

EVIDENTIARY HEARING
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)

)

VOLUME I

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

MONDAY, DECEMBER 17, 2007

10:00 A.M.

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

COMMITTEE MEMBERS PRESENT

Jeffrey D. Byron, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Susan Gefter, Hearing Officer

Gabriel Taylor, Advisor to Commissioner Byron

STAFF, CONTRACTORS AND WITNESSES PRESENT

Brian Bateman, Bay Area Air Quality Management District

Brewster Birdsall, PE, QEP, Aspen Environmental Group

Alvin J. Greenberg, PhD, REA, QEP, Risk Science Associates

Caryn Holmes, Staff Counsel

Brian K. Lusher, Bay Area Air Quality Management District

Bill Pfanner, Project Manager

PUBLIC ADVISER

Nick Bartsch

APPLICANT

June E. Luckhardt, Downey Brand, outside counsel
Dan L. Carroll, Downey Brand, outside counsel
Nicolaas W. Pullin, Downey Brand, outside counsel

Greg Trewitt, Tierra Energy

David A. Stein, PE, CH2MHILL

Gregory S. Darwin, Atmospheric Dynamics

James Westbrook, Westbrook Environmental

INTERVENORS

Paul N. Haavik

City of Hayward

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

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

Alameda County

Andrew J. Massey, Office of County Counsel

Cindy Horvath, Alameda County Community
Development Agency

Sandra Witt, PhD, Planning Policy and Health
Equity, Alameda County Public Health
Department

Paolo Zannetti, PhD, EnviroComp Consulting

Chabot-Las Positas

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outside counsel to Chabot-Las Positas

Susan Sperling, Faculty Association

Group Petitioners

Jewell Hargleroad, outside counsel to Group
Petitioners

Jay White, California Pilots Association

Mike Toth

Suzanne Barba

Robert Sarvey

ALSO PRESENT

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

Michael W. Jarred, the Office of Senator Ellen M. Corbett

Christopher Parman, the Office of Assembly Member Mary Hayashi

Mayor Michael Sweeney, City of Hayward

Supervisor Gail Steele, Alameda County Board of Supervisors

Ahmad Asir

Chancellor Joel Kinnamon, EdD, Chabot-Las Positas Community College District

Trustee Hal G. Gin, EdD, Chabot-Las Positas Community College District

Diane Zuliani, the Academic Senate President, Chabot Community College

Rachel Ugale, Classified Senate President, Chabot Community College

Jove Meyer, Vice President, Associated Students of Chabot College, Chabot Community College

Lynn Tomkunas

Catherine Powell, Classified Employees of Chabot College, Chabot Community College

Audrey LePell, Citizens Against Pollution

Karen Kramer, Citizens Against Pollution

Professor Laurie Price, California State University East Bay

Wulf Bieschke, President, San Lorenzo Village Homes Association

Glenn Kirby, Sierra Club

ALSO PRESENT

Kimberley Finn

Harry Shin

Juanita McDonald

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

Stephania Widger

Sharon Cornu, Alameda Labor Council

Patricia Taylor

J. Edwards

J. V. McCarthy

Mitchell Medeiros

Bob Williams

Carol Ford, California Pilots Association

Juanita Gutierrez

Rob Simpson

Jesus Armas

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

2 10:03 a.m.

3 PRESIDING COMMISSIONER BYRON: Good
4 morning everyone. I would like to welcome you to
5 the friendly confines of the Hayward Council
6 Chambers once again.

7 My name is Jeff Byron, I am the
8 presiding member of the Energy Resources
9 Conservation Development Commission Committee on
10 the application for certification for the
11 Eastshore Energy Center in Hayward. This is an
12 evidentiary hearing.

13 With me is my advisor, Gabriel Taylor,
14 and also our hearing officer, Susan Gifter. I'll
15 turn it over to her shortly. Unfortunately
16 Commissioner Geesman is unable to attend today's
17 proceedings. And also pending the expiration of
18 his term as Commissioner, probably at the end of
19 this month, he will likely not be participating in
20 the Presiding Member's Proposed Decision.

21 We have a couple of days of hearing
22 scheduled. I just want to open with a few
23 remarks, if I may. I wanted to let you know that
24 this take this very seriously at the Commission.
25 These siting cases receive a great deal of

1 attention and this one is no exception.

2 I believe we have scheduled enough time
3 for hearing all the evidence and cross examination
4 and I have reviewed all the testimony and briefs.
5 I would certainly like to thank the parties for
6 their efforts in pulling all that information
7 together in a timely way. As I said, I don't see
8 why we cannot complete this within the prescribed
9 time. We are all familiar with the issues and the
10 important arguments.

11 And remember that the purpose of today
12 and tomorrow's evidentiary hearing is to collect
13 the evidence that we need in order to make a
14 decision on the application for certification
15 before the Commission.

16 I have also asked for briefs for us to
17 be able to make a decision on the request for the
18 override request on the LORS. And I believe it's
19 one of those acronyms that is kind of -- it's
20 laws, ordinances, resolutions?

21 HEARING OFFICER GEFTER: Regulations
22 and standards.

23 PRESIDING COMMISSIONER BYRON:
24 Regulations and standards, thank you.

25 But as we've seen from a lot of the e-

1 mail traffic that has been going back and forth
2 and the docketing of information over the last
3 couple of weeks there may be some of you here that
4 are not completely familiar with the Warren-
5 Alquist Act and our process at the Energy
6 Commission. I believe we have extended a great
7 deal of latitude over the last number of weeks
8 since our prehearing conference in order to allow
9 testimony to come in a little bit late.

10 But I also want to remind everyone that
11 this process that we have been undertaking on
12 behalf of the Commission is not new. This
13 application has been before the Commission for
14 over a year and we have an obligation to try and
15 complete it in a timely manner. So I would like
16 to thank you all for working so diligently on
17 this. December is a very difficult month given
18 the holidays to do this but we are intent upon
19 seeing this through and completing this
20 evidentiary hearing over the next two days.

21 I would like to ask that all parties to
22 the process remain focused on presenting relevant
23 evidence to this case. Our hearing officer,
24 Ms. Gefter, will keep us on the straight and
25 narrow with regard to process and on schedule for

1 the next two days. We have been thanked numerous
2 times for coming here to Hayward and listening,
3 that is our job.

4 My time is expendable but everyone
5 else's time here is extremely important. I would
6 ask that before you speak today that you consider
7 a couple of questions. Is the information you are
8 providing relevant to this case? If it has
9 already been said during the hearing that we have
10 been conducting thus far is it really necessary to
11 say it again? And does it confuse or delay the
12 proceeding? If we are confused about the process
13 that's one thing but we do not want to continue to
14 delay the proceeding.

15 Having said all that I'll turn this
16 over to Ms. Gefter. I thank you all again for
17 being here and to the City of Hayward for
18 providing this wonderful facility for us. And I
19 think Ms. Gefter has some important information
20 instructions for the parties as well.

21 HEARING OFFICER GEFTER: Thank you,
22 Commissioner Byron. I'd like the parties to
23 introduce themselves before we get started,
24 starting with Commission staff. Ms. Holmes.

25 MS. HOLMES: Thank you. Caryn Holmes,

1 staff counsel. On my right is Bill Pfanner, the
2 CEC staff project manager for this project.

3 HEARING OFFICER GEFTER: Mr. Haavik.

4 MR. HAAVIK: Paul Haavik, intervenor.

5 HEARING OFFICER GEFTER: The applicant.

6 MS. LUCKHARDT: Hi, I'm Jane Luckhardt
7 for Eastshore Energy. Also with me and going to
8 be doing some cross today, sitting behind me, are
9 Dan Carroll and Nick Pullin. Sitting next to me
10 is Greg Trewitt representing the owner, project
11 owner. On the other side of Greg is David Stein,
12 the project manager for CH2MHILL on this project.

13 HEARING OFFICER GEFTER: I also wanted
14 to ask the parties if you could please give your
15 business cards to the reporters so they can spell
16 your names correctly and identify you when you
17 speak. So if you haven't already given your
18 business cards it would be a good time right now.

19 Mr. Sarvey is an intervenor. I don't
20 think your mic works over there, Mr. Sarvey.

21 MR. SARVEY: Yes it does.

22 HEARING OFFICER GEFTER: It's working.

23 But does the reporter have you also on your
24 system? The reporter doesn't have you on the
25 system. You can hear him? Okay. Mr. Sarvey,

1 identify yourself for the record, please.

2 MR. SARVEY: Robert Sarvey. The last
3 name is spelled S-A-R-V-E-Y.

4 HEARING OFFICER GEFTER: Thank you.

5 MR. SARVEY: Thank you.

6 HEARING OFFICER GEFTER: And the City
7 of Hayward.

8 PRESIDING COMMISSIONER BYRON: I
9 believe the microphones in front of you are for
10 the recording.

11 HEARING OFFICER GEFTER: Yes, they are.
12 We're going to go off the record. Let me go see
13 if we can find out what happened to that
14 microphone. I thought we had it.

15 (Brief recess)

16 HEARING OFFICER GEFTER: City of
17 Hayward, please identify yourself and your
18 attorney.

19 MS. GRAVES: I'm Diana Graves from
20 Pillsbury Winthrop Shaw Pittman. We are outside
21 counsel representing the City of Hayward. And
22 with me I have Robert Bauman, the Director of
23 Public Works for the City of Hayward.

24 HEARING OFFICER GEFTER: Thank you.
25 And Alameda County, please.

1 MR. MASSEY: I am Andrew Massey with
2 the Office of County Counsel for Alameda County.
3 With me is Cindy Horvath from the County's
4 Department of Planning.

5 HEARING OFFICER GEFTER: Thank you.
6 And the group petitioners?

7 MS. HARGLEROAD: Hi, I'm Jewell
8 Hargleroad, here for group petitioners, California
9 Pilots Association. I have their counsel, Jay
10 White here is attending. Also San Lorenzo Village
11 Homes Association. And I also have Suzanne Barba
12 here with me and Mike Toth. And also we have
13 Hayward Area -- I am representing the Hayward Area
14 Planning Association.

15 HEARING OFFICER GEFTER: Thank you.
16 And also the Chabot College-Las Positas College
17 District.

18 MS. SCHULKIND: Laura Schulkind,
19 Liebert Cassidy Whitmore, for intervenor Chabot-
20 Las Positas Community College District. Dr.
21 Sperling representing the Faculty Association will
22 be arriving shortly. We also will have Chancellor
23 Kinnamon and Trustee Gin and the Faculty Senate
24 President, Diane Zuliani, joining us during the
25 public comment period.

1 HEARING OFFICER GEFTER: Thank you very
2 much. We have them scheduled for public comment
3 this evening, thank you.

4 I also understand that Scott Galati
5 from PG&E will be here today. I don't know if he
6 is here yet but when he gets here we'll introduce
7 him.

8 And then I don't know if there are any
9 elected officials here at this time. I don't have
10 any blue cards yet but we're expecting them this
11 evening.

12 The public adviser's representative,
13 Nick Bartsch is in the back standing there by the
14 door and can assist any members of the public if
15 you have any questions on how to participate
16 today.

17 I am going to describe the format for
18 the evidentiary hearing. The evidentiary hearing
19 is a formal adjudicatory proceeding to receive
20 evidence from the parties. The technical rules of
21 evidence are generally followed, however, any
22 relevant, non-cumulative evidence may be admitted
23 if it is the sort of evidence on which responsible
24 persons are accustomed to rely in the conduct of
25 serious affairs.

1 The testimony offered by the parties
2 shall be under oath and the Committee will
3 administer the oath today. Each party has the
4 right to present and cross-examine witnesses,
5 introduce exhibits and to rebut the evidence of
6 another party. Questions of relevance will be
7 decided by the Committee. Hearsay evidence may be
8 used to supplement or explain other evidence but
9 shall not be sufficient in itself to support a
10 finding.

11 The Committee will rule on motions and
12 objections. After ruling is made no more time
13 will be allowed for further argument since we want
14 to spend our time taking testimony. Parties may
15 assert a continuing objection that will be
16 addressed in the Committee's written decision.

17 The Committee may take administrative
18 notice of matters within the Energy Commission's
19 field of competence and of any fact that may be
20 judicially noticed by California courts.

21 The official record of this proceeding
22 will include the sworn testimony of the parties'
23 witnesses, the reporter's transcript, the exhibits
24 received into evidence, the briefs, the pleadings,
25 the orders, the notices and the oral and written

1 comments submitted by members of the public. And
2 that is contained in our regulations.

3 The Committee's decision will be based
4 solely on the record of competent evidence in
5 order to determine whether the project complies
6 with applicable law.

7 Members of the public who wish to speak
8 should write their comments on blue cards and hand
9 them to the public adviser's representative in the
10 back of the room. The public comment period
11 begins this evening at six p.m.

12 I also wanted to talk about the
13 schedule today. If parties have not completed
14 witness testimony by six p.m. we'll break for
15 public comment and then we'll resume this evening
16 to try to finish up the topics that we have
17 scheduled for today.

18 I notice that Ms. Hargleroad has a
19 question.

20 MS. HARGLEROAD: I just wanted to take
21 notice for the record, and I'll try to do a short
22 pleading on this too, is that we did not file a
23 brief on the evidentiary standard.

24 HEARING OFFICER GEFTER: We know that.

25 MS. HARGLEROAD: But I want to make it

1 clear though that we are also, like the applicant
2 and staff, relying on the entire record.
3 Specifically we would also like to refer to the
4 declaration of Jay White which sets forth various
5 applicable statutes concerning airport hazards and
6 state law. I just wanted to make that clear for
7 the record.

8 HEARING OFFICER GEFTER: The exhibit
9 list that lists the exhibits that we have received
10 so far and have been proposed to be offered into
11 the record has been distributed to the parties.
12 It's a working list. We'll use it to organize and
13 receive evidence into the record today.

14 We will also use the topic and witness
15 schedule to keep track of the topics and that was
16 attached to the Notice of Evidentiary Hearing. I
17 hope everyone has a copy of that. There are 15
18 uncontested topics identified in that topic and
19 witness schedule. None of the intervenors filed
20 objection to submittal of these topics by
21 declaration and we'd like to go forward with that
22 at this time.

23 We'll allow applicant to offer into
24 evidence the AFC, the relevant supplements and the
25 testimony in support of the 15 uncontested topics.

1 Then we'll ask staff to offer the Final Staff
2 Assessment, which constitutes staff's testimony.
3 And also the Preliminary Staff Assessment, which
4 is referred to as well in the parties' testimony.

5 As we have indicated previously the
6 parties may litigate portions of the AFC and the
7 FSA that are contested. Since the proceeding is
8 based on these documents we will receive them into
9 evidence at this time.

10 At this point before we do that I will
11 swear the applicant's and the staff's project
12 managers and environmental consultants so that
13 they will be sworn through the entire proceeding
14 because we know that you will all be testifying on
15 various topics. So let's do that now and then
16 we'll identify the 15 uncontested topics.

17 If you could stand up and state your
18 name and then we'll swear you in. And applicant
19 as well, if your project managers will stand and
20 state your names. Thank you. Okay.

21 Whereupon,

22 BILL PFANNER

23 DAVID STEIN

24 GREG TREWITT

25 were duly sworn.

1 HEARING OFFICER GEFTER: Thank you very
2 much. I am going to -- What I would like to do is
3 actually list the uncontested topics and then ask
4 the applicant to move your documents and
5 testimony.

6 The uncontested topics include Project
7 Purpose and Description, Power Plant Efficiency,
8 Power Plant Reliability, Transmission System
9 Engineering, Transmission Line Safety and
10 Nuisance, Facility Design, Geological and
11 Paleontological Resources, Cultural Resources,
12 Soil and Water Resources, Hazardous Materials,
13 Worker Safety and Fire Protection, Biological
14 Resources, Waste Management, Visual Resources and
15 Compliance.

16 And I would ask Ms. Luckhardt then to
17 move your exhibits.

18 MS. LUCKHARDT: Okay, do you want me
19 just to move them? Okay. Then I request that the
20 hearing officer take into the record all of those
21 exhibits that apply to the subject areas that have
22 been previously identified.

23 HEARING OFFICER GEFTER: Well, would
24 you give me the exhibit numbers. Because we have
25 to identify them for the record.

1 MS. LUCKHARDT: Okay. The Exhibit
2 numbers are as identified on exhibit number 21.
3 In many instances they are parts of other exhibits
4 so if you want me to go through each one I can.
5 But I think it would be faster for the record to
6 identify all those exhibits that are listed in our
7 Exhibit 21, which includes the AFC, the data
8 responses, the AFC supplement and various other
9 items that are uncontested. Since each subject
10 area is bringing in parts of some documents I
11 think it would take an inordinate amount of time
12 now to go through and identify the specific parts.

13 HEARING OFFICER GEFTER: That's fine
14 with me and I can read Exhibit 21 just like
15 everyone else can so we'll incorporate the list of
16 exhibits in Exhibit 21 and receive them into the
17 record. Thank you.

