

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Eastshore Energy) 06-AFC-6
Center in Hayward by Tierra)
Energy of Texas)

)

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

MONDAY, NOVEMBER 26, 2007

2:00 p.m.

Reported by:
John Cota
Contract No. 170-07-001

COMMITTEE MEMBERS PRESENT

Jeffrey D. Byron, Presiding Member

John L. Geesman, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Susan Gelter, Hearing Officer

Gabriel Taylor, Advisor to Commissioner Byron

STAFF PRESENT

Caryn Holmes, Staff Counsel

Bill Pfanner, Project Manager

PUBLIC ADVISER

J. Mike Monasmith, Associate Public Adviser

APPLICANT

June E. Luckhardt, Downey Brand, outside counsel

Greg Trewitt, Tierra Energy

INTERVENORS

Paul N. Haavik

City of Hayward

Diana J. Graves, Pillsbury Winthrop Shaw
Pittman, outside counsel to the City of
Hayward

Michael S. Hindus, Pillsbury Winthrop Shaw
Pittman, outside counsel to the City of
Hayward

Robert A. Bauman, PhD, PE, City of Hayward

Greg Jones, City of Hayward

INTERVENORS (CONTINUED)

Alameda County

Andrew Massey, Office of County Counsel

James "Buzz" Sorensen, Alameda County
Community Development Agency

Cindy Horvath, Alameda County Community
Development Agency

Chabot Las Positas

Maiya Yang, Liebert Cassidy Whitmore, outside
counsel to Chabot-Las Positas

Susan Sperling, Faculty Association

Group Petitioners

Jewell Hargleroad, outside counsel to Group
Petitioners

Jay White, California Pilots Association

Suzanne Barba

Bob Sarvey

ALSO PRESENT

Scott Galati, Galati|Blek, counsel to Pacific Gas
and Electric Company

Bob Nishimura, Bay Area Air Quality Management
District

Weyman Lee, Bay Area Air Quality Management
District

Christopher Parman, the Office of Assembly Member
Mary Hayashi

Jesus Armas

Barry Luboviski, Building and Construction Trades
Council of Alameda County AFL-CIO

Ryan Maldonado

ALSO PRESENT (CONTINUED)

Ben Flores

Mayor Michael Sweeney, City of Hayward

Kevin Dowling, Hayward City Council Member

Barbara Halliday, Hayward City Council Member

Audrey LePell, Citizens Against Pollution

Karen Kramer

Patricia Taylor

Dennis DuBose

Ernie Pacheco

Diane Zuliani

Susan Silva, Citizens Against Pollution

J. V. McCarthy

Suzanne Barba

Andrew Wilson III

Robert Williams

Juanita Gutierrez

Rob Simpson

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P R O C E E D I N G S

2:07 p.m.

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2
3 PRESIDING COMMISSIONER BYRON: Good
4 afternoon. I'm Jeff Byron, Commissioner with the
5 California Energy Commission, and we are here
6 today in Hayward, California for a Prehearing
7 Conference with regard to the Eastshore Energy
8 Center that is proposed here in Hayward.

9 I would like to welcome you all this
10 afternoon. I am just going to give some brief
11 introductory remarks with regards to why we're
12 here. We are scheduled from two to five for the
13 Pre-Hearing Conference and then we'll break and
14 reconvene at six p.m. for the public comment
15 period.

16 This is a Prehearing Conference, the
17 purpose of which is to assess the parties'
18 readiness for evidentiary hearing and identify
19 areas of agreement or dispute and discuss the
20 remaining schedule and procedures.

21 I would like to introduce my fellow
22 Commissioner on the Eastshore Committee and that
23 would be Commissioner Geesman. My advisor to the
24 left is Gabriel Taylor.

25 I am going to turn it over to our

1 hearing officer, Susan Gefter, who will go into a
2 lot more detail about what we are going to try and
3 accomplish here this afternoon. Thank you for
4 being here.

5 HEARING OFFICER GEFTER: Welcome
6 everybody. We now have several parties and we
7 have assigned seats to the Intervenors at these
8 tables here at the front. In the last two weeks
9 several parties have intervened and they are
10 eligible to participate in this conference and at
11 the evidentiary hearings. The deadline to
12 intervene was November 19 and we will no longer
13 grant new petitions to intervene.

14 At this point we'll take introductions
15 from the parties beginning with Commission staff.

16 MS. HOLMES: Thank you. Caryn Holmes,
17 staff counsel. To my right is Bill Pfanner who is
18 the project manager for the Eastshore Energy
19 Center.

20 MS. LUCKHARDT: My name is Jane
21 Luckhardt and I am representing Eastshore Energy.
22 With me here today to my right is Greg Trewitt
23 from Eastshore Energy.

24 HEARING OFFICER GEFTER: And Mr. Haavik.

25 MR. HAAVIK: Yes, Paul Haavik,

1 Intervenor. From the beginning, I guess.

2 HEARING OFFICER GEFTER: And then we
3 have --

4 MR. HAAVIK: Good afternoon, everyone.

5 HEARING OFFICER GEFTER: The City of
6 Hayward.

7 MS. GRAVES: My name is Diana Graves
8 from Pillsbury Winthrop Shaw Pittman and we are
9 representing the City of Hayward.

10 HEARING OFFICER GEFTER: And who are the
11 other people sitting with you?

12 DR. BAUMAN: I'm Bob Bauman, I'm the
13 Public Works Director for the City of Hayward.

14 MR. JONES: Greg Jones, City Manager for
15 the City of Hayward.

16 HEARING OFFICER GEFTER: Thank you.

17 MR. HINDUS: I'm Michael Hindus with
18 Pillsbury Winthrop Shaw Pittman also representing
19 the City of Hayward.

20 HEARING OFFICER GEFTER: Were you able
21 to get that, reporters? Okay, thank you.

22 And County, Alameda County?

23 MS. HORVATH: Cindy Horvath, Alameda
24 County Planning.

25 MR. MASSEY: Andrew Massey, Office of

1 the County Counsel.

2 HEARING OFFICER GEFTER: Thank you.

3 Then Chabot College.

4 MS. YANG: Maiya Yang with Liebert
5 Cassidy Whitmore on behalf of Chabot College. And
6 I understand Susan Sperling will also be here on
7 behalf of the Faculty Association.

8 HEARING OFFICER GEFTER: And then we
9 have Group Petitioners, including the Pilots
10 Association.

11 MS. HARGLEROAD: Yes. Jewell Hargleroad
12 for Group Petitioners. And I also have with me
13 Jay White and also Suzanne Barba.

14 HEARING OFFICER GEFTER: Ms. Hargleroad,
15 could you please move over to the other seat
16 because we are trying to keep the intervenors in
17 separate spots so that our reporters can keep
18 track of you. So we're asking you to move next
19 door to --

20 MS. HARGLEROAD: Can we do that if we
21 have a break or something so that I don't have
22 shuffle everything right now?

23 HEARING OFFICER GEFTER: I would like
24 you to do that now, please. Thank you. We were
25 trying to assign seats so we could keep track of

1 where the parties were.

2 MS. HARGLEROAD: I also need to serve,
3 to provide the Hearing Officer as well as the
4 parties, an amendment to our Prehearing Conference
5 statement to add Mr. White as a witness.

6 HEARING OFFICER GEFTER: Okay, thank you
7 very much.

8 And then also I understand there is
9 Mr. Galati representing PG&E. Are you in the
10 audience? Yes. Scott Galati. And could you
11 please give the reporter your business card if you
12 haven't done that already. And we may be calling
13 on you, Mr. Galati, to participate on behalf of
14 PG&E.

15 Also the Associate Public Adviser, Mike
16 Monasmith, who was standing at the back here and
17 has a table in the back. If anyone has any
18 questions about the process or would like to make
19 any comments please ask Mike for a blue card and
20 fill it out and then he'll give it to us.

21 We also would like to welcome any
22 elected officials who are here this afternoon and
23 if there are any if you could identify yourselves
24 for us, we'd like to talk with you. Yes sir.

25 MR. PARMAN: I'm Chris Parman

1 representing Assembly Member Mary Hayashi's
2 Office.

3 HEARING OFFICER GEFTER: Okay. Do you
4 have a statement from the Assembly Member or is
5 she going to come later today?

6 MR. PARMAN: Not at this time.

7 HEARING OFFICER GEFTER: Thank you,
8 okay.

9 Also, is Bob Sarvey here today? Okay.
10 Mr. Sarvey, I am going to deal with your petition
11 to intervene here on the record. Mr. Sarvey filed
12 a petition to intervene at 5:45 p.m. on November
13 20, which was 24 hours after the deadline to
14 intervene.

15 Mr. Sarvey, we know you have been
16 participating in this AFC process since the very
17 beginning. Your name appears both in the PSA and
18 the FSA. And we know that you have gotten the
19 notices of all of the events and yet your petition
20 was filed late, whereas several intervenors who
21 came to the process late filed on time.

22 I did not see any compelling reasons why
23 we should make an exception for you, especially
24 since you have been participating since the very
25 beginning. But you are absolutely welcome to

1 participate and present public comment and to make
2 your recommendations on air quality conditions,
3 which is what you indicated in your statement.

4 MR. SARVEY: I plan to --

5 HEARING OFFICER GEFTER: Mr. Sarvey,
6 could you come up to a microphone, please.
7 There's a microphone right here.

8 MR. SARVEY: Bob Sarvey. I plan to
9 appeal this to the full Commission. And I think
10 it might be beneficial to the Committee and the
11 full Commission to find out if any of the other
12 parties have an objection to my intervention, if
13 that's okay.

14 HEARING OFFICER GEFTER: It is not okay
15 because the deadline was noticed on October 17 and
16 you had that notice.

17 MR. SARVEY: Okay, thank you.

18 HEARING OFFICER GEFTER: Thank you.

19 ASSOCIATE MEMBER GEESMAN: I'd raise a
20 question to my colleague. Is there some damage
21 that has been done by Mr. Sarvey having missed the
22 deadline? Am I on now? Is there some damage that
23 would be done if we allowed Mr. Sarvey to
24 intervene?

25 MS. LUCKHARDT: You know, at this point

1 we would object. This process has been going on
2 for over a year. It is supposed to be completed
3 within a year. And we would object to any
4 additional actions that might be taken at this
5 point that might delay the process. The addition
6 of another party could cause additional delay and
7 time to be taken both within the hearings and
8 within the proceeding.

9 Mr. Sarvey is an experienced intervenor.
10 He's participated in other Commission proceedings.
11 And I think that he not only filed his petition to
12 intervene late but he also filed his prehearing
13 conference statement late. And I think that
14 demonstrates that he is going to be someone who is
15 going to be filing materials late and delaying the
16 proceeding. At this point I just don't think that
17 is acceptable.

18 ASSOCIATE MEMBER GEESMAN: But it would
19 seem to me that if he has already demonstrated a
20 proclivity for late filings that our hearing
21 officer could probably guard against him delaying
22 the proceeding any further.

23 And I don't know that I would really
24 characterize going a little bit longer at hearings
25 to accommodate Mr. Sarvey's presence, which I

1 think we'd have to accommodate in public comment
2 anyway, is really a damage to you or any of the
3 other parties.

4 MS. LUCKHARDT: Well it really depends
5 what all Mr. Sarvey plans to do. I think he plans
6 to sponsor witnesses and participate fully in the
7 proceeding. All of that does take additional
8 hearing time. We have two days of hearings
9 scheduled for this proceeding. We now have five
10 parties formally intervening with witnesses,
11 testimony and cross examination. And I am
12 concerned that if we allow people to intervene
13 late that the proceedings will not be completed
14 within that two day time period.

15 ASSOCIATE MEMBER GEESMAN: But are you
16 going to what you anticipate Mr. Sarvey's content
17 will be or the mere fact that he appears to have
18 filed his papers a week late?

19 MS. LUCKHARDT: I am concerned that the
20 fact that he is filing his papers late, all of his
21 papers late, will continue throughout the process.
22 And what that will do is that will cause other
23 parties to request for additional time. You know,
24 other parties asked for additional time in this
25 proceeding and have not been granted that. So I

1 think if you start granting extra time for
2 individuals like Mr. Sarvey that other intervenors
3 will rightfully request additional time to
4 complete their actions in this proceeding.

5 The prehearing conference statement was
6 very clear in stating that you had to take the
7 proceeding at the point at which it was at when
8 you intervened. And those petitions for
9 additional time from both Mr. Haavik and other
10 parties, I think Alameda County filed, and they
11 did not receive any additional time.

12 So I am concerned about giving
13 Mr. Sarvey a break and additional time to file his
14 papers while other parties were not given the
15 same. And if you start giving additional time
16 that will just snowball and this proceeding will
17 go on for a much longer time period. As I
18 estimate it now we are looking at approximately an
19 18 month siting process for a project that should
20 have taken 12.

21 ASSOCIATE MEMBER GEESMAN: Have we
22 denied anybody else's petition?

23 HEARING OFFICER GEFTER: We haven't
24 denied petitions to intervene, we have denied
25 delays.

1 ASSOCIATE MEMBER GEESMAN: But that's
2 apples and oranges in my book, you know. This is
3 the prehearing conference. In fact, every
4 proceeding that I have ever been aware of at the
5 Energy Commission, if somebody intervenes by the
6 prehearing conference we let them in. I don't
7 know what we gain by keeping them out.

8 Commissioner, it is your call but I want
9 to indicate to you, if he appeals this to the full
10 Commission I certainly intend to vote on letting
11 him in.

12 PRESIDING COMMISSIONER BYRON: Well I
13 certainly yield to my fellow Commissioner's wisdom
14 and experience. For those of you that don't know,
15 Commissioner Geesman is our designated attorney on
16 the Commission so it is extremely helpful to have
17 his advice.

18 I am inclined to postpone a decision on
19 this. Let's hear and make it later today. Let's
20 hear what we have got from the existing
21 intervenors that have been allowed in, give
22 Mr. Sarvey an opportunity to make a case for what
23 additional information he would bring to the
24 table. If you could keep that brief we'd
25 appreciate it. Let's go ahead and make that

1 decision following all the other intervention,
2 prehearing conference matters that go on here,
3 okay.

4 MR. SARVEY: Thank you, Commissioners.

5 MR. HAAVIK: Pardon me. As the original
6 intervenor in this matter, Mr. Byron and
7 Mr. Geesman, and the fact that my petition to
8 delay the hearing was denied, out of respect for
9 both of you I do accept that, thank you very much.

10 But out of the respect for not only the
11 applicant, and probably you won't hear that much,
12 Jane. But out of respect of the applicant as well
13 as the other four intervenors who bided by making
14 sure that they applied appropriately and on time I
15 think it would be a travesty that you allowed now
16 an intervenor to come in at the very end.

17 I do agree with Ms. Luckhardt that
18 you've got to cut it off somewhere and I thought
19 as though the cutoff was November 19.

20 MS. LUCKHARDT: I would also just like
21 to note for the record that in accordance with
22 California Code of Regulations Section 1207,
23 intervenors in a siting case, petitions shall be
24 filed no later than the prehearing conference or
25 30 days prior to the first hearing, and 30 days

1 was the 19th.

2 ASSOCIATE MEMBER GEESMAN: But this is
3 the Pre-Hearing Conference, is it not?

4 MS. LUCKHARDT: Whichever is earlier.

5 PRESIDING COMMISSIONER BYRON: So we'll
6 make that determination before we finish at five
7 o'clock today.

8 HEARING OFFICER GEFTER: We're taking
9 that under submission.

10 The format for today is from two to five
11 p.m. we are going to discuss the technical issues
12 necessary to identify the witnesses, the evidence
13 and other information that are required for
14 evidentiary hearings.

15 And then the members of the public who
16 wish to speak to us, if there are people here
17 today who wish to make comments or ask questions,
18 if you can write those on the blue cards
19 distributed by Mr. Monasmith and then we'll take
20 your comments beginning at six p.m.

21 I think there are a lot of issues and
22 there are a lot of exhibits and a lot of witnesses
23 that we have to sort through. The first thing I
24 want to talk about is how to handle the exhibits.
25 In the Notice of Prehearing Conference we

1 indicated that Exhibits 1 through 199 would be the
2 applicant's exhibits, Exhibits 200 would be the
3 staff's exhibits, Exhibits 300, in that number
4 range, would be Mr. Haavik's exhibits. And I
5 wanted to assign numbers to the other parties.

6 And then I would like all the parties to
7 reread the Notice of Prehearing Conference and
8 present your exhibits in the format that we
9 described in that notice. Because it is a
10 voluminous case with a lot of documents and we
11 need to have a consistent way of handling the
12 documents.

13 At this point the City of Hayward, you
14 would be listed as 400s. So all of your exhibits
15 would be in the 400s, starting with 400. Alameda
16 County would be starting with 500, Chabot College
17 Las Positas would start with 600, and the Group
18 Petitioners, including the Pilots Association,
19 would begin with 700.

20 I also found there were duplications of
21 exhibits in some cases and that needs to be
22 resolved. The parties have to decide who is the
23 best sponsor of a particular exhibit. There is no
24 need for duplication of exhibits. And I leave it
25 to the parties to work that out among yourselves

1 off the record because it is time consuming.

2 But I don't really feel it is necessary
3 to have two exhibits sponsored by two different
4 parties unless you have a compelling reason to do
5 that; if your witness needs the document for a
6 different reason. But if the document is in the
7 record your witness can use it for whatever
8 reason, whatever position you wish to use it for.

9 Also we note that there are duplicate
10 witnesses. Both Alameda County and Chabot College
11 plan to sponsor Mr. Paolo Zanetti on air quality
12 modeling. Is that correct?

13 MS. YANG: That's correct.

14 MR. MASSEY: That's correct.

15 HEARING OFFICER GEFTER: Both of you.
16 Have you consulted with each other on the use of
17 that witness and the purpose for his testimony?

18 MS. YANG: I think the discussion was
19 that we were both going to do -- actually it's the
20 Chabot Community College District plus the Chabot
21 Faculty so there are three parties involved.

22 HEARING OFFICER GEFTER: Right.

23 MS. YANG: I think the agreement was
24 that we would all do direct at the same time.

25 I think the discussion with the county

1 counsel was that we all sponsor this particular
2 witness and the direct would be done at the same
3 time. I'm not sure what the Chabot Faculty
4 Association, they may be retaining separate
5 counsel. At the moment they're represented by
6 Susan Sperling.

7 So we're going to do it in the most
8 efficient manner. We don't anticipate duplicative
9 on direct on Mr. Zanetti.

10 HEARING OFFICER GEFTER: So he would be
11 sponsored jointly by Chabot College Las Positas
12 and the County?

13 MR. MASSEY: That's correct, that's our
14 understanding as well. Andrew Massey, Alameda
15 County.

16 HEARING OFFICER GEFTER: Okay. One of
17 the questions I had regarding the witness's
18 proposed testimony is that from the prehearing
19 conference statements it appears that he would be
20 talking about the modeling, the differences in
21 opinion on the modeling and the analysis on air
22 quality. And I am not sure whether he proposes to
23 challenge staff and applicant's modeling analysis
24 or the Bay Area's modeling analysis or what he
25 hopes to accomplish with that testimony.

1 MR. MASSEY: Andrew Massey, Alameda
2 County. I believe Dr. Zanetti is supposed to be
3 addressing the Bay Area air quality in-house
4 modeling; he is also going to be looking at
5 staff's as well.

6 HEARING OFFICER GEFTER: But what would
7 be the point if his challenging the modeling
8 analysis if the Bay Area has already approved it
9 and it is consistent with their standards? What
10 would you look to accomplish with his testimony?

11 MR. MASSEY: By challenging the modeling
12 we hope to establish that some of the mitigation
13 that has been proposed by staff and the
14 modification to the mitigation plan proposed by
15 the applicant are not adequate for this plant.

16 HEARING OFFICER GEFTER: We would expect
17 to have his prepared testimony filed prior to the
18 evidentiary hearing so the parties have an
19 opportunity to prepare cross examination of the
20 witness.

21 MR. MASSEY: Absolutely. We plan to
22 file something hopefully by December 11. That is
23 what Dr. Zanetti has told us. In addition he
24 planned to give a short discussion when we do the
25 direct.

1 HEARING OFFICER GEFTER: One of the
2 things I wanted to propose with regard to air
3 quality, since there is a lot of concern from all
4 the parties and from the members of the public, is
5 that perhaps your witness could meet informally
6 with witnesses from the other parties to talk
7 about some of the concerns. Because if we can
8 stipulate to basic issues without having to spend
9 hours on testimony I think it would help expedite
10 the process along.

11 Do you think -- And I am inviting the
12 other parties as well to perhaps have an informal
13 meeting among your witnesses with respect to air
14 quality to find out what Dr. Zanetti's concerns
15 are. Because if we wait until December 11 that's
16 almost right on top of the hearing time.

17 MR. MASSEY: Well we can try to arrange
18 something. There are a lot of parties and also
19 Dr. Zanetti's schedule. We haven't got a lot of
20 time before the evidentiary hearing. We can try
21 to coordinate something but I can't promise you
22 with this short schedule before the evidentiary
23 hearing that we can have everything hammered out.

24 HEARING OFFICER GEFTER: I understand
25 that.

1 MR. MASSEY: We'll do the best we can.

2 HEARING OFFICER GEFTER: One of the
3 things we're trying to do is to avoid a lot of
4 what we call the battle of the experts. So that,
5 you know, if we can stipulate to some basic
6 information and basic facts and basic
7 understanding of what the point is of his analysis
8 perhaps we can save a lot of time and really be
9 able to come to some resolution.

10 MR. MASSEY: We appreciate that, not
11 wanting to add weeks of evidentiary hearing. Just
12 given the time schedule I can't promise that we'll
13 be able to agree to everything that ideally you'd
14 want in advance of an evidentiary hearing. But we
15 will do our best.

16 MS. HOLMES: Excuse me.

17 HEARING OFFICER GEFTER: Also with
18 respect --

19 MS. HOLMES: Excuse me, Hearing Officer
20 Gefter.

21 HEARING OFFICER GEFTER: Yes.

22 MS. HOLMES: I would like to clear up a
23 misconception I may have at the beginning of this.
24 I had read the order that the Committee issued
25 that said that printed copies of the exhibits

1 shall be submitted at the prehearing conference.
2 We came here today believing that we would have
3 the ability to obtain copies of the pre-filed
4 testimony that the other parties, including the
5 intervenors, were planning to present at the
6 hearing. Is that not the case?

7 HEARING OFFICER GEFTER: That was my
8 expectation as well and that's what I wanted to
9 talk to the parties about, the prepared testimony
10 particularly of the witnesses that they are
11 offering.

12 MS. HARGLEROAD: Can I have a point of
13 clarification, please. Can we clarify exhibits
14 versus prehearing testimony? Because there was
15 one discussion that we should have exhibits here
16 today and then there is another issue that the
17 prehearing testimony should be available today.

18 HEARING OFFICER GEFTER: It's pre-filed
19 testimony. It's declarations under penalty of
20 perjury of your expert witnesses with their
21 qualifications.

22 MS. HARGLEROAD: I understand.

23 MS. LUCKHARDT: We also understood that
24 to be all of our direct testimony. In fact we are
25 providing, it is being printed and created at this

1 time, all of our exhibits and all of our direct
2 testimony. Because our filing is so big, it
3 includes the application, we are going to be
4 sending discs to everyone. But all of that is
5 being produced today.

6 MS. HARGLEROAD: It sounds like it is
7 not ready today. It is not here at this hearing
8 so --

9 MS. LUCKHARDT: I'm sorry, that is
10 actually incorrect. Ours is ready and it is being
11 filed and sent to everyone. There is no way we
12 could bring the boxes of material that we would
13 need to provide for everyone here today. That's
14 why it is going out on disc. But it will be going
15 out to everyone.

16 MS. HARGLEROAD: We totally appreciate
17 that and so therefore I agree that we appreciate
18 just a little leeway with the Commission on the
19 experts. Because I think these are going to be
20 important experts. We have raised a lot of issues
21 concerning the air.

22 We have not designated an air expert but
23 we certainly believe that the County and Chabot's
24 expert is important as well as the prehearing
25 testimony of the applicant's.

1 HEARING OFFICER GEFTER: Well we're not
2 talking -- There is no such thing as prehearing
3 testimony. What we're talking about is
4 declarations under penalty of perjury, which is
5 the direct testimony of the expert witnesses.

6 MS. HARGLEROAD: I mis-spoke, sorry
7 about that.

8 HEARING OFFICER GEFTER: And the other
9 thing. The reason I'm talking about Dr. Zanetti's
10 testimony in particular is because -- I believe it
11 was Chabot College who indicated it was a three
12 hour direct. And I wanted to find out, what do
13 you intend to present? Because that puts
14 everyone, including the Committee, at a
15 disadvantage when we don't know what it is that he
16 is going to testify about.

17 MS. LUCKHARDT: You know, Ms. Gefter, I
18 actually have a question about that. Since we are
19 all filing pre-filed testimony and given the
20 limitations in hearing time I think it would be
21 better to take all pre-filed testimony as filed
22 and expecting, as we traditionally do, that the
23 Committee will read that and then just have live
24 direct -- live cross and live rebuttal.

25 HEARING OFFICER GEFTER: That's what we

1 intend to do but I just think that we need to know
2 what it is that they intend to accomplish with the
3 three hour direct testimony. Because when they
4 say they are going to challenge the Air District's
5 methodology I don't know on what grounds you can
6 do that. Because the Air District's methodology
7 is based on the Air District rules. So I am just
8 not sure of what we're talking about. That's why
9 I would like to have some of this resolved before
10 we get to hearings. I'm sure you would agree.

11 MS. LUCKHARDT: Absolutely. And it is
12 very important for us as well because we need to
13 know which witnesses to bring.

14 MS. YANG: If I may comment. Actually
15 the three hours that has been put into our
16 prehearing conference should be, I think we agree
17 with Mr. Massey that jointly between Chabot
18 College and the Faculty Association the direct
19 should be no more than an hour between the three
20 parties.

21 We believe that Mr. Zanetti's testimony
22 is going to go through, it is going to be
23 pertinent to the issue of the methodology that is
24 being used and sort of the deficiency of that
25 methodology that was used by both the staff and --

1 so We think it is important testimony.

2 It is premature, I believe, to make a
3 ruling regarding whether the testimony should be
4 let in or not or should be excluded or whether it
5 is relevant. I think that is an issue that should
6 be addressed at the evidentiary hearing.

