the technical paperwork  
14 and all the surveys and everything.

15 But I'd like to ask you to take into  
16 account common sense. This is being built right  
17 in a residential neighborhood, both these plants,  
18 which if you lived there you wouldn't want it. I  
19 don't think anybody in this room would like either  
20 one of these plants built in their neighborhood.

21 So I think common sense should also be a  
22 big factor in this, and take that into  
23 consideration. Thank you.

24 HEARING OFFICER GEFTER: Thank you for  
25 your comments. And we actually want to thank

1 everybody for being here tonight. It was  
2 fantastic to see so many people come out. You  
3 have a wonderful community; you've been so  
4 welcoming to us and so cooperative. And we really  
5 appreciate it very much.

6           Commissioners, have any more comments  
7 before we close?

8           PRESIDING/ASSOCIATE MEMBER GEESMAN:

9 Just to say in both proceedings we will be back  
10 here. We will conduct all of our evidentiary  
11 proceedings here in Hayward. We'll try to  
12 schedule those in such a way that people are able  
13 to come and present your thoughts and opinions to  
14 us.

15           And I think that you're right to expect  
16 us to take your viewpoints fully into  
17 consideration; and to conduct the evidentiary  
18 process that lies at the core of our decision in  
19 full public view and subject to your scrutiny.

20           And I can't tell you in advance that  
21 you're going to agree or disagree with the  
22 conclusions that we ultimately reach. But you're  
23 certainly going to have the right and the  
24 opportunity to contribute to them, and to  
25 challenge any of the evidence that's presented to

1 us.

2 PRESIDING/ASSOCIATE MEMBER BYRON: I'd  
3 also like to thank all of you for taking the time  
4 to be here this evening. I think your presence  
5 demonstrates the importance of this issue to you.  
6 And I can tell you that it's also very important  
7 to me. We take this very seriously.

8 I'd also like to assure you that your  
9 comments were heard this evening, and will weigh  
10 in my decision. But, as Commissioner Geesman  
11 said, although we may disagree on which inning  
12 we're in in the game, I can tell you the score is  
13 still zero/zero.

14 And perhaps in the words of our  
15 Governor, I'll say, we'll be back. Thank you very  
16 much.

17 (Laughter.)

18 HEARING OFFICER GEFTER: Thank you very  
19 much. All right. At this point we're going to --

20 MR. HAAVIK: Ms. Gefter, pardon me.

21 HEARING OFFICER GEFTER: Okay, Mr.  
22 Haavik.

23 MR. HAAVIK: I'd like to thank both  
24 Commissioners for attending today. As the  
25 intervenor, I would like to ask just a point of

1 clarification.

2 Over some of the proceedings, especially  
3 with Eastshore, we've certainly heard this evening  
4 that there's been an enormous amount of not  
5 misinformation, but disinformation, where a lot of  
6 the people have not been able to get the  
7 information.

8 I was very happy to hear from Mike  
9 Monasmith that he's going to be working with me in  
10 regards to some more bilingual literature, as well  
11 as information being given out to much more of the  
12 Hayward general public and residents.

13 But for this meeting, as well as some of  
14 the other meetings that have taken place, some of  
15 the information has not been posted to the web.  
16 And I did have conversations with Mr. Pfanner, as  
17 well as with Gabriel here, Mr. Taylor; and am very  
18 satisfied with those procedures.

19 But I know you guys are still catching  
20 up. For this meeting today, how are you going to  
21 produce a report or a summary of this report for  
22 not only the attendees of this meeting, but also  
23 for the general public here in the City of  
24 Hayward?

25 And thank you very much.

1 HEARING OFFICER GEFTER: Okay. There  
2 will be a transcript of this proceeding. Our  
3 reporting has been keeping track of every single  
4 word that was said today that was on the record.  
5 And that transcript will be on the webpage. And  
6 you'll be able to access it.

7 At this point there is not necessarily  
8 going to be a report, because we are just  
9 listening to what the residents have to say. The  
10 next report that we'll see will most likely be the  
11 staff assessment.

12 Before we close, Mr. Kramer, who is the  
13 Hearing Officer on Russell City, would like to  
14 have a few comments.

15 HEARING OFFICER KRAMER: Earlier today  
16 staff and the applicant proposed a schedule that  
17 would have the staff releasing their final  
18 assessment on June 29th. And because this is an  
19 amendment proceeding, rather than a full-blown new  
20 permit, there's normally just one final  
21 assessment. They don't have a preliminary and a  
22 final.

23 So they also proposed that public  
24 comment end on Friday, July 14th. And then they  
25 were asking to hold a prehearing conference. And

1 if everything is ready to go, an evidentiary  
2 hearing on a date the following week.

3 And we will put out a formal notice with  
4 the new schedule in the next few days. But I can  
5 tell everyone, just for planning purposes, since  
6 we have a lot of people here, that we're looking  
7 at either the 18th or the 19th, that's a Wednesday  
8 or a Thursday, in July as the likely dates for  
9 that prehearing conference and evidentiary  
10 hearing.

11 This is just for Russell City. It's  
12 separate from Eastshore. So, again, look to the  
13 website or if you're on the mailing list you  
14 should get the schedule in the next few days.

15 But keep in mind that is the likely  
16 schedule. Now, if we come to a prehearing  
17 conference and we find out there's a lot of issues  
18 and a lot of testimony or something didn't happen  
19 on time leading up to that, it may very well  
20 change. But that will likely be the plan unless  
21 there is some change.

22 HEARING OFFICER GEFTER: Along those  
23 lines on the Eastshore project, the revised  
24 schedule will also be issued in the next few days  
25 based on staff and applicant's agreement in terms

1 of timing on the Eastshore project.

2 But, as we mentioned earlier it seems  
3 that the staff assessment will likely be issued in  
4 July in that case. And that's way before we have  
5 any hearings, because then you'll have a chance to  
6 look at that. It's a preliminary staff  
7 assessment, or as we call it, a PSA. It will be  
8 workshops on that document; we will hear comments  
9 on that document before we get anywhere close to  
10 an evidentiary hearing on the Eastshore project.

11 Hearing no more questions and no more  
12 comments, this status conference on Russell City  
13 and Eastshore is adjourned. Everyone is welcome  
14 to meet with the applicants, the staff and PG&E  
15 representatives. Thank you.

16 (Whereupon, at 8:25 p.m., the status  
17 conference was adjourned.)

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CERTIFICATE OF REPORTER

I, RICHARD A. FRIANT, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of June, 2007.