18 MS. LUCKHARDT: Thank you.

19 HEARING OFFICER GEFTER: And at this
20 point I'll ask staff to move your documents.

21 MS. HOLMES: Thank you. Staff would
22 move that Exhibit 200 and Exhibit 202 be received
23 into evidence at this time.

24 HEARING OFFICER GEFTER: And we will
25 receive Exhibit 200 and Exhibit 202 into the

1 record. And as we indicated earlier if there are
2 any issues that are contested in those particular
3 documents we will receive testimony and the
4 parties are entitled to cross-examine on those
5 issues as well. And this will be very efficient
6 and we appreciate that.

7 And now we are moving on to our
8 contested topic and the first topic is air
9 quality. We know there is a lot of concern on
10 that topic so the way I'd like to proceed on that
11 is to ask the applicant to present its witnesses
12 on air quality and we'll take your direct
13 testimony first.

14 Then we'll have staff witnesses on air
15 quality and we'll take your direct testimony. The
16 staff will also sponsor the Air District's
17 witness. Then we'll also receive the final
18 determination of compliance at that point. The
19 parties can then cross-examine the staff and
20 applicant's witnesses on air quality.

21 Then we'll move on and have the County
22 present its witness on air quality, Dr. Zannetti
23 and then the parties may cross that witness.

24 And then Mr. Sarvey will present his
25 testimony on air quality and the parties may

1 cross-examine him as well.

2 So in order for us to move along we
3 would like to start with the applicant. Would you
4 identify your witnesses and we'll swear them in.

5 MS. LUCKHARDT: Okay. Do you want to
6 swear all the air quality witnesses in at once,
7 then?

8 HEARING OFFICER GEFTER: Yes, all of
9 applicant's.

10 MS. LUCKHARDT: We identify, we
11 identify Greg Darvin, James Westbrook and David
12 Stein. Mr. Stein has already been sworn. Both
13 Mr. Darvin and Mr. Westbrook need to be sworn.

14 HEARING OFFICER GEFTER: Could witnesses
15 please stand up, state your name for the record
16 and I'll swear you in.

17 MR. DARVIN: Greg Darvin.

18 MR. WESTBROOK: I'm James Westbrook.

19 HEARING OFFICER GEFTER: Thank you.

20 Whereupon,

21 GREGORY S. DARVIN

22 JAMES WESTBROOK

23 were duly sworn.

24 MS. LUCKHARDT: Okay, I will start with
25 Mr. Westbrook.

1 DIRECT EXAMINATION

2 BY MS. LUCKHARDT:

3 Q Was a statement of your qualifications
4 attached to your testimony?

5 A Yes it was.

6 Q And is a list of exhibits that you are
7 sponsoring attached to your testimony as well?

8 A Yes it is.

9 Q Do you have any corrections to your
10 testimony at this time?

11 A I do have a correction.

12 Q Please identify the page and provide
13 the specific corrections.14 HEARING OFFICER GEFTER: Also would you
15 identify the Exhibit. I'm sorry if I missed that.16 WITNESS WESTBROOK: Exhibit 15. And it
17 is under Q-11 or A-11, page three.18 I would like to make a correction to,
19 starting with the third sentence under A-11. It
20 should read as follows: There are no SO2 data for
21 the Hayward area. Only PM10 and sulfate data are
22 available from the Hayward area. Ambient SO2 data
23 are only available from areas in Bay Area with
24 filings to the north.

25 And then below under A-12, the first

1 sentence should read: Yes, I independently
2 obtained sulfate and SO2 data. And the rest is
3 correct.

4 BY MS. LUCKHARDT:

5 Q Thank you. With those changes, insofar
6 as your testimony contains statements of fact are
7 those facts true and correct to the best of your
8 knowledge?

9 A Yes they are.

10 Q And insofar as your testimony contains
11 statements of opinion do they represent your best,
12 professional judgment?

13 A Yes.

14 Q Do you now adopt all those exhibits
15 identified as your sworn testimony?

16 A Yes I do.

17 DIRECT EXAMINATION

18 BY MS. LUCKHARDT:

19 Q Mr. Darwin, was a statement of your
20 qualifications attached to your testimony?

21 A Yes it was.

22 Q And is a list of exhibits attached to
23 your testimony?

24 A Yes.

25 Q Do you have any corrections to your

1 testimony?

2 A No corrections.

3 Q Insofar as your testimony contains --

4 HEARING OFFICER GEFTER: I'm sorry,
5 what is his exhibit number, please, for his
6 testimony?

7 MS. LUCKHARDT: He is also identified
8 in Exhibit 20. Okay, I apologize. Mr. Darwin
9 does not have a specific list of testimony or a
10 specific list. He is identified under traffic and
11 transportation.

12 BY MS. LUCKHARDT:

13 Q Mr. Darwin, did you support the work
14 that is sponsored by Mr. Westbrook?

15 A Yes I did.

16 Q Did you perform the modeling that is
17 sponsored by Mr. Westbrook?

18 A Yes.

19 Q Do you adopt that modeling and that
20 effort as your testimony at this time?

21 A I do.

22 Q Do you -- You already said. Do you
23 have any corrections to that?

24 A No corrections.

25 Q Is your testimony, is that work true

1 and correct to the best of your knowledge?

2 A Yes it is.

3 Q Do you adopt the testimony -- Let's
4 forget that. Thank you.

5 DIRECT EXAMINATION

6 BY MS. LUCKHARDT:

7 Q Mr. Stein, did you supervise -- In your
8 role as a project manager did you supervise the
9 work that was performed by, or provide peer review
10 to the work that was performed by Mr. Darwin and
11 Mr. Westbrook?

12 A Yes.

13 Q We do not have any specific --

14 HEARING OFFICER GEFTER: Ms. Luckhardt,
15 excuse me, I have a question with regard to
16 Mr. Darwin's role in this. And when you asked him
17 if he supported Mr. Westbrook's analysis, what do
18 you mean by that? Did they work together?

19 MS. LUCKHARDT: Yes, they worked
20 together on this. They both provided different
21 parts and peer-reviewed each other's work. We
22 have them both up here and available because the
23 detailed modeling was initially performed by
24 Mr. Darwin. So since there were questions about
25 the detailed modeling we thought it would be most

1 appropriate to have him here to answer those
2 questions.

3 HEARING OFFICER GEFTER: Thank you.

4 MS. LUCKHARDT: Mr. Stein is the
5 project manager. He peer-reviewed the work that
6 was done and so he is also available to respond to
7 questions but is not independently sponsoring any
8 specific piece of the air quality testimony.

9 Mr. Westbrook, can you please explain
10 the two changes that the applicant is requesting
11 to AQ-SC8

12 MR. WESTBROOK: Yes, the changes are a
13 requested change in the condition to allow more
14 flexibility to mitigate project PM10 emissions.
15 While the applicant agrees with the preference to
16 use local or upwind offsets for emission reduction
17 credits to mitigate PM10 emissions from the
18 project it may not be possible to get those
19 offsets because of limitations in the marketplace.

20 Therefore, if the applicant has made a
21 best faith effort to obtain those local, upwind
22 emission reduction credits and cannot do so we
23 would ask for some flexibility to go into other
24 geographical regions where these emission
25 reduction credits can be obtained if there is

1 meteorological justification for doing so.

2 Also we would like to change the trade-
3 off ratio for using SO2 emission reduction credits
4 for PM10. We don't agree with the staff's 5.3 to
5 1 ratio for that. Three to one is appropriate and
6 a likely conservative tradeoff ratio for obtaining
7 a conversion between SO2 offsets and PM10. And it
8 is a ratio that is supported decisions on other
9 projects, by district policy and also by technical
10 analysis.

11 MS. LUCKHARDT: Thank you. These
12 witnesses are available now for cross.

13 HEARING OFFICER GEFTER: Thank you.

14 I wanted to take staff's testimony
15 first and then we will make all witnesses
16 available at that point. So staff, do you want to
17 swear your witness in, please.

18 MS. HOLMES: Staff's witness in air
19 quality is Brewster Birdsall.

20 HEARING OFFICER GEFTER: And also do
21 you want to ask the Air District's witness to come
22 up too.

23 MS. HOLMES: And I believe there are
24 Air District witnesses as well.

25 MS. LUCKHARDT: If I could make a quick

1 correction. Mr. Darvin has identified some of the
2 air quality modeling in Exhibit 20 under Traffic
3 and Transportation. So as the work that is
4 identified there applies to this, that is one
5 place to look where we identified the modeling.

6 HEARING OFFICER GEFTER: Is there a
7 particular exhibit that is referred to?

8 MS. LUCKHARDT: It's all under Exhibit
9 20 so we can bring it in here or under Traffic and
10 Transportation tomorrow.

11 HEARING OFFICER GEFTER: Okay, thank
12 you. Okay, all right.

13 Do you want to ask your witnesses to
14 stand and identify themselves, please. And would
15 you please give your business cards to the
16 reporter so they can spell your name correctly,
17 thank you.

18 MR. BIRDSALL: My name is Brewster
19 Birdsall. I work with Aspen Environmental Group
20 as a Senior Associate and I prepared the CEC staff
21 assessment for air quality on this project.

22 HEARING OFFICER GEFTER: Okay. Well
23 wait a second, we're going to swear you. And I
24 wanted to ask the Air District witnesses also to
25 identify yourselves first.

1 MR. BATEMAN: Yes. I am Brian Bateman,
2 Director of Engineering at the Bay Area Air
3 Quality Management District.

4 MR. LUSHER: Brian Lusher, I am a
5 permit engineer for the Bay Area Air Quality
6 Management District.

7 HEARING OFFICER GEFTER: Thank you.
8 Whereupon,

9 BREWSTER BIRDSALL

10 BRIAN BATEMAN

11 BRIAN LUSHER

12 were duly sworn.

13 HEARING OFFICER GEFTER: Thank you very
14 much. Please be seated. I'm going to ask the
15 staff to proceed with Mr. Birdsall first.

16 MS. HOLMES: Thank you.

17 DIRECT EXAMINATION

18 BY MS. HOLMES:

19 Q Mr. Brewster (sic), was the air quality
20 portion of Exhibit 200 and 202, which are the PSA
21 and the FSA, prepared by you or under your
22 direction?

23 A Yes.

24 Q And was a statement of your
25 qualifications included in the FSA?

1 A Yes it was.

2 Q And do you have any changes or
3 corrections to your testimony at this time?

4 A I do have a correction to make to my
5 testimony. My written testimony on page 4.1-1 of
6 the Final Staff Assessment has a bullet point
7 regarding NOx emissions from the facility.

8 The correction that I'd like to make is
9 that the bullet be removed. The NOx emissions
10 from the project during the ozone season would be
11 fully mitigated through compliance with the Air
12 District's local new source review program which
13 requires offsets be supplied.

14 With that bullet removed the remainder
15 of the testimony is unchanged. The details for
16 this part of the analysis can be found on page
17 4.1-24 and 4.1-25 of the Final Staff Assessment.

18 MS. HOLMES: Thank you. With --

19 HEARING OFFICER GEFTER: I am not sure
20 which bullet you're referring to. Is that on the
21 first page of your testimony?

22 MR. BIRDSALL: Yes.

23 HEARING OFFICER GEFTER: There are
24 three bullets.

25 MR. BIRDSALL: Yes. On the first page

1 of the testimony the second bullet would be
2 removed.

3 BY MS. HOLMES:

4 Q With that correction are the facts
5 contained in your testimony true and correct to
6 the best of your knowledge?

7 A Yes they are.

8 Q And do the conclusions contained in
9 your testimony represent your best professional
10 judgment?

11 A Yes, they do.

12 MS. HOLMES: Thank you.

13 DIRECT EXAMINATION

14 MS. HOLMES: And Mr. Bateman and
15 Mr. Lusher, did you prepare or was prepared under
16 your direction the final determination of
17 compliance which has been identified as Exhibit
18 201?

19 MR. LUSHER: Yes.

20 MS. HOLMES: Could you please briefly,
21 since I don't believe 201 contains a statement of
22 your qualifications, could each of you very
23 briefly explain what your role is at the Bay Area
24 Air Quality Management District.

25 MR. LUSHER: I'm the permit engineer

1 for this application. I have an environmental
2 engineering degree from Cal Poly and I have been
3 working in the environmental field for over 12
4 years, three years of other engineering
5 experience.

6 MS. HOLMES: Thank you. Mr. Bateman?

7 MR. BATEMAN: And I am the Director of
8 Engineering at the Air District so I oversee the
9 work of Mr. Lusher and others in our division. I
10 have been working at the Air District for about 26
11 years.

12 MS. HOLMES: Do either of you have any
13 corrections to make to the Final Determination of
14 Compliance?

15 MR. LUSHER: Not at this time.

16 MS. HOLMES: Are the facts contained in
17 the Final Determination of Compliance true and
18 correct to the best of your knowledge?

19 MR. LUSHER: Yes.

20 MS. HOLMES: And do the conclusions
21 contained in the Final Determination of Compliance
22 represent your best professional judgment?

23 MR. LUSHER: Yes.

24 MS. HOLMES: Thank you. Ms. Gefter, at
25 this point I think it would be appropriate to have

1 staff give a very brief summary of their
2 testimony. Mr. Birdsall.

3 HEARING OFFICER GEFTER: Right. And
4 also please address applicant's concerns about
5 AQ-SC8. Thank you.

6 MR. BIRDSALL: Okay. I will summarize
7 the testimony by starting at, staff recognizes
8 that this project is using a technology of
9 internal combustion engines and that the use of
10 internal combustion engines does relate to higher
11 emissions of pollutants such as NOx and greenhouse
12 gases and particulate matter. Higher on a count
13 per megawatt hour basis than a combined cycle-
14 combustion turbine facility.

15 However, we've taken the approach of
16 mitigating all of the emissions that contribute to
17 significant impacts. And that would be
18 accomplished through AQ-SC8, which would offset
19 the particulate matter impacts of the project.

20 The applicant is asking for flexibility
21 on AQ-SC8 that staff disagrees with. The first
22 item would be the flexibility to provide regional
23 emission reduction credits as well as local
24 emission reduction credits, with the argument that
25 local emission reduction credits may not be

1 available.

2 Well, AQ-SC8 provides two options for
3 compliance with the offset requirement. The first
4 is through emission reduction credits. And we've
5 confined these ERCs to be from, to be from the
6 inner Bay Area region, meaning the part of the Bay
7 Area that is bounded roughly by San Francisco to
8 Oakland to Fremont to San Jose. And we believe
9 that that provides the applicant with enough
10 flexibility to shop around for emission reduction
11 credits.

12 The applicant did not identify a time
13 in the proceeding specifically in which emission
14 reduction credits would be supplied to comply with
15 AQ-SC8. So without that knowledge of which
16 specific ERCs are coming forward we felt compelled
17 to constrain the universe of ERCs to include those
18 communities that I just mentioned.

19 The second request from the applicant
20 is to adjust the interpollutant trading ratio for
21 which SO₂ ERCs can be traded to mitigate PM₁₀
22 impacts. And the applicant provides information
23 that says the Air District has in the past used a
24 regional average of three to one, meaning three
25 tons of SO₂ productions for every one ton of PM₁₀

1 increases.

2 Staff prepared in its analysis for this
3 case a reflection of the analysis that was
4 conducted for the Russell City Energy Center case
5 that indicates a higher ratio would be appropriate
6 for the sort of inner-Bay Area. Meaning this part
7 of the Bay Area that is west of the East Bay
8 Hills.

9 I think that the applicant's direct
10 testimony and the data that's viewed from this
11 perspective of what is interior to the Bay versus
12 what is exterior to the Bay, I think that all of
13 the parties including the applicant and myself
14 indicate that the higher ratio is appropriate for
15 sources and reductions occurring to the west side
16 of the hills.

17 The lower ratio that the Air District
18 has as sort of a policy of three to one is maybe
19 appropriate on a regional average. But for the
20 local effects of this project and for this project
21 in particular, and as decided by the Energy
22 Commission on the Russell City Energy Center case,
23 we continue to stand by the ratio of 5.3 to 1.

24 MS. HOLMES: Thank you.

25 Mr. Lusher, could you please briefly

1 describe the summaries contained in the Final
2 Determination of Compliance.

3 MR. LUSHER: Yes. Basically I had to
4 review whether proposed project would comply with
5 all the local air district rules and regulations
6 as well as state rules and regulations as well as
7 federal air quality rules and regulations. And I
8 determined that the proposed project is capable of
9 complying with all applicable air quality rules
10 and regulations.

11 MS. HOLMES: Thank you. These
12 witnesses are available for cross examination.

13 HEARING OFFICER GEFTER: Commissioner
14 Byron has a question.

15 PRESIDING COMMISSIONER BYRON: All
16 right. If I understood correctly from the
17 applicant, Mr. Birdsall, we did use on the Russell
18 City application the ratio of sulfur dioxide to
19 PM2.5 of 5.3 to 1; is that correct?

20 MR. BIRDSALL: The ratio of 5.3 to 1 is
21 a ratio that was determined appropriate for the
22 Russell City case.

23 PRESIDING COMMISSIONER BYRON: And the
24 reduced area, the geographic area. Was that also
25 the same in Russell City?