7 HEARING OFFICER GEFTER: We are not
8 making that ruling today because we haven't seen
9 the testimony.

10 The other thing I wanted to state when
11 Mr. Massey indicated that the testimony would be
12 available on the 11th. Actually I was going to
13 schedule a deadline of the 10th, December 10th,
14 which is one week prior to the hearing. So
15 everyone has a chance to look at it, prepare their
16 cross examination and to bring their own
17 witnesses.

18 MS. HOLMES: Excuse me, Ms. Gefter.

19 HEARING OFFICER GEFTER: Yes.

20 MS. HOLMES: Are you suggesting that the
21 intervenors have until the 10th of December to
22 file direct testimony?

23 HEARING OFFICER GEFTER: The deadline
24 was today, we don't have it.

25 MS. HOLMES: That's what I thought.

1 HEARING OFFICER GEFTER: We don't have
2 it, okay. He is telling me that his expert can't
3 have it until the 11th. I was going to say the
4 10th would be the last day that that could be
5 filed. And that doesn't give people a lot of time
6 to prepare, I understand that.

7 MS. HOLMES: No, I have a lot of concern
8 about that.

9 HEARING OFFICER GEFTER: Why don't you
10 tell us about your concerns.

11 MS. HOLMES: My concern again is that I
12 think all of us, in particular the staff, have
13 witnesses to prepare for cross examination as
14 well. And to say that other parties, including
15 other intervenors had to file their testimony by
16 last week and giving other parties an additional
17 -- the newer parties an additional two weeks to
18 file testimony seems to me a bit unfair.

19 HEARING OFFICER GEFTER: What other
20 testimonies do you have besides Mr. Zanetti's that
21 you plan to provide? I know that both the City of
22 Hayward and Alameda County propose to present the
23 testimony of your elected officials as well as
24 local staff.

25 MS. GRAVES: We do and we are fully

1 prepared to present that testimony prior to the
2 evidentiary hearing. I actually did speak to the
3 public adviser on this because I had the same
4 concern.

5 I just felt like that we didn't know at
6 the time we filed our prehearing conference
7 statement how many intervenors there might be and
8 how many exhibits do I have to submit and also we
9 didn't want to submit duplicates. So that's why
10 we didn't bring hard copies of all of our exhibits
11 today, because we wanted to avoid that
12 duplication. Also we simply didn't know how many
13 we would need as of today.

14 And we also understood that testimony is
15 something to be given at the evidentiary hearing
16 and it is a convenience to have pre-filed
17 testimony. We're perfectly willing to do that, to
18 prepare it. December 10 seems like a reasonable
19 deadline for us. We believe that gives enough
20 time for us to prepare quality testimony, complete
21 quality testimony, and then also to develop a fair
22 cost for the parties.

23 MS. LUCKHARDT: You know what, having
24 all the other parties file all their testimony on
25 December 10 really is too close to the hearings

1 and I think the date needs to be much sooner than
2 that.

3 I also think that we are now going to
4 have issues with rebuttal testimony and those
5 types of things because we now filed our direct
6 and they will have the advantage of that direct in
7 filing their direct testimony. So I think we
8 ought to, for smoothly conducting the hearings,
9 have any final testimony filed much sooner than
10 the tenth.

11 And I also would just like to note that
12 the Energy Commission traditionally uses pre-
13 filed, all pre-filed direct testimony, as I know
14 Mr. Hindus is very familiar with the PUC. So I
15 don't think that should be all that unusual to the
16 City of Hayward given their experience in energy
17 proceedings to file pre-filed testimony.

18 I think that in order to conduct these
19 hearings in a reasonable fashion we need to have
20 pre-filed, written testimony or we will be here
21 much longer than two days.

22 MR. MASSEY: The County would also like
23 to point out we recently received a request for --

24 HEARING OFFICER GEFTER: You need the
25 microphone, please.

1 MR. MASSEY: The County recently
2 received from the Commission a request for agency
3 comment on the final staff analysis and that said
4 it was due on December 3. So it doesn't really
5 make any sense to have, even to have pre-filed
6 testimony today if we have until the third to do
7 our review of the final staff analysis.

8 MS. HOLMES: Excuse me, let me clarify
9 that for a moment. Typically we send out a
10 request for comments to public agencies and to
11 members of the public on the FSA. That typically
12 would not supersede testimony dates for those
13 public agencies or members of the public who
14 choose to become intervenors.

15 It is not uncommon for us to receive
16 public comment on the FSA from public agencies at
17 the hearing without having received anything
18 written in advance and that's acceptable. But
19 when an agency is an intervenor, at least it is
20 staff's position that they need to abide by the
21 rules that apply to all of the parties.

22 HEARING OFFICER GEFTER: I think that
23 Ms. Holmes has explained it as well as any of us
24 can that since the public agencies are now also
25 parties they need to abide by the rules of the

1 evidentiary hearings. And that prepared
2 testimony, which is the direct testimony, needs to
3 be filed ahead of hearings. Everyone should be
4 aware of that. And in fact the notice of
5 prehearing conference indicated that exhibits and
6 testimony should be available at the prehearing
7 conference.

8 So we are in a bit of a bind because we
9 don't have your testimony here. I don't know what
10 -- There are no sanctions really available for us
11 at this point but, you know, we really do need to
12 have your direct testimony or, you know, the
13 parties could, the applicant and the staff could
14 move to strike your testimony. So let's see how
15 soon -- if you can give me some idea of how soon
16 you can submit your prepared testimony that would
17 move the process along.

18 MR. MASSEY: On behalf of the County, we
19 have all of our exhibits and testimony with the
20 exception of Dr. Zanetti and our aviation expert,
21 Larry Berlin. Mr. Berlin informed us he could
22 have his materials ready for us on the 7th and
23 Dr. Zanetti, we'll do our best to get it by the
24 10th.

25 HEARING OFFICER GEFTER: Okay.

1 MR. MASSEY: And if you give us the 10th
2 as our deadline we will live by that deadline.

3 HEARING OFFICER GEFTER: Is this a new
4 witness, your aviation witness? I don't remember
5 his name.

6 MR. MASSEY: He's on, he's listed on the
7 prehearing conference.

8 HEARING OFFICER GEFTER: He is listed?
9 Okay.

10 MR. MASSEY: We didn't have a complete
11 CV for him at that time; we listed some of his
12 qualifications. He has now provided us with a CV
13 and it is in our papers that we have here to file
14 today.

15 HEARING OFFICER GEFTER: That you are
16 going to file today. And are you making those
17 available to the parties as well?

18 MR. MASSEY: We have two hard copies
19 with us today and we also brought CDs for
20 everybody that we can distribute.

21 HEARING OFFICER GEFTER: Thank you very
22 much. So if the County can do it how about the
23 City?

24 MS. HOLMES: I would just like to
25 interject a second, for a moment.

1 HEARING OFFICER GEFTER: Okay.

2 MS. HOLMES: We are still very concerned
3 about the 10th and the 11th, particularly on areas
4 that are typically as contested as air quality as
5 in Russell City Aviation.

6 HEARING OFFICER GEFTER: I know.

7 MS. HOLMES: And we would like to ask
8 the Committee to pick an earlier date. We would
9 be willing --

10 HEARING OFFICER GEFTER: We're working
11 on that, Ms. Holmes. You know, we're trying to
12 find out what's available to us and how fast we
13 can get the documents, the testimony. Because I
14 agree, that's why I brought it up in the first
15 place about the air quality witness. And I also
16 proposed that the witness meet with staff and
17 applicant's witness informally to try to stipulate
18 to some basics. If that can't happen we'll talk
19 about dates.

20 But anyway, I want to ask the City how
21 soon they can get their exhibits and their
22 prepared testimony to us.

23 MS. GRAVES: Well first this is a point
24 of clarification. The Notice of Prehearing
25 Conference requires that evidence be submitted

1 today but not the --

2 HEARING OFFICER GEFTER: Direct
3 testimony is evidence.

4 MS. GRAVES: Testimony is testimony.
5 Testimony is given live with cross examination.
6 So we --

7 HEARING OFFICER GEFTER: But when you
8 have expert witness, when you have expert
9 witnesses that testimony is always prepared ahead
10 of time, submitted along with the qualifications
11 of the witness.

12 MS. GRAVES: We could move our date back
13 to December 6. The reality is we have five
14 witnesses. We won't be speaking to air quality,
15 if that makes a difference to staff's concerns.
16 Our issues are the land use, socioeconomic and
17 public health so we will prepare that testimony by
18 the 6th.

19 I think the danger of bumping the
20 testimony much earlier is that the quality will be
21 less and it will be more difficult for everyone to
22 deal with.

23 HEARING OFFICER GEFTER: And your
24 witnesses are aviation witnesses, land use
25 witnesses?

1 MS. GRAVES: Our witnesses are land use
2 witnesses. We have Bob Bauman from the City,
3 David Rizk from the City and three elected
4 officials. So the testimony also will not be
5 lengthy, traditional, scientific, expert
6 testimony.

7 MS. LUCKHARDT: I'm wondering on that
8 respect in dealing with the elected officials how
9 we want to deal with them going forward.
10 Traditionally the Energy Commission has provided a
11 time frame for elected officials to come address
12 the Commission. Of the City and the County would
13 like to these elected officials sworn in as
14 experts and be subject to cross examination then
15 we need to look at credentials and other things
16 regarding the elected officials. So I am not sure
17 what your intent is but I think it would be
18 important to identify that.

19 HEARING OFFICER GEFTER: That is a very
20 good question from Ms. Luckhardt, which is whether
21 or not your elected officials expect to be cross
22 examined.

23 MS. GRAVES: They'll make themselves
24 available for cross examination if necessary. Our
25 intent for the public officials is to speak to the

1 issues of siting the second power plant in our
2 city and the political ramifications of such an
3 action.

4 MS. LUCKHARDT: Okay. And as I hear
5 that --

6 MS. HOLMES: Excuse me. Excuse me, did
7 you say the political ramifications?

8 MS. GRAVES: The social, the
9 socioeconomic.

10 MS. LUCKHARDT: I see that really as
11 being more of the traditional public officials
12 addressing the Commission and less in the form of
13 expert testimony. So at this point I would object
14 to having them testify as experts but would agree
15 to having the traditional situation where they
16 come and address the Commission.

17 MS. GRAVES: We just would like them to
18 address the Commission during the evidentiary
19 phase, not during the public participation phase.

20 HEARING OFFICER GEFTER: I want to know
21 if the staff has any comment on that?

22 MS. HOLMES: It's hard to know without
23 seeing their credentials but it doesn't sound to
24 me like it is expert testimony. Again, my
25 experience is that for the testimony portion of

1 the proceeding we qualify the witnesses as experts
2 in their field by virtue of their education or
3 their training or their experience and they
4 testify on issues that are the subject of factual
5 disputes. That is the purpose of expert
6 testimony.

7 From what I'm hearing so far it sounds
8 to me as though it is more in the nature of
9 comment by local officials. And I would note that
10 traditionally at the Commission that is usually
11 handled in a separate section than public comment.

12 So there is an evidentiary portion where
13 the people that are qualified as experts provide
14 testimony and are subject to cross examination and
15 there is a time for agency and local government
16 agency comments and observations and
17 recommendations. And then that section is
18 succeeded by the section at which members of the
19 public and anyone else who is interested may make
20 general comments. It sounds to me as if this is
21 more in the nature of the second.

22 PRESIDING COMMISSIONER BYRON: If I may.
23 I think we can close the discussion out on this.
24 If the elected officials wish to testify under
25 oath and subject themselves to cross examination,

1 unless Commissioner Geesman objects, we will allow
2 them to go ahead and testify in that regard.
3 Commissioner?

4 ASSOCIATE MEMBER GEESMAN: That's
5 certainly no objection to me. In fact I'd object
6 if we gravitate too far into a closed, elite,
7 technological discussion. I don't think our
8 process is supposed to be like that.

9 PRESIDING COMMISSIONER BYRON: Right.
10 So understood?

11 HEARING OFFICER GEFTER: So if your
12 elected officials are willing to be cross examined
13 then they're welcome to come and testify.

14 MS. GRAVES: Certainly.

15 MS. LUCKHARDT: Okay, then are we going
16 to have any opportunity to discuss their
17 credentials to testify as experts in a certain
18 area or is the Commission simply going to take
19 that into account? And we don't even have any
20 kind of background. There was no expert
21 qualifications or r, sum, s filed with their
22 prehearing conference statement and so we have no
23 way of knowing at this point whether any of these
24 individuals truly can testify as experts on any
25 particular subject area.

1 MR. MASSEY: The county did provide CVs
2 for all of our experts.

3 MS. LUCKHARDT: Yes. I did not mean to
4 include the County in that.

5 HEARING OFFICER GEFTER: We're talking
6 about the public elected officials.

7 MS. GRAVES: We will be submitting all
8 that information. I think that it is safe to say
9 as a general matter that, for example, the Mayor
10 of the City of Hayward can speak to his concerns
11 as the mayor of the host city. His concerns of
12 the land use impacts that the plant will have and
13 its conformance with the general plan.

14 Certainly we have other more technical
15 experts on those topics but I think that we would
16 have to consider the mayor an expert on his city.

17 MS. LUCKHARDT: I understand your
18 concern about the mayor and an elected official
19 but that does not make that person an expert by
20 virtue of the fact that they hold public office.
21 So I just would like to make that clear. It would
22 have been nice if you had filed their background
23 and information as the County did regarding the
24 folks who you plan to sponsor as witnesses.

25 MS. GRAVES: We will be filing that.

1 MS. LUCKHARDT: It was supposed to be
2 filed with the prehearing conference statement.

3 HEARING OFFICER GEFTER: And you're
4 telling us that the soonest you can do it is on
5 December 6th?

6 MS. GRAVES: Yes.

7 HEARING OFFICER GEFTER: Okay, now I am
8 going to turn to Chabot College and Las Positas.
9 In terms of your timing, how soon can you provide
10 your testimony?

11 MS. YANG: I think with the exception of
12 Mr. Zanetti, who we're working on, we could
13 probably get the rest of the testimonies, the
14 declarations in on the 8th.

15 HEARING OFFICER GEFTER: The 8th is a
16 Saturday.

17 MS. YANG: I'm sorry. I'm looking at
18 November. So the 7th, would that work?

19 HEARING OFFICER GEFTER: We don't know
20 yet, we're trying to assess when people can file
21 their papers.

22 MS. YANG: The problem we have is that
23 some of these experts were retained, you know,
24 just right before the prehearing conference and we
25 need time to confer with them and put together a

1 declaration that is going to be of some quality
2 that could be used in this proceeding. So that's
3 the issue that we have.

4 I think that most of our witnesses are
5 either faculty association or members of the
6 district employees. So we could get those in --
7 We'll do our best efforts to get them in on the
8 7th. Dr. Zanetti, we will certainly confer with
9 him and see if we can also meet that deadline of
10 December 7.

11 HEARING OFFICER GEFTER: Thank you.
12 Ms. Hargleroad.

13 MS. HARGLEROAD: Our witnesses, I think
14 we have one shared witness maybe, Mr. David
15 Butterfield is a staff witness also.

16 HEARING OFFICER GEFTER: On aviation?

17 MS. HARGLEROAD: On the aviation issue.
18 We also have, as I mentioned before at the
19 beginning of the hearing, I have an amendment to
20 our prehearing conference statement also adding
21 Mr. Jay White here of the California Pilots
22 Association.

23 Going back to distinguishing between
24 exhibits and the pre-filed direct testimony. I
25 distinguish that -- If perhaps staff or the

1 hearing officer want to give us a citation to
2 where that is being defined that might be helpful
3 to the intervenors just for procedural purposes.

4 Also I would like to point out that we
5 -- it was November 9 that staff issued the Final
6 Staff Assessment and it is over 700 pages. So it
7 is somewhat difficult for us just to whip this off
8 immediately based on the 700 pages.

9 Because we do have also Mr. Andy
10 Richards, he is the Bay Area Tower Manager for the
11 FAA air traffic control. We have Carol Ford. She
12 has also testified before, before the Commission
13 in the Russell City. Charles Earhart.

14 HEARING OFFICER GEFTER: All of these
15 speaking to the aviation issue?

16 MS. HARGLEROAD: All of these are
17 speaking to the aviation.

18 HEARING OFFICER GEFTER: Are they going
19 to be testifying on different aspects of the
20 aviation issue?

21 MS. HARGLEROAD: Yes.

22 HEARING OFFICER GEFTER: Okay. And how
23 soon can you have their testimony to the Committee
24 and to the parties?

25 MS. HARGLEROAD: December 10, because we

1 do have a number of different people involved and
2 it does get somewhat technical.

3 HEARING OFFICER GEFTER: We don't need
4 duplicative testimony. So if you have several
5 people speaking to the same issue it wouldn't be
6 necessary to have --

7 MS. HARGLEROAD: We certainly would not
8 intend to do that. We certainly agree with the
9 Hearing Officer that it is best if we can
10 stipulate and in fact that is one of the
11 discussions I was attempting to engage in with
12 Chabot and the County with respect to certain
13 issues we might be able to stipulate to.

14 HEARING OFFICER GEFTER: Very helpful,
15 thank you.

16 MS. LUCKHARDT: We have a lot of
17 concerns about the testimony coming in later and
18 later and later. And we're wondering whether we
19 should stop the process that is proceeding right
20 now. You know, every party was told and it was
21 very clear in the notice for the prehearing
22 conference that the entity had to take the
23 proceeding where it was at the time that they
24 intervened and that they had to meet the schedule
25 required and set out by this committee.

1 What we are hearing today is that very
2 few entities are ready and there are many that are
3 not at all and that we are going to see testimony
4 from them as late as the 10th of December. We
5 really that that is improper and not giving
6 adequate time for the other parties to respond.
7 So the time limit for filing testimony, if it is
8 going to be moved from today, should be something
9 like towards the end of this week and no later.

10 MS. HOLMES: Hearing Officer Gefter, I
11 have one comment to make in response to Group
12 Petitioner's Counsel. She did list David
13 Butterfield as one of her witnesses. The staff
14 had indicated that he may be available. We have
15 been in contact with him and it not yet certain as
16 to whether or not he is going to be at the hearing
17 or not. I just mention that because he is listed
18 as a witness and his availability is not clear.

19 HEARING OFFICER GEFTER: What is his
20 affiliation?

21 MS. HOLMES: He is with FAA. And staff
22 listed him because we also cited in our prehearing
23 conference statement a communication that we had
24 with him and we thought it might be helpful to be
25 able to ask questions about that. As we have been

1 in contact with him it is still not clear whether
2 or not he will be able to attend the hearings.

3 HEARING OFFICER GEFTER: We hope we can.

4 MS. HARGLEROAD: That's exactly the type
5 of circumstance that we're also dealing with.

6 HEARING OFFICER GEFTER: Thank you, we
7 understand that.

8 MS. HARGLEROAD: Right.

9 HEARING OFFICER GEFTER: All right. So
10 I think where we are now is Ms. Luckhardt is very
11 concerned about the timing, she has been all
12 along. The notice of the prehearing conference
13 was issued in October so the notice was out to
14 everybody a long time before. It was six weeks
15 ago that that notice went out.

16 MS. HARGLEROAD: It's the Final Staff
17 Assessment that's the operative document here and
18 we know that was not published.

19 HEARING OFFICER GEFTER: As we've
20 indicated -- okay, as we've indicated, it is not
21 really substantially different from the PSA which
22 came out in August. I am going to go off the
23 record right now and consult with Commissioner
24 Byron.

25 (Off the record.)

1 HEARING OFFICER GEFTER: Before we
2 actually assign dates for the filing of the direct
3 testimony we want to go through the rest of the
4 issues. And I am going to bring up an issue that
5 has been presented by Chabot College Las Positas,
6 which is the environmental justice issue. It
7 looks like your witnesses are particularly
8 interested in that topic. I wanted to find out
9 whether you can file your direct testimony on
10 that. And if there is no objection, no cross
11 examination, we can take it all in declaration
12 without your having to present the direct
13 testimony.

14 MS. YANG: Just for clarification. I
15 guess what you are guys are asking is that we
16 would file the declarations under penalty of
17 perjury with no direct examination. Would they be
18 subject to cross examination?

19 HEARING OFFICER GEFTER: If they are
20 subject to cross examination they would have to be
21 present in person but if none of the other parties
22 wish to cross examine we can take the testimony
23 under declaration.

24 MS. YANG: I guess the issue with that
25 is that some of the Chabot employees are

1 testifying as expert witnesses and not necessarily
2 in their capacity with the college and so with the
3 district. Without having -- We've gone through
4 some of their testimonies. But without having
5 gone through in detailed preparations for the
6 evidentiary hearing I would like to reserve that
7 issue.

8 We will try our best to put the
9 declarations, prepare the declarations to the best
10 quality and see if that is a possibility and
11 discuss it with the other counsel. But that is
12 something I don't want to have a determination at
13 this point in time.

14 HEARING OFFICER GEFTER: And I assume
15 that you've read the environmental justice
16 sections of the FSA.

17 MS. YANG: Yes ma'am.

18 HEARING OFFICER GEFTER: And the filings
19 by the staff on that.

20 MS. YANG: Yes ma'am.

21 HEARING OFFICER GEFTER: All right. And
22 given what the FSA says I'm not sure that the
23 applicant or staff would want to cross examine
24 your witnesses but it is up to them.

25 MS. YANG: We would be willing to work

1 with the applicants and the other parties to
2 resolve that issue.

3 HEARING OFFICER GEFTER: I appreciate
4 that, thank you. All right.

5 MS. LUCKHARDT: And for our part we're
6 willing to look at it but we would need to see the
7 testimony beforehand. I guess I am just really
8 surprised that but for the County that none of the
9 other intervenors, other than Mr. Haavik, have
10 even attempted to meet the requirements of the
11 notice for the prehearing conference. So I just
12 register that concern.

13 MS. HARGLEROAD: I just want to object
14 to that because we really disagree with that. We
15 have identified the witnesses, we have also
16 identified earlier declarations that people have
17 submitted. Obviously the prehearing conference
18 statement that we're reviewing is talking about a
19 list, it is not talking about actual documents and
20 pretrial declarations.

21 MS. HOLMES: Hearing Officer Gefter, I
22 have comments to make from staff's perspective on
23 the socioeconomic/environmental justice issue. I
24 don't know if this is the appropriate time or
25 when?

1 HEARING OFFICER GEFTER: Yes, because I
2 just raised the question of environmental justice
3 and whether that would be a contested issue or
4 not. Under both the FSA and the applicant's
5 analysis it is not a contested issue. And it is
6 becoming contested from Chabot College and I'm
7 curious whether the parties would want to cross
8 examine or just let that as submitted on
9 declaration.

10 MS. HOLMES: My concern has to do more
11 with the identification. I believe Chabot College
12 is not the only entity. I think the County also
13 listed staff's witnesses on environmental justice
14 and I wanted to offer some additional information.

15 The summary of staff's position on
16 environmental justice is offered by Mr. Pfanner as
17 the project manager. And it is not clear to me
18 that there are particular socioeconomic, there are
19 not particular sections of the socioeconomic
20 section of the FSA that would be subject to cross
21 examination.

22 We of course would like to know which of
23 our witnesses need to be present for the hearing.
24 That is one of the objectives we had hoped to
25 accomplish today. So it would be very helpful for

1 the staff if we know whether or not those two
2 entities are interested in cross examining
3 Mr. Pfanner, who can discuss the methodology that
4 staff used and the results versus the person who
5 wrote socioeconomic testimony.

6 We would appreciate knowing that by the
7 close of the prehearing conference today so we
8 know which witnesses we need to bring to hearing.

9 MS. LUCKHARDT: That is also important
10 for the applicant as well.

11 HEARING OFFICER GEFTER: Absolutely, and
12 that would be another topic that we're going to
13 talk about. Which is, several of the intervenors
14 have indicated they want to cross examine
15 everybody. That's not realistic and so we do
16 really need to get a sense of the actual people
17 you wish to cross examine and the actual topics.

18 So what I understand now on the
19 environmental justice is that Chabot College and
20 Las Positas are going to put together your
21 testimony and consult with counsel from the other
22 parties to find out if they wish to cross examine
23 and you're going to tell them what your issues
24 are.

25 MS. YANG: Yes.

1 MR. MASSEY: The County also has a
2 witness to put on talking about environmental
3 justice.

4 HEARING OFFICER GEFTER: Who is that
5 witness?

6 MR. MASSEY: Supervisor Gail Steele.
7 She is listed in our prehearing conference
8 statement.

9 HEARING OFFICER GEFTER: Right. And she
10 was listed as socioeconomics, it didn't mention
11 EJ.

12 MR. MASSEY: That was our intent.

13 HEARING OFFICER GEFTER: Okay.

14 MR. MASSEY: We're saying that
15 environmental justice was within the heading of
16 socioeconomics.

17 HEARING OFFICER GEFTER: All right. And
18 she is another elected official on that topic.

19 MR. MASSEY: Yes.

20 MS. GRAVES: The City also has their
21 elected officials listed as socioeconomic. What
22 we would like to do is reserve the right to
23 present them as experts and subject them to cross
24 but obviously I need to speak more in detail with
25 the elected officials. So if they choose not to

1 subject themselves to cross examination we would
2 like to allow them a brief period of time to just
3 give a statement, which would also be a pre-filed
4 statement, at a designated time during the
5 hearings.

6 HEARING OFFICER GEFTER: We always
7 invite elected officials to speak to us at any of
8 our proceedings and they're welcome to speak to us
9 during the evidentiary hearings as well as public
10 comment if they choose that.

11 MS. LUCKHARDT: And we have no objection
12 to that as well.

13 HEARING OFFICER GEFTER: All right, so
14 the County and the City are sort of conflating
15 socioeconomics with EJ and Chabot College is
16 saying that EJ is a separate issue that you have
17 concern about. I wonder if the parties can get
18 together and stipulate to what the issues are
19 regarding environmental justice.

20 MS. YANG: I think they're related but
21 there are also separate issues as well. There is
22 no way to separate the two issues.

23 I will be glad to consult with the
24 County and the City to see if we can arrive at
25 some sort of resolution and stipulations.

1 HEARING OFFICER GEFTER: Thank you.

2 MS. GRAVES: The City's issue is not
3 environmental justice, it's socioeconomics.

4 HEARING OFFICER GEFTER: Thank you.

5 Later on we're going to actually go through a list
6 of the witnesses that you wish to cross examine
7 from the staff and applicant.

8 I have another topic here, which is a
9 very big topic which has to do with the
10 applicant's request for an override, which they
11 presented to us in their prehearing conference
12 statement.

13 MS. LUCKHARDT: I would just like to ask
14 the Committee. We are holding our filing right
15 now with our testimony.

16 HEARING OFFICER GEFTER: We understand
17 that and we'll get to it later.

18 MS. LUCKHARDT: Okay. If we don't know
19 in about 20 minutes that you would like us to file
20 today we will not be able to file today.

21 HEARING OFFICER GEFTER: Thank you very
22 much.

23 I want to raise the concern regarding
24 override because that is also a scheduling
25 question. Which is that at some point we are

1 going to ask the parties to brief that issue. It
2 seems that it makes the most sense to brief it
3 before the evidentiary hearing so we can formulate
4 what the issues are and direct the evidence
5 towards that concern.

6 So that means yet another deadline,
7 which is, when can you file your briefs on the
8 override issue. I know that Ms. Holmes has a
9 question right now on that one.

10 MS. HOLMES: My question, since this is
11 a prehearing brief I presume that what you are
12 asking about is what the standard is, not whether
13 or not the facts support an override.

14 HEARING OFFICER GEFTER: That is exactly
15 correct, yes, yes. This would be briefing the
16 legal question of what would constitute an
17 override in this case and what the standard is.
18 There are several parts of our statute and our
19 regulations that talk about the override concept
20 and I can give you some of those references right
21 now, which is in our regulations. I know most of
22 you are familiar with this, maybe our intervenors
23 are not.

24 Section 1741(b), which talks about
25 override standards, Section 1752(k), which talks

1 about the PMPD, Proposed Member's Presiding
2 Decision -- I'm sorry, Presiding Member's Proposed
3 Decision. Whatever it is, the PMPD. That section
4 of our regulations talks about the contents that
5 are included in the PMPD and it mentions the
6 override provision as well.

7 Also in Section 1755, which talks about
8 what the final decision should include, there is a
9 discussion about whether -- some reference to the
10 language for override. And the language has to do
11 with whether the project is required for public
12 convenience and necessity or whether there are not
13 more prudent and feasible means of achieving such
14 public convenience and necessity. And that stems
15 from Public Resources Code Section 25525.

16 In this case the applicant is requesting
17 an override of the city and county LORS regarding
18 aviation safety. So we are not asking right now
19 for an exposition on whether the facts will
20 support an override. What we're looking for
21 really is what the legal standards should be.

22 There are a couple of cases that the
23 Energy Commission has issued where override is
24 discussed. A major case is the Metcalf case.

25 It's M-E-T-C-A-L-F, it's on our web page. There

1 is also the Los Esteros project, which is also in
2 the same neighborhood in San Jose. I don't know
3 if any other cases, except for the coastal cases,
4 really have any kind exposition on our standards.
5 Do you remember whether any of them --

6 ASSOCIATE MEMBER GEESMAN: I know that
7 there was an override finding made in the El
8 Segundo case.

9 HEARING OFFICER GEFTER: El Segundo.
10 That was a coastal case and it was specific to
11 that particular project, El Segundo.

12 ASSOCIATE MEMBER GEESMAN: And in the
13 Morro Bay case.

14 HEARING OFFICER GEFTER: And Morro Bay,
15 yes. So you might want to look at those decisions
16 to see what the Commission said in those cases in
17 terms of standards. But we are not bound to those
18 cases and those decisions because none of them are
19 precedent.

20 Now I don't know if the intervenors are
21 familiar with what the applicant is requesting on
22 the override. Do you have any questions as to
23 what they would like to see?

24 MS. HARGLEROAD: I understand you're
25 distinguishing between the standards and the

1 facts. Because I just want to confirm that the
2 applicant has not presented any evidence or
3 witness list to support this override. If I am
4 correct on that.

5 HEARING OFFICER GEFTER: That will be
6 occurring at the evidentiary hearing and that is
7 why it is necessary to discuss what standards
8 we'll be using when we take the testimony and
9 review the evidence.

10 MS. HARGLEROAD: But I just want to
11 confirm that those witnesses who the applicant
12 would be sponsoring as evidence in support of an
13 override are not listed in this prehearing
14 conference statement. If they are listed and I'm
15 missing that then I just would appreciate that
16 clarification.

17 MS. LUCKHARDT: All of our witnesses are
18 listed in the areas where there was controversy.
19 And if there is concern in other areas regarding
20 data responses and data requests in the
21 application itself then other parties need to let
22 us know so that we can have witnesses available.

23 Again, the request for the override is
24 out of an abundance of caution. We believe that
25 the evidence will show that there is not an impact

1 to aviation and therefore there is consistency
2 with Hayward ordinances. I'm sorry, I've got a
3 cold. With Hayward ordinances. But should the
4 Commission decide otherwise then we are asking
5 that they consider an override at that time.

6 We have been planning since the
7 beginning of this proceeding and have let others
8 parties know in status reports and other documents
9 that we will be presenting the evidence necessary
10 for an override in the evidentiary hearing. Staff
11 has also prepared some of the required analysis
12 for this and it is in the Final Staff Assessment
13 as well. So we believe that all the information
14 that is necessary for a finding of override is
15 already in the record.

16 MR. MASSEY: Andrew Massey for the
17 County. I am not understanding this procedure.
18 On the one hand there is the argument that the
19 applicant's proposal complies with all of the
20 local land use LORS, and then there is the other
21 argument that, well, in the alternative it doesn't
22 and therefore we're requesting an override.

23 We think that issue should be addressed
24 after the evidentiary hearing. We've got a lot of
25 work to do, particularly all of the intervenors in

1 advance of the evidentiary hearing. We're really
2 going to work on getting all of our exhibits and
3 pre-filed testimony ready to go. Adding another
4 brief for an issue that may not be an issue
5 because you may ultimately decide that it does
6 comply with the County's and the City's LORS, this
7 is just loading public entities that have a lot of
8 other work to do.

9 I'm devoting almost all my time to this
10 and that is not really my job. We don't do this
11 all that often. We're having to drop everything.
12 And I think that's true of folks at the City and
13 folks at Chabot College. We request that any kind
14 of briefing on override occur after the
15 evidentiary hearing once it is determined that
16 they can't comply with the LORS. That's a
17 separate issue. But trying to do everything in
18 the alternative at the same time, it's a lot of
19 work for public entities that don't have the time
20 and resources to put into it. We know that the
21 applicant has a large staff and your staff a lot
22 of resources to do this but we need time.

23 MS. HARGLEROAD: If I could just add
24 also, the applicant's prehearing conference
25 statement was distributed late on -- it was late.

1 And I only make that point because we've been
2 hearing that a lot from the applicant.

3 MS. LUCKHARDT: Excuse me, our filing
4 was not late. There was a service list change
5 that was made at 4:30 -- at four o'clock and then
6 4:30. Our filing had already been submitted by
7 that time. We, out of an abundance of caution and
8 out of respect for other parties, provided it the
9 following day to the parties that we did not serve
10 initially on the date that it was due.

11 MS. HARGLEROAD: Excuse me, If I could
12 continue, Madame Hearing Officer. Thank you.

13 This override request was published just
14 on November 19 at whatever hour. This issue is
15 specifically requesting an override on aviation.
16 Our witness list and our testimony may be somewhat
17 different if that is going to be a consideration
18 so that is a very important point. Because if you
19 are going to be taking testimony on override
20 considerations you need to say so, so we can
21 adjust our witnesses and their testimony
22 accordingly.

23 So I think that the time, which has been
24 extraordinarily brief, to provide the testimony,
25 this is just one more reason why there's some

1 substantial issues here. So we would really
2 object to that also and agree with the County.

3 MS. HAAVIK: Might I have a point of
4 clarification, please, from Mc. Luckhardt.

5 Did you indicate that all of your
6 witnesses and the testimony that you will be
7 providing within the next few hours would also
8 include the testimony for override?

9 MS. LUCKHARDT: Yes, it has primarily
10 been completed by Commission staff in the local
11 system affects portion of the Final Staff
12 Assessment. We are simply agreeing with the
13 analysis that has already been done and has been
14 available. I believe it has been available to all
15 parties.

16 Our interest in an override has been
17 expressed by the applicant since midsummer. Just
18 because these parties have -- you know, being late
19 in the process does not mean that they are to be
20 given additional time because they are unaware of
21 things that happened earlier in the proceeding.

22 MR. HAAVIK: Thank you for that answer.
23 Would you address more than one paragraph in your
24 prehearing conference in regards to the override
25 situation. Like specifically the witnesses that

1 you are going to be providing. Is there going to
2 be a separate topic for requests for override?
3 Your prehearing was very brief.

4 MS. LUCKHARDT: No, we have no, we are
5 not going to provide witnesses specifically on the
6 override question. The local system affects
7 analysis is the analysis that primarily provides
8 the support for the override and that analysis is
9 done. We agree with it. And we are simply saying
10 that we agree with the analysis that staff has
11 already provided. We are not intending to provide
12 additional witnesses on that respect.

13 It has not been a question or an area of
14 dispute by any other party. We simply wanted to
15 make sure that we would not have any comments from
16 other parties saying, we were unaware that
17 applicant would request an override, because we
18 had provided it in our status reports earlier in
19 the proceeding.

20 MR. HAAVIK: Thank you. I have a
21 question for the Committee, Ms. Gefter. Then
22 typically, and I know you just cited four or five
23 different cases where there has been an override.
24 And I believe Mr. Geesman was involved in a few of
25 those. I think there was a discussion briefly at

1 our dual status conference that we had here some
2 months ago. But in that regard are we putting the
3 cart before the horse? What comes first?

4 I'm the only intervenor here that is not
5 represented by counsel so I can speak my peace. I
6 saw Mr. Geesman there sort of smile. You know,
7 what does come first? From what I have read, if
8 an override is not substantiated this goes no
9 further. Is that correct?

10 ASSOCIATE MEMBER GEESMAN: Well without
11 getting into question and answer with you,
12 Mr. Haavik, let me say that I think what we were
13 attempting to do -- And I believe if you go all
14 the way back to the joint status conference that
15 we held in this proceeding and the Russell City
16 proceeding, the subject of override was
17 identified.

18 I think for the benefit of all of the
19 parties we were attempting to flag, this is likely
20 to be a seminal issue in this case. If you would
21 like to inform the Committee of your viewpoint as
22 to what standard should be applied, before we get
23 to the evidentiary hearing, we're inviting you to
24 do that.

25 Several of the parties have indicated

1 that they've got other things to work on or that
2 they have got limitations in their resources. If
3 they don't want to file their briefs with us
4 that's fine too.

5 But I think that to give everyone a
6 heads-up we have tried to identify pretty
7 consistently over the last several months that the
8 override question is likely to be a seminal issue
9 in this case. It's not to say that you can't wait
10 until the record is closed and you submit your
11 briefs to let us know what you think. But in
12 order to better inform our review of the testimony
13 provided at the evidentiary hearing we thought
14 that it might be helpful to have the benefit of
15 your advice before those evidentiary hearings.

16 Again, if you're not in a position to be
17 able to do so, don't. I think our schedule is
18 sufficiently important that you shouldn't
19 anticipate we're going to change the dates for the
20 hearings to accommodate briefs before the
21 hearings.

22 MS. HARGLEROAD: I'm somewhat confused,
23 I'm sorry, Mr. Geesman, but I thought that the
24 Hearing Officer said that you had invited briefs.

25 ASSOCIATE MEMBER GEESMAN: We just did

1 and I just did a second time.

2 MS. HARGLEROAD: Okay, I just wanted to
3 clarify that, that you were inviting briefs.

4 ASSOCIATE MEMBER GEESMAN: Yes we are.

5 MS. HARGLEROAD: Okay, all right. And
6 so the question is, I would request that those
7 briefs be due perhaps just prior to the -- You're
8 asking for that prior to the evidentiary hearing.
9 So that starts on the 17th so I would request
10 December 14 to provide any briefs.

11 The other issue is that the applicant
12 has only identified aviation as an issue to
13 override. And the other question for this
14 Commission is, is that the only subject that will
15 need to be overridden or will there be other
16 subjects that will need to be overridden?

17 ASSOCIATE MEMBER GEESMAN: I think it
18 would be premature for us to get into that
19 discussion.

20 MS. HARGLEROAD: That's just fine.

21 ASSOCIATE MEMBER GEESMAN: That's why
22 what we solicited was a discussion of what is
23 standard should be applied.

24 MS. HARGLEROAD: Thank you.

25 HEARING OFFICER GEFTER: I know

1 Ms. Luckhardt is waiting to find out whether you
2 should continue or put a hold on your filing. If
3 you hold it for today you could file it tomorrow;
4 is that correct?

5 MS. LUCKHARDT: Yes, that's correct.

6 HEARING OFFICER GEFTER: I wanted to,
7 before we actually get to deadlines, I actually
8 wanted to invite Mr. Galati forward for a minute
9 on PG&E's views with respect to the local system
10 effects because Ms. Luckhardt has brought up the
11 topic. And that is, basically, applicant's
12 argument as to why the project should be sited
13 notwithstanding its inconsistency with local LORS.
14 And my understanding is that it is based on the
15 contract that the applicant has with PG&E.

16 MR. GALATI: This is Scott Galati on
17 behalf of PG&E.

18 HEARING OFFICER GEFTER: Thank you. So
19 we wanted to ask whether you are able to address
20 that in any way with respect to the existing
21 contract. There is an RFO in effect where the
22 applicant is under a specific performance
23 agreement to provide power by a certain date. I
24 understand that is what, the end of 2009?

25 MS. LUCKHARDT: May 2009.

1 HEARING OFFICER GEFTER: May 2009. And
2 the applicant has been saying all along that if
3 they don't move this project along and if we delay
4 it further and if we don't override they can't
5 perform their contract with respect to PG&E. And
6 by virtue of that contract we understand applicant
7 to be saying that this is the only place that this
8 project can interconnect, which is at the
9 Eastshore Substation.

10 So my question to you is, is there any
11 information available to indicate that
12 interconnection at other substations in the Bay
13 Area would be sufficient to meet the power grid
14 needs in the Bay Area?

15 MR. GALATI: As you may recall from the
16 staff's conference, there really is a break
17 between transmission planning and generation
18 planning. I can't answer that question nor would
19 I be able to bring a witness here who could tell
20 you where could PG&E's electricity needs be met by
21 interconnecting somewhere else.

22 Let me try to explain why. The contract
23 that was approved during the long-term RFO bidding
24 process provided a competitive bid and had a
25 price. And based on that price it was selected.

1 It also was selected because it generated and
2 delivered power into the Bay Area where it was
3 needed.

4 Any modification to the project that
5 would change substantially that contract would
6 require an amendment at the PUC. So for example,
7 moving the site or interconnecting somewhere else
8 would require an additional interconnection
9 agreement and it would require some studies to be
10 done. And that may change the pricing system. It
11 may also change, for example, what PG&E is
12 obligated to do to facilitate the interconnection.
13 Anything that changed like that would be a
14 substantial amendment.

15 I don't have that answer. I tried to
16 see if I could get that answer and quite frankly
17 it doesn't exist. It doesn't exist because no one
18 has made an interconnection request under today's
19 queue position at any of the alternative sites.
20 So this is not something that PG&E can even do
21 under its FERC 2004 blueprint, do a system impact
22 study on a fictitious or pretend project. It must
23 act in accordance with the request.

24 So that is not information I can provide
25 to you. What I can do is comment as we have

1 before. We think your staff did a good job on
2 identifying generally the local system affects and
3 we can provide a witness to support that they
4 basically got it right at a high scale. But I
5 can't provide you any additional information.

6 Now with respect to the contract. There
7 are two reasons it's confidential. First, the
8 applicant and PG&E agreed to make it confidential
9 while we were negotiating it. And then when it
10 was submitted to the PUC portions of it were asked
11 to be made confidential.

12 So if there are portions of the contract
13 specifically that you think you need or want for
14 the evidentiary record, if I could understand what
15 those might be maybe those areas are not
16 confidential and we could, if the applicant would
17 agree we could take pieces of it and we'll put it
18 in the record if that would be helpful.

19 HEARING OFFICER GEFTER: I know we've
20 discussed the forced provision of the contract and
21 we've discussed it with the applicant and the
22 staff and with yourself and with yourself and
23 whether or not that provision could be provided to
24 us. Whether or not it would carry any weight or
25 whether it's even relevant is another question but

1 we assume there is a forced provision in the
2 contract.

3 MR. GALATI: Right. And PG&E has no
4 problem with providing that piece. From a
5 procedural standpoint the applicant has that
6 contract as well. We've asked them to sponsor it
7 so I wouldn't bring a witness just to sponsor a
8 piece of the contract.

9 HEARING OFFICER GEFTER: The other
10 question, again, that we discussed at our previous
11 status conference is that the letter that was
12 submitted by PG&E which indicated that PG&E is
13 interested in multi-support in the Bay Area but it
14 doesn't specify that it has be at the Eastshore
15 interconnect.

16 MR. GALATI: Yes, and it --

17 HEARING OFFICER GEFTER: And that is why
18 we are concerned about more information because in
19 the staff's alternative analysis they recommend an
20 alternative site at the Newark substation
21 interconnect.

22 MR. GALATI: And from the perspective
23 of, is the question you're asking PG&E to answer
24 whether interconnection at Newark will provide
25 that same voltage support? I would certainly see

1 if I can find a witness who can testify to that.

2 When I did ask they said in order to
3 identify what the benefits of a project would be,
4 a full system impact study would be. We can say
5 that it probably will provide power in the Bay
6 Area, which is what we were looking for in the
7 long-term RFO. And had there been a project
8 interconnecting there at the same price maybe that
9 project would have been selected but I don't know.

10 HEARING OFFICER GEFTER: I think that's
11 basically what we want to discuss with PG&E.

12 ASSOCIATE MEMBER GEESMAN: Are the terms
13 of the RFO really the best guidance that we're
14 going to get on this informational question. What
15 was PG&E looking for at the time they conducted
16 their solicitation?

17 MR. GALATI: Commissioner Geesman, I
18 don't know the answer to that question. I do know
19 that the long-term RFO process, we did
20 specifically ask for power to be injected into the
21 Bay Area. But we didn't provide as part of that
22 process where or what location for that to be
23 done.

24 I think one of the sensitivities,
25 certainly from PG&E's perspective is, the more

1 specific my questions get the more the
2 transmission crew starts feeling like they're
3 passing on the FERC 2004 separation issue. And
4 that's where the issue becomes -- it becomes more
5 of a transmission planning than a generation
6 planning. Which the two cannot meet under FERC
7 2004. So, Commissioner Geesman, I know you've
8 seen me be vague before, I'm not being vague now.
9 I'm telling you this time I really have a reason
10 to be vague.

11 ASSOCIATE MEMBER GEESMAN: But I think I
12 am drawing a conclusion from the vagueness and I
13 stated the conclusion. And that is, that from the
14 sounds of it the best guidance we're going to get
15 is what PG&E put in the RFO.

16 MR. GALATI: I believe for purposes of
17 this evidentiary hearing that is what you're going
18 to get.

19 ASSOCIATE MEMBER GEESMAN: Thank you.

20 PRESIDING COMMISSIONER BYRON: So in
21 preparing the RFO can you speak to whether or not
22 there is any kind of system impact study or system
23 integration study that is done prior to the RFO?

24 MR. GALATI: How this was done is each
25 proponent, each person who put in a bid was

1 required to do a system impact study. And how
2 they go about doing that is they file a request
3 with PG&E and work with the Cal-ISO. And then
4 they submit with their bid the system impact study
5 and all the costs associated with that and their
6 pricing is based on that. So that was done for
7 this project prior to its selection.

8 PRESIDING COMMISSIONER BYRON: And does
9 that include alternative sites or the no project
10 alternative?

11 MR. GALATI: It did not, it only looked
12 at what was bid in. So the other applicants who
13 bid in as well -- And Jane might correct me on
14 that one.

15 MS. LUCKHARDT: No, I think that's
16 correct. And one of the key points about what
17 Mr. Galati said is that the interconnection
18 studies do identify whether there are downstream
19 impacts that need to be addressed. As part of
20 that then PG&E can see whether the location that
21 is proposed for the interconnect is in fact
22 supporting the system or requires extra
23 reinforcement to support the system. And that was
24 required to be provided with the bid so I cannot
25 imagine that PG&E did not take that information

1 into account. There are no system upgrades
2 required for a connection at the Eastshore
3 Substation.

4 HEARING OFFICER GEFTER: Another
5 question, though, that comes up in regard to the
6 override issue and the local system effects is
7 what would be the consequences if this project
8 were not certified and did not interconnect at
9 Eastshore. Could PG&E answer that question?

10 MR. GALATI: Well I think that PG&E
11 would be in a position where they would not be
12 able to get the power that they fully anticipate
13 the applicant to deliver in 2009.

14 So whether or not PG&E would buy spot
15 market power, whether PG&E would be able to enter
16 into a bilateral contract with someone else,
17 whether it will be handled in the next RFO system
18 I am not sure. PG&E will continue to purchase
19 power somewhere because we'll provide the
20 reliability to our customers. But we did identify
21 that this project would help us meet our needs
22 under our 2004 long-term procurement plan.

23 HEARING OFFICER GEFTER: I think that
24 these are the issues that are going to come up
25 again at the evidentiary hearing so it would be

1 helpful if you could bring someone from PG&E who
2 could explain some of this, in particular with
3 respect to override and whether or not the
4 consequences to the grid would outweigh the
5 consequences to aviation in the City of Hayward.

6 MR. GALATI: Here is where I'm getting
7 confused. Because I don't think I can get a
8 witness at PG&E to tell you anything that I
9 haven't just said. So I am not sure that that is
10 evidence supplied. And with all due respect, I
11 think that is the applicant's burden, to explain
12 to you why this project is so important that it
13 would require an override.

14 HEARING OFFICER GEFTER: The applicant
15 has to give us information from PG&E as to why it
16 is so important.

17 MR. GALATI: That I disagree with you.
18 I don't believe that they need to put in
19 information of why PG&E, why PG&E believes it
20 absolutely needs this project here at this
21 location.

22 HEARING OFFICER GEFTER: Fair enough.

23 MR. GALATI: Unless I'm missing
24 something. I guess what I'm trying to do is not
25 have a witness come up here and do what I'm doing

1 to you now. Because I can't answer these
2 questions without violating confidentiality or
3 without crossing some line.

4 PRESIDING COMMISSIONER BYRON:
5 Commissioner Geesman, it seems that Mr. Galati has
6 provided enough vagueness on his own.

7 (Laughter)

8 ASSOCIATE MEMBER GEESMAN: Actually I
9 think he has been quite helpful. Thank you for
10 being here, Scott.

11 HEARING OFFICER GEFTER: Thank you.

12 MR. GALATI: Thank you.

13 HEARING OFFICER GEFTER: I'm just going
14 to -- I think that we need to, we're going to
15 schedule some dates when the testimony is due.

16 MS. HARGLEROAD: Excuse me.

17 HEARING OFFICER GEFTER: I will talk to
18 you in just a moment.

19 And we're also going to get a list of
20 staff witnesses and advocate witnesses that the
21 parties wish to cross examine. And if there are
22 any other requests from the applicant and staff at
23 this point then we'll go to -- Are there other
24 requests or housekeeping issues that you wish to
25 address at this point?

1 MS. HOLMES: No, but I would point out
2 that it is going to be very difficult for us to
3 identify whether we need to cross examine
4 witnesses when in some cases we don't even know
5 who the witnesses are and in other cases we
6 haven't seen the testimony.

7 HEARING OFFICER GEFTER: I understand
8 that. Jane?

9 MS. LUCKHARDT: I have the same issue.

10 HEARING OFFICER GEFTER: Okay, and we're
11 aware of those concerns. Just a moment.

12 Yes, go ahead, please.

13 MS. HARGLEROAD: Thank you. I was just
14 going, I was just trying to interrupt because I
15 wanted to talk about PG&E, the PG&E subject. And
16 that is, we would contend that the applicant's
17 raising of the contract with PG&E is a waiver of
18 any confidentiality of the contract and that that
19 contract should be disclosed to the parties so we
20 can examine it.

21 HEARING OFFICER GEFTER: What would be
22 the relevance?

23 MS. HARGLEROAD: Well the relevance is
24 that it is being utilized as a basis and evidence,
25 allegedly evidence from what I understand, to

1 support an override. And we would argue that we
2 have every right to examine a contract that is
3 being relied upon for that.

4 Also we would expect to receive copies
5 of the Request for Offer also, the RFO from PG&E
6 and what other applicants submitted bids,
7 competitive bids in response to this RFO. And
8 what was their response and if in fact those
9 applicants could still perform. We think that is
10 very relevant because that would go directly to
11 your decision on any potential override.

12 And also I wasn't quite clear. The PG&E
13 representative mentioned the system impact study,
14 if that is confidential or not. Even if it's not
15 -- Even if it is confidential or there's certain
16 issues that the state may or PG&E as a third-party
17 is interested, we certainly would be agreeable and
18 I'm sure the other intervenors would be agreeable
19 to a protective order to not disclose any issues
20 concerning the impact study. But we certainly
21 think it's necessary to examine so we could
22 examine any witnesses on that.

23 MS. LUCKHARDT: Just to help the
24 Committee, the RFO has been docketed as a data
25 response in this proceeding so as well has the

1 system impact study. And to clarify, Eastshore is
2 not relying on the contract for the override
3 request. As far as wanting information about
4 other respondents, good luck with the California
5 Public Utilities Commission on that request.

6 MS. HARGLEROAD: Thank you.

7 HEARING OFFICER GEFTER: We are going to
8 schedule the dates for the filing of testimony.
9 At this point Ms. Luckhardt's filing I imagine has
10 ceased at this point, right? You're at a stop?

11 MS. LUCKHARDT: Yes, we are holding our
12 filing.

13 HEARING OFFICER GEFTER: All of the
14 filings shall be filed by December 7 and that
15 includes Dr. Zanetti's testimony as well as all
16 the other testimonies, the direct testimony from
17 all of your witnesses. And because we are saying
18 December 7 for the intervenors the applicant can
19 wait that long as well if you wish. Staff's
20 testimony is already filed because the FSA is out
21 there.

22 In terms of briefs, we'll also -- Those
23 parties who wish to file briefs on the override
24 standard, that shall also be filed by December 7
25 as well.

1 Then I also would like to go through the
2 list of witnesses that the intervenors wish to
3 cross examine. And we'll start with staff
4 witnesses first with respect to the FSA. And you
5 understand the FSA is staff's filed testimony.
6 The names of the expert witnesses who filed
7 testimony is at the top of every section. Those
8 are the individuals who are responsible for those
9 sections and they are the expert witnesses. And
10 their qualifications are also filed.