1 MR. BIRDSALL: I am not sure that
2 Russell City had a comparable -- I'm not sure that
3 Russell City had a comparable focus for the
4 emission reduction credits. That part of the
5 Russell City case I'm not familiar with. The
6 Russell City case, I think, and this is --

7 The Russell City case did have a
8 geographic restriction on fireplace retrofit
9 programs, which is the other component of AQ-SC8,
10 which isn't contested by the applicant here. And
11 the fireplace retrofit program is one that is also
12 geographically focused to the sort of western
13 Alameda County area.

14 PRESIDING COMMISSIONER BYRON: Is there
15 someone on staff that can answer this question?

16 MS. LUCKHARDT: I believe Mr. Darwin
17 may be able to answer that question for you.

18 MR. DARVIN: Actually, I worked on the
19 Russell City project. We were not constrained for
20 offsets except for the fireplace program was
21 identified. We actually had offsets that we were
22 providing on the project that sort of crossed the
23 entire region.

24 But on the Russell City case the
25 applicant, namely Calpine, did not contest the EC

1 findings that supported the 5 to 1, the 5.3 to 1.
2 However, in the analysis that was provided by
3 Calpine to the CEC the 3 to 1 ratio was proposed.

4 PRESIDING COMMISSIONER BYRON: Okay.
5 But with regard to the geographic area that was
6 not constrained.

7 MR. DARVIN: No.

8 PRESIDING COMMISSIONER BYRON: Okay.
9 Can the can the staff summarize for me the reason,
10 again, for the constrained geographical area.

11 MR. BIRDSALL: I think the reason for
12 the geographical constraints on the ERCs is really
13 coming from -- first of all there's a large local
14 interest, obviously, in this project and that the
15 reductions be local. But from a technical
16 perspective we at staff have been working with the
17 applicant over the course of the proceeding to
18 identify how the mitigation plan would occur and
19 how the mitigation plan would implement it.

20 And the applicant in this case, as
21 compared to Russell City, hasn't identified
22 specifically which ERCs must be surrendered. And
23 since the applicant hasn't identified what ERCs
24 from the bank of credits that's available, since
25 the specific ERCs have not been identified we

1 can't at staff analyze the effectiveness of those
2 credits. So this is why I felt compelled to
3 constrain the ERCs geographically.

4 And I understand that it may be
5 difficult and hard to find ERCs in this geographic
6 area. But at the same time the fireplace retrofit
7 program is an available mitigation halfway. And
8 that is an option to the applicant as well.

9 PRESIDING COMMISSIONER BYRON: Would
10 the applicant like to respond to that?

11 MR. WESTBROOK: Yes, I'd like to
12 respond on the analysis that was presented in the
13 Final Staff Assessment which referred to the
14 Russell decision.

15 Basically as described in my written
16 testimony, the analysis that was performed was a
17 modeling analysis on a very specific, sort of the
18 worst-case day and there were selective data
19 chosen to come up with a ratio. As I have said in
20 the testimony, there are a number of ways you can
21 do the analysis. But one thing that is very clear
22 is that very limited data was used to make a
23 decision for such a very important issue for this
24 project.

25 MS. LUCKHARDT: I think the

1 Commissioner had a question about the constraint
2 on offsets and the identification of the offsets.
3 And maybe Mr. Darwin can speak to the range of
4 areas from which the Russell City project offsets
5 came from.

6 MR. DARVIN: Well you're testing my
7 memory on that one. I believe some of the offsets
8 were coming from the foundry operations to the
9 north, the northeast part of the bay. I believe
10 there were also some offsets coming from the San
11 Francisco area along with some offsets provided
12 locally.

13 PRESIDING COMMISSIONER BYRON: Okay,
14 thank you.

15 HEARING OFFICER GEFTER: I have
16 questions for Mr. Birdsall. Number one, with
17 regard to AQ-SC8. When staff fashions a condition
18 such as this in addition to the FDOC conditions
19 which are incorporated into your FSA, my
20 understanding is that this is to deal with the
21 CEQA effects of the project and trying to mitigate
22 CEQA impacts, is that correct?

23 MR. BIRDSALL: Yes, that's correct.

24 HEARING OFFICER GEFTER: Okay. So when
25 staff proposes a 5.3 to 1 ratio you're looking at

1 a way to mitigate the cumulative impacts of this
2 project for particulate matter, right?

3 MR. BIRDSALL: That's correct.

4 HEARING OFFICER GEFTER: And that's a
5 CEQA issue?

6 MR. BIRDSALL: This is the
7 recommendation for arriving at the CEQA conclusion
8 that the impacts would be reduced to a level of
9 insignificance.

10 HEARING OFFICER GEFTER: Right. And
11 the Air District does not include a CEQA analysis
12 when they issue the FDOC; is that right?

13 MR. BIRDSALL: None.

14 HEARING OFFICER GEFTER: Okay. So
15 where staff is calculating 5.3 to 1 that's a staff
16 calculation and your calculations are included in
17 AQ Appendix 1; is that right?

18 MR. BIRDSALL: That's true.

19 HEARING OFFICER GEFTER: And you came
20 up with this ratio to try to deal with the
21 cumulative impacts regarding the particulate
22 matter.

23 MR. BIRDSALL: Well right, the ratio is
24 to deal with this CEQA cumulative impact.

25 HEARING OFFICER GEFTER: Would you say

1 that the Bay Area's 3.0 to 1 ratio is not
2 particularly relevant to your CEQA analysis?

3 MR. BIRDSALL: The ratio is one that is
4 not, to my knowledge, adopted by rule by the Air
5 District, although it has been used in precedent
6 and the applicant has provided a lot of
7 information on why that ratio would be preferred.
8 But it's a region-wide kind of a ratio in that the
9 chemistry of the interior of the Bay Area warrants
10 use of the higher ratios.

11 HEARING OFFICER GEFTER: And the
12 emissions of PM, particulate matter, in the Bay
13 Area by power plants, is that connected with the
14 ammonia emissions, the ammonia slip ratio that the
15 Air District imposes on the particular projects
16 for their SCR?

17 MR. BIRDSALL: Indirectly. The ammonia
18 slip limitation does help to reduce the ammonium
19 sulfates, which are secondary particulates.

20 HEARING OFFICER GEFTER: And in this
21 project ammonia slip is limited to ten PPM?

22 MR. BIRDSALL: That's right, that's an
23 Air District limitation.

24 HEARING OFFICER GEFTER: All right. Is
25 that because it is a peaker project or is that

1 just because it's the Air District's limit?

2 MR. BIRDSALL: It depends on the
3 technology, the internal combustion engines and
4 the selective catalytic reduction. It does not,
5 it would not be affected by whether the project
6 was a peaker or baseload.

7 HEARING OFFICER GEFTER: And also the
8 Air District has actually in another project
9 agreed to a lower ammonia slip of five PPMs in
10 eastern Alameda County, the Tesla Project.

11 MR. BIRDSALL: Well, in the Tesla
12 Project we used a different technology, the
13 combined-cycle combustion turbines. That's why I
14 say that limit depends on the technology.

15 HEARING OFFICER GEFTER: Okay. So
16 because this is a peaker you're saying that -- And
17 the technology being used here at ten PPM ammonia
18 slip is reasonable in your opinion?

19 MR. BIRDSALL: Yes. The internal
20 combustion engines being the basic technology of
21 the power plant warrants use of the higher ammonia
22 slip limit.

23 HEARING OFFICER GEFTER: But because of
24 the higher ammonia slip limit you have a higher
25 PM10 effect and there is a connection there. Is

1 that?

2 MR. BIRDSALL: Well, I think that that
3 is would be subject to some debate and certainly
4 some analysis.

5 HEARING OFFICER GEFTER: Okay.

6 MR. BIRDSALL: The staff approach to
7 ammonia, however, is to reduce the ammonia slip to
8 the level that is technologically feasible. And
9 for the internal combustion engines it has been
10 settled with the air district and staff that the
11 ten PPM is the lowest achievable.

12 HEARING OFFICER GEFTER: Okay, thank
13 you. And then with respect to the ERCs. You
14 stated that the applicant has not identified their
15 ERCs to be submitted. Now would that be only with
16 respect to AQ-SC8 or is that with respect to the
17 FDOC?

18 MR. BIRDSALL: That is only with
19 respect to AQ-SC8. With respect to the FDOC the
20 emission reduction credits are identified and
21 that's reflected in AQ-SC6, where there's a list.

22 HEARING OFFICER GEFTER: Okay. And
23 there is a table, I think it is table AQ-18, which
24 lists a number of offsets. Is that the one that
25 you're referring to?

1 MR. BIRDSALL: Probably Table 18. It
2 is also, yes, reflected in --

3 HEARING OFFICER GEFTER: In AQ-6.

4 MR. BIRDSALL: In condition AQ-SC6,
5 yes.

6 HEARING OFFICER GEFTER: Yes, okay.
7 But that's with respect to the FDOC.

8 MR. BIRDSALL: Yes.

9 HEARING OFFICER GEFTER: And not with
10 respect to your CEQA mitigation.

11 MR. BIRDSALL: Yes, that's with respect
12 to the LORS compliance and the Final Determination
13 of Compliance.

14 HEARING OFFICER GEFTER: Thank you.
15 The other issue that apparently the applicant is
16 concerned about is that the retrofit, the
17 fireplace retrofit timing, whereas the staff's
18 proposed condition requires the retrofits to be
19 actually accomplished before commissioning of the
20 power plant. And apparently the applicant is
21 proposing a different time schedule, as I
22 understand it. Is that what the difference is in
23 terms of your proposal and their proposal?

24 MR. BIRDSALL: My understanding at this
25 time is that the timing of the fireplace retrofit

1 program is not being debated. The applicant had
2 some recommendations at the time of the public
3 comment period on our Preliminary Staff Assessment
4 and we incorporated a sequence for the fireplace
5 program to be rolled out. I haven't heard a
6 debate on that issue today.

7 HEARING OFFICER GEFTER: All right.
8 And what is your opinion on the efficacy of this
9 program, the fireplace insert program? Because
10 the Russell City project is also incorporating
11 that same sort of CEQA mitigation plan and I am
12 curious as to whether this has ever been attempted
13 in this particular air district and whether there
14 is any information on whether it is effective.

15 MR. BIRDSALL: Well, programs like this
16 have been attempted elsewhere in the District, the
17 South Bay in Santa Clara County. At least that,
18 to my knowledge, has been a mitigation strategy.

19 The efficacy of this program I think is
20 yes, one that could be subject to debate. But the
21 mitigation measure in a way corrects for any
22 potential, any potential weakness that way. The
23 mitigation measure seeks a certain quantity of
24 emissions be reduced and the emission reductions
25 per fireplace unit have been, have been researched

1 to some extent and documented.

2 And it is shown in the staff assessment
3 that fireplaces are a very substantial source of
4 particulate matter, especially on episode days
5 when particulate matter concentrations get high.
6 This is a local source that when reduced in the
7 City of Hayward and other western Alameda County
8 communities will, I think, directly and positively
9 reduce particulate matter in this part of the Bay
10 Area.

11 The Air District is pursuing wood stove
12 regulations and fireplace regulations in the
13 future for new fireplace installations. So that,
14 to me, indicates that this is a serious source
15 that requires some kind of control. In the
16 current condition without, without staff's
17 condition on the fireplace retrofit program these
18 fireplaces might otherwise just continue to
19 operate unregulated.

20 HEARING OFFICER GEFTER: Well with
21 respect to that, at page 4.1-26 of the FSA there
22 is a statement where you say staff has general
23 concerns with the ability of retrofit programs to
24 produce real and quantifiable reductions. So then
25 you fashioned AQ-SC8 to address that concern. Is

1 that what you're proposing?

2 MR. BIRDSALL: That's right. AQ-SC8
3 has the ultimate target of particulate matter
4 reductions and that's the 20.4. My reservation
5 with the fireplace program is also reflected in
6 the option that I provide the applicant to offset
7 the power plant's emissions with the form of
8 emission reduction credits and certificates. So
9 there were two strategies here.

10 HEARING OFFICER GEFTER: And at page
11 4.1-32 the FSA states that Eastshore will result
12 in cumulatively considerable impacts on existing
13 violations for PM10 and ozone precursors. It's a
14 pretty strong statement that you have in this
15 particular FSA. The condition that we have been
16 discussing, is that the only condition that you're
17 proposing to deal with those cumulative impacts?

18 MR. BIRDSALL: That is essentially the
19 keystone condition. It is not the only condition
20 that influences the conclusions but it is the
21 keystone condition. And this is why I feel
22 strongly that the language for retaining the local
23 focus of this measure be retained.

24 HEARING OFFICER GEFTER: Okay. And is
25 the Air District aware of other sources for ERCs

1 in the East Bay and the local area other than the
2 banked ERCs?

3 MR. BATEMAN: Our emissions reductions
4 bank does include deposits from other facilities
5 in the East Bay.

6 HEARING OFFICER GEFTER: And they can
7 be identified to the applicant?

8 MR. BATEMAN: Yes.

9 MS. SCHULKIND: Ms. Gefter, could I
10 raise an issue briefly? I didn't want to
11 interrupt your questioning but on behalf of the
12 Chabot intervenors. As you know, we represent a
13 constituency that has been --

14 HEARING OFFICER GEFTER: We don't need
15 to hear that right now. Commissioner Byron is
16 going to speak, then I'm going to ask for cross
17 examination. So then it will be your turn.

18 MS. SCHULKIND: I have a request
19 regarding how the examination is conducted. That
20 either we create a record that avoids the use of
21 acronyms so it is readily understandable to the
22 lay-public or suggest that you direct that the
23 transcript include a glossary of acronyms so that
24 lay-people will be able to understand this
25 proceeding.

1 HEARING OFFICER GEFTER: There is a
2 glossary at the end of the FSA, isn't there? Is
3 there something in the FSA?

4 MS. SCHULKIND: With all the terms, for
5 all of the initials that are being used in the
6 questioning. Could we please include that in the
7 transcript, then?

8 HEARING OFFICER GEFTER: It is in the
9 FSA, which is part of the record.

10 Okay, let's move on. Commissioner
11 Byron.

12 MS. SCHULKIND: I'm requesting that the
13 transcript that the public may download off of the
14 site readily have within a list of acronyms so
15 they can understand the transcript.

16 HEARING OFFICER GEFTER: We'll talk
17 about it later. Okay, we'll talk about that
18 later. Let's move on.

19 MS. SCHULKIND: Well --

20 HEARING OFFICER GEFTER: No, we're not
21 taking any more questions. Commissioner Byron --

22 MS. HARGLEROAD: Just for --

23 HEARING OFFICER GEFTER: We're not
24 taking any more questions.

25 MS. HARGLEROAD: Can we say some of the

1 words rather than the acronyms.

2 HEARING OFFICER GEFTER: No.

3 Commissioner Byron, please.

4 PRESIDING COMMISSIONER BYRON: Could
5 the applicant care to indicate in the first place
6 why we are making the exchange for the -- why you
7 are not providing direct PM10 mitigation.

8 MR. WESTBROOK: In the district bank
9 that was described there are a limited supply of
10 certificates for credits for PM10. And the
11 problem one faces, you can try to get PM10
12 credits, they may not be available. What that
13 means is that either they are not going to be
14 local credits as asked for or it could mean that
15 whoever has these is not going to sell because
16 they're holding them for future expansion or for
17 other reasons.

18 So you can go to those people and say,
19 can you sell me credits, and they may not be able
20 to. That's why I talk about a good faith effort
21 of trying to get those sales to happen. What
22 should we do?

23 If you can't get PM10 credits anywhere
24 in the Bay Area there is a provision, it's in the
25 District rules, for a case-by-case transfer of SO2

1 for PM10. And case-by-case in terms of the ratio
2 we talked about.

3 PRESIDING COMMISSIONER BYRON: Right.

4 MR. WESTBROOK: The ratio of three to
5 one. So you can after that SO2. And it may be
6 that you can get SO2 instead of PM10. And because
7 SO2 in the atmosphere converts to PM10 that is
8 acceptable.

9 PRESIDING COMMISSIONER BYRON: Okay.

10 Mr. Bateman and Mr. Lusher, can you
11 tell me, are PM10 credits available?

12 MR. LUSHER: There is a very limited
13 amount of PM10 emissions reduction credits in our
14 bank. Most of the credits are gaseous pollutants,
15 primarily NOx and precursor organic compounds.

16 PRESIDING COMMISSIONER BYRON: Thank
17 you.

18 HEARING OFFICER GEFTER: Okay. I just
19 wanted to -- I apologize for getting angry with
20 Ms. Hargleroad for jumping in but this is a formal
21 hearing, this is not an informal workshop, and
22 everyone will have their turn.

23 With respect to your request for
24 acronyms, the FSA is Exhibit 200. At page 4.1-64
25 of the FSA is a list of acronyms. If people want

1 to look for that they can read the reference in
2 the transcript because I just listed it for you
3 and you can go to that page.