11 MS. YANG: May I suggest maybe a process
12 that may reduce the time that we are here is to
13 have the counsels meet and confer outside of this
14 proceeding to agree on which witnesses to cross
15 examine.

16 HEARING OFFICER GEFTER: If everyone
17 agree to that that's fine. We could go off the
18 record and you can do it that way. But we still
19 need to have the list because we're going to issue
20 a hearing order so I still need to know who you're
21 going to cross examine.

22 MS. YANG: If we could maybe schedule a
23 teleconference where we could have that --

24 HEARING OFFICER GEFTER: I need it
25 today.

1 MS. YANG: Okay.

2 HEARING OFFICER GEFTER: So you can
3 either do it off the record for 15, 20 minutes now
4 or we can do it on the record but I need the list.

5 MS. YANG: Let me clarify. What you
6 need is the list of which witnesses we're going to
7 cross examine?

8 HEARING OFFICER GEFTER: Correct.

9 MS. YANG: I have to echo the
10 applicant's concern that given that we haven't
11 seen the testimony it is hard to know which ones
12 we're going to --

13 HEARING OFFICER GEFTER: You have seen
14 the staff's testimony and basically you have seen
15 most of applicant's as well, even though you may
16 not have seen their declarations. Their AFC is
17 the basis for their testimonies.

18 MS. YANG: Would that be subject to --
19 If we make a determination later on that there are
20 certain witnesses that we'd like to cross examine
21 that we haven't determined at this point in time
22 would that foreclose any cross examination at the
23 evidentiary hearing?

24 HEARING OFFICER GEFTER: Not necessarily
25 but most likely, I mean, if the witness isn't

1 there. You can't walk into the evidentiary
2 hearing and say suddenly, I need to cross examine
3 X and that person is not available. So the main
4 reason we need to get the list of names today is
5 so that the parties can make their witnesses
6 available to you.

7 And you know there are -- It is not
8 every single issue that the parties are going to
9 cross examine witnesses on. So what I think we
10 should do is just start going through the issues
11 that the parties have identified as contested and
12 then you can tell us if you want a witness from
13 staff or the applicant on that topic. And
14 obviously the first topic is air quality so I am
15 asking the parties, do you want to cross examine
16 staff's witnesses on air quality and applicant's
17 witness on air quality?

18 MS. YANG: Yes we do.

19 HEARING OFFICER GEFTER: Big surprise.

20 MS. GRAVES: The City does not.

21 HEARING OFFICER GEFTER: The City not.

22 MR. MASSEY: The County does.

23 HEARING OFFICER GEFTER: Okay.

24 MS. HARGLEROAD: Yes, Group Petitioners
25 do wish to.

1 HEARING OFFICER GEFTER: Okay, Group
2 Petitioners --

3 MS. HARGLEROAD: For simplicity
4 purposes, because I know this is a difficult
5 situation. We've got voluminous records --

6 PRESIDING COMMISSIONER BYRON: Please
7 use the microphone.

8 MS. HARGLEROAD: I'm sorry. Excuse me,
9 I'm sorry.

10 We have voluminous records here.
11 There's a lot of issues. That's why we simply
12 reserved our entitlement to cross examine each and
13 every witness who is being offered on direct. For
14 simplicity purposes and that way we're hoping
15 maybe that expedites matters.

16 MS. HOLMES: I'm sorry, to me that
17 defeats the whole purpose of creating a list. We
18 would like to know which witnesses need to be
19 present for the hearing.

20 HEARING OFFICER GEFTER: Staff does not
21 need to present its witnesses on direct unless
22 someone wishes to cross examine them. And the
23 issues that were raised in your filings were air
24 quality, public health and aviation.

25 MS. HARGLEROAD: And aviation, right.

1 HEARING OFFICER GEFTER: So you want to
2 cross examine people, their witnesses on air
3 quality, right? Okay.

4 MS. HARGLEROAD: That's why I said the
5 issues which have been identified.

6 HEARING OFFICER GEFTER: All right, well
7 we're going to go through the issues right now.

8 MS. HARGLEROAD: The parties that are
9 going to be presenting direct testimony.

10 HEARING OFFICER GEFTER: They wouldn't
11 necessarily present the direct testimony unless
12 you ask for the cross because the witness direct
13 testimony has been submitted.

14 Chabot, do you want air quality? Do you
15 want to cross examine staff's witnesses on air
16 quality?

17 MS. YANG: I think our participation in
18 this proceeding is set forth in our prehearing
19 conference and it is only with respect to those
20 three issues, the cumulative effect, the
21 socioeconomic and environmental justice. So those
22 are the three issues that we're concerned with and
23 we would like to cross examine all witnesses
24 regarding those three issues.

25 HEARING OFFICER GEFTER: Okay, socio and

1 environmental justice are two separate issues.
2 Who do you want to, what would be the subject of
3 your cross examination on socio?

4 MS. YANG: We are concerned with -- With
5 the socioeconomic we are concerned with what
6 populations the staff looked at. Also that is in
7 the same connection with the environmental justice
8 issues, the methodology that they used in arriving
9 at their conclusions and the basis for those
10 conclusions.

11 HEARING OFFICER GEFTER: All right. So
12 essentially you're looking at staff's EJ analysis.

13 MS. YANG: Right.

14 HEARING OFFICER GEFTER: Okay. So that
15 would be probably Bill Pfanner.

16 MS. HOLMES: I assume that that's not
17 the socioeconomic --

18 HEARING OFFICER GEFTER: It's not the
19 socio --

20 MS. HOLMES: -- economic witnesses, the
21 environmental justice witness who is Bill Pfanner.

22 HEARING OFFICER GEFTER: That's what I
23 understand.

24 MS. HOLMES: He is the one who is
25 prepared to talk about the methodology and how

1 staff reached its conclusions.

2 MS. YANG: I think it is both issues,
3 the socioeconomic and the environmental justice.
4 So to the extent that you have two separate
5 witnesses on those issues we'd like to cross
6 examine them both.

7 HEARING OFFICER GEFTER: What topic?
8 What is the issue on socio that you want to talk
9 to them about?

10 MS. YANG: Chabot represents an under-
11 represented population. There's certain
12 conclusion in staff's analysis that the air
13 quality impact, everyone is the same and therefore
14 the fact that there's air quality impact on a
15 certain population is irrelevant. I think we
16 disagree with that conclusion.

17 HEARING OFFICER GEFTER: That's the
18 environmental justice analysis, it's not the socio
19 analysis.

20 MS. YANG: Well but the socioeconomic,
21 we're dealing with sort of an under-represented
22 population and we want to bring testimony in to
23 that. We are concerned with the methodology and
24 conclusions drawn by staff.

25 HEARING OFFICER GEFTER: I understand

1 that but that would be your witness.

2 MS. YANG: I understand that but I also
3 want to reserve the right to cross examine the
4 staff's witnesses on those issues as well.

5 MS. HOLMES: I'm sorry, I just haven't
6 heard any socioeconomic issues. I've heard air
7 quality and I've heard environmental justice and
8 we're happy to provide witnesses on those topics.

9 HEARING OFFICER GEFTER: Staff will
10 provide the witness on air quality and
11 environmental justice.

12 MS. YANG: Susan Sperling has asked that
13 if I could get a clarification from the Committee
14 as to the difference between socioeconomic and
15 environmental justice.

16 HEARING OFFICER GEFTER: If you look at
17 the Final Staff Assessment, the FSA, they're two
18 separate sections, they're two separate chapters.
19 Socio is one chapter, environmental justice is
20 another chapter, and it applies to several
21 different sections of the FSA, environmental
22 sections. But they're separate.

23 MS. HARGLEROAD: Madame Hearing Officer.

24 HEARING OFFICER GEFTER: And you had
25 separate authors of each section. And what staff

1 is trying to do is find out whether you need to
2 cross examine the author of the socioeconomic
3 section. Because if not they don't need to bring
4 that person to the hearing.

5 MS. HARGLEROAD: I think the confusion
6 lies also, we have the FSA here, and under the
7 environmental justice section there is a
8 discussion of socioeconomics.

9 HEARING OFFICER GEFTER: Okay.

10 MS. HARGLEROAD: So that's part of our
11 confusion, if you'll excuse us.

12 HEARING OFFICER GEFTER: I'm going to
13 move on to the County then.

14 MS. HARGLEROAD: I would also like to
15 add, we also would like to examine or cross
16 examine those witnesses on both environmental
17 justice as well as socioeconomics.

18 HEARING OFFICER GEFTER: Those were not
19 raised in your prehearing conference statement.

20 MS. HARGLEROAD: Well we've been --

21 HEARING OFFICER GEFTER: If they are
22 cross examining you can participate in the cross
23 examination. But to start adding a lot of
24 witnesses --

25 MS. HARGLEROAD: That's fine, that's

1 fine. As long as one of the parties is entitled
2 to cross examine that means that the other
3 parties --

4 HEARING OFFICER GEFTER: All the parties
5 can cross examine whatever witnesses are here.

6 MS. HARGLEROAD: Great, thank you.
7 Thank you for that clarification.

8 HEARING OFFICER GEFTER: Okay, County,
9 do you want -- We were talking about air quality,
10 somehow we got into environmental justice. The
11 County wants to cross on air quality, correct?

12 MR. MASSEY: Yes.

13 HEARING OFFICER GEFTER: Okay. City,
14 air quality, no.

15 MS. GRAVES: No.

16 HEARING OFFICER GEFTER: Okay. The next
17 topic is public health. I know that --

18 ASSOCIATE MEMBER GEESMAN: Do you want
19 to ask Mr. Haavik?

20 HEARING OFFICER GEFTER: Mr. Haavik? No?
21 You're not on here.

22 MR. HAAVIK: No.

23 HEARING OFFICER GEFTER: I'm sorry,
24 okay. I know that Group Petitioners raised public
25 health issues.

1 MS. HARGLEROAD: Absolutely.

2 HEARING OFFICER GEFTER: So you would
3 like to cross examine staff's witness on public
4 health.

5 MS. HARGLEROAD: Please, thank you.

6 HEARING OFFICER GEFTER: Anybody else on
7 public health?

8 MS. YANG: I think we also raised that
9 issue in our prehearing conference as well.

10 HEARING OFFICER GEFTER: All right.
11 Well basically if the witness is here you can
12 cross examine the person.

13 Do you have cross examination for public
14 health?

15 MR. MASSEY: No.

16 HEARING OFFICER GEFTER: Okay. City,
17 no?

18 MS. GRAVES: No.

19 HEARING OFFICER GEFTER: Okay, all
20 right. And then of course land use. And I'm
21 going to start with the City on that.

22 MS. GRAVES: The City supports the
23 staff's position on land use so we would just
24 request, we're assuming that the staff person will
25 be here for that in case we need redirect.

1 HEARING OFFICER GEFTER: On land use?

2 MS. LUCKHARDT: I'm assuming that you
3 will not allow the intervenors to redirect someone
4 else's witness.

5 HEARING OFFICER GEFTER: No, I know. I
6 think that was a misstatement on her part. You
7 can redirect your own witness.

8 MS. GRAVES: In case there is cross
9 examination on that issue we'd like to be --

10 HEARING OFFICER GEFTER: Yes, I know.
11 There will be a witness here on land use in any
12 event and you'll have the opportunity to cross
13 examine that witness.

14 And the County I assume on land use as
15 well.

16 MR. MASSEY: Correct.

17 HEARING OFFICER GEFTER: And then --

18 MS. HARGLEROAD: Group Petitioners also.
19 That's related to the --

20 HEARING OFFICER GEFTER: If the party is
21 here you can cross examine.

22 MS. HARGLEROAD: Thank you.

23 HEARING OFFICER GEFTER: All right, on
24 traffic and transportation with respect to the
25 aviation issues. Cross examine witnesses on that,

1 City, County?

2 MR. MASSEY: The County would like to,
3 yes.

4 HEARING OFFICER GEFTER: I don't think
5 -- The only place where socioeconomic comes in is
6 where the City has offered the public officials on
7 socioeconomic. I don't believe that it is going
8 to be necessary to cross examine staff's
9 socioeconomic witness.

10 MS. GRAVES: No, we are not requesting
11 staff's witness.

12 HEARING OFFICER GEFTER: I don't think
13 that is going to be, you don't need that witness.

14 Then alternatives. I know that topic
15 has been raised by the parties. Who wants to
16 cross examine an alternatives witness from staff?

17 MR. MASSEY: Excuse me, going back to
18 the socioeconomic. I'm sorry to backtrack but
19 that was one of the issues we had identified. And
20 I think our confusion also had to do with that the
21 socioeconomic resources section of the Final Staff
22 Assessment discusses environmental justice and
23 likewise in the environmental justice section. I
24 believe we want to discuss environmental justice.

25 HEARING OFFICER GEFTER: Okay, good.

1 MR. MASSEY: That's more appropriately
2 where our witness will --

3 HEARING OFFICER GEFTER: And staff will
4 have a witness here on EJ.

5 MS. HOLMES: For environmental justice.
6 Let me just offer one bit of clarification that
7 might be helpful to the parties. And that is that
8 there is an environmental justice discussion in
9 many of the individual subsections of the FSA, the
10 individual technical sections. And that is pulled
11 together by Mr. Pfanner as well as him sponsoring,
12 as I said, the methodology.

13 MR. MASSEY: And with that clarification
14 I believe our witness is more appropriately
15 characterized as environmental justice.

16 HEARING OFFICER GEFTER: Thank you.

17 MR. MASSEY: Thank you.

18 HEARING OFFICER GEFTER: Good, thank
19 you, thank you very much.

20 On alternatives staff provided an
21 alternative analysis as did the applicant. In
22 your prehearing conference statements some of you
23 mentioned that as a concern, a topic. Who wants
24 to cross examine on alternatives?

25 MS. HARGLEROAD: We would. Yes, we

1 would like to cross examine on alternatives.

2 HEARING OFFICER GEFTER: City or County?

3 You didn't raise that in your filing.

4 MS. LUCKHARDT: I believe that was
5 raised by the applicant because we wanted to file
6 some affirmative testimony.

7 HEARING OFFICER GEFTER: That's right.

8 MS. LUCKHARDT: We do not intend to
9 cross staff on that issue so we don't need a staff
10 witness on alternatives.

11 HEARING OFFICER GEFTER: Ms. Holmes, who
12 is staff's witness on alternatives?

13 MS. HOLMES: Suzanne Phinney.

14 HEARING OFFICER GEFTER: All right. We
15 just have the Group Petitioner who wishes to cross
16 examine her because applicant is just going to
17 provide direct on that. So we'll see how that
18 goes, we'll talk about it.

19 Noise and vibration. Mr. Haavik?

20 MR. HAAVIK: Yes.

21 HEARING OFFICER GEFTER: Okay. And then
22 I know that applicant has some concern about
23 Noise 4 that you wanted to --

24 MS. LUCKHARDT: Correct.

25 HEARING OFFICER GEFTER: But that's

1 direct.

2 MS. LUCKHARDT: As direct and as cross.

3 HEARING OFFICER GEFTER: And cross,
4 okay.

5 And then also I know that the applicant
6 had a question about an air quality condition.

7 MS. LUCKHARDT: Right.

8 HEARING OFFICER GEFTER: AQ-SC8. And so
9 you want to cross staff's witness on that as well?

10 MS. LUCKHARDT: Yes, on AQ-SC8. There
11 will be very little.

12 HEARING OFFICER GEFTER: All right. And
13 then on the override issue, which may be the local
14 system effects issue. I don't know who would want
15 to cross examine the staff's witness on that. I
16 imagine the applicant will provide direct on that
17 topic.

18 MS. LUCKHARDT: Our direct is simply
19 that we support staff. And no other party had
20 identified it as an issue of concern so we had not
21 assumed that we would be addressing it in the
22 hearing.

23 HEARING OFFICER GEFTER: You wouldn't be
24 putting a witness on for that. Okay, so you just
25 would accept the staff's testimony.

1 MS. LUCKHARDT: Yes.

2 HEARING OFFICER GEFTER: And I didn't
3 see anybody, anyone's prehearing conference
4 statement indicating you wanted to cross anybody
5 on that section, local system effects.

6 MS. HARGLEROAD: On the local systems
7 effect (sic).

8 HEARING OFFICER GEFTER: Yes, you did
9 not indicate that.

10 MS. HARGLEROAD: Well I think that's
11 maybe wherein lies the confusion. We had
12 identified the alternatives also that related to
13 alternatives. Because if alternatives exist then
14 that satisfies the local systems effect element,
15 potentially.

16 HEARING OFFICER GEFTER: You can argue
17 whatever you wish to argue.

18 MS. HARGLEROAD: Well no, I'm just
19 simply stating that that was our understanding.

20 HEARING OFFICER GEFTER: Okay, so you
21 want to cross examine on alternatives?

22 MS. HARGLEROAD: Absolutely, yes.

23 HEARING OFFICER GEFTER: Okay. Well
24 you've got alternatives, we're taking out local
25 system.

1 MS. HARGLEROAD: But in relation to the
2 local systems effect.

3 HEARING OFFICER GEFTER: There is a
4 witness on alternatives and then there's another
5 section on local system.

6 MS. HARGLEROAD: Right.

7 HEARING OFFICER GEFTER: At this point
8 you will bring in the alternatives witness but the
9 local system effects witness does not need to be
10 here.

11 PRESIDING COMMISSIONER BYRON:
12 Ms. Gefter.

13 HEARING OFFICER GEFTER: Yes.

14 PRESIDING COMMISSIONER BYRON: Given the
15 limited amount of information that we're going to
16 get on this subject, and I think it is a critical
17 aspect of our decision, I would like to make sure
18 that someone is here from the staff to address the
19 local system effects.

20 HEARING OFFICER GEFTER: Okay. Well
21 then there we go.

22 MS. HARGLEROAD: We appreciate that.

23 HEARING OFFICER GEFTER: We are going to
24 have direct testimony on local system effects.
25 There you go, Ms. Hargleroad.

1 MS. HARGLEROAD: Thank you.

2 HEARING OFFICER GEFTER: All right. I
3 don't know if there are any other topics. Because
4 the aviation issue is subsumed in land use and
5 traffic. I don't believe there are any other
6 contested topics at this point unless any of the
7 intervenors --

8 MS. YANG: We wanted testimony, we are
9 going to present direct testimony regarding the
10 cumulative effect between the Russell City and the
11 Eastshore project.

12 MS. LUCKHARDT: Can we get some
13 information on what areas in which you're going to
14 present?

15 HEARING OFFICER GEFTER: Okay, and which
16 topic. Because there is a discussion in land use
17 and also in traffic on cumulative impacts. So are
18 you going to address those topics?

19 MS. YANG: It's in the area of air
20 quality, traffic and health effects and so those
21 are the three areas where we're talking about
22 cumulative effect.

23 HEARING OFFICER GEFTER: Okay. Well
24 there is a staff analysis on air quality in
25 cumulative, there is a staff analysis on land use

1 and there is a staff analysis on traffic.

2 MS. YANG: It would be with respect to
3 the traffic and the air quality.

4 HEARING OFFICER GEFTER: Okay. Staff is
5 going to bring a witness on traffic so you'll have
6 an opportunity to cross examine that person as
7 well as the land use person.

8 MS. YANG: And also the health effects.

9 HEARING OFFICER GEFTER: Okay. So there
10 will be both public health and air quality, there
11 will witnesses on those topics.

12 MR. MASSEY: Andrew Massey, Alameda
13 County. I wanted to confirm that you have us down
14 for both land use and traffic, transportation.

15 HEARING OFFICER GEFTER: There will be a
16 witness both for land use and traffic. Is that
17 correct, Ms. Holmes? And also for applicant's
18 witnesses.

19 MS. LUCKHARDT: One question I have
20 regarding traffic. I the concern of the
21 intervenors based on aviation or do we also need
22 to bring our, for lack of a better term, roads
23 analysis people? Because there have not been
24 issues raised regarding impacts on roads, there
25 have only been issues raised regarding aviation.

1 And those are two different witnesses for the
2 applicant. They may not be for staff but they are
3 for us. So we need to know who we need to bring.

4 MR. MASSEY: To clarify for the County,
5 one of our primary concerns is aviation and we
6 know that falls into both land use and traffic and
7 transportation. So in that respect we're
8 interested in both categories.

9 But also with respect to land use we had
10 identified a witness, the director of our
11 redevelopment agency. And that is a separate land
12 use issue so we wanted to make sure that you were
13 aware that there were two, separate land use
14 issues we wanted to discuss.

15 HEARING OFFICER GEFTER: But in terms of
16 cross examining the applicant and staff's
17 witnesses, they're going to bring --

18 MR. MASSEY: It's just the aviation.

19 HEARING OFFICER GEFTER: Okay, that's
20 fine, thank you.

21 MS. GRAVES: And with respect to the
22 City there's the same kind of duality. We have
23 the aviation issues and we also have the
24 traditional land use issues, conformance with the
25 general plan, that sort of nature. We don't have

1 someone, we are not contesting specifically road
2 traveling.

3 MS. YANG: With respect to Chabot we are
4 going to be cross examining on road traffic.

5 HEARING OFFICER GEFTER: What exactly?

6 MS. YANG: Chabot College is located
7 within miles of this power plant. So the impact
8 on the traffic with faculty and staff coming in,
9 with the community coming in to Chabot Colleges,
10 there's going to be some impact. So we would like
11 to cross examine what that impact is going to be
12 and see if there is an analysis that has been
13 conducted on that.

14 HEARING OFFICER GEFTER: Ms. Holmes, the
15 same witness that you're bringing in on traffic
16 and transportation could answer that question or
17 not on the analysis of travel?

18 MS. HOLMES: Yes.

19 HEARING OFFICER GEFTER: Okay, thank
20 you. All right, so now we have --

21 MS. LUCKHARDT: So then I guess I've got
22 a clarification question. Do we need to bring our
23 traffic witness as well?

24 HEARING OFFICER GEFTER: If your traffic
25 analysis is different than staff's.

1 MS. LUCKHARDT: It is not different than
2 staff's. We're in agreement on the final
3 determination on traffic but we can have a witness
4 available as well. So we are just trying to
5 determine because these hearings are very close to
6 the holidays and many people are taking vacation.

7 HEARING OFFICER GEFTER: Exactly, that's
8 why we are trying to identify witnesses. Do you
9 need to cross examine applicant's witness as well
10 on roads and traffic?

11 MS. YANG: We would like that
12 opportunity to cross examine your witnesses as
13 well.

14 MS. LUCKHARDT: Okay, I guess we're
15 trying to understand. If you would like the
16 opportunity what specifically is your issue and
17 what specifically is your concern?

18 MS. YANG: Well as I just stated Chabot
19 College is within, you know, just a few miles of
20 the proposed power plant. There are 15,000
21 students who are on campus and on top of it there
22 are 6,000 faculties coming in and out of that
23 campus. And there's been no analysis regarding
24 what the impact is going to be on the road
25 conditions with the students and faculties coming

1 at different time. I think the analysis has been
2 during peak hours but we haven't seen any analysis
3 from staff or the applicant as to the impacts
4 during different times of the day.

5 MS. HARGLEROAD: Also if I could just
6 also add, this is very close to the intersections
7 of Highway 92 and 880 and that is a very important
8 interchange. In fact, that interchange is
9 scheduled to have construction done on --

10 HEARING OFFICER GEFTER: Yes, that is
11 already noticed in the FSA.

12 MS. HARGLEROAD: Thank you. And why
13 that is an important issue?

14 MS. LUCKHARDT: All of that analysis has
15 already been done.

16 HEARING OFFICER GEFTER: It has already
17 been done in the FSA. So if you read the section
18 on traffic it might answer all your questions so
19 that it wouldn't be necessary for the applicant to
20 bring in a witness. Because we need to know
21 whether it's worth or not.

22 MS. HARGLEROAD: Well we're certainly
23 willing to provide the applicant -- If we had a
24 little bit more time at some point later on to
25 notify counsel if we intend to withdraw that or

1 not. But if that is not possible then we would
2 reserve our right.

3 MS. LUCKHARDT: I guess we're just
4 trying to understand whether we need to bring a
5 witness. And I guess at this point you're telling
6 me we need to notify and bring our traffic witness
7 as well.

8 HEARING OFFICER GEFTER: Okay.

9 PRESIDING COMMISSIONER BYRON:
10 Mr. Sarvey, could you come forward at this time.
11 I guess my first question to you would be, given
12 all the intervention that will go and the
13 testimony that be given and the evidence presented
14 do you still want to be an intervenor in this
15 case?

16 MR. SARVEY: Yes I do.

17 PRESIDING COMMISSIONER BYRON: What will
18 you be adding to this case?

19 MR. SARVEY: I have a fairly unique
20 perspective on air quality issues that I haven't
21 seen anybody else even discuss. That's the basis
22 of my intervention. I will provide one witness,
23 which will be myself, and I would like to cross
24 examine Brewster Birdsall for about ten minutes
25 and Dave Stein for about ten minutes. That pretty

1 much is going to be the extent of my
2 participation.

3 PRESIDING COMMISSIONER BYRON: Thank
4 you.

5 HEARING OFFICER GEFTER: Will your
6 questions be any different than what the staff has
7 addressed in the FSA?

8 MR. SARVEY: It is probably going to be
9 more depending on how they respond to my
10 testimony, will be my questions to them and their
11 provided testimony.

12 PRESIDING COMMISSIONER BYRON: While I
13 understand that some of the other intervenors
14 object to your coming in late at this moment that
15 I would like to indicate that we want to have an
16 inclusive process here. Although you were late on
17 your application for intervention and late on your
18 filing I am going to allow you to become an
19 intervenor in this process.

20 MR. SARVEY: Thank you.

21 PRESIDING COMMISSIONER BYRON:
22 Mr. Haavik, I know you have been here since the
23 beginning but I hope you'll accept this decision.
24 We want to make sure that all members of the
25 public are represented in this case. Thank you.

1 MR. HAAVIK: That's fine, thank you.

2 HEARING OFFICER GEFTER: And Mr. Sarvey,
3 your intervention will be limited to the air
4 quality issues?

5 MR. SARVEY: Yes it will.

6 HEARING OFFICER GEFTER: All right. It
7 is 20 after four, it is almost time to break.
8 Does anyone else have any other housekeeping
9 matters?

10 MS. HOLMES: I just have a question.
11 Excuse me.

12 PRESIDING COMMISSIONER BYRON: Is
13 everybody clear on the cross examination?

14 MS. HOLMES: Yes, that was my question.
15 Will there be an order that follows this
16 prehearing conference so that we can --

17 HEARING OFFICER GEFTER: Yes there will.

18 MS. HOLMES: Thank you.

19 MS. LUCKHARDT: And I guess I have a
20 question as well. Is it my understanding that the
21 Committee is looking for all pre-filed direct and
22 we will not be providing direct live? We will be
23 providing only rebuttal and cross live.

24 HEARING OFFICER GEFTER: It is your
25 choice whether you want to present the direct

1 live. I don't think it is necessary if you file
2 your direct as declarations.

3 MS. LUCKHARDT: I'm just concerned that
4 we do it consistently through all the parties, I
5 think it's important. And I'm concerned that if
6 we do, we do all of our direct live that we will
7 not have enough time.

8 HEARING OFFICER GEFTER: It is not
9 necessary. I don't know that -- I think it is a
10 question of educating our intervenors on how that
11 works but I'm glad you mentioned that.

12 Typically what we will do is that your
13 prepared testimony will be submitted as direct
14 testimony. The witness will sponsor his or her
15 testimony into the record as an exhibit. And you
16 should number your testimony as one of your
17 exhibits, as a matter of fact, if you don't know
18 that already. Then once the witness is qualified
19 and they have sponsored their testimony the party
20 that is offering the witness will make that
21 witness available for cross examination.

22 Is that what you were getting at? Okay.

23 MS. HOLMES: I wanted to confirm that
24 there will be no additional last-minute direct
25 that is not included in the written testimony that

1 is pre-filed.

2 HEARING OFFICER GEFTER: And we do want
3 to -- Since the pre-filed testimony, we now have
4 until December 7 to file, that should give you
5 enough time to make sure that you have everything
6 in there that you want to have in there in your
7 direct. And then your witness will be subject to
8 cross and then you may redirect the witness if
9 necessary.

10 MS. HOLMES: Hearing Officer Gefter, at
11 some point subsequent to this, since we don't have
12 I don't believe the full list of witnesses
13 offering testimony, are you going to be asking us
14 to provide you our cross examination estimates of
15 the other witnesses? In other words, are you
16 going to wait until the day of the hearing to find
17 out how much cross examination staff or the
18 applicant or any of the other intervenors wants to
19 conduct on the testimony that hasn't come in yet?

20 HEARING OFFICER GEFTER: That's a very
21 hypothetical question.

22 MS. HOLMES: No, I don't think it is
23 very hypothetical given the time constraints that
24 may occur at the hearing.

25 HEARING OFFICER GEFTER: We have asked

1 the parties when they file, when everyone filed
2 their prehearing conference statements we asked
3 you to indicate your plan to cross examine. If we
4 want to do an update I need that update much
5 sooner than the 7th.

6 MS. LUCKHARDT: We'll need to update it
7 after we have a chance to see other parties'
8 testimony. It is very difficult to estimate time
9 for cross until we have actually read the
10 testimony they plan to provide. We were only able
11 to do that for staff because we had seen staff's
12 testimony.

13 HEARING OFFICER GEFTER: All right.
14 What would happen in that case is that if I
15 receive everyone's response on cross after the 7th
16 the order, the hearing order can't be issued until
17 closer to the day of the hearing. But you will
18 know at the very least the names of the witnesses
19 and those who you need to bring in for cross. All
20 right?

21 So what we'll do is then we will -- the
22 direct testimony and all the other exhibits,
23 numbered properly, shall be submitted by December
24 7. Served on the parties either by CD or DVD or
25 e-mail. I want hard copies in my office. They

1 also need to be docketed, all your exhibits.

2 The hearing order, which will show me --
3 Well the problem is, when do you want to tell me
4 about your cross examination? I would say
5 December 10. That gives you the weekend. Does
6 that give you enough time? Because we have the
7 issue --

8 MS. LUCKHARDT: Well since we just
9 worked over Thanksgiving weekend I'm not really
10 sure that weekends really mean anything in these
11 proceedings.

12 (Laughter)

13 HEARING OFFICER GEFTER: The problem is
14 that I need to issue a hearing order ten days
15 before the hearing.

16 MS. HOLMES: I would like to go back to
17 one just clarification of your previous statement.
18 I'm assuming that when you say that the testimony
19 will be filed that means it will be at the
20 Commission --

21 HEARING OFFICER GEFTER: Exactly.

22 MS. HOLMES: Or in parties' hands by,
23 not stuck in the mail on the 10th.

24 HEARING OFFICER GEFTER: Exactly, no.
25 Delivered on the 7th.

1 MS. HOLMES: Delivered.

2 HEARING OFFICER GEFTER: Delivered on
3 the 7th. Hard copies to me in office. Either CD,
4 DVD, e-mail, however electronically, however you
5 can get it to all the parties by close of business
6 on the 7th.

7 MS. HOLMES: I am very concerned about
8 e-mail delivery only given the difficulty
9 sometimes e-mail systems have with large files. I
10 think that my recommendation or my request would
11 be that there is some kind of a hard copied
12 delivered to each --

13 HEARING OFFICER GEFTER: Well there has
14 to be a hard copy delivered to docket. In any
15 event it has to go to docket.

16 MS. LUCKHARDT: If we are going to
17 provide hard copy in something other than a disc
18 we are going to be sending boxes.

19 HEARING OFFICER GEFTER: I'm saying to
20 me.

21 MS. LUCKHARDT: Just to you.

22 HEARING OFFICER GEFTER: I want a hard
23 copy. I need the -- Because what happens is that,
24 you know, what I get --

25 MS. LUCKHARDT: We understand that and

1 are supplying that to you.

2 HEARING OFFICER GEFTER: And I'll
3 explain to the intervenors as well. Which is that
4 what my office does is we create the official
5 record of the case. You know, all of the exhibits
6 are filed with dockets and they are filed with me.
7 And at the conclusion of the case when the final
8 decision is made by the Commission the documents
9 that you've submitted as exhibits become the
10 official record of the case. So I need hard
11 copies and I need them identified as described in
12 the notice of prehearing conference.

13 MR. MASSEY: The County requests that
14 while we're happy to provide you hard copies if we
15 would be allowed e-mail service if we can keep our
16 e-mail attachment to a reasonably small size.
17 Just because of the sheer numbers involved here.

18 HEARING OFFICER GEFTER: E-mail service
19 is acceptable if your voluminous documents can go
20 through. Otherwise you need to provide electronic
21 service otherwise such as a CD to the parties.
22 Hard copy to me, hard copy to docket.

23 MR. MASSEY: I understand. The
24 applicant or staff were requesting, I can't
25 remember which one, indicating that they wanted

1 CDs delivered to everybody. And we'd request if
2 we can get our file size small enough to be --

3 HEARING OFFICER GEFTER: If you can
4 have, if your files will go through e-mail that
5 would be sufficient. But if they don't and the
6 applicant or the staff lets you know that they
7 can't open their file --

8 MS. HOLMES: Perhaps a solution might be
9 to say that the filing of the -- I've already
10 forgotten the date.

11 HEARING OFFICER GEFTER: The 7th.

12 MS. HOLMES: The 7th, thank you, is by
13 two o'clock or three o'clock in the afternoon.
14 That way we can notify you if it has bounced or we
15 haven't received it and then we can, you can make
16 arrangements.

17 I'm concerned that I have been in this
18 situation before where people try to send us
19 electronic copies at five o'clock, they don't go
20 through. The person is gone by the time you call.
21 You call the next morning and they're not there
22 and it's the end of the day the next day before
23 you actually get them. And we can't afford to
24 lose a day.

25 MR. MASSEY: That's fine with the

1 electronic copies but with the hard copy we'd
2 request to be able to close of business just
3 because you're in Sacramento and we're not. We
4 have to get the documents up there.

5 MS. HARGLEROAD: As far as the hard copy
6 goes for the hearing officer. Would that be okay
7 if we did serve, deposit in the mail or the
8 overnight service for the hearing officer?

9 HEARING OFFICER GEFTER: No.

10 MS. HARGLEROAD: So you're saying for
11 yourself you need your hard copies.

12 HEARING OFFICER GEFTER: And docket does
13 too on that day.

14 MS. HARGLEROAD: Well normally because
15 the rules provide that the service by e-mail --
16 you send it by e-mail to the docket and then you
17 deposit it in the mail that same day, that is
18 satisfactory. So you're saying you're not
19 following that procedure? I'm just trying to
20 clarify.

21 HEARING OFFICER GEFTER: I need a hard
22 copy and Docket needs a hard copy on that day to
23 be filed with docket. And the reason for that is
24 because in case somebody has problems with the
25 electronic service or whatever else docket has the

1 hard copy on that date.

2 MS. HARGLEROAD: We have no, we have no
3 objections at all to depositing in the overnight
4 service, Federal Express or whatever, hard copies.

5 HEARING OFFICER GEFTER: But it doesn't
6 get there until Monday if you do it on Friday so
7 it needs to be in the office on Friday by five
8 o'clock.

9 Okay, the last steps or the next steps
10 in this process. A hearing order has to be issued
11 from the Committee. In terms of timing I am going
12 to issue a hearing order based on what we discuss
13 today.

14 In terms of the time for cross
15 examination we'll amend that order or we'll append
16 it to the order after December 10. You know,
17 after I have a chance to see everything everyone
18 else can. We'll talk about it on the 10th. But a
19 hearing order has to go out ten days before the
20 17th so it's going to go out probably in the next
21 week or so. What it will say basically is, you
22 know, what the topics are and, you know, who wants
23 to cross examine whom, that sort of thing. And
24 we'll schedule the times on that.

25 Anything else? Anyone else?

1 I hope the parties can take the next
2 several days to consult with one another in terms
3 of, especially again, the air quality witness and
4 some of the other topics that perhaps can be
5 stipulated.

6 MS. LUCKHARDT: We are checking quickly.
7 We think we may have a schedule conflict with one
8 witness. I believe it's noise. We're just trying
9 to be sure that we don't have one day or the other
10 that our --

11 HEARING OFFICER GEFTER: I'm going to
12 tell you what I'm going to do with this notice of
13 evidentiary hearing. I'll send out a draft to
14 each party before we actually serve it. So that
15 if it turns out that I have noise listed on one
16 day and your witness isn't available until the
17 next day -- this will be to everyone.

18 And then you get back to me and say, my
19 witness can't do it on Monday but they can do it
20 Tuesday. And that way, you know, we can probably
21 try to accommodate people the best we can. All
22 right, okay, thank you.

23 MS. LUCKHARDT: Yes, that will work
24 fine. If I could suggest that maybe we handle
25 some of the larger issues initially. Maybe

1 beginning with traffic and land use trying to get
2 some of the big issues out of the way early.

3 HEARING OFFICER GEFTER: Well that would
4 be the plan. The first day of hearing, which is
5 Monday, we'll do air quality, land use, traffic,
6 the aviation issues.

7 We do have some representatives here
8 from the Bay Area Air District and we certainly
9 are looking forward to your testimony at the
10 evidentiary hearings. I don't know if the people
11 that are here today are going to be testifying.

12 And also I think it is staff who is
13 sponsoring the air quality people or is it
14 applicant? Who is sponsoring them?

15 MS. HOLMES: It really doesn't matter,
16 it's been done both ways at the Commission.

17 HEARING OFFICER GEFTER: Okay.

18 MS. LUCKHARDT: Yes, yes, we're happy to
19 do it either way.

20 MS. HOLMES: I would also note that the
21 two witnesses that we have been in contact with
22 from other agencies, from Caltrans and from the
23 FAA, both indicated that it would be very helpful
24 to them. And again, we don't have confirmation
25 that they'll be available, but they said that it

1 would be very helpful to them if there was a time
2 certain.

3 HEARING OFFICER GEFTER: Well that's the
4 plan but I'm expecting that we take that testimony
5 on Monday, on the 17th, because that's the longer
6 day. So we need to find out if they're available
7 that Monday.

8 The way I see it is, you know, we'll
9 either do the aviation issue first, land use and
10 traffic and aviation as it includes both topics,
11 and then air quality, public health on the first
12 day. That may be ambitious but let's hope that we
13 can do it. And then the EJ and the noise and the
14 alternatives and the other topics can go on the
15 second day.

16 MR. PFANNER: The staff would just ask,
17 is there a third day beyond the 17th and 18th?

18 HEARING OFFICER GEFTER: We haven't
19 scheduled any further days. We will have to see
20 if we need another day.

21 MR. PFANNER: In terms of preparing
22 people.

23 HEARING OFFICER GEFTER: We're going to
24 try to finish in those two days if we can.

25 PRESIDING COMMISSIONER BYRON: It is the

1 intent of the Committee to finish in those two
2 days.

3 MS. LUCKHARDT: Therefore be prepared
4 for long days?

5 HEARING OFFICER GEFTER: Be prepared.

6 PRESIDING COMMISSIONER BYRON: Our time
7 is expendable.

8 (Laughter)

9 MS. GRAVES: Does the Commission
10 anticipate that you might have a separate
11 discussion regarding our briefs and the standards
12 for override or if that is just something you'll
13 discuss in time?

14 HEARING OFFICER GEFTER: No, we'll be
15 discussing that probably on the first day if we
16 can fit it in, if not we can discuss it on the
17 second day. Because basically the applicant has
18 the burden on that topic.

19 MS. HOLMES: Will you be asking for oral
20 argument on that topic?

21 HEARING OFFICER GEFTER: Would you like
22 to do oral argument on that topic?

23 MS. HOLMES: I'm just wondering if I
24 should be prepared. I thought we were simply
25 going to submit the briefs for your consideration.

1 HEARING OFFICER GEFTER: We hadn't
2 really expected oral argument, I think the briefs
3 would speak for themselves. And then if anyone
4 wants to -- In this case it's the applicant. And
5 you've indicated you're not putting on any witness
6 on local system effects because you accept staff's
7 analysis.

8 MS. LUCKHARDT: That's correct.

9 HEARING OFFICER GEFTER: So it would be
10 your brief that would argue to us whether or not
11 we should follow through on that.

12 MS. LUCKHARDT: And we would argue that
13 only in the instance in which the Committee or the
14 Commission would find that the project is not in
15 conformance with local ordinances. If the
16 Committee found otherwise then that argument would
17 not be necessary. But we would provide the
18 support for it in our brief.

19 MR. MASSEY: The County would request
20 oral argument.

21 PRESIDING COMMISSIONER BYRON: Please
22 use the microphone.

23 MR. MASSEY: The County requests oral
24 argument in the form of an opposition. It is my
25 understanding that everyone is going to file their

1 briefs at the exact same time and that doesn't
2 give us an opportunity -- If the burden is on the
3 applicant and we are opposed to what the applicant
4 is saying we're not going to get to see the brief
5 until we have to file our own brief. So if that
6 is going to be the setup then we would request
7 oral argument as our opposition.

8 HEARING OFFICER GEFTER: We might have
9 reply briefs.

10 MS. LUCKHARDT: Yes, I think an opening
11 and reply brief out to the evidentiary hearing,
12 that that would be appropriate because then we
13 will actually have the testimony upon which to
14 apply the standard.

15 HEARING OFFICER GEFTER: Exactly. Thank
16 you. That's the plan and expectation, that at the
17 close of evidentiary hearings we would have post-
18 hearing briefs. And one of the topics would be
19 your argument on the override if it turns that
20 that's where we're going.

21 MS. HARGLEROAD: Will the Commission be
22 rendering a ruling prior to the evidentiary
23 hearing, simply so we're prepared to address that
24 standard with respect to the testimony. Because
25 we may want to be eliciting certain testimony or

1 cross examining on certain issues or perhaps
2 expanding on certain issues depending upon the
3 Commission's determination.

4 Because you are making a determination
5 on the standard, the applicable standard, as I
6 understand it, for an override. So that standard
7 is important to, I think in presenting the
8 testimony. Knowing what that standard is so we
9 know what the Commission -- what hoop are you
10 planning to --

11 HEARING OFFICER GEFTER: The Committee
12 is not going to issue an order on our decision on
13 what the standard is because we are going to take
14 the testimony. As I understand it the testimony
15 is based on the local system effects and the
16 applicant said that they are not going to add any
17 additional testimony to that. So you don't need
18 to come in with more testimony or any of that at
19 this point. You are going to analyze what the
20 testimony is.

21 MS. LUCKHARDT: It is in more than just
22 the local system effects. It's kind of throughout
23 the proceeding, the general analysis that the
24 Commission normally goes through in the general
25 evaluation. So there are areas in the rest of the

1 document where there's supporting information that
2 we would be relying on.

3 MR. MASSEY: And I guess that is my
4 confusion with that. On December 7 each of us
5 files a brief telling you what we think the
6 standard should be. Then we have an evidentiary
7 hearing at which point you won't have decided on
8 what standard will be used.

9 Then post-hearing we'll get to file
10 opposition briefs, which will include both our
11 opposition to any of the other parties' arguments
12 as to what the standard should be as well as
13 substantively how you would apply the facts that
14 have been gathered at the evidentiary hearing to
15 the standard that has yet to be decided.

16 So I'm wondering why we would file this
17 initial brief on December 7 if you're not going to
18 make a decision or have a complete briefing on
19 what the standard is until after the conclusion of
20 the evidentiary hearing. I know this is something
21 I said before I'm just --

22 ASSOCIATE MEMBER GEESMAN: In a less
23 formal procedure they'd call that as multiple
24 bites at the apple. But I'll instead characterize
25 it as reserving our discretion until all of the

1 information, the evidence and your brief are in
2 hand. If you don't want to file a brief, don't.

3 MR. MASSEY: The County will file a
4 brief.

5 ASSOCIATE MEMBER GEESMAN: Okay.

6 HEARING OFFICER GEFTER: Anything else?

7 MS. HARGLEROAD: Just for the record,
8 what we're seeking is to understand what standard
9 or discretion will be applied. That's the plan.

10 ASSOCIATE MEMBER GEESMAN: When we issue
11 a PMPD you will understand. You may not agree but
12 you'll understand. You have multiple
13 opportunities before then to provide us your best
14 advice and guidance.

15 MS. HARGLEROAD: Thank you.

16 HEARING OFFICER GEFTER: Thank you.

17 Okay, hearing no other comments or
18 concerns at this point this prehearing conference
19 is in recess until six p.m.

20 (Whereupon, a recess was
21 taken.)

22 --oOo--

23

24

25

1 PUBLIC COMMENT SESSION

2 PRESIDING COMMISSIONER BYRON: Good
3 evening. I'm Jeff Byron, Presiding Commissioner,
4 if you will, on the Committee for the Eastshore
5 Energy Center. With me is my associate member on
6 this committee, Commissioner Geesman, and our
7 hearing officer, Susan Gefter.

8 We are continuing what we began earlier
9 today at two o'clock, a prehearing conference, and
10 we structured how we will be doing our evidentiary
11 hearings December 17 and 18, I believe.

12 So this is a continuation of that
13 process where we're soliciting input from members
14 of the public, elected officials and others that
15 might be here with us this evening. I would also
16 like to thank very much the City of Hayward for
17 allowing us to use these wonderful council
18 chambers to conduct this prehearing conference.

19 Commissioner Geesman, did you want to
20 say anything else before I turn it over to our
21 hearing officer?

22 ASSOCIATE MEMBER GEESMAN: Only to note
23 that we have been in Hayward several times this
24 year, primarily for the Russell City siting
25 process. I believe that we were here in the City

1 of Hayward in January for the informational
2 hearing on the Eastshore project and then again in
3 June when we had a joint status conference with
4 the Russell City proceeding. And as Commissioner
5 Byron indicated, we've scheduled evidentiary
6 hearings in this matter for December 17 and 18.

7 I see a lot of familiar faces, it's
8 always good to see you again, and some new faces
9 too. So to those of you with a concern about the
10 project or with friends or neighbors who have
11 concerns about the project, we'll be back on the
12 17 and 18 and interested in getting your input
13 then.

14 HEARING OFFICER GEFTER: I also want to
15 introduce the parties to the public who was not
16 here this afternoon. Starting with the Commission
17 staff.

18 MS. HOLMES: Caryn Holmes, staff
19 counsel, and on my right is Bill Pfanner, the
20 Energy Commission's project manager for this
21 project.

22 HEARING OFFICER GEFTER: And the
23 applicant, which represents Tierra Energy, the
24 Eastshore project.

25 MS. LUCKHARDT: Hi, my name is Jane

1 Luckhardt and I am outside counsel to Tierra
2 Energy and Eastshore. And with me today to my
3 right is Greg Trewitt from Eastshore Energy.

4 HEARING OFFICER GEFTER: Thank you. And
5 also Mr. Haavik, who is an intervenor in this
6 case, he's a party.

7 MR. HAAVIK: Paul Haavik, intervenor,
8 thank you.

9 HEARING OFFICER GEFTER: Thank you.

10 And then the City of Hayward has also
11 intervened as a formal party. Would you introduce
12 yourselves.

13 MS. GRAVES: I'm Diana Graves, outside
14 counsel for the City of Hayward.

15 DR. BAUMAN: And I'm Bob Bauman, the
16 Public Works Director.

17 HEARING OFFICER GEFTER: Thank you. And
18 there are also other people here from the City of
19 Hayward and we'll ask them to come up and speak to
20 us in a little while.

21 Alameda County has also intervened as a
22 party.

23 MR. MASSEY: Andrew Massey, Office of
24 County Counsel, and with me is Buzz Sorensen,
25 Director of the Community Development Agency.

1 HEARING OFFICER GEFTER: Chabot College
2 has also intervened as a party.

3 MS. YANG: Maiya Yang, and with me is
4 Susan Sperling representing the faculty
5 association.

6 HEARING OFFICER GEFTER: At Chabot
7 College?

8 MS. YANG: Yes.

9 (Ms. Hargleroad, representative for
10 Group Petitioners, did not return
11 for the evening session.)

12 HEARING OFFICER GEFTER: Thank you.

13 I wanted to also indicate to you we have
14 a couple of representatives from the air district,
15 the Bay Area Air Quality Air District. And the
16 two representatives are sitting over here on this
17 side if you could wave your hands.

18 Those of you that have questions about
19 the air quality analysis and you might have like
20 individual questions you may want to ask. The
21 representatives from the air district would be
22 available to answer your questions.

23 At this time I have these blue cards.
24 We're asking people to fill out these blue cards
25 in the back. Mike Monasmith, who is the public

1 adviser back in the back there, will collect these
2 cards with your name and give us your name and the
3 topic that you'd like to address and then we'll
4 call you to come on up and talk to us.

5 I have a card from Jesus Armas. I don't
6 know if you want to come up first from the city.
7 Jesus used to be the city manager and is now
8 retired and likes to come to our hearings anyway.
9 So Mr. Armas if you'd like to join us and make
10 your comments we'd like to hear from you.

11 MR. ARMAS: Thank you. You know, the
12 Raiders won last night, as did the 49ers, so I
13 didn't think there was a reason to be at home
14 tonight and that's why I join you.

15 Commissioners Byron and Geesman,
16 welcome. We appreciate your consideration to the
17 residents. As a resident I welcome the
18 opportunity to be able to simply come downtown and
19 offer some remarks as opposed to having to go to
20 another community, especially having to travel to
21 Sacramento. So we very much appreciate your
22 consideration in allowing the folks to simply stay
23 in their town to share their thoughts with you.

24 I simply want to make one observation
25 based on the testimony you heard, the comments you

1 heard this afternoon, and something that has been
2 troubling me for some time as I've become more
3 acquainted with this process.

4 As you know the Eastshore application
5 stems from a process that was initiated by PG&E
6 with the concurrence of the Public Utilities
7 Commission in which, in effect, PG&E invited
8 energy companies to submit proposals to identify a
9 location. Ultimately if such an entity was
10 successful a contract was agreed to, executed,
11 which had certain performance standards.

12 Nothing in that process really requires
13 an exercise to identify whether a proposed
14 location is actually suitable. Instead they
15 negotiate this contract and then at some point
16 submit an application to the Energy Commission.
17 The Energy Commission then does it's evaluation as
18 we're going through with this application.

19 And we find ourselves in this where the
20 applicant -- and this is not specific or limited
21 to Tierra Energy. But the applicant says, we have
22 a contractual obligation to produce power, to
23 convey power, in this case to PG&E. Well it seems
24 to me that there needs to be some kind of process
25 to reconcile those a bit better.

1 As I know Commissioner Geesman's term
2 will be ending soon but Mr. Byron, as you continue
3 in your capacity, I would urge that consideration
4 be given to how those two steps might be better
5 reconciled. Particularly with an opportunity for
6 the local agency to weigh in as early as possible
7 with respect to the land use ramifications.

8 I think one of the issues you've heard
9 already through the series of your visits and
10 you'll continue to hear is a question around the
11 appropriateness of the location. Had that been
12 addressed much earlier some of the expense, some
13 of the agony, some of the difficulties that we've
14 experienced over the past number of months would
15 not have been before us.

16 So I simply want to urge you to continue
17 to look at how those two efforts might be
18 reconciled. I respect that they are separate
19 entities, both the PUC and the CEC, but it seems
20 to me that as we look at addressing our energy
21 needs those have to come back, have to come
22 together in a better way. Thank you very much.

23 HEARING OFFICER GEFTER: Thank you very
24 much. And also thank you, Mr. Armas, for
25 continuing to keep us updated on what's going on

1 here in the city. Thank you.

2 I have some other blue cards. Barry,
3 I'm sorry, Luboviski.

4 MR. LUBOVISKI: Right. Phonetically
5 that's correct. Ellis Island did a wonderful job
6 with a lot of us when our ancestors came through.

7 HEARING OFFICER GEFTER: That's right.
8 If you would please spell your last name for our
9 reporters so they can collect --

10 MR. LUBOVISKI: Certainly. The first
11 name Barry with an A; the last name Luboviski,
12 L-U-B-O-V-I-S-K-I.

13 HEARING OFFICER GEFTER: Thank you,
14 Luboviski.

15 MR. LUBOVISKI: Thank you, Madame Chair
16 and Commissioners. My name is Barry Luboviski, I
17 am secretary/treasurer for the Building and
18 Construction Trades Council of Alameda County AFL-
19 CIO. Our council represents 28 local unions whose
20 membership do construction work in the Bay Area,
21 approximately representing about 40,000 workers.

22 I am here in support of the project.
23 We've reviewed this process and the process. We
24 appreciate the due diligence that's going on and
25 believe that this testimony is vital. Several

1 things I'd like to point out.