4 You have something, Mr. Birdsall?

5 MS. SCHULKIND: Ms. Gefter.

6 HEARING OFFICER GEFTER: And now we're
7 going to move on.

8 MS. SCHULKIND: I respectfully
9 understand the point that you are making. The
10 experience that I am hearing from our constituent
11 is that it is difficult to navigate the FSA on the
12 web site. I believe that one of the principles of
13 environmental justice is easy access to the
14 system.

15 I simply made a request that people
16 either refrain from using acronyms or that the
17 actual list of acronyms with what they represent
18 is readily available within the transcript itself
19 at the back so that people don't have to sift
20 through the transcript, find a reference to an
21 exhibit, figure out how to find the exhibit. It
22 is a simple request. I am simply asking that we
23 make --

24 HEARING OFFICER GEFTER: We'll put it
25 up on the web page.

1 MS. SCHULKIND: Thank you very much.

2 HEARING OFFICER GEFTER: Okay, now the
3 next thing that we are going to do is allow for
4 cross examination, one party at a time, and it
5 will be your turn next. But first we're going to
6 ask Chabot if you have any cross examination for
7 the air quality witnesses.

8 MS. SCHULKIND: No we don't, thank you.

9 HEARING OFFICER GEFTER: Okay,
10 Ms. Hargleroad.

11 MS. HARGLEROAD: Yes. And I was
12 initially attempting simply to agree with Chabot
13 that it would be helpful, I think, to everybody if
14 we could just say what the acronym is. Emission
15 reduction credit, that's all.

16 I do have a few questions.

17 MS. LUCKHARDT: Just before you start,
18 I have a question. If you want to do all of air
19 quality should we take Mr. Sarvey's testimony and
20 Alameda County's testimony before we start cross,
21 since they both have air quality witnesses?

22 HEARING OFFICER GEFTER: No, we're
23 going to just go with your cross because their
24 issues are different. Okay, so you may cross the
25 staff and applicant's witnesses.

1 MS. HARGLEROAD: Okay, thank you.

2 CROSS EXAMINATION

3 BY MS. HARGLEROAD:

4 Q Mr. Birdsall, are you familiar with the
5 California Environmental Protection Agency Air
6 Resource Board guidance for power plant siting and
7 best available control technology guidelines?

8 A Yes, I think that that was used as not
9 a reference in the Final Staff Assessment but it
10 was a reference that we at the Energy Commission
11 sometimes use when reviewing determination of
12 compliance from the air districts.

13 Q Okay. And also just as an initial
14 housekeeping question too. If you could clarify
15 again for me, I'm sorry, the correction you were
16 talking about, bullet point number two. It was on
17 4.1-1 I believe, under summary of conclusions; is
18 that correct?

19 A That's right, on page 4.1-1.

20 Q Right. And you suggested that you
21 wanted to strike bullet number two.

22 A Right.

23 Q And the basis of striking that was,
24 what was that again?

25 A Well, at the time of the Preliminary

1 Staff Assessment we had a different tack to
2 addressing the ozone issues related to the
3 project. At the time of the Final Staff
4 Assessment the conclusion had been made that with
5 compliance with the local Air District new source
6 review program, that's NSR, that the ozone impacts
7 generated by the project, and it's a secondary
8 impact because the facility emits precursor
9 pollutants, those impacts would be fully mitigated
10 through compliance with the new source review
11 requirements. Which means that offsets are
12 surrendered into the Air District's -- they're
13 removed from the Air District's bank rather, then
14 the facility is allowed to emit the precursor, the
15 precursor pollutants after the offsets are
16 surrendered.

17 Q Okay. So your suggestion is now that
18 that be struck and that no additional local or
19 upwind emission reduction credits should be
20 surrendered?

21 A The recommendations that no additional
22 emission reduction credits be surrendered for
23 ozone, which would involve nitrogen oxides or
24 particulate -- sorry, excuse me -- nitrogen oxides
25 or precursor organic compounds. Now that's a

1 separate impact than the impact related to
2 particulate matter where we do continue to request
3 ERCs, emission reduction credits.

4 Q Okay. You mentioned that you are
5 somewhat familiar with the guidance for power
6 plant siting and best available control technology
7 guidelines.

8 A Yes.

9 Q And that that's a reference material
10 referred to in the staff report.

11 A It is not a citation and it is not a
12 reference in the Final Staff Assessment but I
13 believe you are referring to a document that
14 perhaps we used in one of our comment letters to
15 the local Air District in the earlier part of the
16 proceeding.

17 Q Okay. But you do not rely on that
18 document in support of your Final Staff
19 Assessment?

20 A What I am saying is that I didn't list
21 it as a reference in the Final Staff Assessment.

22 Q Okay.

23 A But I am familiar with the document.

24 Q Okay. Because one of the points made
25 in those guidelines at page 38, which is a fairly

1 standard statement I think that we have all been
2 talking about is, emission offsets must be real,
3 quantifiable, surplus, permanent and enforceable.

4 MS. HOLMES: Excuse me, Ms. Gefter. If
5 there is going to be cross-examination of this
6 witness with another document I would request that
7 the attorney for group petitioners provide a copy
8 of that document to Mr. Birdsall.

9 HEARING OFFICER GEFTER: That's fine.
10 What the attorney is citing to is just common Air
11 District language. So, you know, basically she is
12 saying that maybe he is not familiar with that.
13 Obviously he is familiar with this.

14 MS. HOLMES: No, I think that staff is
15 clearly familiar with that document. But I
16 believe that it is only fair if counsel is going
17 to be crossing the witness with an exhibit that a
18 copy be provided, a copy of that exhibit be
19 provided to the witness.

20 HEARING OFFICER GEFTER: And you're
21 absolutely right, Ms. Holmes, in a formal setting
22 we would do that. But at this point Mr. Birdsall
23 knows the document and he is familiar with the
24 issues that she is raising. If you could bring a
25 copy up to him to look at.

1 MS. HARGLEROAD: Sure. I am mainly
2 focusing in on that sentence at this point in time
3 because we have referred to those terms before,
4 which are real and verifiable.

5 BY MS. HARGLEROAD:

6 Q How do you verify the fireplace
7 retrofit program?

8 A Well the fireplace retrofit program is
9 a program that would be administered with the
10 district's assistance and it is not something that
11 occurs on an ad hoc basis. But the point is that
12 with enough fireplace retrofits a certain average
13 reduction per fireplace would be achieved.

14 The information that has been provided
15 in this case in the applicant's request for a PM10
16 mitigation plan back in May and in our staff
17 assessment indicates that there is a sufficient
18 inventory of fireplaces and fireplace emissions
19 that's available to be reduced. Now it's true on
20 a unit-by-unit basis there may be some variation.
21 But I think that on average the program is a
22 program that would be effective and would achieve
23 real reductions.

24 Q Do you have a presumption or assumption
25 as to how many fireplaces are being used or how

1 much wood is being burned in the East Bay to come
2 up with this?

3 A There have been -- In the applicant's
4 proposal for this program there is some background
5 information on, yes, how much wood is typically
6 used.

7 Q So you're relying on -- Do you know
8 from where the applicant attained this
9 information?

10 HEARING OFFICER GEFTER: You can ask
11 the applicant that question.

12 MS. HARGLEROAD: Well I'm simply asking
13 the staff because staff is relying on it and I
14 would presume that staff may have investigated
15 that.

16 HEARING OFFICER GEFTER: Don't presume,
17 just ask the question. If you have a question ask
18 the applicant the question.

19 MS. HARGLEROAD: Well that's what I was
20 asking and you -- Okay.

21 BY MS. HARGLEROAD:

22 Q Because we're trying to understand if
23 you are recommending this adoption the basis for
24 how much wood is being burned. Because I would
25 presume that you got a number that you're

1 presuming people are burning a certain amount of
2 wood.

3 A That's true, we are, and that would be
4 on an average basis. The rates for this that you
5 are looking for are part of the, part of the
6 proceeding, part of the docket, and came to us as
7 staff. I reviewed them. The rates seemed
8 reasonable and they were coming from US EPA
9 guideline documents. This is why I have a level
10 of confidence that the measure would result in
11 effective reductions as well as real reductions.

12 Q When you say US EPA guidelines is that
13 applying a national standard or a state standard
14 or an area. Because as we know we all have
15 microclimates. The Bay Area is known for its
16 microclimates.

17 THE REPORTER: Excuse me, could I get
18 you to hold it closer. I'm really not getting
19 you. Closer to your mouth, the mic.

20 MS. HARGLEROAD: Sure.

21 THE REPORTER: Thank you.

22 MS. HOLMES: Could you repeat the
23 question, please.

24 BY MS. HARGLEROAD:

25 Q You say that you relied on US EPA

1 guidelines. And are those guidelines based on a
2 national standard or a state standard assumption?

3 A At this moment I am reading through the
4 response to the data request that provided the
5 information for this plan and there is a
6 combination of data points, one is population data
7 from Alameda County, one is wood consumption data.
8 I can't say if that is an annual average on the
9 nationwide average. I don't have that citation in
10 front of me. But the population and inventory
11 they have are from this part of Alameda County.

12 HEARING OFFICER GEFTER: I have a
13 question. Ms. Luckhardt, this is a data response
14 that Mr. Birdsall is looking at. Do you have an
15 exhibit number on that?

16 MR. BIRDSALL: I don't know which
17 exhibit this would be. We're talking about --

18 HEARING OFFICER GEFTER: Well it would
19 be an exhibit that the applicant has probably
20 submitted.

21 MR. BIRDSALL: Shall I identify it
22 informally? This is a --

23 HEARING OFFICER GEFTER: No. Let's
24 just get the exhibit number.

25 MS. HARGLEROAD: Ms. Gefter, we're

1 perfectly willing to have that information
2 provided later if that's more convenient.

3 HEARING OFFICER GEFTER: Right. But I
4 want it in the transcript so that when we're
5 looking at the record we can see which document
6 you're referring to.

7 MS. HARGLEROAD: Just because we have a
8 voluminous record and I certainly appreciate that.

9 HEARING OFFICER GEFTER: Okay, you can
10 ask your next question while the applicant
11 identifies this document for us.

12 MS. HOLMES: Hearing Officer Gefter, we
13 believe it's Exhibit 12 but we would appreciate
14 confirmation from the applicant.

15 MS. LUCKHARDT: We're looking right
16 here. Yes, I do believe it is Exhibit 12.

17 HEARING OFFICER GEFTER: Okay, why
18 don't you ask your next question and they'll
19 confirm that.

20 MS. HARGLEROAD: Are you -- Have you
21 heard or do you understand from the Air District,
22 the local Air District here, are they seeking to
23 regulate fireplace and wood stove usage presently?
24 Is there a present proposal?

25 HEARING OFFICER GEFTER: You can ask

1 the Air District that question, they're right
2 here. You can answer the question.

3 MR. BATEMAN: Yes, the Air District has
4 proposed a rule that would limit emissions from
5 wood-burning appliances like fireplaces. That
6 rule has not been adopted yet and most likely will
7 not be brought to our Board of Directors for
8 adoption until late 2008, mid to late 2008.

9 HEARING OFFICER GEFTER: It's a public
10 proposal on your web page?

11 MR. BATEMAN: That's correct.

12 HEARING OFFICER GEFTER: Thank you.

13 BY MS. HARGLEROAD:

14 Q Mr. Birdsall, if the air district does
15 decide to regulate fireplace and wood stove usage
16 are not the emission reduction credits generated
17 from the fireplace retrofit program, aren't they
18 really surplus?

19 A That's a good question. And I think
20 that if the Air District passes a rule, which as
21 Mr. Bateman has said would be a year away, the
22 rule would have to go backwards to require
23 retrofits of existing fireplaces. I am not
24 certain that that rule addresses existing
25 fireplaces, or the proposed rule rather, would

1 address existing fireplaces.

2 But the emissions from the existing
3 fireplaces, if they are not subject to a backward-
4 looking regulation, then they would continue to be
5 surplus reductions. The regulations usually
6 require a certain kind of operational change or
7 limits on new installations. So I think that it
8 would be hard to say exactly what part of the
9 universe of fireplaces is surplus until the
10 regulation is final.

11 So our condition is to accelerate these
12 reductions and to get ahead of the Air District
13 rule and to get the existing fireplaces. Not so
14 much new fireplaces.

15 Q Okay. Well how does one verify, and I
16 go back to perhaps Exhibit 12 of the applicant's
17 data concerning the usage, of fireplace usage.
18 There's a certain presumption we have generally in
19 the San Francisco Bay Area a very mild climate
20 compared to other areas of the country as we know
21 are presently experiencing severe ice. Other
22 parts of the country may burn more wood; is that
23 correct? Other parts of the country may burn more
24 wood than we do here?

25 MS. LUCKHARDT: Objection. Is the

1 attorney testifying at this point?

2 HEARING OFFICER GEFTER: If you could
3 just ask the question directly that would be
4 helpful.

5 MS. HARGLEROAD: We are on cross,
6 though.

7 BY MS. HARGLEROAD:

8 Q So given -- The data you relied on, do
9 you know whether or not the assumption on how much
10 wood is being burned, does that apply to the
11 climate of the San Francisco Bay Area?

12 A I think that the assumptions used in
13 the fireplace retrofit program are good on an
14 average basis and would be, yes, appropriate for
15 this area.

16 Q And why is that?

17 A Because like you say, there is a
18 certain amount of variability. But on the other
19 hand of things, this program is not meant to just
20 isolate one or two fireplaces, it is going for an
21 area average. And the Air District does have,
22 like I say, some experience with implementing
23 these programs before.

24 Q Also I asked the question going to, how
25 do you verify the fireplace retrofit program?

1 Because what if you have people converting
2 existing fireplaces but they have low usage? Yet
3 isn't the applicant getting a PM2.5 credit for a
4 fireplace retrofit when in fact no wood is being
5 burned?

6 A I think what you're asking about is the
7 actual roll-out and implementation of the program
8 and I don't have personal, firsthand experience
9 with how the Air District takes the, takes the
10 application from a homeowner, for example, and
11 then provides the funding to the homeowner. But
12 when a homeowner would apply to the Air District
13 for a subsidy to replace an existing fireplace
14 there is a certain amount of information that has
15 to come from the homeowner to the Air District.

16 From our perspective, with the
17 implementation of the program being conducted by
18 the Air Quality Resources Agency of the region
19 that there is a certain amount of faith that I
20 give to that agency to ensure that the homeowners
21 are supplying true and correct information when
22 they apply for a subsidy under the retrofit
23 program.

24 Q Well this goes back to the assumption
25 of how much, establishing how much wood is

1 presently being burned. And if we are relying on
2 a national study where the weather differs then
3 the presumption may be high. That we're presuming
4 more wood is being burned than is actually being
5 burned; is that correct?

6 A I think what you are contesting is
7 whether or not the process rates in this table are
8 accurate. And I think that they are accurate and
9 useful for this study and for the use in our
10 mitigation measure.

11 Q Well I go to quantifiable and I go back
12 to the sentence I was quoting on guidance for
13 power plant siting and best available control
14 technology. At the very next sentence is,
15 quantifiable means that the amount of emission
16 reduction can be determined with reasonable
17 certainty.

18 MS. HOLMES: Is there a question?

19 MS. HARGLEROAD: Well, we have been
20 talking about the data which Mr. Birdsall has been
21 relying to come up or to make that recommendation
22 on the fireplace retrofit. So that's my question.
23 How is the -- How is this quantifiable if you
24 again had a situation where a low usage fireplace
25 is being retrofitted and receiving a PM2.5 credit?

1 MS. HOLMES: I am going to object,
2 asked and answered. We have been over this
3 already.

4 HEARING OFFICER GEFTER: And I would
5 sustain the objection. If you have another line
6 of questioning let's do that because we need to
7 move along.

8 MS. HARGLEROAD: Sure. Not at this
9 time, thank you.

10 HEARING OFFICER GEFTER: Thank you.
11 Alameda County, do you have cross examination of
12 the applicant's and staff's witnesses on air
13 quality?

14 MR. MASSEY: Yes I do. Okay, let me
15 begin with Mr. Birdsall.

16 CROSS EXAMINATION

17 BY MR. MASSEY:

18 Q I am Andrew Massey with Alameda County,
19 thanks for being here.

20 I wanted to start on the topic of the
21 interpollutant trading of SO2 for PM10. Are you
22 aware that EPA has expressed strong reservations
23 about the use of interpollutant trading?

24 MS. HOLMES: Excuse me, that sort of
25 assumes facts not in evidence. Could we have --

1 Again, can we have the cross document if there is
2 going to be cross examination on a document that
3 is being --

4 HEARING OFFICER GEFTER: What is the
5 basis of your question? Where did you get that
6 information? Do you have a document from EPA or
7 do you have some sort of, something in the record?

8 MR. MASSEY: It was a series of Federal
9 Register filings by the EPA. But for the sake of
10 expediency I will withdraw the question.

11 It is my understanding that sulfur
12 dioxide is a secondary pollutant, whereas PM10 is
13 a primary pollutant.

14 HEARING OFFICER GEFTER: With respect
15 to what?

16 MR. MASSEY: Let me rephrase.

17 BY MR. MASSEY:

18 Q It is my understanding that SO2 when
19 emitted over time converts to PM10, correct?

20 A The power plant emits sulfur oxides and
21 some quantity of sulfur oxides may react in the
22 atmosphere to create a secondary downwind
23 particulate matter, yes.

24 Q Now that's a process that happens over
25 time, it is not immediately upon emission.

1 A That's true.

2 Q So the conversion to PM10 may take
3 place in a geographically distant location from
4 the power plant, correct

5 A Yes.

6 Q How far away are we talking about in
7 terms of that conversion? What sort of distances
8 do we see before we have a full conversion to
9 PM10?

10 A Well I think what you're getting at is
11 that as the precursor pollutants to PM10 such as
12 sulfur oxides are emitted from the power plant
13 they'll go downwind, they will mix with the
14 ambient air, they'll mix with other, the other
15 constituents including ambient ammonia and create
16 a particle at some point downwind. Now this could
17 be, this could be within the first hour, it could
18 be within three hours or a day.

19 I think the -- I'm not quite sure what
20 the concern is but the point of our mitigation
21 measure is to provide emission reductions that are
22 equal in quantity to the power plant's potential
23 emissions. And with providing those emission
24 reductions we essentially balance out the
25 increases that will be caused by the project so

1 that the net effect downwind of particulate matter
2 formation would be essentially zero.

3 Q But do you know the exact rate of
4 conversion of the sulfur oxides into the PM10?
5 And to give you a little background to my
6 question. What I am trying to explore is whether
7 PM10, the SO2 for PM10 interpollutant trading, is
8 really going to have a significant improvement to
9 the air quality here in Hayward when the Eastshore
10 plant is constructed, if.

11 A Well I think what you're getting at is
12 do I have faith in the interpollutant trading and
13 the ratio that we are recommending. And I do.
14 Interpollutant trading, especially for a compound
15 such as sulfur oxides, is a useful way and is an
16 effective way of reducing particulate matter.

17 If you take away the sulfur component
18 of the emissions or if you essentially offset the
19 sulfur emissions from other sources you have fewer
20 molecules of the sulfur oxides and the sulfates to
21 attach on to the ammonia and the moisture and
22 everything else to cut down on the particles.

23 So I have faith that the interpollutant
24 trading is a, is an acceptable way of reducing
25 ambient particulate matter and that the ratio that

1 we are proposing, which is the 5.3 to 1, is a
2 conservative and protective ratio. Especially
3 when there is information from the applicant
4 supporting use of a lower ratio.

5 Q But in terms of mitigation it would be
6 better, I assume, to get direct PM10 emission
7 reduction credits rather than the sulfur oxide
8 ones.

9 A I am not in a position to pick or
10 choose direct PM10 reductions versus the precursor
11 because if you are out there today sampling
12 particulate matter you get all of the above. You
13 get direct particulate matter that was directly
14 emitted, you get a number of the reactive
15 pollutants as well that are aerosols that are
16 coming from sources of sulfur and sources of
17 nitrogen oxides that react to form aerosol
18 particulate matter.

19 So the particulate matter problem is
20 much bigger than just direct particulate matter
21 emissions. So to deal with that problem, allowing
22 reductions to precursors like sulfur oxides, is
23 useful as long as it is done in an appropriate
24 ratio.

25 Q But if the sulfur dioxides are

1 converting to PM10 downwind then you're ending up
2 when you're doing the trade for sulfur dioxides to
3 PM10, the conversion to PM10 on the sulfur
4 dioxides happens somewhere else whereas the direct
5 emission of the PM10 from the Eastshore facility
6 would occur here in Hayward. Is that a correct
7 statement of the effect?

8 A Are you saying that I should value -- I
9 suppose I should not be asking questions here in
10 this position.

11 What I think you're getting at is that
12 SO2 reductions locally don't have so much of a
13 value. But what they do provide is the downwind
14 improvement in particulate concentrations. I
15 think that what we're trying to do here is to
16 create a mitigation scheme that addresses the
17 local and regional effects of the power plant.

18 I mean, we can't just say that Hayward
19 is the only community that experiences the impact
20 of a relatively large, natural gas-fired power
21 plant. The mitigation needs to be local and it
22 does provide regional benefit.

23 Q But in this case the conversion from
24 sulfur -- I'm sorry, the trading between sulfur
25 dioxide and PM10 will necessarily be to the

1 benefit of other regions more than to Hayward than
2 if you were requiring direct PM10 emission
3 reduction credits instead.

4 A I think that's hard to say because we
5 don't have information from the applicant on where
6 the sulfur oxide credits might come from. If they
7 are for example coming from a source that was shut
8 down in San Francisco then Hayward does benefit.
9 And that is the kind of reduction that my measure
10 AQ-SC8 requires.

11 Q How strong is the science on the
12 interpollutant trading? Is that something that in
13 your review when you were looking at the wisdom of
14 doing interpollutant trading, is that something
15 that is firmly established in the science or is
16 the science still out on interpollutant trading?

17 A I think it is firmly established. The
18 question is always the case-by-case nature of it.
19 It does depend on the local meteorology, it
20 depends on the local emission inventory. Sort of
21 whether or not the area emits more of some things
22 versus another. So it's very complicated.

23 But the Air District has in its adopted
24 state implementation plan for ozone, for example,
25 an interpollutant trading ratio for ozone

1 precursors. So there are ways to arrive at an
2 appropriate ratio and these kinds of programs are
3 approved by EPA. The sulfur oxides to particulate
4 matter trade is a ratio that is normally
5 determined on sort of a case-by-case analysis,
6 which is what we're struggling with here today.

7 Q Thank you. I --

8 PRESIDING COMMISSIONER BYRON:

9 Mr. Massey, if I may. I believe it is also
10 dependant upon the reactivity of the sulfur
11 dioxide, correct?

12 MR. BIRDSALL: That's true. The sulfur
13 dioxide and the sulfates that are emitted are
14 reactive as well as the other precursors are
15 reactive. So the particulate matter issue in the
16 ambient air is a mix of all of these issues, not
17 just particulate matter.

18 PRESIDING COMMISSIONER BYRON: Okay. I
19 was just trying to help Mr. Massey here. If there
20 was anything you could add with regard to the
21 reactivity. For instance, the half-life of the
22 sulfur oxide, so that we do indeed know that they
23 -- Forgive me, I may say the wrong word,
24 transform.

25 MR. BIRDSALL: That's true. The sulfur

1 oxides have a certain kind of reactivity and they
2 will react with the moisture in the air, they will
3 react with any ambient ammonia from natural
4 sources or from motor vehicle exhaust or these
5 other kinds of precursors. So it's a complicated
6 basket.

7 MR. MASSEY: Thank you, I appreciate
8 those follow-up questions.

9 BY MR. MASSEY:

10 Q I also had some questions on the
11 fireplace retrofit program and I don't want to
12 duplicate what Ms. Hargleroad asked. I did want
13 to explore that it is my understanding that the
14 program will be both voluntary and will provide
15 only a partial credit for the retrofit of an
16 individual homeowner's fireplace. Is that
17 correct?

18 A Well the program is made available to
19 homeowners and then it is up to homeowners to
20 participate or not participate. And if there
21 isn't a successful uptake or if there aren't
22 enough homeowners coming out of the City of
23 Hayward interested in the program then the program
24 in AQ-SC8 allows it to be expanded to other
25 western Alameda County communities. But it is not

1 -- You're right, it is a voluntary program.

2 Q And the second part of that, it is only
3 a partial credit in terms of the homeowner doing
4 the retrofit, it is not fully funded per person.

5 A Yes, yes, that's my understanding. As
6 I said, it is a financial incentive or a subsidy
7 of the upgrade.

8 Q Have you conducted any studies in your
9 view whether homeowners in the vicinity of the
10 Eastshore plant are in a financial position to
11 actually pay for the difference between whatever
12 credit they would get towards the retrofit and the
13 full cost of retrofitting their fireplace?

14 A I have not.

15 Q Wouldn't common sense dictate that
16 persons on lower incomes or living paycheck to
17 paycheck may not be able to pay for the difference
18 between the credit and the full cost of the
19 retrofit?

20 A I think that the City of Hayward is a
21 diverse community and that there are probably
22 customers out there who are in a position to
23 participate in the program. There may be, yes,
24 people who are not in a position to participate.
25 I think that the program is something that needs

1 to be offered on a community-wide basis. And if
2 it is not successful in Hayward it expands to
3 other East Bay communities.

4 Q But did you conduct any studies to try
5 to determine whether this program would be
6 something that would actually be taken advantage
7 of by people living in this area?

8 A I didn't conduct any study like that.

9 Q Does a person who wishes to take
10 advantage of this fireplace retrofit program
11 actually have to use their fireplace currently?

12 A Like I explained before, I am not so
13 familiar with the exact implementation of the
14 program but when the Air District offers a subsidy
15 to the homeowner the homeowner would need to
16 provide basic information on its use of that
17 fireplace. And this goes to wood stoves as well
18 as fireplaces. And if there are wood stoves out
19 there that are being used for heating purposes
20 then those would obviously have a much higher
21 rate. But the point is that the homeowner needs
22 to demonstrate that they even have a fireplace to
23 retrofit.

24 HEARING OFFICER GEFTER: Mr. Massey, I
25 think maybe if the Air District has experience

1 with this program perhaps it is best to ask them
2 the direct question on how they implement the
3 program. It seems that most of the intervenors
4 have that very question.

5 MR. MASSEY: I appreciate that.

6 Mr. Bateman, would you be most
7 appropriate to answer my questions?

8 MR. BATEMAN: Unfortunately not. The
9 Air District is a fairly decent sized agency and
10 the staff that has the expertise in that
11 particular area are in our grants and incentives
12 group, not in engineering, so I am not really able
13 to answer that in terms of specifics of how the
14 incentives program is implemented.

15 I am sure that there are some measures
16 of determination that the fireplace was used.
17 Probably there will be requirements for proof of
18 purchase of qualifying devices, for example,
19 natural gas inserts, that sort of thing. Perhaps
20 some sort of an affidavit on behalf of the person
21 that was applying for the grant, an incentive. I
22 can't say with any certainty because that is not
23 my area of expertise.

24 HEARING OFFICER GEFTER: Do you know if
25 there is any report on progress or any sort of

1 follow-up on the program that was conducted in
2 Santa Clara County? Is that where you -- the
3 program near San Jose?

4 MR. BATEMAN: I do not.

5 HEARING OFFICER GEFTER: No, okay.

6 What I would like to ask applicant and staff, to
7 work together on checking with the Air District on
8 whether or not there is any information on who the
9 previous program was implemented. Whether there
10 is a report, whether there are application forms,
11 and put together a little package and serve it on
12 the parties.

13 Because it seems to be the parties' big
14 question. And if we can get them some information
15 other than spending time here this morning asking
16 the questions where our witnesses here today don't
17 have the answers. Thank you.

18 Any more cross examination on another
19 topic with respect to air quality?

20 MR. MASSEY: Not for Mr. Birdsall. Is
21 this the time to ask of the applicant's witness?

22 HEARING OFFICER GEFTER: Yes.

23 MR. MASSEY: Thank you.

24 CROSS EXAMINATION

25 BY MR. MASSEY:

1 Q Mr. Westbrook, I wanted to explore with
2 you the SO2 to PM10 ratio change that you're
3 proposing. It is my sort of lay understanding
4 that if we change from the 5.3 to 1 ratio to the
5 3.0 to 1 ratio, that will necessarily mean an
6 increase in the amount of SO2 emissions because
7 you're mitigating less of it. Is that a fair
8 statement of the effect?

9 A You know, I wouldn't know the answer to
10 that question. What I presented here was the fact
11 that the staff did not analyze the uncertainty in
12 deriving a value and that we have a precedent for
13 using three to one in multiple projects like the
14 San Francisco electric reliability project.

15 And while it laid out the analysis that
16 shows you can get lower numbers such as one to one
17 on a high PM2.5 day versus a high PM10 day, the
18 staff shows where they got the number they got.
19 There is a difference in the numbers.

20 So when you apply the method -- my
21 point in all this is that staff needs to take a
22 look at all the data and justify and back-up their
23 presumption for 5.3 to 1. As far as you're
24 question, I'm sorry, I can't answer that.

25 Q So if I am releasing three units of

1 SO2, versus if I'm releasing 5.3 units of SO2, 5.3
2 isn't bigger than three?

3 A Can you repeat that question.

4 Q My question is, if I am releasing three
5 units of SO2 versus if I emit 5.3 units of SO2,
6 isn't 5.3 bigger than three?

7 MS. LUCKHARDT: Are you referring to
8 emissions from this project or are you referring
9 to something else?

10 MR. MASSEY: I'm trying to get at the
11 issue of the effect of the change in the ratio and
12 what that will do in terms of the actual quantity
13 of SO2. If we had two --

14 MS. LUCKHARDT: Are you talking
15 about --

16 HEARING OFFICER GEFTER: Let me
17 interrupt. I am not sure whether you are looking
18 at Air Quality Appendix 1, which is at page 4.1-66
19 of the FSA, Exhibit 200, in which Mr. Birdsall has
20 laid out his table on the 5.3 to 1 ratio. Perhaps
21 if you take a look at that and frame your question
22 more specifically perhaps the applicant can answer
23 the question.

24 PRESIDING COMMISSIONER BYRON:
25 Mr. Massey, I think I understand what you're

1 trying to say and that is, with the lower ratio of
2 SO2 or sulfur oxides to PM10 -- 2.5 are you not
3 going to be emitting more SO2?

4 BY MR. MASSEY:

5 Q Yes, that's my basic question.

6 A It's important to understand we're not
7 talking about the project emissions, we're talking
8 about using an emission reduction credit that is
9 banked to mitigate particulate matter. So what
10 we're doing is we're taking that banked SO2 credit
11 and we're making an assumption that there is a
12 conversion to PM10 in the atmosphere, which
13 science shows there is. My point in all this is
14 that there is a lot of uncertainty in how you
15 derive that number and the staff's analysis is
16 very limited in deriving that number.

17 Q But my question is going to, if you
18 mitigate 5.3 units of SO2, versus if you mitigate
19 three units of SO2, you're mitigating less SO2
20 when you use the 3 to 1 ratio than if you use the
21 5.3 to 1 ratio. Is that correct?

22 A It is not correct because what we're
23 trying to do in the conversion is mitigate PM10.

24 Q So then using the 5.3 to 1 ratio as
25 opposed to the 3.0 ratio you're mitigating under

1 your proposal less PM10; is that correct?

2 A You're mitigating less PM10? You know,
3 again I am not saying the proposal, based upon the
4 uncertainty we saw in the analysis. What I'm
5 saying is that there is a background for 3 to 1 as
6 an appropriate number.

7 As far as what is less or more, you
8 have to look, you have to look at all the study to
9 understand the uncertainty of what would happen.
10 What I'm talking about is a number that has been
11 established and justified in the record for what
12 an appropriate value would be for this project.

13 HEARING OFFICER GEFTER: And this
14 ratio, Mr. Massey, has to do with the purchase of
15 ERCs from the Air District's bank and how much
16 they're worth, basically. The Air District
17 indicated they had fewer PM10 ERCs available than
18 you might have for sulfates, SO2. So in terms of
19 how much, how many ERCs they need to come up with,
20 that's what this ratio deals with.

21 MR. MASSEY: I appreciate that
22 clarification. Just a couple of follow-ups I
23 guess on that, then.

24 If as you stated in your direct
25 testimony there is uncertainty as to the science.

1 When there is uncertainty as to the science and
2 the effect of making a bad policy choice here
3 could be an increase in the amount of emissions in
4 the local Hayward area. Wouldn't it be more
5 prudent --

6 MS. LUCKHARDT: I'm sorry, I object.
7 You're saying an increase in emissions in the
8 local Hayward area. We're talking about offset
9 ratios. I don't believe there is anything that is
10 talking about any kind of increase.

11 MR. MASSEY: Let me rephrase that.
12 When you say that there is uncertainty as to the
13 science and you have a proposal that would require
14 a smaller ratio, that the 3 to 1 versus the 5.3 to
15 1 ratio, is the 3.0 ratio more protective of the
16 air quality in terms of the emissions when you --
17 And I understand Ms. Gefter's point that this is
18 an emissions reduction credit.

19 HEARING OFFICER GEFTER: It is how much
20 the applicant wants to pay for the credits and how
21 much they're worth. And the other thing that I
22 think you're trying to get at is, when science is
23 unclear typically the analysis will go towards the
24 more conservative analysis.

25 MR. MASSEY: Correct.

1 HEARING OFFICER GEFTER: So you are
2 suggesting that the 5.3 to 1 as opposed to the 3.0
3 to 1 is a more conservative analysis. And I think
4 that everybody here is on the same page with you
5 on that question, it would be more conservative.
6 It would be also more expensive for the applicant.

7 BY MR. MASSEY:

8 Q And then I guess this gets to my
9 ultimate point that the primary motivator here for
10 recommending a 3.0 to 1 versus the 5.3 to 1 ratio
11 when the science is uncertain, and 5.3 is the more
12 conservative view, is basically money.