2 First, in reviewing and seeing comments
3 on Russell City and on this project regarding FAA.
4 I think that we think it's important to note that
5 this project, as with Russell City, is outside of
6 the safety perimeter of the airport and should be
7 viewed consistently with policy I would think in
8 terms of how one deals with that risk. We would
9 believe that that's an acceptable risk as any
10 homes in or about -- or any dwellings in or about
11 an airport, everything presents some sort of risk.

12 The real risk that we believe that we're
13 confronted with is again seeing another cycle of
14 the lack of sufficient power in the Bay Area. I
15 certainly understand and have a great deal of
16 respect for local community residents who come out
17 for the most part in opposition to this project
18 and many others. And I would suspect the
19 discussions that I've had with my colleagues
20 around the state that that's fairly typical.

21 It is very difficult for local residents
22 to embrace a large power plant. All the
23 perceptions about what power plants do. We have
24 had in our history coal-fired and other power
25 plants that spew tons of toxics into the

1 atmosphere.

2 We appreciate the fact that the
3 Eastshore Energy Project is state of the art
4 technology and is very aware of the responsibility
5 to the community and in general to the globe to
6 minimize as much as is technologically possible
7 the placing into the atmosphere of contaminants.
8 So we think that this is appropriate for that
9 reason also. It is a state of the art facility.

10 Lastly let me say that again for us the
11 importance here is having sustainable and
12 sufficient power here locally to guard against
13 power shortages. This plant is a peaker plant, as
14 you know. It is not operating 24 hours a day but
15 specifically preserves the integrity of the power
16 grid and ensures to the East Bay in particular and
17 to Hayward, to Oakland and San Leandro, the local
18 residents, that we're not going to have an
19 interruption in the very important use of power.
20 So we support it and we urge its approval. Thank
21 you.

22 HEARING OFFICER GEFTER: Thank you for
23 coming out tonight, appreciate that.

24 Okay, I have a blue card from Mr. Ben
25 Flores. Are you here in the room, Mr. Flores?

1 Maybe he stepped out, we'll call on him again.

2 Also from Mr. Ryan Maldonado. Are you
3 here? Yes. Won't you come forward, please. And
4 could you please spell your name for the reporter.

5 MR. MALDONADO: Ryan, R-Y-A-N,
6 Maldonado, M-A-L-D-O-N-A-D-O. Good evening,
7 Chairwoman, good evening, Commissioners. My name
8 is Ryan Maldonado and I am a 12th grader at San
9 Lorenzo High School and an active member of my
10 environmental leadership class.

11 I am addressing to your council for a
12 motion to reject the application for Eastshore
13 Energy via Tierra Energy's certification. At
14 today's hearing my concern is Eastshore's
15 application for certification but today I am
16 concerned about my home, my community, my future,
17 our future.

18 I grew up in Hayward, right off of A
19 Street, in the neighborhood adjacent to Kennedy
20 Park, where I had countless birthday celebrations
21 in the past. Yet when the power plant will be
22 built in the Chabot Las Positas area its emissions
23 will rain down on not only the surrounding
24 community but the entire city of Hayward.

25 Emissions of gas are not immobile once

1 they enter into the atmosphere. They move and
2 spread. Why might you ask. It's what we call the
3 nature of wind. When this occurs the entire
4 Hayward area will be exposed and subjected to the
5 inhalation of tons of chemicals and natural gases
6 in the air from basic greenhouse gases such as
7 carbon dioxide, nitrogen dioxide, to the dangerous
8 and pungent chemical NH₃, also commonly known as
9 ammonia.

10 The image of Tierra Energy's position is
11 certainly a fallacy. They clearly advertise and
12 show off on their web site clean wind energy, and
13 then they propose to other states to build power
14 plants that are harmful to our cities.

15 When I visit Kennedy Park in the future
16 should I worry about the children breathing deeply
17 while they run around and play? Will the
18 playground equipment and the train become corroded
19 because of the exposure of ammonia in the
20 atmosphere?

21 If we proclaim Hayward as the city at
22 the heart of the bay shouldn't we live up to the
23 name? Shouldn't we keep the beat of the bay
24 pulsating and alive? Don't stop the heartbeat.
25 Don't stop the rush of people like the blood

1 rushing through your veins. Don't stop the
2 heartbeat of an innocent resident living next door
3 to the cause of their illness. Please think about
4 what will happen to the value of this beautiful
5 city and picture the clean and green future the
6 city needs. Thank you.

7 HEARING OFFICER GEFTER: Thank you very
8 much, Mr. Maldonado, that was very well presented.
9 We appreciate that.

10 I am going to ask for Mr. Ben Flores
11 again, if he isn't present. Mr. Flores, could you
12 come forward. Please spell your name for the
13 reporter.

14 MR. FLORES: I'm Ben Flores, F-L-O-R-E-
15 S. I'm a resident of Hayward. I live at 2712
16 Cryer, within earshot of the proposed plant. I've
17 lived here for 50 years, retired.

18 You've already approved one plant in our
19 area. It's a big shot to our air. This other
20 proposal now is before you. We have three
21 colleges within earshot from that plant that's
22 proposed, a grammar school, a junior high school.
23 Over, I'd say 500 homes, residences, people that
24 live within where that air is going to come to us.

25 This plant, you can talk to me all day

1 long about how efficient it is. It's going to be
2 so bad that they're going to have to go out and
3 buy credits for the puke that they're going to
4 throw on us. I'm an old man. I don't need that.

5 You've already approved this other
6 plant. I heard the head of the Commission on TV.
7 He said that if it wasn't for the Commission that
8 they have the power to override anything else
9 because they would never have a chance to build
10 these plants that we need.

11 Hayward does not need another plant
12 here. Put it across the bay where most of this
13 power is going to go. We don't need that power
14 here. They're going to wire that stuff over to
15 Silicon Valley, someplace else across the way. We
16 are right in the middle where it's a dumping
17 ground for them.

18 I don't want it here. It's going to
19 come, I know, but I'm letting you know right now
20 that I don't want it. And I think there's a lot
21 of other people here that agree with me.

22 You guys don't have to put it -- I'd
23 like to see after this time -- I'm sure you're
24 going to approve it. But I'd like to see when
25 they approve one for your neighborhood what you

1 would say then. I wish I could have the power to
2 vote then. Thank you.

3 ASSOCIATE MEMBER GEESMAN: Let me ask
4 you a question.

5 MR. FLORES: Yes.

6 ASSOCIATE MEMBER GEESMAN: What makes
7 you so sure we're going to approve it?

8 MR. FLORES: You've already done the
9 other one. It was already rejected by the city
10 and everybody else and you still overrode it.

11 ASSOCIATE MEMBER GEESMAN: The city was
12 in favor of the last one.

13 MR. FLORES: They did not approve it.
14 Not what I understood, what I understood. And
15 this one is being opposed to. But I bet you a
16 dollar that you're going to approve it and I don't
17 like it.

18 ASSOCIATE MEMBER GEESMAN: Thanks for
19 your comment.

20 HEARING OFFICER GEFTER: Thank you.
21 Mayor Sweeney, would you like to come forward at
22 this point and address us. And then after you I
23 have Kevin Dowling from the Hayward City Council.

24 MAYOR SWEENEY: Thank you. My name is
25 Mike Sweeney, I'm the mayor of the City of

1 Hayward. I am here to speak in opposition to the
2 Eastshore plant.

3 As you should already know the city
4 council unanimously denied this project because it
5 was inconsistent with the land use, it was
6 inconsistent with our zoning ordinance and our
7 general plan, and the council unanimously found
8 that the project was inconsistent with the general
9 plan and the zoning ordinance.

10 They did so in large part because of the
11 proximity of this Eastshore plant to Eden Gardens
12 Elementary School, Ochoa Middle School, Chabot
13 Community College and many, many single family
14 residences of the Eden Gardens neighborhood, many
15 apartments and condominiums in the area.

16 The did so in part because of air
17 quality concerns. Now I know you all like this
18 air credit trading system that is there and you've
19 heard me speak before about my concerns about the
20 impact on real Hayward residents. At the end of
21 the day the citizens of Hayward will be asked to
22 bear the burdens that no other community will bear
23 like Hayward will when it comes to air quality.

24 The way the system works, as you well
25 know, is that we're being told we're already out

1 of compliance in our area and Russell City will
2 add an increment of air quality problems and
3 pollution to our area. Eastshore will add another
4 increment of pollution to our area. But after all
5 the trading of credits that is done on paper we
6 will bring somehow the air quality in our area
7 into compliance.

8 But the reality is at the end of the day
9 that the students at Eden Gardens Elementary, the
10 students at Ochoa Middle School and the students
11 at Chabot Community College will have to live with
12 those air quality impacts. And nothing has been
13 presented that mitigates that impact on real,
14 live, Hayward human beings. And I think that is
15 something that ought to be brought into
16 consideration here.

17 Now with all due respect to Brother
18 Luboviski from the Building Trades Council,
19 Brother Barry doesn't live in the City of Hayward.
20 And I want you to know that I believe that if
21 Brother Barry lived in Eden Gardens, and if
22 Brother Barry had a child going to Eden Gardens
23 Elementary, and Brother Barry had a sister or
24 brother who had a child at Ochoa Middle School,
25 and if Brother Barry's wife was taking classes at

1 Chabot Community College I doubt that Brother
2 Barry would be here this evening speaking in
3 support of this project.

4 Finally the issue of air safety at the
5 Hayward Municipal Airport is very important to
6 people in this community. And there's been
7 nothing that has been presented that shows that
8 with this plan that that can -- and the impacts of
9 this plan on air safety can be appropriately
10 handled.

11 What you have is horizontal and vertical
12 barriers that you're asking air pilots to navigate
13 to get in and out of the Hayward Municipal
14 Airport. Pilots are being told, you should not go
15 any higher than say 1,000 feet to stay out of
16 certain airspace for other uses but we want you to
17 at 600 feet for other approaches that may need to
18 come in and out of Hayward Airport. And then
19 we're told, you have a no-fly zone in the area of
20 Russell City and perhaps another no-fly zone
21 around Eastshore.

22 What you have constructed then is
23 basically a horizontal and a vertical maze that
24 you're asking pilots to navigate that we feel is
25 unreasonable to expect, and again, cannot be

1 mitigated.

2 Now I know it's popular with folks to
3 say, anything can be mitigated, right. Your job
4 is to make everything gets mitigated. But at the
5 end of the day we think you have no choice but to
6 find that some of these issues, some of these
7 problems simply cannot be mitigated.

8 And at the end of the day you also have
9 to keep in mind a basic sense of fairness to the
10 Hayward community. I don't know of a community in
11 the Bay Area that has been asked to take on a
12 major power plant and a peaker plant. And if I'm
13 wrong please tell me so. Is there any other
14 community in the Bay Area that has been asked to
15 take on both a major power plant and a peaker
16 plant?

17 ASSOCIATE MEMBER GEESMAN: The City of
18 San Jose.

19 MAYOR SWEENEY: And?

20 HEARING OFFICER GEFTER: Pittsburg.

21 MAYOR SWEENEY: And?

22 ADVISOR TAYLOR: San Francisco.

23 MAYOR SWEENEY: San Francisco. Both?

24 What were the San Francisco plants?

25 ASSOCIATE MEMBER GEESMAN: The one I'm

1 familiar with is the peaker project. I don't
2 believe that the Potrero project ever made it
3 through the licensing process.

4 MAYOR SWEENEY: So they have one new
5 peaker plant.

6 ASSOCIATE MEMBER GEESMAN: That's
7 correct.

8 MAYOR SWEENEY: Okay. So they haven't
9 had two new plants being --

10 ASSOCIATE MEMBER GEESMAN: Potrero is
11 still running. I think the mayor is addressing
12 the siting process.

13 HEARING OFFICER GEFTER: Yes, it's
14 already there.

15 MR. NISHIMURA: The San Francisco
16 Electric Reliability Project and the San Francisco
17 International Airport Project.

18 MAYOR SWEENEY: Which isn't in San
19 Francisco.

20 ASSOCIATE MEMBER GEESMAN: That's a bit
21 of a stretch.

22 HEARING OFFICER GEFTER: Pittsburg has
23 several plants.

24 ASSOCIATE MEMBER GEESMAN: But I think
25 San Jose is the one that has most recently gone

1 through our licensing process with two different
2 projects. And neither were popular with the city
3 council.

4 MAYOR SWEENEY: And where did both
5 plants end up being sited?

6 ASSOCIATE MEMBER GEESMAN: In San Jose.

7 MAYOR SWEENEY: But where in San Jose?

8 ASSOCIATE MEMBER GEESMAN: One is
9 Metcalf, which is Coyote Valley, and the other is
10 Los Esteros, which is in the northern part.

11 MAYOR SWEENEY: But Coyote Valley is
12 quite far from metropolitan San Jose I think most
13 people would find.

14 ASSOCIATE MEMBER GEESMAN: The city
15 council didn't necessarily feel that way.

16 MAYOR SWEENEY: I wouldn't think so.
17 But I would think Coyote Valley and the west side
18 of the city of Hayward are quite different areas
19 and the prevailing winds in those areas and where
20 those winds take the pollution are quite
21 different.

22 So thank you for your time and your
23 consideration. We hope you will keep the citizens
24 of Hayward foremost in your thoughts as you move
25 through this process. Thank you.

1 ASSOCIATE MEMBER GEESMAN: Thank you,
2 Mayor Sweeney. Let me ask you a question just in
3 terms of the last speaker. The official position
4 of the city council is different on Eastshore than
5 it was on Russell City; is that right?

6 MAYOR SWEENEY: That's correct. I was
7 not on the council that approved Russell City.
8 And as you know I spoke before you earlier this
9 year and also last year and expressed my concerns
10 about Russell City. Obviously I wasn't on the
11 Council in 2001 and I believe in 2005 when you
12 approved those projects, or rather when the
13 council approved those projects and ultimately you
14 all approved those projects.

15 ASSOCIATE MEMBER GEESMAN: I raise that
16 because I think one of the stronger arguments that
17 we're likely to hear from the public is the
18 importance of deferring to our local elected
19 officials in land use decisions. And I want to be
20 real clear with everyone that comes up here and
21 makes that argument that we did that in Russell
22 City. And we will take the argument into account
23 in Eastshore as well but the City has had two
24 different positions on two different projects.

25 MAYOR SWEENEY: And we are asking you to

1 respect the city's decision in the Eastshore
2 process.

3 ASSOCIATE MEMBER GEESMAN: And you have
4 been very clear on that.

5 MAYOR SWEENEY: And I think my testimony
6 on this has been also very consistent.

7 ASSOCIATE MEMBER GEESMAN: Yes it has.

8 MAYOR SWEENEY: Perhaps in the minority
9 regarding Russell City, but certainly not in terms
10 of Eastshore.

11 PRESIDING COMMISSIONER BYRON: Mayor, I
12 would like to thank you for being here tonight and
13 for your comments. You're usually up here, of
14 course, so we appreciate your being here and
15 addressing us. And yes you have been consistent
16 on this.

17 And I want to assure you and all the
18 people here tonight in the City of Hayward, we
19 have not made any determination. We will have
20 evidentiary hearings and we'll take the additional
21 information that comes in. There has been no pre-
22 determined outcome from this.

23 MAYOR SWEENEY: Again, we just want to
24 urge your careful consideration of the impacts at
25 the airport and on pilots and also the impacts on

1 the residents who would live very, very close to
2 this proposed power plant. Thank you.

3 PRESIDING COMMISSIONER BYRON: Thank you
4 Mayor.

5 ASSOCIATE MEMBER GEESMAN: Thank you.

6 HEARING OFFICER GEFTER: Thank you.

7 We also have City Council Members here
8 as well today. Kevin Dowling. And could you
9 please come and spell your name for the reporter.
10 Thank you.

11 COUNCIL MEMBER DOWLING: My penmanship
12 isn't too good. Kevin Dowling, D-O-W-L-I-N-G. I
13 usually sit where Mr. Taylor is sitting right now.

14 I have been on the council for nine
15 years. I think two of the most difficult issues
16 we faced on the council were both involving state
17 agencies. These two power plants with the Energy
18 Commission and the change of name from Cal State
19 Hayward to Cal State East Bay.

20 And I want to thank the Energy
21 Commission because you have been honest with our
22 staff and our community from day one. You have
23 met in Hayward several times, that the CSU trustee
24 board refused to do, and they lied to us
25 repeatedly. So whatever the outcome of this I

1 think you have done a lot of hearings, a lot of
2 them in Hayward, and I really appreciate that.

3 I think the Energy Commission is under a
4 tough, has a tough job. We all want power.
5 Russell City was approved. I voted for that power
6 plant in 2001. What was happening then?
7 Blackouts. We had just had a bunch of blackouts.
8 Calpine was doing Metcalf and Russell City at the
9 same time. Metcalf was streaming toward approval.
10 Our staff told us, you know, it's going to get
11 approved, you might as well be on board. There
12 was very little input from the public because we
13 had just had blackouts.

14 Now what's happening in 2007? Al Gore
15 has a Nobel Peace Prize, he has an Emmy and an
16 Oscar. So global warming is on the front page of
17 the paper every day. So we're faced with
18 different pressures.

19 And I know you are faced with the
20 challenge of bringing power to the state.
21 Everybody wants their lights kept on, everyone's
22 air conditioning, everyone's heating, but nobody
23 seems to want any source of power. I recently
24 heard on National Public Radio in Canada there's
25 efforts to stop some hydroelectric plants that

1 will help power some of the northern parts of the
2 US.

3 Alameda County has been repeatedly sued
4 by activists to stop the wind projects out at the
5 Altamont. I know Sonoma County is looking at
6 tidal power and there's concerns, environmental
7 concerns about that. Nuclear power, of course,
8 has no global warming effects at all but the
9 federal government hasn't solved the storage
10 issue. And even solar. We have a solar
11 installation that was supposed to go in at our
12 mall, Southland Mall off the Nimitz Freeway. The
13 neighbors came down and said, we don't like the
14 look of the panels because they were parking lot
15 panels. The roof could not support the weight.

16 So I know you have a really tough job.
17 But in my mind this is different because Russell
18 City is a mile closer to the bay. What's out
19 there? Sewage treatment plant, auto wreckers.
20 It's not next to residences. It's over a mile
21 away from any school, residences or businesses.

22 Eastshore is in the middle of our
23 industrial district, it's across from a
24 chiropractic college, it's across from Heald
25 College on Industrial Boulevard and Chabot and the

1 elementary schools people talked about.

2 Basically I think Hayward has done its
3 share. We all need power. I think other parts of
4 the area have not done their share like San Mateo
5 County. They need to step up to the plate. It
6 doesn't need to be just in areas like Pittsburg,
7 like Hayward. We don't want to be the next
8 Pittsburg where we have industrial polluting
9 plants everywhere in the industrial area. We want
10 to see more Silicon Valley companies.

11 We have now 35 biotech companies right
12 in that same area. So they're not going to want
13 to come to the area if they see, they drive down
14 and they see a power plant right there. As
15 opposed to Russell City, it's way up in the Bay,
16 it's another mile. It doesn't seem that far to
17 you but for our citizens and for our business
18 community it really is far.

19 So I appreciate all the work you've
20 done. I know you have a tough decision but the
21 council would really appreciate your support. And
22 those of us who stuck with Russell City all those
23 years, members who are still on the council, we'd
24 really appreciate your support. Thanks.

25 ASSOCIATE MEMBER GEESMAN: Thanks for

1 your comment.

2 HEARING OFFICER GEFTER: Thank you.

3 Barbara Halliday, also a City Council
4 Member. Would you please spell your name for the
5 reporter.

6 COUNCIL MEMBER HALLIDAY: Sure.

7 HEARING OFFICER GEFTER: Thank you.

8 COUNCIL MEMBER HALLIDAY: It's Barbara
9 Halliday, H-A-L-L-I-D-A-Y, and I am also a member
10 of the Hayward City Council. And I think that the
11 Mayor and my colleague, Council Member Dowling,
12 have covered a lot of what I wanted to say. So
13 just let me echo what they say.

14 My plea to you to respect the local
15 input here, the local government. We looked at
16 this -- Our decision is not inconsistent that the
17 council favored one plant and not the other. Now
18 I think perhaps if Russell City were to come to us
19 today with all that we have now we would not maybe
20 be so favoring of that. But I think that Council
21 Member Dowling put it into context at what we were
22 looking at at the time.

23 But I think most of all when you look at
24 zoning decisions it is the location that is key.
25 What is in the surrounding environment of the

1 particular project and how will that area be
2 impacted. And here as the mayor pointed out, this
3 is so close to so many schools. And I think that
4 you would be jeopardizing, seriously jeopardizing
5 the health of some of the population that is most
6 vulnerable to toxic fumes. And I just don't think
7 that you want to do that. This location is quite
8 different from the Russell City plant.

9 There's just a couple more points I want
10 to make. The air space. I'm on the airport
11 committee. We have a lot of problems with our
12 airport, as any community that has an airport in
13 an urban area has.

14 And we have asked and we have taken
15 great pains to try to work out some of the
16 conflicts we have over noise because we have
17 residences surrounding the airport. And that has
18 required us asking pilots to respect fly zones.
19 To respect fly corridors, entry and departure
20 approaches -- entry approaches and departure
21 routes that don't go right over the surrounding
22 houses.

23 You know, as the mayor said, there are
24 all kinds of restrictions on this fly zone because
25 of the Oakland, the proximity of the Oakland

1 Airport too. So now to add yet another thing
2 after Russell City, something that we didn't know
3 when we approved Russell City. We didn't know
4 about the impact on the airport, nor did we really
5 know that when we voted to oppose the Tierra
6 Center. But it is just going to add even more
7 problems for our pilots coming into and out of the
8 airport.

9 And finally, you know, as a citizen.
10 From the feeling of the times we are in right now
11 this is not something we need, a peaker plant. We
12 need to conserve energy. We need to look more to
13 renewable sources, to solar energy.

14 There's someone here tonight actually,
15 Mr. Pacheco, you've probably heard from him. He
16 showed me a picture, an aerial photo of our
17 industrial district. Now I have seen such photos
18 many, many times in my work as a member of the
19 city council. But he showed it to me and asked me
20 to think about it from the standpoint of this
21 area, you know, being a great place to put a lot
22 of solar installations. And it would be, it would
23 be wonderful.

24 There is so much more we can do. And as
25 the leaders of our state in energy and considering

1 the times we live in. And I know that you all
2 know much more about all this than I do. I just
3 hope that you will think about what we're doing
4 here and think about whether we really need a
5 peaker plant before we do everything we can to
6 invest in solar and to help persuade people to
7 conserve energy. Thank you.

8 ASSOCIATE MEMBER GEESMAN: Thanks for
9 your comments.

10 HEARING OFFICER GEFTER: Thank you very
11 much.

12 PRESIDING COMMISSIONER BYRON: Yes. I'd
13 like to thank both the council members for being
14 here and for yielding their dais to us tonight.

15 Just for your information, the Energy
16 Commission does promote and speak very highly to
17 renewable energy. It precedes my time on the
18 Commission but Commissioner Geesman has chaired
19 our Integrated Energy Policy Report that we do
20 every two years. If you care to pull it up and
21 read it, it has very strong recommendations to our
22 legislators and our Public Utilities Commission
23 with regard to renewables and the use of solar.

24 HEARING OFFICER GEFTER: Thank you.

25 Audrey LePell, the Citizens Against

1 Pollution. Ms. LePell, could you please spell
2 your name for the record, thank you.

3 MS. LePELL: Thank you, I'll be glad to.
4 My name is Audrey LePell and my last name is
5 spelled L-E capital P-E-L-L. And Audrey is
6 spelled capital A-U-D-R-E-Y.

7 I have lived in the Hayward area for
8 over 40 years and I have had the privilege of
9 appearing before Mr. Geesman and Mr. Byron in the
10 past. And I want to first of all say, welcome
11 back. And then I want to say thank you to the
12 staff, wherever you are, behind me and over here.

13 I felt both of the environmental impact
14 reports, although you call them amendments, were
15 extremely well-written and I someday may be able
16 to write that well, I hope.

17 So the first thing I wanted to say was I
18 represent and I'm the chair of a coalition of
19 individuals and groups called CAP, Citizens
20 Against Pollution. And we have formed ourselves
21 over the past two-and-a-half months and we say, no
22 to Tierra. But also Tierra has two more names,
23 Tierra Energy Center and the Eastshore Energy
24 Center. Which was even confusing to some of us
25 when we first found out about the second power

1 plant. I call it power plant number two, Calpine
2 power plant number one.

3 So a long time ago I came down here in
4 2001 and watched part of the proceedings of the
5 California Energy Commission with regards to
6 Calpine. And I made a decision, and it was an
7 incorrect decision, so I didn't come down to
8 protest, I just came down to observe but I should
9 have been protesting. So now I am protesting.

10 So I wanted to say that I read in your
11 report that you have received over 1500 notices,
12 perhaps part of those were e-mails, opposing this
13 power plant. And I was told this happened last
14 winter, 2007.

15 Then I wanted to say, it was told to us
16 by a lawyer that those comments that you take
17 seriously are those where people are sworn to take
18 testimony. And I have never heard that statement
19 here when we're learning how the California Energy
20 Commission acted or your rules of procedure, which
21 I requested and have never yet received. But
22 nevertheless, is that true?

23 HEARING OFFICER GEFTER: Mr. Monasmith,
24 the Public Adviser in the back, the Public Adviser
25 puts out a brochure on what the policy and

1 procedures are. I don't know if you have ever
2 asked him for that. Mr. Monasmith who is in the
3 back there.

4 MS. LePELL: It wasn't quite clear to
5 me, I'm sorry, maybe I didn't quite understand.

6 HEARING OFFICER GEFTER: You asked for
7 the --

8 MS. LePELL: I know that sworn testimony
9 would be taken seriously but our comments --

10 HEARING OFFICER GEFTER: You asked for
11 the policies and procedures, correct? You wanted
12 the policies and procedures on the siting process,
13 correct?

14 MS. LePELL: That would be most
15 appreciated on my part.

16 HEARING OFFICER GEFTER: Mr. Monasmith
17 who is the public adviser who is at the back
18 there.

19 MS. LePELL: Yes.

20 HEARING OFFICER GEFTER: Has a brochure
21 and you can ask him for that. And that contains
22 all the instructions on how to participate in the
23 siting process.

24 MS. LePELL: I thank you for that.

25 I wanted to say that I had a

1 conversation today with Mr. Bateman. Mr. Bateman
2 works for the Bay Area Air Quality Management
3 District. I met with his colleagues earlier
4 today. Mr. Bateman told me that he appeared, and
5 I know he did, at Chabot College about five weeks
6 ago. It was a public meeting, a forum, to speak.