13 A No. This number of 5.3 to 1 is not
14 backed up or justified by staff. So, you know,
15 what number do you want to make up without an
16 analysis. We haven't seen calculations, we
17 haven't seen peer review of this information. We
18 don't know how staff came up with that number.

19 It has been referred to in another
20 project, we just don't know how they derived that
21 number. We know the method they used because they
22 referred to that method. So it is not about
23 money, it is about good science and about doing
24 the science the way you're supposed to do it. And
25 we have not seen that backup.

1 So three to one is a number which has
2 been used in multiple projects recently including
3 2006 and it has a lot of history. And that number
4 by itself is likely very conservative already.

5 Q But 5.3 to 1 is more conservative.

6 A It would be --

7 HEARING OFFICER GEFTER: I think the
8 question has been asked and answered. If you have
9 another line of questioning, otherwise we'll move
10 on to another party.

11 BY MR. MASSEY: This question is for
12 Mr. Bateman and this has to do with the use of the
13 emissions reduction credits.

14 CROSS EXAMINATION

15 BY MR. MASSEY:

16 Q There's been the proposal from the
17 applicant to expand the market from which they can
18 -- the geographic region from which they can
19 purchase these emissions reduction credits and I
20 wanted to explore that issue with you.

21 It is my understanding that the Hayward
22 area is out of compliance for a number of
23 pollutants in the air; is that correct?

24 A Well, the entire San Francisco Bay area
25 region is non-attainment for federal and state

1 ozone standards and the air quality standards. So
2 that includes Hayward and every other part of the
3 Bay Area.

4 Q When you propose to use these emissions
5 reduction credits, it is my understanding that an
6 emissions reduction credit is an existing
7 reduction. It's the status quo, it's what we have
8 presently. Somebody has banked it in the past and
9 they're going to apply it to a different project;
10 is that correct?

11 A Under our rules emission reduction
12 credits can be in that category, yes. I should
13 point out that the Air District's requirements for
14 the use of emission reduction credits in this
15 project, it is only with respect to two
16 pollutants, precursor organic compounds and
17 nitrogen oxides, not PM. Based on the emissions
18 from the project under our rules the project did
19 not trigger requirements for PM offsets.

20 Q So when you apply one of these emission
21 reduction credits it has already been banked? The
22 actual effect of doing that to a project that will
23 produce X amount of conditions is to create an
24 actual increase beyond the existing status quo.

25 A If you are defining the status quo as

1 current emissions.

2 Q Correct.

3 A That would be true depending on the age
4 of the banked reductions. If they were, for
5 example, from reductions that were achieved a long
6 time ago then that would be true, yes.

7 Q You had explained to me previously that
8 the Bay Area exceeds I believe it was ozone. Then
9 given that won't the construction of the Eastshore
10 plant using banked emissions credits result in an
11 actual increase in emissions in this area?

12 A No it won't because we have a
13 requirement under both the state and federal
14 planning requirements to run a permitting program
15 that would have no net increase for the pollutants
16 that I mentioned in this case, precursor organics
17 and nitrogen oxides. The permitting program has
18 to have no net increase in those emissions,
19 including the emissions from permitting projects.

20 MR. MASSEY: Thank you.

21 I realize I'd left out a line of
22 questioning for Mr. Westbrook if I might go back
23 and ask him a follow-up question.

24 HEARING OFFICER GEFTER: Yes.

25 FURTHER CROSS EXAMINATION

1 BY MR. MASSEY:

2 Q I was interested in your proposal to
3 expand the scope geographically of where these
4 emissions reduction credits could be purchased.
5 You have proposed that the applicant need only use
6 best efforts to purchase more local emissions
7 reduction credits and that your understanding of
8 best efforts is to consult the local market and
9 see what is available; is that correct?

10 A That is correct. But what you would do
11 is you would consult the market and you would keep
12 a record of those consultations. You would go out
13 to brokers, emission brokers who are knowledgeable
14 about pending transactions as well as going to
15 owners of the certificates and document the fact
16 that you contacted them repeatedly over the period
17 of time we are talking about. That's what a good
18 faith effort consists of.

19 Q Now what happens if as a product of the
20 good faith effort the applicant is able to find a
21 local emissions reduction credit and there is a
22 willing seller but it is very expensive? Would
23 the applicant be under any obligation to purchase
24 that very expensive credit?

25 MS. LUCKHARDT: So basically you're

1 asking whether someone can blackmail the project
2 for a very high cost. Is that what you're asking?

3 MR. MASSEY: No, that's not my
4 question.

5 BY MR. MASSEY:

6 Q My question is that in your testimony
7 you had indicated that local credits are scarce.
8 And I guess maybe I need to ask this foundational
9 question. If local emissions are scarce does that
10 not make them expensive?

11 A They are absolutely expensive, yes.

12 Q And are they more expensive than
13 emissions reduction credits that could be
14 purchased from some of the other more
15 geographically distant areas that you are
16 proposing?

17 A No, they might be less expensive or
18 more expensive in other areas. And you know the
19 reason for the justification for other areas is
20 that you could have an emission of particulate
21 matter in the northern part of the bay where the
22 air can travel down to Hayward outside of the
23 areas we are talking about.

24 So even though we are looking at this
25 local preference, in terms of meteorology and

1 chemistry we talked about SO2 and conversion to
2 PM10. It could be that on the worst PM10 days you
3 are getting some impact from these other areas.

4 But when you look at the issues of what
5 to get, if this project is not able to get the
6 mitigation it can't go forward. So what staff has
7 described is flexibility in terms of different
8 ways to get the mitigation. It could be that one
9 program is more difficult but less costly per ton
10 of mitigation. It could be that another way is
11 easier. We just don't know. We don't know
12 sitting here today what we are going to do for
13 mitigation. What specific location, what specific
14 needs.

15 Q But if you are able to find a local
16 emissions reduction credit but don't like the
17 price would the applicant be under any obligation
18 to purchase it under your proposed flexibility?

19 A I think that's a question for staff.

20 Q No, I believe it would be a question
21 more appropriate for you because --

22 MS. LUCKHARDT: Are you asking whether
23 it's at market price or whether it's above market
24 price?

25 BY MR. MASSEY:

1 Q I'm asking if you are able to identify
2 an emissions reduction credit using your best
3 efforts within the local area proposed by staff
4 would the applicant be under any obligation under
5 your proposal to purchase that local emissions
6 reduction credit despite the high cost?

7 A The proposed condition, the language
8 currently does require justification of the
9 location of the offsets. So of course location
10 and price, those are folded in as a consideration.

11 Q If you end up with conditions of
12 compliance as the staff has proposed, the
13 applicant would be required to purchase emissions
14 reduction credits within the localized area,
15 correct?

16 A Without our changes that's correct.

17 Q And that credit, the credits you might
18 be able to find in this local area might be very
19 expensive.

20 A I don't know the answer to that. I
21 have no way of knowing whether they are going to
22 be expensive or not expensive and what that means,
23 I'm sorry. I don't know what is going to happen
24 with that search in terms of availability and
25 cost.

1 Q Assuming that you identify an emissions
2 reduction credit in the local area proposed by
3 staff that is more than the applicant wants to
4 pay. Under your modified compliance conditions
5 would you be under any obligation to purchase it
6 as opposed to a more geographically distant
7 emissions reduction credit that is much cheaper?

8 A In that respect I don't see a
9 difference between the staff's proposal or our
10 proposed condition language.

11 HEARING OFFICER GEFTER: Mr. Massey, I
12 don't believe the witness is going to answer your
13 question the way you want him to answer it. It
14 sounds like it is a business decision on the part
15 of the applicant. If they can't provide the
16 required ERCs they can't go forward, bottom line.
17 So I don't think you're going to get an answer to
18 your question. But you certainly can brief it.

19 MR. MASSEY: I am getting that
20 impression.

21 HEARING OFFICER GEFTER: Another line
22 of questioning or let's move on.

23 MR. MASSEY: No, I believe that was my
24 last question, thank you.

25 HEARING OFFICER GEFTER: Thank you very

1 much.

2 Does the City of Hayward have any
3 questions of the witness, of the applicant and
4 staff witnesses?

5 MS. GRAVES: No.

6 HEARING OFFICER GEFTER: Okay.

7 Mr. Sarvey do you have any air quality
8 cross examination?

9 MR. SARVEY: Yes I do, thank you.

10 HEARING OFFICER GEFTER: Okay. Let's
11 try to keep it brief, thank you.

12 MR. SARVEY: I'll do my best. It
13 depends on the answers that I receive.

14 HEARING OFFICER GEFTER: Thank you.

15 CROSS EXAMINATION

16 BY MR. SARVEY:

17 Q Mr. Lusher, is the fireplace retrofit
18 the only program available in the district to
19 mitigate this project's particulate matter and
20 other emissions from this project?

21 A We have no PM mitigation requirements
22 for this project under our rules and regulations.
23 We have been following what CEC staff has been
24 proposing and taking a look at that. Fireplace
25 mitigation programs, to my knowledge, have been

1 used for other power plants in the state in other
2 air districts and we have a program before us
3 today that people are discussing.

4 Q And do you have like other programs
5 like vehicle scrappage and a Carl Moyer program
6 that also could be utilized to reduce the
7 project's particulate matter impacts locally?

8 A We certainly are actively looking for
9 opportunities under the Carl Moyer program to fund
10 removal of diesel engines off the road to reduce
11 diesel particulate matter. But when you retrofit
12 a diesel bus, for example, it is very expensive
13 and it is a very toxic particulate matter. But
14 having a mitigation for diesel particulate I think
15 the District would be interested in but it is very
16 difficult because you may not be able to get a ton
17 for ton in diesel particulate matter.

18 Q Would these types of programs be more
19 effective for mitigating the local particulate
20 matter impact than the ERCs that are being
21 proposed since these emissions would occur in the
22 future rather than in the past?

23 A Well I am not sure what the final
24 mitigation program will be. I have certainly
25 considered the program and it appears to be

1 consistent with other programs I have seen. I am
2 not going to speak to whether it is the perfect
3 mitigation or not.

4 HEARING OFFICER GEFTER: There is a
5 Carl Moyer program available for the Bay Area?

6 MR. LUSHER: Yes. I am not an expert
7 on the Carl Moyer program but it is on our web
8 site and there is an outreach and incentive staff.
9 And grants are given to people to retrofit diesel
10 engines under that program.

11 HEARING OFFICER GEFTER: Has staff
12 considered that for this project? Have you looked
13 into that program from the Bay Area?

14 MR. BIRDSALL: Yes, we have looked into
15 a Carl Moyer program-kinds of reductions before
16 and also on this case. There may be some
17 potential for reductions in PM through a more
18 aggressive Carl Moyer program, providing
19 incentives for local companies and local fleet
20 owners like the City of Hayward to retire diesel
21 equipment or for AC Transit, for example, to
22 retire diesel-emitting busses.

23 Those programs have been in place from
24 the California Air Resources Board and the local
25 Air District for awhile. What we tend to find is

1 that the reductions that you gain in particulate
2 matter are relatively small in quantity.

3 So what we did for Eastshore and what
4 we have been doing for some of the other power
5 plants that I'm sure you're aware of, Mr. Sarvey,
6 is we take a look at the stationary source
7 inventory rather than the mobile source inventory.

8 The emissions from wood stoves during
9 wintertime conditions are a big component of the
10 local inventory. That combined with the
11 stationary source emission reduction credit
12 program, we think those are two very highly
13 effective pathways to mitigation and that it would
14 be very difficult to achieve the kinds of tons in
15 reductions that we are looking for using Carl
16 Moyer. But Carl Moyer has been, has definitely
17 been considered.

18 MR. SARVEY: Some of these next
19 questions require that the witnesses have this,
20 which I have already given out, but I want to give
21 them a copy real quickly if I could.

22 HEARING OFFICER GEFTER: Okay, and
23 identify the exhibit. This is one of Mr. Sarvey's
24 exhibits.

25 MR. SARVEY: This is Exhibit 804.

1 HEARING OFFICER GEFTER: It's listed in
2 the exhibit list.

3 MR. SARVEY: Mr. Lusher, how long does
4 it take to get an ERC certificate after the
5 emission source has been retrofitted or shut down?

6 MR. LUSHER: I don't process those
7 applications personally. I would say it would be
8 a matter of months. You have to submit an
9 application, a district engineer gets assigned to
10 it, they review and quantify what they think the
11 emission reduction is and then that generates an
12 ERC.

13 MR. SARVEY: So in terms of months
14 then, okay.

15 CROSS EXAMINATION

16 BY MR. SARVEY:

17 Q Mr. Brewster, you mentioned earlier
18 that SO2 emissions could take as long as three
19 hours or three days to form particulate matter.
20 How about three months?

21 A I would say not three months. You've
22 got precipitation, you've got wind currents and
23 that tends to move the air along.

24 MR. SARVEY: Okay, I would like to ask
25 all the witnesses this question. Would increasing

1 the project stack height lower the project's
2 ambient air quality impacts?

3 MR. DARVIN: Yes it would.

4 MR. LUSHER: I would agree.

5 MR. SARVEY: Okay, thank you.

6 MR. BIRDSALL: Yes.

7 FURTHER CROSS EXAMINATION

8 MR. SARVEY: Mr. Lusher, according to
9 your response to Mr. Toth on his comments in the
10 PDOC, and that's Exhibit 804 page 72, there are no
11 generic cancer potency values or reference
12 exposure levels for fine particulate matter so it
13 is not included in the health risk assessment, is
14 that correct?

15 MR. LUSHER: Well let me clarify that.
16 OEHHA does not have relative exposure values for
17 PM2.5 by itself but I think everybody would
18 recognize that combustion particulate is made up
19 of a dominant species called PAHs, which is
20 polynuclear aromatic hydrocarbons and those are
21 also a particulate matter. So we do look at the
22 particulate matter species that we have reference
23 exposure values for from OEHHA.

24 PRESIDING COMMISSIONER BYRON: Could
25 you -- Excuse me, for all of us not familiar with

1 all these acronyms. OEHHA, please.

2 MR. LUSHER: Office of Environmental
3 Health Hazard Assessment. Sorry, folks.

4 PRESIDING COMMISSIONER BYRON: That's
5 all right, thank you.

6 MR. SARVEY: Is he done with his
7 answer?

8 MR. LUSHER: Yes.

9 MR. SARVEY: Okay, thank you.

10 BY MR. SARVEY:

11 Q Mr. Lusher, in the PDOC, Appendix A
12 page one, you estimate that the facility's SO2
13 emissions using a fuel sulfur limit of .182
14 grains.

15 A Um-hmm.

16 Q Do you have a condition that guarantees
17 compliance with that fuel sulfur limit for the gas
18 supplied to the project?

19 A Well they have to track the fuel gas
20 sulfur and they have to manage underneath the
21 limit. I don't have a specific limit that limits
22 it. What really drives the sulfur emissions from
23 the project is not the fuel gas sulfur content, it
24 is the lube oil content that was provided by the
25 applicant. And I believe that the fuel gas

1 portion is actually quite small versus the lube
2 oil portion. So they have vendor guarantee data
3 that they believe they can live with that number.

4 MR. SARVEY: Mr. Birdsall, do you have
5 a condition in your conditions of certification to
6 test the fuel sulfur in the gas, the natural gas
7 supplied to this project?

8 MR. BIRDSALL: We have the same
9 conditions that the Air District put forth in its
10 final determination of compliance for that issue
11 so I would have to look through. But I do
12 believe --

13 MR. LUSHER: Maybe I misunderstood the
14 question.

15 MR. BIRDSALL: I'll stop.

16 MR. SARVEY: Should I repeat the
17 question?

18 MR. LUSHER: No, no, no, sorry. I'm
19 trying to add on to my response.

20 MR. SARVEY: I'm sorry.

21 MR. LUSHER: We allow the applicant to
22 use PG&E data because PG&E tests the system on a
23 weekly basis for sulfur. So they will track the
24 sulfur in the fuel gas using PG&E data.

25 MR. SARVEY: A lot of power plants

1 recently have been amending their conditions of
2 certification to raise their fuel sulfur limit.
3 And I would quote most recently the Los Esteros
4 project has increased their limit from 25 to 33
5 grains. Shouldn't that factor into your
6 assessment of the fuel sulfur limit for the
7 natural gas for this project?

8 MR. LUSHER: Like I tried to state
9 earlier, the fuel gas sulfur component is a small
10 portion of the sulfur emissions from the facility.
11 And that they have to meet their permit limit and
12 they have to track emission calculations over the
13 year to demonstrate they meet their permit limit.
14 And they are subject to enforcement action if the
15 sulfur goes over the permit limit.

16 HEARING OFFICER GEFTER: Are you saying
17 that there is a condition in the FDOC relating to
18 the sulfur content of the natural gas? If there
19 is why don't we find it and identify it for the
20 record.

21 I also have a question. Mr. Sarvey,
22 when you asked the question about if the height of
23 the stacks is increased then the emissions of
24 pollutants would be less. Is that what your
25 question was?

1 MR. SARVEY: Better dispersion, yes.

2 HEARING OFFICER GEFTER: Okay. And
3 what was the point of that question? Are you
4 suggesting that the applicant should raise the
5 height of the stacks?