7 And he announced at that time, or stated
8 I should say, that the Bay Area Air Quality
9 Management District had data but it was two years
10 old. That was what the data that the Bay Area Air
11 Quality Management District was going on when they
12 approved the idea of having Tierra Energy and
13 Calpine.

14 And I said today on the telephone, I
15 said, if that's true then how do we know what in
16 fact the data is from the Air Quality Management
17 District? And I saw a summary in your amendment.
18 I have not read it all, but I wanted to let you
19 know that there was a real disconnect among the
20 audience that night at Chabot at what we were
21 hearing from the Air Quality Management District.

22 Then I wanted to say that I appreciated
23 Mr. Bateman's even appearing at Chabot College
24 because the audience, particularly those of us
25 citizens and students and faculty, were complete

1 against Calpine, and I suspect you all know that
2 they are not going to be in favor of Tierra
3 either.

4 So the last thing I wanted to discuss
5 with you is your EIR, we'll call it. There are
6 some errors in the summary and the errors have to
7 do with transportation. And as I mentioned to
8 you, because of my background in transportation
9 studies and because I was on the Alameda County
10 Planning Commission for nine-and-a-half years, I
11 feel I know something about that.

12 On page 4.10-1 I am going to read a
13 statement.

14 "The Alameda County Airport
15 Land Use Commission passed a
16 resolution recommending that the
17 Eastshore facility be located
18 outside the airport influence area
19 for the Hayward Airport."

20 And you have heard our City Council refer to that.
21 Then it says at the bottom of the page, 4.10-1:

22 "During construction, impacts
23 created by workforce traffic, truck
24 traffic, and the movement of
25 workers and materials between the

1 temporary parking/laydown area
2 would be reduced to a less than
3 significant level by condition of
4 certification --"

5 But it doesn't say who is certifying it. So I
6 would assume that is yourself?

7 ASSOCIATE MEMBER GEESMAN: Yes, I think
8 that reference would be to the Energy Commission.

9 MS. LePELL: But how can it be true and
10 accurate if in fact you create a place where there
11 is construction going on for a year and a half, as
12 stated in this document. And you're saying that
13 it would be reduced to a level less than
14 significant?

15 ASSOCIATE MEMBER GEESMAN: That's the
16 staff's appraisal.

17 MS. LePELL: I think with all due
18 respect I would question that statement.

19 Then I would also say that when I went
20 to a workshop on Tierra these past months and I
21 was given another document to look at, and you
22 have ratings with regards to what's happening. On
23 page 4.10-5 I will quote:

24 "The Highway Capacity Manual
25 is prepared by the Transportation

1 Research Board Committee on Highway
2 Capacity and Quality of Service.
3 The current edition was published
4 in the year 2000."

5 Seven years ago? And staff is using documents
6 from seven years ago for transportation numbers.
7 I should say that you might want to look again at
8 some of those statements.

9 I would like to also to refer to the
10 beginning of your document. And that is something
11 about Highway 92, 880 and Route 580 and 238. You
12 state, or your staff does:

13 "After evidentiary hearings,
14 the Committee will consider the
15 recommendations presented by staff,
16 the applicant, all parties,
17 government agencies and the
18 public."

19 So prior to its proposing its decision. So I made
20 a note today while I was listening to the
21 testimony or the speaking of various people and I
22 have a distinct impression that you will be asking
23 staff to override the decision that you will be
24 making. And this was not clear to some of us in
25 the audience. Just exactly what was going on

1 about this override? It wasn't clear who is
2 overriding what.

3 ASSOCIATE MEMBER GEESMAN: State law
4 provides the Energy Commission with the legal
5 authority to override conflicting local or other
6 state requirements in making a decision to certify
7 a power plant. So if in our judgment it is
8 appropriate to do such an override we do have the
9 legal authority and have used that authority in
10 the past. The discussion this afternoon was
11 attempting to clarify what standard we should meet
12 before issuing such an override. But it would be
13 the Commission overriding a conflicting local or
14 state requirement.

15 MS. LePELL: So in effect you also, that
16 applies also to your staff recommendations?

17 ASSOCIATE MEMBER GEESMAN: Yes.

18 MS. LePELL: Then I shall like to quote
19 two other things and then I will conclude. On
20 page 1-7, this is in the summary:

21 "Therefore, siting of the
22 project at the proposed location is
23 inconsistent with the Hayward
24 Municipal Code 10-1-140."

25 And then you say:

1 "Therefore the project would
2 not conform to all applicable
3 LORS."

4 Which are your local organization rules -- and I
5 forgot what the S stands for. But anyway, there
6 is considerable controversy then, perhaps what we
7 heard today, and then also that we were perceiving
8 the direction of the two Commissioners here.

9 And Mr. Byron, specifically I know you
10 are according to the newspaper, representing the
11 public so I particularly appreciate your being
12 here. Because we in the public are honored to
13 have you here but also to ask you to listen
14 carefully.

15 The other comments I will make in
16 writing. I think the 10th. Is that correct, the
17 10th of December for writing for the public?

18 HEARING OFFICER GEFTER: You may file
19 your comments any time up until the Commission
20 rules on the proposed decision. Members of the
21 public may file comments at any time.

22 MS. LePELL: And if that is correct, any
23 comments that I shall like to continue in writing,
24 would that be part of my speaking tonight? Could
25 I ask that to be? Because I have more comments

1 but in the interest of time --

2 HEARING OFFICER GEFTER: Can you hear
3 me?

4 MS. HOLMES: Comments on the FSA are due
5 on the 3rd.

6 HEARING OFFICER GEFTER: Right, but if
7 she has comments --

8 MS. HOLMES: On the FSA.

9 HEARING OFFICER GEFTER: Right. But she
10 can file any comments to the Committee on anything
11 she wants to tell us up until the time that the
12 Commission makes its final decision.

13 MS. LePELL: And the deadline then?

14 HEARING OFFICER GEFTER: You can file
15 it, like I said, any time.

16 MS. LePELL: I'm sorry?

17 HEARING OFFICER GEFTER: Any comment.

18 MS. LePELL: No, but I meant -- The
19 final deadline is what I meant.

20 HEARING OFFICER GEFTER: We haven't
21 decided which day the Commission is going to
22 determine the final decision so you have time now
23 to file.

24 MS. LePELL: Thank you.

25 HEARING OFFICER GEFTER: If you want to

1 file comments before the evidentiary hearing, in
2 writing, you can file them up until that day.
3 Because you are not a party, you're a member of
4 the public, and therefore your comments are
5 accepted at any time.

6 MS. LePELL: Thank you for that. And I
7 wanted to say that one part, there was an error in
8 just the location with regards to Highway 92.
9 It's minor, but if you were a member of the public
10 you wouldn't quite know where Highway 92 and some
11 of these streets -- They parallel each other so
12 they don't really meet but your statement says
13 they do. Thank you.

14 HEARING OFFICER GEFTER: Thank you.
15 Karen Kramer.

16 MS. KRAMER: Are we able to sit here?
17 Can we sit?

18 HEARING OFFICER GEFTER: You can sit
19 there if you wish, the microphone works. Just
20 spell your name for the reporter, please.

21 MS. KRAMER: My name is Karen Kramer, K-
22 R-A-M-E-R. Thanks for the chair.

23 I don't know a lot about energy and I
24 have not been involved politically with any other
25 issues, I don't think, that I can recall other

1 than school for my daughter, the school district.

2 But I do know about health. I've had
3 chronic health problems for many years and that's
4 why I'm sitting, one reason I'm sitting. Because
5 I don't feel good and I really don't want to come
6 out to all these meetings.

7 But I live in Eden Gardens and I don't
8 want more pollution in the area or more noise.
9 The planes drive me crazy as it is. And I can
10 vouch for what they say about the planes. One
11 night when I was coming out to one of these
12 meetings there was an Oakland jet going over,
13 there were two small planes right around and a
14 helicopter. So there were four things right all
15 in my area of sight at one time. I thought oh my
16 gosh, you know.

17 But I am here because I do have health
18 problems and I know that it is your most precious
19 gift. I know about that, unfortunately, the hard
20 way. So I do also request that you not put this
21 plant in. I'd prefer no plants. My daughter goes
22 to school at Ochoa, she passed on from Eden
23 Gardens. I even go to Chabot some. I mean, it's
24 a heavily populated area. And I'm sure Life
25 Chiropractic would not have moved in across if

1 they'd known about it before they built, because
2 they are very health conscious.

3 Also just an indication of how adamant I
4 think some of us are about not having this plant
5 is the fact that the mayor and the two people from
6 the city council are here. Obviously that has
7 never happened in any meeting that I've seen. So
8 I think they're getting the point that we're
9 really, really not happy about this.

10 And I've heard that supposedly -- some
11 of the people that have been at our group, and I
12 don't know if this is true, that we really don't
13 need more energy plants. And I do know that we
14 are supposed to be going towards other forms of
15 energy.

16 In the paper just on Wednesday was
17 Governor Brown saying he can sue counties if they
18 don't reduce their greenhouse emissions. So why
19 are we building this polluting, old-style peaker
20 plant, it's ridiculous. And the whole credit
21 thing too is ridiculous, that should be outlawed.

22 Anyway, that's all I have to say.

23 Please don't make me come out to any more of these
24 meetings. I'm really tired of it.

25 HEARING OFFICER GEFTER: Thanks for your

1 comments. Thank you.

2 Patricia Taylor, please. Are you here
3 tonight?

4 MS. TAYLOR: And thank you Barbara, also
5 for your comments.

6 HEARING OFFICER GEFTER: Okay. Please
7 spell your name for the reporter.

8 MS. TAYLOR: I will introduce myself.
9 I'm Patricia Taylor, last name T-A-Y-L-O-R.

10 HEARING OFFICER GEFTER: Thank you.

11 MS. TAYLOR: I am a resident of the
12 area, Castro Valley. I'm so glad to be able to
13 speak with you tonight.

14 The Eastshore Energy Center I want to
15 speak about as an example of a bigger picture,
16 California. You guys are -- Are there only four
17 commissioners?

18 ASSOCIATE MEMBER GEESMAN: Five.

19 MS. TAYLOR: Five, okay. So it really
20 is a powerful situation you have.

21 I want to remind us all of that phrase,
22 not in my backyard, because we all know it. A few
23 years ago I was in the position of saying
24 frequently, well, if I am in that position I won't
25 say, not in my backyard. Nobody says it, that's

1 what they're thinking, right? And I was going to
2 be more altruistic than that.

3 Well I'm still not saying that. What I
4 concluded -- And this was about six months ago I
5 came to this and spoke to supervisor Nate Miley
6 about it. If it is not good enough for my
7 backyard it is not good enough for anybody's
8 backyard. So that's one thing I want to just sit
9 out here.

10 You as California Energy Commissioners,
11 this is an example of what I think perhaps you can
12 look at changing the tide. As Barbara was saying
13 there is so much more looking at environmental
14 needs and someone else mentioned Al Gore. There's
15 really a shift in tide.

16 I believe that the public is ready for a
17 moratorium on energy plants in general of the
18 traditional type. But we are ready as California
19 -- I mean, you are not the US Energy Commission or
20 the Worldwide Energy Commission. You're a
21 California Energy Commission. And I take
22 incredible pride in being Californian.

23 That we are ready to move towards --
24 Maybe not with this Russell plant, maybe not with
25 the next one, but I want you to think seriously

1 about the possibility of moving California towards
2 a moratorium on traditional energy plants and
3 really go whole hog for the clean -- and I know
4 that is a really ambiguous word, energy plants.

5 We heard someone say tonight the
6 business needs it, brown-outs and all that.
7 Barbara spoke to alternative energy sources. And
8 the minute we are able to as a collective say
9 yeah, we're going for the alternative energy
10 sources. Not to shun the ones that are already
11 made. I am not a negative person, I will not
12 oppose. I usually to try to find a way to move
13 forward.

14 And see, that's where we're at as a
15 society. That there is such entrepreneurial
16 spirit an enthusiasm for new technology that there
17 will be a new boom. Business need not worry in
18 terms of a city's economy. There will be other
19 things that rise. Then you take the buildings,
20 the conserving structures for how to build.

21 You know, I think it came from
22 Australia, they teach this in elementary school.
23 I have been an elementary school teacher. That
24 first it's reduce. Right, you reduce. If you
25 reduce you're not even needing to create that

1 energy. Then you reuse. You know this. You
2 reduce, you reuse and then you recycle.

3 The reduction is something we can do and
4 it will motivate the economy. So I don't think
5 there is really an issue where we have to have
6 power or the business will squawk. Well they
7 might squawk but then they'll get smart. And
8 other smart people who are on the edge will have
9 -- you know, I think it will be great. And I've
10 said that you are the California Energy
11 Commission, not federal or something like that.

12 Okay, now sufficiency of power. Again,
13 the reduction. I've mentioned that so I won't
14 repeat that. But we have sufficient for our need
15 if we reduce our use, get cleaner and smarter
16 about how we build and how we produce our
17 manufacturing things. And then as a society we're
18 changing too and I think we're going to be seeing
19 a simpler lifestyle.

20 New forms, advances in conservation to
21 reduce. And I think actually I've said everything
22 except one more thing. That in terms of the
23 health of the planet we really need -- we are
24 seeing so many stories, so much science, so many
25 directions that people are coming from to address

1 the needs of a healthy planet.

2 And the needs of species of all sorts.

3 Now whether you think a human being could be a
4 creature of God or a creature of evolution, I
5 don't think it matters. It's really the same
6 question of not just preservation of us but a
7 respectful relationship with, dot-dot-dot.

8 And it may not -- I mean, there really
9 is. Energy is a kind of mystical, kind of odd
10 thing. Because whenever you change matter from
11 one form to another you get something. In
12 chemistry you get something, right? It changes
13 and with that change you get something that comes
14 off. There is a lot of heat with energy.

15 So I encourage you to do your job and
16 think forward and be Californians. Be
17 Californians. I'm pretty sure we've already
18 convinced you about the airport and those things.
19 Don't forget you're the California Energy
20 Commission.

21 ASSOCIATE MEMBER GEESMAN: Before you
22 go. I think you made some good points. I want to
23 give you something to think about.

24 MS. TAYLOR: Please, yes.

25 ASSOCIATE MEMBER GEESMAN: And I hope

1 you come back and see us in some of our subsequent
2 hearings. That is that a lot of people think, and
3 certainly I've heard this from PG&E and other
4 utilities but other system planners as well, that
5 as we bring on California's electricity system
6 more and more intermittent resources like wind-
7 generated electricity, that we're going to have a
8 greater need for peaking units.

9 Because of the intermittency our system
10 is likely to shift, the argument goes, away from
11 the large combined cycle facilities like the
12 Russell City project and toward these smaller,
13 faster-ramping, quick-start/ quick-stop peaking
14 units like the Eastshore one.

15 I am not sure that this case is the
16 proper venue to try to thrash that out but I do
17 think it is one of the big issues the state is
18 going to have to come to grips with in the years
19 ahead. I think this case really needs to focus on
20 whether the project conforms with the
21 environmental, public health and safety
22 requirements and what to do with the apparent
23 conflict with the City of Hayward's land use
24 preferences. But I think the larger question is
25 lurking there in the background. I'd be curious

1 as to what in the future you have to say about it
2 or others in the public community here.

3 MS. TAYLOR: And there is much that
4 people are saying now about global siting of
5 energy production and other needs, food and
6 everything else. Yes, and home production of
7 energy and selling it back, all those things.

8 Thank you. I'm sure you'll do your job
9 well.

10 HEARING OFFICER GEFTER: Thank you very
11 much.

12 Mr. Dennis DuBose. Please spell your
13 name.

14 MR. DuBOSE: Capital D as in David, U,
15 capital B as in boy, O, S as in sugar, E. I've
16 got that little rap down pretty good after X
17 amount of years in business.

18 HEARING OFFICER GEFTER: Thank you.
19 Very good. Thank you.

20 MR. DuBOSE: And Dennis has two Ns and
21 an E there also, I'm sorry.

22 HEARING OFFICER GEFTER: Thank you.

23 MR. DuBOSE: I've gotten mail addressed
24 to Denise and all kinds of stuff. But anyway I
25 have a couple of comments and a couple of

1 questions. And I was wondering, is there a PG&E
2 representative here tonight?

3 HEARING OFFICER GEFTER: There is.
4 Mr. Galati is here in the back there. If you turn
5 around for a minute you'll see him standing there.
6 Mr. Galati is an attorney who represents PG&E.

7 MR. DuBOSE: Possibly he could answer
8 some questions for me.

9 HEARING OFFICER GEFTER: You could ask
10 him after we -- you can go and ask him privately
11 if you wish.

12 MR. DuBOSE: Okay. I thought that
13 everything that was, you know. That we didn't
14 have any -- or that we shouldn't.

15 HEARING OFFICER GEFTER: Okay, but that
16 is only between the parties and the Committee.
17 But since you are a member of the public and PG&E
18 is not a party you're welcome to talk to him if
19 you have questions.

20 MR. DuBOSE: Okay. It just seemed -- It
21 just seems like a 115 kilovolt yard is a black
22 sheep as far as PG&E is concerned. And I am just
23 wondering why are they --

24 HEARING OFFICER GEFTER: What do you
25 mean by that?

1 MR. DuBOSE: I'm sorry, ma'am.

2 HEARING OFFICER GEFTER: What do you
3 mean by a black sheep?

4 MR. DuBOSE: Well it's not a standard
5 yard. It seems like everything is a 230 kilovolt
6 yard and why are they pushing so hard to get a 115
7 kilovolt yard up. Where would 115 kilovolt power
8 go to? Where is this, you know. Is it sold only
9 to cities or is it only used in cities or is it
10 industrial uses? You know, what's the difference
11 between a 115 kilovolt yard, obviously, and a 230
12 kilovolt yard?

13 They've got to have transformers in the
14 yard anyway. Even though the yard is conception
15 they show transformers being in the yard. So why
16 not make it into a 230 kilovolt yard which they
17 can then, you know, send across the Bay over to
18 the San Bruno sub over by the airport or they can
19 send it a lot of different other places being as
20 how it's, you know, a 230 kilovolt system. You
21 know, why are they, you know, pushing for a 115
22 kilovolt yard is what I am interested in.

23 And also, what were some of the other
24 sites that they investigated? Like the Moraga
25 substation out on the end of Valley View Drive in

1 Moraga. A huge substation out there. I can't
2 find anything out about it because nobody at PG&E
3 will talk with me about it.

4 I've asked them where the closest gas
5 line is, nobody will tell me. I've asked them if
6 they can get a 115 kilovolt line out there, nobody
7 will talk with me. Nothing. I can't find out a
8 damn thing about it. It's almost like there's,
9 you know, an iron curtain drawn on information
10 about that.

11 HEARING OFFICER GEFTER: Have you read
12 the Final Staff Assessment section on
13 alternatives.

14 MR. DuBOSE: I just got the alternatives
15 from Mister --

16 HEARING OFFICER GEFTER: Monasmith?

17 MR. DuBOSE: Jesus Armas.

18 HEARING OFFICER GEFTER: Okay. That
19 answers some of your questions.

20 MR. DuBOSE: But why does it have to be
21 in the Hayward area? Why could it not be
22 somewhere else that is, you know. Or the San
23 Bruno sub. Why could it not be over in that area
24 there? Electricity is cheap to transfer, you
25 know. It doesn't make any difference, you know.

1 Power equals voltage times the current, is what it
2 basically boils down to. And you can play with
3 those things. As long as P remains constant you
4 can juggle the voltage and the current. So, I
5 mean, why does it have to be in Hayward at that
6 particular point?

7 There's a lot of substations. The
8 Metcalf substation of PG&E down in the Peninsula.
9 And the reason I know all of these is because I
10 used to deal with PG&E years ago and we did, you
11 know, a lot, a lot, a lot of work for them, you
12 know, up on the Pit River and Sacramento River and
13 various places like that.

14 But it seems like, you know, PG&E is
15 getting a free ride on this operation without
16 having to, you know, to answer a lot of these
17 questions in a public forum. Let me put it that
18 way.

19 The other thing is that PG&E sold power
20 to Enron and also the Independent System Operator
21 sold power to Enron. Then they bought it back.
22 You know, that's negligence. Was there anybody
23 awake? Was there any carbon-based life forms at
24 those two places, you know, while all this was
25 going on, you know?

1 And all this need for renewable -- not
2 renewable but ramping up our energy requirements
3 and possibilities goes back to that particular
4 area in time and it was all false. It was a
5 fraud. Again, what in the hell are those people
6 doing? We were paying them millions of dollars,
7 you know, as far as, you know, CEOs and all the
8 rest of that stuff. And then PG&E turns around
9 and stabs the Governor in the back by declaring
10 bankruptcy. So Sunday night, you know.

11 What the hell is going on? You know,
12 those people are responsible to us, they're a
13 public utility. They're not an independent
14 company. And it seems like, you know, if they're
15 looking for property or something -- again, the
16 Moraga sub. There is a lot of land out there.
17 And again, I cannot find out who owns that land.

18 But if it belongs to PG&E or anybody
19 else it seems like the right of domain, of public
20 domain should be able to take some of that land
21 and sell it to Tierra Energy or, you know,
22 something like that. Or lease it to them, not
23 necessarily sell it to them but keep it in the
24 name of the people or the state of California.
25 And lease it to them for as long as the peaker

1 plants go west.

2 But, you know, I mean, you know, it
3 seems like this whole thing is shrouded in
4 secrecy. And that's what, you know, irritates me.
5 You know, like I said, they're supposed to be a
6 public utility and, you know, all of this secrecy
7 about, you know. Again, I can't get the
8 information that I need.

9 For the staff. Why would you
10 necessarily override your staff's recommendations.
11 I mean, the full staff recommended not to, you
12 know, not to approve the -- I'm sorry, the one
13 that you just approved.

14 ASSOCIATE MEMBER GEESMAN: Russell City.

15 MR. DuBOSE: Russell City. Thank you,
16 sir. Why would you do that? I mean, it sounds
17 like an FDA operation where, you know, the deadly
18 overrides the complete thing of all the doctors
19 and all the specialists, all the scientists and
20 everything else and it sounds more like a
21 political operation than it does an actual --
22 Excuse me, I'm a little nervous and a little
23 worked up. But it sounds more like a political
24 operation rather than it does an actual, you know,
25 logical culmination.

1 Thank you. That was all I needed to
2 say.

3 HEARING OFFICER GEFTER: Thank you.

4 Mr. Ernie Pacheco. And please spell
5 your name.

6 MR. PACHECO: My name is Pacheco, P-A-C-
7 H-E-C-O. Good evening everybody. I bothered you
8 before and I'm going to bother you again in just a
9 minute. I have a couple of questions and a couple
10 of comments. I'm going to ask the questions first
11 if you don't mind.

12 First of all, I don't know if can ask
13 the CEC staff or even the applicant if we can get
14 a carbon dioxide prediction of what Eastshore is
15 going to produce? First question.

16 HEARING OFFICER GEFTER: Have you read
17 the Final Staff Assessment, the air quality
18 section?

19 MR. PACHECO: I have not seen anything
20 where they predict the amount of CO2. If it's in
21 there I missed it. They predict the amount of
22 yearly CO2? Okay, my apologies on that.

23 The second question. And again this is
24 something that you guys may not want to answer.
25 If Russell City wasn't approved -- the previous

1 gentleman was talking about why is Eastshore being
2 built or why we're getting stuck with this. Would
3 Eastshore be economically feasible, do you know?
4 And maybe the applicant can answer this. If
5 Russell City wasn't approved would it be a stand-
6 alone project? Would it be viable to either
7 Tierra or PG&E?

8 HEARING OFFICER GEFTER: I don't really
9 understand your question.

10 MR. PACHECO: If Russell City wasn't
11 approved, if it didn't exist, would Eastshore the
12 separate, a separate project, be viable to --

13 HEARING OFFICER GEFTER: Eastshore is a
14 separate project.

15 MR. PACHECO: Well I understand that.
16 But it is going to be using some of those same
17 lines at Russell City that PG&E is going to
18 restructure their lines to accommodate Russell
19 City and Eastshore is going to fall in with that.

20 I've heard some arguments that Eastshore
21 wouldn't be viable by itself. I don't know and I
22 was wondering whether or not there is any comments
23 from either the CEC or the applicant on that?

24 HEARING OFFICER GEFTER: You can ask the
25 applicant at some point if you wish.

1 MR. PACHECO: I will ask the applicant.

2 I don't know if they're going to --

3 HEARING OFFICER GEFTER: You can ask
4 them off the record because you're not a party and
5 it is just a question you have from the public.
6 You're welcome to talk to them later.

7 MR. PACHECO: Okay. Now a comment. My
8 brother, Barry Luboviski, which I was looking to
9 see if he had left and I think he has because I
10 wanted to talk to him or speak while he was in the
11 room. He spoke for the Builders Trade Council,
12 which always approves these things because they're
13 looking for a few months work of their members.

14 I actually attended the Labor Council,
15 which adjourned about 45 minutes after the
16 Builders Trade Union cast their votes. And what I
17 heard from people who are members of both the
18 Builders Trade Union and the Labor Council is that
19 they had heard from the members a lot of
20 disturbance and unease about what they had heard
21 was coming into Hayward and that they were just
22 shucked aside and they passed unanimously to
23 approve Russell City.

24 After talks with two of the
25 representatives from the Builders Trade Union

1 where I showed them some of the actual effects
2 that would be happening one-on-one, and some of
3 the job opportunities that are possible through
4 distributed energy here in Hayward, the job
5 creation that that would do, which is magnitudes
6 greater than what Russell City or Eastshore would
7 do. And for decades longer. We're talking 20, 30
8 or more.

9 I was asked -- I won't name names
10 because I am not representing the CW nor have I
11 got permission from them. They said, what can we
12 do. And I haven't followed that up with them
13 because of the cascading events of Russell City
14 and Eastshore, which has been slammed so tight
15 together.

16 But a point of correction. When my
17 buddy Luboviski was up here he used the term,
18 sustainable. He was interested in sustainable
19 energy for Hayward. By definition Eastshore is
20 not sustainable. It's the absolute opposite of
21 sustainable. It is not a renewable resource. You
22 know that; whether he knows that or not, I don't
23 know.

24 But from the nurses union, my union or
25 any of the Labor Council that I was talking to,

1 they're all aghast. No one has taken an official
2 stand on it except for my union. But he does not
3 speak for all unions and he certainly doesn't
4 speak for the locals.