6 MR. SARVEY: Most definitely and that
7 is in my testimony. When you look at the ambient
8 air quality impacts from this project, and I'll
9 address that in my testimony, it's already there.

10 HEARING OFFICER GEFTER: Okay.

11 MR. SARVEY: Compared to other projects
12 that the Energy Commission has approved and other
13 projects that are being sited throughout the
14 country, the ambient air quality impacts from this
15 project are very, very high.

16 HEARING OFFICER GEFTER: Okay. Well
17 we'll wait for your testimony on that and that
18 will come up pretty soon. Do you have any other
19 questions on cross?

20 MR. SARVEY: Yes I do.

21 HEARING OFFICER GEFTER: Okay.

22 FURTHER CROSS EXAMINATION

23 BY MR. SARVEY:

24 Q Mr. Birdsall, how many of the projects
25 you have analyzed for the Energy Commission have

1 had particulate matter impacts as high as this
2 Eastshore project?

3 A Your direct testimony that was filed,
4 Mr. Sarvey, pointed out that the ambient air
5 quality impacts of Eastshore are higher than
6 typical power plant impacts.

7 Q In Air Quality Table 16 in your
8 exhibit, could you look at that briefly, please.

9 MS. HOLMES: I'm sorry, could you
10 repeat the reference again.

11 BY MR. SARVEY:

12 Q Air quality Table 16 in Exhibit 100.

13 A Yes.

14 Q According to your testimony there under
15 the pollutant PM10 you list the project's annual
16 impacts as 3.1 and the background as 20 and then
17 in the bold color you have the total impact is
18 23.1. Are you indicating that that is a violation
19 of the PM10 standard there, for annual PM10
20 standard?

21 A The testimony makes it clear that the
22 project most definitely contributes to violations
23 of PM10 standards. The PM10 standard on a daily
24 basis is already violated. The project most
25 definitely contributes to those violations. Which

1 is why we are proposing AQ-SC8.

2 Q And then in the annual PM2.5 standard
3 you have the modeled impact as 3.1. That
4 represents 25 percent of the annual federal PM2.5
5 impact; is that correct?

6 A The 3.1 being about one-quarter of the
7 standard of 12. That would be yes, about one-
8 quarter.

9 Q And then when combined with the
10 background you indicate there could possibly be a
11 violation of the federal PM2.5 standard for this
12 project?

13 A That's right. Well the federal
14 standard for PM2.5, as explained in the testimony,
15 is relatively new, the 35 microgram per cubic
16 meter standard. And the Air District is still
17 going through its formal demonstration of
18 attainment on non-attainment. It is pretty
19 clear -- I think the testimony spells this out,
20 that the area looks like it will be designated
21 non-attainment for PM2.5. This project would
22 definitely contribute to that violation. Then
23 that's again what leads us to our mitigation.

24 Q Are you familiar with the new NO2
25 standard that is being promulgated by the Air

1 Resources Board?

2 A Yes. We have been watching that
3 closely over the year or so. In February of 2007
4 I think the Air Resources Board adopted a lower
5 standard for nitrogen dioxide, NO2, and the
6 standard has yet to be approved by the Office of
7 Administrative Law. We have been watching this
8 standard but we aren't using it in our staff
9 assessments until it becomes law.

10 Q You said you have ben watching the
11 standard. Have you seen the staff report on the
12 standard?

13 A I don't think I've read the staff
14 report on that standard.

15 Q Okay, thank you, thank you. Do you
16 know what the new standard is per micrograms per
17 cubic meter?

18 A The newer standard is mentioned in the
19 footnote to my table, my table that summarizes the
20 ambient air quality standards in the beginning of
21 my staff assessment so that's the footnote to Air
22 Quality Table 2.

23 Q Thank you, Mr. Birdsall. And the 314.3
24 micrograms per cubic meter NO2 impact from this
25 project is about 90 to 95 percent of that

1 standard; is that correct?

2 A Right. The modeled impact for NO2 on
3 this project is close to but not exceeding the new
4 standard that would become law if it becomes law.
5 The points that you have raised in your direct
6 testimony, just to kind of jump ahead a little
7 bit, I think are very relevant in the fact that a
8 newer standard and lower standard may come down
9 from the Office of Administrative Law is something
10 that I say we're watching very closely.

11 I think what will need to occur when
12 and if that becomes law is that we will have to be
13 working very closely with the Air Districts and
14 the Air Resources Board to determine what is the
15 proper way and the methodology to model a
16 project's impacts against that standard.

17 Nitrogen dioxide is a reactive
18 pollutant and as you know the power plant emits
19 nitrogen oxides, which is a blend of nitric oxide
20 and nitrogen dioxide. So modeling compliance with
21 the NO2 standard always involves a certain amount
22 of reactivity in the equations or reactivity in
23 the analysis. And that is a little bit more
24 difficult to model than a direct pollutant impact
25 like the direct impact of sulfur oxides, for

1 example, where we don't assume any reactions.

2 The analysis that is in the staff
3 assessment does assume a certain level of
4 reactivity. If the new, lower standard becomes
5 law we would have to work with the Air Resources
6 Board to figure out the proper modeling protocol
7 for that short-term NO2 standard.

8 Q If the Office of Administrative Law
9 approves this amendment before this project is
10 certified how does that affect the project?

11 HEARING OFFICER GEFTER: That is a
12 question of law and, you know, the attorneys can
13 brief that as well.

14 MR. SARVEY: Okay, thank you. I'll
15 move on.

16 HEARING OFFICER GEFTER: I want to
17 interrupt just one minute.

18 MR. SARVEY: Sure.

19 HEARING OFFICER GEFTER: Because,
20 Mr. Sarvey, I know that you have air quality
21 testimony which actually is very connected to your
22 cross examination.

23 MR. SARVEY: Yes.

24 HEARING OFFICER GEFTER: And it makes
25 sense, perhaps, to have you actually do your

1 direct now.

2 But let me ask Mr. Haavik if you have
3 any cross examination of any of the air quality
4 witnesses at this point? Because if not what I
5 think I'll do is have Mr. Sarvey testify and then
6 have Dr. Zannetti testify afterwards.

7 MR. HAAVIK: I have only one comment on
8 the cross for Mr. Lusher.

9 HEARING OFFICER GEFTER: Thank you.

10 CROSS EXAMINATION

11 BY MR. HAAVIK:

12 Q Are you familiar with the Russell City
13 proponent and the discussions they have had in
14 regards to the fireplace retrofit program?

15 A I am aware of it just because I know
16 the engineer in my group who's working on it but I
17 am not directly involved in all of that.

18 Q You do not know the components of that
19 particular proposition?

20 A I am not, I have not been reviewing
21 that very extensively recently. I mean, I know
22 that they had proposed -- I was at the evidentiary
23 hearing for the proceeding obviously so I know
24 that we were discussing many of the same issues at
25 that proceeding but I am not, I do not know where

1 the mitigation is going to fall out.

2 MR. HAAVIK: Okay, thank you, nothing
3 else.

4 HEARING OFFICER GEFTER: That's it?
5 Okay.

6 MS. HARGLEROAD: Excuse me.

7 HEARING OFFICER GEFTER: Yes.

8 MS. HARGLEROAD: Before we move on to
9 Mr. Sarvey's direct I just wanted to qualify that
10 I have a few more follow-up. I didn't expect to
11 be the first one to ask the cross. So if I could
12 follow-up if the intervenors or any other cross
13 examination is complete.

14 HEARING OFFICER GEFTER: All right,
15 after everything is complete, including
16 Dr. Zannetti's direct, you can come back and ask
17 questions at that point.

18 MS. HARGLEROAD: Okay, I can come back
19 to staff and the Bay Area, okay, thank you.

20 HEARING OFFICER GEFTER: Yes, because
21 we need to move along. You know, we are supposed
22 to break at one o'clock and I thought we might be
23 through public health by now. We're not even
24 starting public health.

25 So Mr. Sarvey, if you would like to

1 present direct testimony now. I know that you
2 have offered yourself as an expert witness on air
3 quality. As you know, I haven't ever qualified
4 you as an expert witness on air quality, however,
5 I will qualify you as an expert intervenor and
6 very knowledgeable in our proceedings. So if you
7 want to, you know, be sworn in I'll take your
8 testimony.

9 MR. SARVEY: I'd have to object to that.

10 HEARING OFFICER GEFTER: Okay. Do you
11 want to be sworn in?

12 MR. SARVEY: I'd have to object to your
13 not qualifying me as an expert witness. I have
14 the educational background and the experience.

15 HEARING OFFICER GEFTER: I know and
16 other hearing officers have qualified you but I
17 won't. However, I will accept your testimony and
18 if you want to be sworn I will swear you in.

19 MR. SARVEY: I'll do so under
20 objection.

21 HEARING OFFICER GEFTER: Okay.
22 Whereupon,

23 ROBERT SARVEY
24 was duly sworn.

25 HEARING OFFICER GEFTER: Thank you,

1 Mr. Sarvey. Okay, go ahead.

2 MR. SARVEY: I also had some more cross
3 examination questions. Will I be allowed to ask
4 those later?

5 HEARING OFFICER GEFTER: Sure, yes.

6 MR. SARVEY: Okay.

7 HEARING OFFICER GEFTER: But I thought
8 it would make sense to hear your direct because it
9 is very interconnected with your cross
10 examination. So right now this will be considered
11 your direct testimony, thank you.

12 DIRECT EXAMINATION

13 MR. SARVEY: My direct testimony
14 pretty much speaks for itself. I don't have a lot
15 to add to it.

16 HEARING OFFICER GEFTER: Okay.

17 MR. SARVEY: I have offered a condition
18 of certification, AQ-SC8, which would allow the
19 CEC, the applicant, the Bay Area Air Quality
20 Management District to provide a mitigation
21 program for PM10 that includes advanced street
22 sweeping, school bus retrofits, vehicle scrappage,
23 fireplace/wood stove retrofits or any other CEC-
24 approved emission reduction program in the modeled
25 area of impact with the highest impact areas

1 mitigated first.

2 And I believe that that's the correct
3 way to mitigate the PM10 impacts from this
4 project. I do not believe that the SO2 credits do
5 mitigate the project. The SO2 credits are
6 basically a piece of paper like this.

7 MS. LUCKHARDT: I'm sorry, is this
8 brand new? Is this something that you provided
9 just today? I mean, I'm scrambling to find AQ-
10 SC8.

11 MR. SARVEY: I gave it to all the
12 witnesses, would you like a copy of it?

13 MS. LUCKHARDT: I notice that my
14 witnesses have it. I just want to note that this
15 is something that has just been presented today.

16 MR. SARVEY: Yes, I just provided it
17 today, yes.

18 HEARING OFFICER GEFTER: But Mr.
19 Sarvey, didn't you submit other information in
20 your previous exhibits or is this new testimony
21 that I haven't seen either?

22 MR. SARVEY: This is a new condition.

23 HEARING OFFICER GEFTER: A new
24 condition that you are proposing today?

25 MR. SARVEY: That I am offering today,

1 yes.

2 MS. LUCKHARDT: I would like to object.

3 HEARING OFFICER GEFTER: We all need to
4 see a copy of that.

5 MR. SARVEY: Okay.

6 MS. LUCKHARDT: I also would like to
7 object in general to the provision of new
8 testimony today. Everyone was required to pre-
9 file. Every other party did that. Mr. Sarvey is
10 showing up just now and providing new testimony.
11 I am very concerned that if we continue to allow
12 new testimony in at this point that the process
13 will never be completed. So I would like to see
14 some limits put on the process.

15 HEARING OFFICER GEFTER: Mr. Sarvey is
16 admonished, was admonished previously when you
17 moved to intervene as a petitioner and we told you
18 at that time that that was the last time that we
19 would accept your late filing.

20 I understand that Ms. Luckhardt is
21 concerned that this is the first time we've seen
22 this. So I will take your objection under
23 advisement, Ms. Luckhardt, and we will take
24 Mr. Sarvey's testimony and give it whatever weight
25 it is worth in the context of the whole record.

1 MR. SARVEY: I'm done, thank you.

2 HEARING OFFICER GEFTER: Mr. Sarvey,
3 again, if you can connect this to the previous
4 filings that would be helpful.

5 MR. SARVEY: The condition itself? In
6 the applicant's errata today I received a new
7 condition of certification for AQ-SC8 so I don't
8 think it's all that unusual.

9 MS. LUCKHARDT: I object.

10 HEARING OFFICER GEFTER: No, we had
11 seen that.

12 MS. LUCKHARDT: Those are the documents
13 that were filed with the prehearing conference
14 statement. I provided them to everyone because we
15 did not include them on our exhibit list but I
16 intended to. I wanted to give everyone an
17 opportunity to see them. But they are not new.

18 HEARING OFFICER GEFTER: We have seen
19 them before.

20 MR. SARVEY: You can toss the
21 condition. I'll put it in my brief and then you
22 can brief it if you'd like, that's fine.

23 HEARING OFFICER GEFTER: And what we
24 could do is if you brief it actually the parties
25 need to comment on this because it won't, it is

1 out of context if you just include it in a brief
2 without the comment from the experts on your
3 proposal. And if your proposal has validity it
4 might be useful for both the staff and the
5 applicant's and the Air District's witnesses to
6 see this condition and comment on it. So if you
7 would, if you want to tell us what it's about real
8 quickly in your direct and then we'll move on.

9 MR. SARVEY: I basically already did
10 tell you. What I am trying to do is to get a
11 real-time emission reduction program started here
12 with this condition. I believe that it is much
13 more beneficial to the community because it is
14 actually improving their air quality rather than
15 providing precursor emission reductions, which may
16 or may not provide the mitigation necessary.

17 We have a disagreement between the
18 staff and applicant as to how effective the SO2
19 ratio is and we also have a disagreement on the
20 location of the ERCs. And I believe that this
21 particular condition deals with both those issues
22 in that it provides emission reductions and
23 improves the quality of life for the people who
24 are most affected by this plant.

25 And as I mentioned earlier, the impacts

1 from this project are huge compared to any other
2 project that I have ever been involved with.

3 HEARING OFFICER GEFTER: Mr. Sarvey, I
4 would like to identify this proposed condition as
5 Exhibit 806 in your series of exhibits so that as
6 you speak about it the record will reflect that is
7 Exhibit 806.

8 MR. SARVEY: That's fine.

9 HEARING OFFICER GEFTER: Thank you.

10 MR. SARVEY: Thank you.

11 HEARING OFFICER GEFTER: Do you have
12 any additional cross examination that you would
13 like to finish?

14 MR. SARVEY: Yes I do.

15 HEARING OFFICER GEFTER: Okay, thank
16 you.

17 FURTHER CROSS EXAMINATION

18 BY MR. SARVEY:

19 Q Mr. Birdsall, did the Energy Commission
20 recommend a particulate matter limit of less than
21 .6 pounds per hour for this project in its
22 comments on the PDOC?

23 A I believe we did. I don't have that
24 letter in front of me at the instant.

25 Q Okay. And did the Air Resources Board

1 recommend a similar limit?

2 A In our letter to the Air District, and
3 I think there was a very brief e-mail
4 correspondence between the Air Resources Board and
5 the Air District. In our letter to the Air
6 District we recommended setting the lowest
7 particulate matter limit possible.

8 And we had been using some ARB
9 guidelines to urge the Air District to consider
10 the use of an emission rate as the particulate
11 matter emission rate for the -- as the particulate
12 matter emission limit for the project that is
13 lower than the 1.3 and 1.9 pound per hour that
14 ultimately came in the Final Determination of
15 Compliance.

16 We think, though, that the Air District
17 emission limit does satisfy the ACT and complies
18 with the local and federal laws, ordinances and
19 regulations and standards. To address the
20 potential particulate matter emissions and the
21 impacts of these emissions we have gone forward
22 with the AQ-SC8.

23 So to tie it all together, I think if
24 we asked the applicant to emit a lower level of
25 particulate matter. First of all we have heard

1 throughout the proceeding that the applicant would
2 not accept a lower limit for whatever business
3 reasons. The unintended or the un-intention --

4 The kind of consequence that might come
5 about if we had a lower particulate matter
6 emission rate though would be that staff would not
7 be in a position to ask for such a high level of
8 PM10 mitigation. So our mitigation being at the
9 level that it is today reflects the Air District's
10 permitted emission limit and I believe that the
11 project will emit less than that, much less than
12 that.

13 Q And your comments on the PDOC also
14 mentioned that there were two facilities that have
15 achieved the levels of particulate matter you are
16 recommending in practice; is that correct?

17 A Yes, I think that lower limits, lower
18 levels rather, are definitely achievable. And for
19 that the applicant can sleep well at night.

20 Q Does your analysis include particulate
21 matter emissions from the lube oil?

22 A My analysis includes the total
23 particulate matter emissions from the project.
24 However that originates, yes.

25 Q Okay. Exhibit 802, page 3.2-2, says

1 that it is not unusual to test emissions from two
2 identical reciprocal engines in the same plant,
3 operated by the same personnel, using the same
4 fuel and have the test results show significantly
5 different emissions. Do you agree with that
6 assessment?