5 When Eastshore, which I pray is not
6 going to be approved. But I know that we have
7 been doing work. I have people who have been
8 doing work here in Hayward to try to push forward
9 the concept of CCA or other templates for
10 distributed energy here in Hayward, which we could
11 be an energy exporter within 25 years if we follow
12 Santa Monica's example and ramp it up to our size.

13 One of the things I have been handing
14 out like candy is the local government
15 commission's fact sheet which has, Mr. Geesman,
16 your quote on it speaking about how CCAs are a
17 solution or a partial solution for the future.

18 As I've stated before, any power plant
19 here in the community diminishes support for CCA
20 because the public support that's needed to either
21 pass a large bond, a multimillion dollar bond, a
22 tens of million dollar bond, or an independent
23 buy-in by the individual community members
24 dissipates to a certain extent when you're already
25 breathing polluted air. When you suspect that the

1 next 30 years you're going to be dealing with this
2 monster.

3 People whether or not it's right or not
4 will -- we're already at the downside of this
5 power plant. Why I should my tax money or my
6 personal money go into a solution. That's just
7 the way, unfortunately, that people's attitudes
8 seem to be. Eastshore will hurt a CCA or any
9 solar Santa Monica-style template that we try to
10 build here.

11 Here in the community we've actually
12 come a long way in putting something large like
13 that on the table. We were not quite successful
14 in getting the city, our new city, the brand new
15 city manager, to commit to a few hours of staff
16 time to apply for a grant for a CCA. But it's
17 part of the conversation now, people in the City
18 know about it, a lot of the staff are supportive.
19 And I believe that within a few months we actually
20 can move forward and at least get a feasibility
21 study. Eastshore would hurt that.

22 So to help support us move forward in
23 distributed energy or a CCA please don't vote for
24 Eastshore. That's about it. Thank you very much.

25 HEARING OFFICER GEFTER: Thank you very

1 much.

2 Diane Zuliani.

3 PRESIDING COMMISSIONER BYRON: We've had
4 Mr. Pacheco before.

5 HEARING OFFICER GEFTER: Yes we have.

6 PRESIDING COMMISSIONER BYRON:
7 Mr. Pacheco, thank you so very much for your
8 comments. And clearly you're a mover and a shaker
9 in this community. I hope you continue your CCA,
10 community choice aggregation projects. But I'm a
11 little bit perplexed. How many other people are
12 related to Brother Luboviski?

13 (Laughter)

14 PRESIDING COMMISSIONER BYRON: No, it's
15 okay, you don't have to answer that.

16 (Laughter)

17 MR. PACHECO: Anyone who is a union
18 member gets to use that suffix.

19 PRESIDING COMMISSIONER BYRON: I see.

20 MR. PACHECO: Whether it is respectful
21 or not, you can use it.

22 PRESIDING COMMISSIONER BYRON: Thank you
23 for your comments.

24 HEARING OFFICER GEFTER: Thank you.

25 Ms. Zuliani, Diane. Please spell your

1 name.

2 MS. ZULIANI: The first name Diane, D-I-
3 A-N-E, the last name Zuliani, Z like zebra, U-L-I-
4 A-N-I.

5 HEARING OFFICER GEFTER: Thank you.

6 MS. ZULIANI: Thank you very much for
7 the opportunity to speak this evening. I'm here
8 as a local resident. I live in Castro Valley and
9 prior to that I lived in Hayward. In the eight
10 years that I've lived in this community I feel
11 like I've gotten a pretty good sense of the cross
12 section of folks here.

13 I just have two quick questions. And
14 forgive me if these are questions that -- I
15 haven't read the FSAs. I realize they are quite
16 lengthy and I'm busy so forgive me. If these
17 questions have been answered in the FSA then
18 forgive me for asking them again.

19 So my first question is this. I'm just
20 trying to get -- as a member of the community that
21 is trying to grasp what is going on could you tell
22 me please, taking the two power plants that we're
23 talking about, the energy or the electricity that
24 is generated from these two plants, exactly what
25 percentage of the energy generated by these two

1 plants will serve the Hayward area?

2 HEARING OFFICER GEFTER: You'll have to
3 ask the applicant and they can probably only tell
4 you about Hayward, about the Eastshore plant.

5 MS. ZULIANI: Okay. And you can't tell
6 me about Russell City? Okay. Perhaps can you
7 answer the question, what percentage of the
8 pollutants will be borne by the Hayward area?

9 HEARING OFFICER GEFTER: Again, you'll
10 have to read the FSA. A perhaps you can talk to
11 staff or the air quality representatives that are
12 here today. We have two representatives from the
13 Air District, perhaps you could talk to them about
14 that. Because I think the answer to that question
15 is probably a very long answer and perhaps they
16 can explain it to you off the record.

17 MS. ZULIANI: Okay. I was hoping they
18 would be very short, percentages one and two, but
19 apparently not. Thank you.

20 HEARING OFFICER GEFTER: Susan Silva.
21 Could you please spell your name for us.

22 MS. SILVA: S-U-S-A-N, S-I-L, V as in
23 Victor, A. I am a member of Citizens Against
24 Pollution. And I wanted to say that everybody in
25 Hayward, Castro Valley and the surrounding

1 communities will be affected by these power
2 plants. I think the outcome of the noise and the
3 pollution is going to lower property values. And
4 when members of their families begin to suffer
5 from emphysema and asthma they'll have to pick up
6 and move after their property values have gone
7 down.

8 It isn't fair to the East Bay Area
9 families and individuals because of the pollution
10 and the noise. And to the school districts,
11 particularly Chabot College where many students
12 are minority group. Hayward itself has mostly
13 minority group citizens. That may have had
14 something to do with the decision to build the
15 plants here. I hope it did not.

16 I would pray that you would just, you
17 know, rethink. Think about this before building
18 these plants for the sake of all the people and
19 the businesses and the airport and the schools.
20 Thank you.

21 HEARING OFFICER GEFTER: Thank you for
22 coming out tonight.

23 I think it's J. V. McCarthy.
24 Mr. McCarthy, could you please spell your name
25 when you come up here.

1 MR. McCARTHY: I'm possibly sorry to say
2 this but this is how it is.

3 HEARING OFFICER GEFTER: Would you
4 please spell your name or if you have a business
5 card. Spell your name for the reporter.

6 MR. McCARTHY: What was that?

7 HEARING OFFICER GEFTER: Spell your name
8 for the reporter.

9 MR. McCARTHY: Okay. The first name J
10 as in John. The second -- that's an initial. The
11 second initial V and that's a last name. Capital
12 M-C-C-A-R-T-H-Y.

13 HEARING OFFICER GEFTER: Thank you.

14 MR. McCARTHY: I live across the street
15 at 732 B Street. Is this going on the record? I
16 certainly do hope it does because I am handing you
17 this copy when I'm finished. I managed to scratch
18 this out while I was waiting.

19 Once upon a time some of us thought that
20 government had some good faith concern for
21 disaster management. Well, have you ever heard of
22 prevention? It has been said that an ounce of
23 prevention is worth a pound of cure. What?

24 Where is the state of California,
25 Arnold, when a major transportation resource for

1 the county is being placed in jeopardy as related
2 to disaster management resources?

3 Where was the County of Alameda when
4 this coup de grfce was served upon the City of
5 Hayward?

6 Where was Caltrans concerning the
7 obvious questions concerning air traffic?

8 Where was the FAA when they were asked
9 at the point of this being served upon the City of
10 Hayward? What does the FAA do for a living?

11 I no longer respect California or this
12 Commission. If this state was serious about what
13 is called the public interest it would not so
14 routinely be sold out to, whose money is here?

15 Is your review of location prearranged
16 with PG&E investors or would it be Arnold's
17 investors?

18 HEARING OFFICER GEFTER: Thank you.

19 Suzanne Barba. And please spell your
20 name.

21 MS. BARBA: Suzanne Barba, S-U-Z-A-N-N-
22 E, Barba, B-A-R-B-A.

23 HEARING OFFICER GEFTER: Thank you.

24 MS. BARBA: I've spent two days reading
25 the over 700 pages of the FSA. It's fascinating

1 reading. Actually, you know, I went through
2 several highlighter pens because there was so much
3 information in it and I've probably forgotten most
4 of it. But I did learn a lot of things. And one
5 of the things I learned --

6 Well first of all I was so happy when I
7 was reading it because I thought, well the staff
8 sees it and the staff has made the argument for
9 why we should oppose this thing. And one of the
10 statements says:

11 "The Commission staff has
12 concluded that even if all
13 mitigation measures and recommended
14 conditions of certification are
15 adopted by the Commission and
16 implemented by the applicant all
17 applicable LORS --"

18 The legal stuff.

19 "-- will not be complied with
20 and significant adverse direct and
21 cumulative environmental impacts to
22 Land Use and Traffic and
23 Transportation would likely result
24 from the Eastshore project."

25 I mean, I thought, well game's over. The staff

1 has said that even if any mitigations are applied.
2 The thing is after they go through a lot of this,
3 saying why it's not good and how it doesn't
4 conform and whatever, when you get ten pages down
5 their recommendation is for some kind of
6 mitigation.

7 And even though they start some
8 paragraphs by saying there is no significant
9 impact of this and such, they end the paragraph by
10 saying, because there is significant impact we
11 have to do this and such mitigation, which doesn't
12 make much sense.

13 Then there is another section on the
14 airport, which again says the same kind of thing.
15 It says that with the conditions as they are with
16 the Russell City and the Eastshore project there
17 is no way that you can mitigate that would make
18 the airport safe.

19 And then I was really disturbed this
20 morning when I heard you talking to the PG&E guy
21 about the override. Isn't that right, it's a
22 override? Yes. And he said, and I'm not
23 paraphrasing it exactly the way he said it, but
24 this looks like it might be a choice between
25 whether we put more electricity on the grid or

1 whether we look at the safety of the airport. So
2 I thought that to me that wasn't a choice. That
3 the safety issue if you're putting them on scales,
4 would certainly be this way.

5 For the lady that came up and asked the
6 two questions. And I'm only getting this from
7 this report. I thought I read, and I know
8 somebody will pounce on me and correct me if I'm
9 wrong. But all the power that is being generated
10 by the Russell City and Eastshore is going to go
11 to the grid.

12 And then somebody up there who controls
13 the grid -- I forget what they're called Cal-SO or
14 whatever, or ISO, they will determine where the
15 electricity will go based on who needs what. So
16 if Hayward needs some they will send it but if San
17 Francisco needs some they will send it there. So
18 it is not, as I read, generated just for Hayward
19 but it is going to be going to the grid.

20 And then her second question was, well
21 who gets all the pollution. And from what I read,
22 even with mitigation, the Russell City still
23 throws up 90 tons or more of pollution of the
24 particulates. I can't remember if they're P10s or
25 PM2.5s. Then I'm not sure how much pollution

1 Eastshore puts out but not as much as that.

2 But it all stays here because the
3 mitigation, if everybody in Hayward converts their
4 fireplaces over to natural gas -- and I know
5 you're not going to get 100 percent. But if they
6 did, that doesn't reduce the 90 tons of pollution
7 that's going up, it just means that there isn't 40
8 on top of the 90.

9 Then another thing that kind of bothered
10 me was that when I was reading about the Eastshore
11 project it looks like they're using the same
12 fireplaces because they talk about the wood
13 fireplaces as being mitigation. So how can
14 Russell City use that for their mitigation and
15 Eastshore use the same fireplaces for the Hayward
16 residents for their mitigation.

17 And I agree with the mayor that said, it
18 doesn't do Hayward any good to buy credits from
19 Milpitas or Cupertino for the energy pollutants
20 that they're not putting up. And that was listed
21 there in your report as well.

22 One thing that hasn't been brought up
23 that concerned me was the seismic activity. This
24 plant, this whole area. Hayward, we have a fault
25 named after Hayward. The Hayward Fault and the

1 San Andreas Fault are very, very close. They
2 don't run under but they do some buildings in
3 Hayward but they are close.

4 And then I was reading the soils report.
5 And I can't believe I did that but I did. And it
6 said some of it was Danville silty clay and I
7 forgot the name of the other one. But it referred
8 to these clays as being -- they could liquify.
9 Liquefaction, they were prone to do that. And I
10 remembered what happened in San Francisco when the
11 whole area was hit by the earthquake and a lot of
12 those houses were down because they were built on
13 fill.

14 Well here is an area that is clay and
15 the water table apparently -- not the water table.
16 The ground water is only 12 feet down and they
17 were going to have ammonia storage tanks and
18 everything plus other hazardous wastes and thing
19 like that on site. So it could easily be a real
20 problem for a big earthquake.

21 Now I live in Castro Valley in a hill
22 area on rock. And that last earthquake we just
23 had about a month ago in Alum Rock, I was sitting
24 at my desk and I was, my house was shaking. And
25 I'm, you know, how many miles away is that? A

1 huge number.

2 So this particular -- these plants are
3 going to be in an area that is prone to earthquake
4 shaking and it could be a very violent one. And
5 it's not if we're going to get one, it's when
6 we're going to get one. And I know everybody is
7 trying to retrofit or build new.

8 I noticed that children and old people
9 are called -- I thought this was a darling
10 metaphor. Not metaphor but euphemism. Sensitive
11 receptors. Sensitive receptors are the schools,
12 the churches, the hospitals, the little kids, the
13 old people. And there are a lot of these, the
14 sensitive receptors that are going to be near this
15 thing. And you've already heard from people who
16 live in that area.

17 Again, you won't be able to see this.
18 It's on page 4.7.64. It's the cumulative chronic
19 hazard isopleths. I'm not sure what an isopleth
20 is, it doesn't sound good, it comes right after
21 hazard. And it shows a picture of the Russell
22 City plant and it shows a picture of the proposed
23 Lakeshore (sic). And around Lakeshore it has
24 these concentric circles that show where the
25 dispersion of chronic hazard isopleths are going

1 to go.

2 It shows Russell City but it doesn't
3 show any concentric circles coming out. But if
4 there were, and there has to be more because it's
5 a larger plant, there's going to be an overlap.
6 There's going to be an overlap between the
7 hazardous stuff that is coming out of Russell and
8 the hazardous stuff that is coming out of
9 Lakeshore.

10 And although I did and then you pointed
11 out, the staff report does go into cumulative
12 effects it treats them very lightly. It doesn't
13 seem to consider that they are any real big
14 problem. But I get the feeling that staff's
15 discussion of the cumulative impacts --

16 One of the cumulative impacts was also
17 the trucks. There will be or could be if this is
18 approved the Russell City construction, the
19 Lakeshore construction, and the construction that
20 is going on with the freeway all at the same time
21 or within months of each other. And the roads are
22 already -- This Clawiter, which is one of the main
23 thoroughfares that is going to be used, is only a
24 two-way road. It's already congested.

25 And I don't know what year the A-B-C-D-

1 E-F gradings were made on the traffic -- I'm
2 sorry, my brain. But it just seemed like the
3 roads were worse than some of the ones that had Bs
4 and Cs. Because B was unacceptable and there were
5 Es and Fs as well. So when all these trucks are
6 part of that mix I can't see how anybody is going
7 to get through that area at all.

8 And I haven't touched on public health
9 and I'm sure that other people have done a better
10 job than I but if you haven't guessed already I'm
11 opposed to the Lakeshore thing and I really hope
12 that you will take all these things into
13 consideration. Especially the cumulative,
14 especially as Mayor Sweeney said, why should
15 Hayward have to bear the burden of two plants in
16 such a small area.

17 And the fact that Hayward is an
18 urbanized area. Coyote Hills is not an urbanized
19 area. I don't know what they have out there but
20 anyway we have people who live in this area.
21 Another one of your staff's great maps shows the
22 diversity. There's a huge amount of diversity all
23 around this particular area.

24 So I'd hate to be in your shoes trying
25 to make this decision but I hope you make the

1 right one. Thank you.

2 HEARING OFFICER GEFTER: Thank you very
3 much for your summary of the FSA. I think you did
4 a great job, you're a good student, thank you. We
5 have more blue cards, Mr. Monasmith? Thank you.

6 Mr. Andy Wilson.

7 MR. WILSON: Good evening Madame Chair,
8 Commissioners and staff. It sounds like the FSA
9 is the top bestseller in Hayward. You're really
10 pushing it too so it must be good reading.

11 On the idea of power plants in these
12 different locations. One is the City of Hayward's
13 population has far fewer people than some of the
14 other cities that were mentioned, whether you're
15 talking about San Jose or whether you're talking
16 about San Francisco. I think it is more of a
17 burden on Hayward than it is these other cities.

18 And it is quite evident that the power
19 is going across the Bay and down south. So with
20 that I think the second plant, that being
21 Eastshore, would be a burden on the City of
22 Hayward.

23 My concern is as a pilot being
24 instrument rated that the FAA requires space being
25 blocked off where pilots can't fly within 1,000

1 feet altitude. And of course we're next to San
2 Francisco and Oakland.

3 I want to describe how you get from the
4 Hayward Airport to the Oakland Airport, to North
5 Field just to show you or demonstrate how
6 compressed this is. Taking off from Runway 2-8-
7 Right what you do is you tell the tower to notify
8 the Hayward tower that you're going there.

9 So when you take off, when your wheels
10 leave the pavement you change your radio frequency
11 to Oakland. So what you're doing is you're
12 telling the Hayward tower that you're going to
13 transfer to the Oakland tower. The Oakland tower
14 already knows that we're coming in. So a lot of
15 times I'll take off with flaps down and then go
16 into Oakland that way.

17 So it's really compressed. The towers
18 have to talk in order for you even to get around.
19 So by compressing the space -- and it is not
20 through your fault, it's the FAA recommends that
21 you stay 1,000 feet above. And we're still not
22 quite clear how far to stay horizontally. So that
23 space is just blocked off.

24 The unfortunate thing is that as you do
25 this throughout the state of California you're

1 taking away air space. Not only from Hayward.
2 But as you site plants in these other areas the
3 same thing is happening. Across the US you've
4 heard about flights being delayed. That primary
5 reason is weather.

6 But the other issue is, if you start
7 compressing and forcing pilots to take special
8 routes this affects San Jose Airport, it affects
9 Oakland Airport, commercial as well as the flights
10 going through San Francisco.

11 I'm an IFR pilot. What happens when I
12 use the system, they've got to make room for me.
13 So what happens is it forces a slowdown into the
14 entire system.

15 So one of the things that -- I don't
16 have a problem with the power plant per se but it
17 just has to be moved further out so it doesn't
18 interfere with the air space. The air space is
19 not recoverable. Once you declare when you put
20 the power plant in you don't get it back. So as
21 you put these power plants throughout the state
22 next to these airports the space doesn't come
23 back.

24 The other problem that i have with the
25 -- And it's a burden on not only the tower

1 operators, it's a burden on the pilots. And what
2 happens is that we're trying to look out for each
3 other and more chatter comes on the radio. Also
4 the Hayward Airport is expanding, there's been
5 more hangers put in. They've scheduled another
6 expansion. So it's becoming a problem.

7 One of the things I'd like to talk about
8 is on the siting of Eastshore. People talk in
9 terms of a peaking unit. And a peaking unit is
10 typically around the load-bearing times of the
11 day, evening, morning. However, the siting and
12 the license is for 4,000 hours per year. But it
13 is my understanding that a couple of years later
14 it is not unusual for a peaking unit to get
15 approved to operate for 8,000 hours out of the
16 year. So when we keep hearing only 4,000 but it
17 is not unusual to do that. So one of the things
18 that if you have an accumulated --

19 ASSOCIATE MEMBER GEESMAN: When you say
20 it is not unusual do you have some specific
21 examples in mind?

22 MR. WILSON: No I don't.

23 ASSOCIATE MEMBER GEESMAN: Because I am
24 not aware of any. If you subsequently determine
25 that there are specific examples if you'd share

1 those with us later we'd appreciate it.

2 MR. WILSON: I'll do that, I'll send you
3 an e-mail.

4 The other issue is that when you have
5 the two power plants you've got the 230 kV line
6 and you've got the 115 kV line. So the 230 can be
7 broken down to a 115. Part of the things that is
8 going on is a lot of that power is going to go
9 across the San Mateo Bridge as 230. But the 115
10 kV pretty much stays on this side of the Bay.

11 So you have a power plant. Also with
12 Russell it's already been determined that it's not
13 going to be operating full time. It's more like a
14 peaker or being operated for either a few hours of
15 the day or a few days out of the week and then
16 shut down again, either one or both units. And
17 that is going to cause a pollution problem because
18 they are near the peak of even to operate in a
19 non-attainment area.

20 So i would say my recommendation is to
21 vote against or not put Eastshore in. Also being
22 a smaller unit there's more areas throughout the
23 Bay Area that it could be put in. Thank you.

24 HEARING OFFICER GEFTER: Thank you.

25 Mr. Robert Williams.

1 MR. WILLIAMS: Hello, I'm Bob Williams
2 and I live on Depot Road, which is walking
3 distance from the newest plant that wants to go
4 in. I don't think I can add much to all the
5 technical reasons why, you know, the neighborhood
6 doesn't want it.

7 But I will say that my general
8 impression of how this whole thing has been
9 handled, how PG&E has handled this -- It appears
10 to me that they've tried to slip this thing in
11 under the radar, you know, and have the first
12 plant voted yes without really the neighborhood
13 really knowing what's going on.

14 It's obvious that the neighbors don't
15 like either one of these plants. And had we had
16 really constructive notice. I mean really
17 constructive notice where everyone really knew
18 what it really meant, you probably would have come
19 across a lot more opposition from the get-go.

20 PG&E is a large corporation that
21 basically wants to use the resources of our
22 neighborhood for monetary purposes. In accounting
23 this is called, I think it's called externalized
24 costs, externalization. In other words, you make
25 a profit and let someone else pick up the mess.

1 That's just what I want to say. That I
2 haven't got a sense that PG&E wants to come to the
3 table and offer our neighborhood anything that is
4 good for us. The electricity is going somewhere
5 else. I don't see how it's going to lower our
6 costs. It's going to pollute our environment and
7 it's going to lower, I believe, our property
8 values, you know.

9 I mentioned this before to the people
10 that were representing PG&E. PG&E, you know,
11 hasn't really shown up. They've had their front
12 men come here and talk. Maybe they're here
13 tonight.

14 They haven't been serious about, you
15 know, like bringing something to the community in
16 a way that would make us feel okay with the impact
17 that these two plants are going to have. You want
18 to take away my health? Okay, what are you coming
19 to bring me to compensate. A couple of jobs? No,
20 that doesn't cut it. So that's all I want to say.

21 HEARING OFFICER GEFTER: I wanted to
22 remind you that there is a representative from
23 PG&E here, Mr. Galati in the back if you want to
24 talk to him.

25 MR. WILLIAMS: Thank you.

1 HEARING OFFICER GEFTER: Thank you.

2 Thank you for your comments.

3 Juanita Gutierrez. Could you spell your
4 name, please.

5 MS. GUTIERREZ: Yes. My name is Juanita
6 Gutierrez, J-U-A-N-I-T-A, Gutierrez, G-U-T-I-E-R-
7 R-E-Z.

8 HEARING OFFICER GEFTER: And I know you
9 have been here before.

10 MS. GUTIERREZ: Yes, I've been here
11 before you many times. And I have lots of
12 patience and I'm here again. As I said before,
13 I'm a real estate broker. The reason why I am in
14 contact with many people. Those many people could
15 not be here because of age, because of health
16 reasons, and I am here for them.

17 And when I brought the problem to them
18 and I asked for their signatures because I did
19 pass a petition. I asked them to help to pass the
20 petition to others, immediately they say yes, I am
21 here to work because I don't want a power plant
22 here. And I don't want the Russell plant either.

23 And I hope, Mr. Byron, that you
24 represent the public. I am a public member.
25 Please listen to us. Don't just hear us, listen

1 to us. We don't want the power plants.

2 Russell City power plant is a joke.

3 It's a disgrace because it is right next to the
4 shoreline. The state has given us lots of money
5 to improve the shoreline and now we're going to
6 put a power plant to destroy it? To destroy the
7 shoreline and to destroy us that live there. It's
8 a joke.

9 So please listen to us, don't just hear
10 us. Thank you.

11 HEARING OFFICER GEFTER: Thank you again
12 for coming out and talking to us.

13 Mr. Rob Simpson. Would you please spell
14 your name for the reporter.

15 MR. SIMPSON: Simpson, S-I-M-P-S-O-N.
16 I'd just like to clarify the connection a little
17 bit between the community choice aggregates and
18 what is going on here with these power plants.

19 With us being over-built for energy
20 generation at this time the justification that I
21 see for PG&E wanting these plants is that they
22 still get paid. They still get paid when we go to
23 renewables. They know that San Francisco is
24 investing three-quarters of a billion dollars to
25 go 51 percent renewable.

1 Marin County is going 100 percent
2 renewable. Oakland, Berkeley and Emeryville are
3 looking at forming CCAs together, which is going
4 to further reduce demand for these plants.
5 Whether this plant ever starts or not PG&E will
6 still get paid by the assessments they get when we
7 still go renewable. That's all I need to say.

8 HEARING OFFICER GEFTER: Thank you. I
9 think just about everyone who wanted to speak has
10 addressed us this evening. I don't have any more
11 blue cards. I don't know if anyone else has a
12 final comment before we adjourn.

13 At this point Mr. Galati would like to
14 address us.

15 MR. GALATI: My name is Scott Galati and
16 I represent PG&E. And I'll be out here to the
17 right and I'll do my best to answer as many
18 questions and I'll stay as late as people have
19 questions.

20 HEARING OFFICER GEFTER: Thank you very
21 much. And also again I'll remind some of you who
22 are concerned about air quality and public health
23 that representatives from the Bay Area Air
24 District are here, sitting right over here in the
25 corner, and they could answer some of your

1 questions if you want to speak to them after we
2 adjourn. Commissioner Byron.

3 PRESIDING COMMISSIONER BYRON: I would
4 like to thank the public for being here this
5 evening, for your comments. Both Commissioner
6 Geesman and I are listening and hearing them.

7 I'd also like to thank the students that
8 are here this evening. Clearly this is a bit of a
9 civics lesson. I hope you weren't forced to be
10 here by some people. But thank you for being here
11 this evening.

12 I think that's it except that we will be
13 back December 17 and we have also scheduled the
14 18th because we anticipate the evidentiary
15 hearings will carry over into the next day. Thank
16 you.

17 (Applause)

18 HEARING OFFICER GEFTER: Thank you. The
19 hearing is adjourned.

20 (Whereupon, at 7:58 p.m., the
21 Prehearing Conference was
22 adjourned.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing 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 7th day of December, 2007.

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