7 MS. HOLMES: Excuse me, can you --

8 MR. SARVEY: Exhibit 802 page --

9 MS. HOLMES: Are you referring to what
10 you handed out as Exhibit 702?

11 MR. SARVEY: No, it's in the pre-filed
12 exhibits that I have, 802.

13 HEARING OFFICER GEFTER: Exhibit 802 is
14 identified on the list of exhibits as an EPA
15 emission factors for reciprocating engines.

16 MS. HOLMES: It is, but I have it
17 listed as Exhibit 702.

18 HEARING OFFICER GEFTER: Yes, he
19 misnumbered his exhibits. They are 800 if you
20 look on your exhibit list.

21 MS. HOLMES: So which page of Exhibit
22 802 are you referring to?

23 MR. SARVEY: 3.2-2.

24 MS. HOLMES: Thank you.

25 MR. BIRDSALL: Mr. Sarvey, I would

1 agree that there is a high degree of variability
2 in the testing results.

3 BY MR. SARVEY:

4 Q And have you proposed a condition for
5 this project that it will be source-tested after
6 construction and determine if the project's
7 impacts are accurate and should any additional
8 emission reductions be provided?

9 A There are conditions of certification
10 to require testing to demonstrate compliance with
11 the 1.3 and the 1.9 limitations. I don't know
12 what you're asking. Are you asking is there -- if
13 you're asking if there's another staff condition
14 on top of the Air District conditions the answer
15 is no.

16 Q Okay, thank you.

17 FURTHER CROSS EXAMINATION

18 BY MR. SARVEY:

19 Q Mr. Lusher, in Exhibit 804-13 you have
20 done some testing on some HCO emissions from a
21 Berrick Gold Strike Mine. And it says, in fact,
22 the standard deviation from this project is more
23 than the average emission rates for the turbines.
24 Is that true?

25 A We obtained formaldehyde emissions data

1 from the Berrick facility from the Nevada
2 Department of Environmental Quality. We reviewed
3 those results. Those were in the application for
4 certification. And I did prepare a spreadsheet.
5 I think you're referring to some of the e-mails
6 that you requested in your public records request.
7 And I did look at the average and the standard
8 deviation of that data.

9 MR. SARVEY: Mr. Birdsall --

10 HEARING OFFICER GEFTER: This is
11 referring to Tierra Energy's project in Nevada?
12 Is that what we're talking about?

13 MR. LUSHER: It is not Tierra Energy's
14 project in Nevada, it's a twin facility.

15 HEARING OFFICER GEFTER: A facility
16 that is similar to the proposed --

17 MR. LUSHER: It is more than similar,
18 it has the identical engines.

19 HEARING OFFICER GEFTER: It's the exact
20 same one.

21 MR. LUSHER: The abatement devices
22 might be different.

23 HEARING OFFICER GEFTER: Okay.

24 MR. LUSHER: But the engines themselves
25 are identical.

1 HEARING OFFICER GEFTER: All right. So
2 you were looking at data from that facility.

3 MR. LUSHER: Which was provided in the
4 application for certification.

5 HEARING OFFICER GEFTER: Right, okay,
6 thank you.

7 FURTHER CROSS EXAMINATION

8 BY MR. SARVEY:

9 Q Mr. Birdsall, do you agree with the
10 applicant's assessment that almost 100 percent of
11 the particulate matter emissions from these
12 engines are PM2.5?

13 A Yes, at the stack the emissions from
14 the engines are generally below PM2.5, maybe even
15 PM1 and under.

16 Q Could you say that again, I'm sorry.

17 A The particulate size is small, less
18 than PM2.5, yes.

19 Q And can you explain why in your PM10
20 impacts, estimates, that the PM10 micrograms per
21 cubic meter would be 27.5 and the PM2.5 would be
22 17? Why is that different?

23 A The notes at the bottom of the two
24 tables in my staff assessment that summarize
25 operational impacts, and this is regarding staff

1 assessment table Air Quality 16 and Air Quality
2 Table 20, the note at the bottom of the table
3 explains that PM2.5 is calculated based on a
4 three-year average of maximum eighth highest or
5 98th percentile 24 hour impacts.

6 And this is consistent with the federal
7 standard for PM2.5, which is not calculated based
8 on the one, single 24 hour highest concentration
9 but rather the 98th percentile as I explained
10 here.

11 Q So the applicant when he did his
12 estimates, his PM2.5 and PM emission impacts were
13 the same. Was that incorrect, was that wrong?

14 A I don't know to what part of the
15 applicant's testimony you're referring. Because
16 as the applicant worked forward in the project the
17 last filing that I remember looking at just before
18 coming here was around the time of May regarding
19 cumulative impacts. And the applicant was
20 following this calculation method at that time. I
21 suppose you can ask them whether or not they were
22 doing it incorrectly.

23 Q So is this a new concept by staff? I
24 have never seen this before. I have always seen
25 the PM2.5 impacts be equal to the PM10 impacts.

1 A The new federal PM2.5 standard is
2 calculated based on this statistical approach. So
3 to that effect, yes, it is relatively new.

4 Q What mitigation is the project offering
5 for nitrogen deposition or for the nitrogen
6 emissions, the NOx emissions?

7 A We did not find a significant impact
8 regarding nitrogen deposition so there is no
9 additional mitigation measure. But for nitrogen
10 oxide emissions, they are a precursor to ozone and
11 the applicant has offered a package of credits to
12 comply with the new source review requirements.

13 Q Okay. You mentioned that this project
14 is dirtier than most technology the CEC permits.

15 MS. LUCKHARDT: I'm sorry, I believe
16 that that is an incorrect statement to say that
17 Mr. Birdsall referred to this project as dirtier
18 than any other project.

19 MR. SARVEY: I'll move on.

20 HEARING OFFICER GEFTER: Just restate
21 your question.

22 MR. SARVEY: I'll move on.

23 BY MR. SARVEY:

24 Q Staff's status report number four, page
25 two, states that the community requested that the

1 PSA address the difference in emission rates for
2 reciprocating engines versus turbines. Have you
3 completed that comparison for the community?

4 A Yes, in the final staff assessment
5 there are a couple of bullets kind of in the back
6 of the staff assessment that address the different
7 emission characteristics of combustion turbines
8 versus internal combustion engines. This is
9 around page 4.1-35 and page 4.1-36 of my Final
10 Staff Assessment.

11 Q Okay, thank you.

12 CROSS EXAMINATION

13 BY MR. SARVEY:

14 Q Mr. Westbrook, your testimony in the
15 AFC states that the PM2.5 impact and the PM10
16 impacts are around 49 micrograms per cubic meter.
17 Have you revised that estimate?

18 MS. LUCKHARDT: I'm sorry, could you
19 refer to the page number you're talking about.
20 The AFC?

21 MR. SARVEY: Yes, I'm speaking to the
22 AFC, his air quality testimony. We're in
23 operating impacts.

24 MS. LUCKHARDT: Okay, which page?

25 MR. WESTBROOK: That was based on the

1 old emission rate, which was adjusted and staff
2 updated the modeling in the staff assessment. We
3 did not actually make the change.

4 BY MR. SARVEY:

5 Q So you haven't provided any new
6 estimates then?

7 A No, we have not.

8 Q Okay. Your testimony states that there
9 is a benefit from the line loss that the Eastshore
10 project displaces. Doesn't the project's high
11 emission rates offset any benefit that would be
12 gained from the project's line loss benefits?

13 A Can you repeat that question.

14 HEARING OFFICER GEFTER: Who are you
15 addressing that to?

16 MR. SARVEY: That would be
17 Mr. Westbrook.

18 MR. WESTBROOK: I'm sorry, I couldn't
19 hear you, could you repeat the question.

20 MR. SARVEY: I'm sorry. Your
21 testimony, Mr. Westbrook, states that there is a
22 benefit from the line loss that the Eastshore
23 project displaces. Doesn't the project's high
24 emission rates offset any benefit that would be
25 gained from the project's line loss benefits?

1 MS. LUCKHARDT: I'm sorry, are you just
2 saying high emissions rate or modeling impacts?

3 MR. SARVEY: High emissions rate.

4 MS. LUCKHARDT: When you say high
5 emissions rate to which pollutant are you
6 referring?

7 MR. SARVEY: Compared to the Los
8 Medanos project, the SF area ERP, Contra Costa.

9 MS. LUCKHARDT: I think Mr. Darvin --

10 HEARING OFFICER GEFTER: Mr. Sarvey,
11 actually --

12 MS. LUCKHARDT: I think Mr. Darvin may
13 need to answer that particular question.

14 HEARING OFFICER GEFTER: But actually
15 this question actually goes more to sort of a
16 legal analysis about whether the benefits of the
17 project are offset by the emissions or whether the
18 emissions are offset by the benefits. And this is
19 a legal issue so let's ask another -- if you could
20 ask a different question.

21 MR. SARVEY: I don't think you
22 understand the question but that's okay, I'll move
23 on.

24 HEARING OFFICER GEFTER: Okay, perhaps
25 if you reframe the question.

1 MR. SARVEY: I'll move on. No, no, no,
2 that's fine, I'll move on.

3 HEARING OFFICER GEFTER: Okay, thank
4 you.

5 MR. SARVEY: I don't think you quite
6 understand the question.

7 BY MR. SARVEY:

8 Q In your cumulative analysis of the
9 project did you include the emissions from the
10 adjacent train and freight terminals nearby?

11 A No.

12 Q Why not?

13 A Typically when we do cumulative
14 analysis mobile sources are not looked at.
15 Basically it is sources that are recently
16 permitted but not yet operational. The background
17 air quality actually already contains existing
18 sources such as mobile sources, trains, cars,
19 things like that. So it was not explicitly
20 modeled but it was contained in the background air
21 quality data that was added to the model
22 concentration.

23 Q So you believe that those emissions are
24 reflected in the background, right?

25 A Those emissions were reflected as

1 concentrations in the background, yes.

2 Q Okay. Wouldn't the emission reduction
3 credits you're proposing for use in this project
4 also be reflected in the current background?

5 A I'm not sure I understand your
6 question.

7 Q You're proposing emission reductions to
8 offset your emissions. Aren't those emission
9 reductions already included in the current
10 background that you're assessing this project by?

11 A The emission reduction credits are
12 banked based upon facilities that shut down with
13 emissions that were in the background. I think
14 what you're doing is you're mixing and matching
15 emission reduction issues and modeling questions.
16 I'm still not sure what you're trying to state.

17 MR. SARVEY: Okay, I'll move on.

18 And Mr. Stein, previous testimony that
19 you've given in the Tesla siting cases that 23
20 percent of the emissions from the Hayward area
21 impacts the Tracy area and San Joaquin Valley;
22 isn't that true?

23 HEARING OFFICER GEFTER: I don't know
24 that Dr. Stein can remember what he testified to
25 in Tesla.

1 MR. STEIN: I don't recall the
2 specifics.

3 HEARING OFFICER GEFTER: But I
4 understand that Mr. Sarvey is concerned because he
5 lives in the Tracy area so he was very involved in
6 the Tesla case. So it speaks for itself. If he
7 said that it probably is in the transcript.

8 MR. SARVEY: Okay.

9 BY MR. SARVEY:

10 Q Does your mitigation package offer any
11 NOx mitigation for this project? Actual NOx
12 mitigation ERCs.

13 A Staff has already stated that NOx
14 mitigation is not necessary under CEQA.

15 Q Thank you. Are you familiar with the
16 rules for NOx to VOC substitutions in the San
17 Joaquin Valley Air Pollution Control District?

18 MS. LUCKHARDT: I'm sorry, I'm going to
19 object to relevance here because we're talking
20 about the Bay Area District and not San Joaquin.

21 HEARING OFFICER GEFTER: Yes,
22 sustained. San Joaquin Valley is not part of this
23 case right now. I know it is of interest to you
24 and your concerned but we have the Bay Area Air
25 District here.

1 MR. SARVEY: Okay.

2 HEARING OFFICER GEFTER: I think we
3 need to move on.

4 MR. SARVEY: That's all my questions,
5 thank you.

6 HEARING OFFICER GEFTER: Thank you very
7 much, Mr. Sarvey.

8 All right, now we have a couple of
9 housekeeping matters. I understand that
10 representatives from Assemblywoman Hayashi and
11 also from Senator Corbett's office wanted to
12 address us this afternoon. I don't know if those
13 folks are here. Yes.

14 And also I think Mayor Sweeney might be
15 here. I don't know if you wanted to address us
16 this afternoon also or if you wanted to wait until
17 later tonight.

18 But let's hear from -- I am going to
19 interrupt the air quality testimony at this point
20 because these folks have been waiting patiently.
21 I know you have statements from your elected
22 representatives so we're going to take a little
23 break and you can present your statements at this
24 time. If you would like to come forward, identify
25 yourself please. There is a microphone right

1 there at the podium. Tell us your name and who
2 you represent.

3 MR. JARRED: Hi, my name is Michael
4 Jarred. I represent Senator Ellen Corbett and I
5 am reading a statement on her behalf.

6 HEARING OFFICER GEFTER: Thank you. I
7 might ask if both you and the representative from
8 Assemblywoman Hayashi if it would be all right
9 with you, rather than reading it verbatim into the
10 record, if we just incorporate it into the record.
11 The transcript can incorporate it without having
12 you read it. It's your choice.

13 MS. SCHULKIND: We would request that
14 it be read.

15 MR. PARMAN: We would like to read our
16 statement.

17 HEARING OFFICER GEFTER: All right. It
18 is just a question of time.

19 MR. JARRED: But I also have a written
20 copy.

21 HEARING OFFICER GEFTER: You have
22 copies for the reporter as well, yes?

23 MR. JARRED: Yes.

24 HEARING OFFICER GEFTER: Okay, thank
25 you. I was just trying to save us some time but

1 go ahead, please.

2 MR. JARRED: It's very brief.

3 HEARING OFFICER GEFTER: Okay, thank
4 you.

5 MR. JARRED: It was addressed to both
6 of the Commissioners but since there is only one
7 here this is to Commissioner Byron. Senator
8 Corbett says:

9 "I am in support of the City
10 of Hayward's efforts to prevent
11 the siting of the proposed
12 Eastshore Energy Center.

13 "As you know, the California
14 Energy Commission has already
15 approved the siting of the 600
16 megawatt Russell City Energy
17 Center in Hayward. The
18 cumulative air quality impact of
19 two plants in a single community
20 places an undue burden on Hayward
21 residents and raises questions of
22 environmental justice.

23 "The Hayward City Council is
24 opposed to the siting of the
25 Eastshore Energy Center because

1 the proposed plant is in conflict
2 with the city's General Plan,
3 local zoning ordinances and the
4 Airport Approach zoning
5 regulations. The Federal
6 Aviation Administration has
7 expressed concerns about siting
8 two power plants in close
9 proximity to the Hayward
10 Executive Airport. A number of
11 environmental groups, including
12 the Sierra Club, have expressed
13 concerns that the pollution
14 caused by the plant. Even the
15 CEC's own staff preliminary
16 recommendations were against
17 siting this plant.

18 "For all these above reasons
19 I urge the CEC not to approve the
20 siting of the proposed Eastshore
21 Energy Center. I would like to
22 thank the Energy Commission for
23 holding these hearings in Hayward
24 and for allowing people who will
25 be affected by the plant to

1 participate. And I am very
2 interested in working closely
3 with the CEC on strategies to
4 improve conservation efforts and
5 to support the establishment of
6 renewable energy projects to
7 lessen the need for siting of
8 these plants. I look forward to
9 working with you in the future on
10 our shared goals to protect the
11 environment and improve energy
12 efficiency in California. Thank
13 you for your consideration of my
14 concerns.

15 "Sincerely, Ellen M.
16 Corbett, Senator of the Tenth District."

17 HEARING OFFICER GEFTER: Thank you very
18 much for being here.

19 MR. JARRED: You're welcome.

20 PRESIDING COMMISSIONER BYRON:
21 Mr. Jarred, thank you very much for bringing the
22 comments. And please let the Senator know they
23 take a great deal of weight and we appreciate her
24 willingness to put them on the public record.
25 Thank you.

1 MR. JARRED: Great, thank you.

2 HEARING OFFICER GEFTER: Thank you for
3 coming.

4 And please tell us your name and your
5 representative.

6 MR. PARMAN: I'm Chris Parman, I'm the
7 District Director for Assembly Member Mary
8 Hayashi. And she has a statement to read and put
9 into public comment.

10 HEARING OFFICER GEFTER: Do you have a
11 copy?

12 MR. PARMAN: I do have a copy as well.

13 "Dear Commissioners Byron
14 and Geesman, who is absent today,
15 Ms. Gefter, CEC Staff,
16 Intervenors and residents of Hayward.

17 "It was my hope to be with
18 you today in person at this very
19 important evidentiary hearing to
20 discuss the construction of a
21 second power plant proposed
22 within the City of Hayward.

23 Unfortunately, I was called to
24 Sacramento during this
25 legislative special session to

1 vote on a new healthcare reform
2 package; another critical issue
3 facing the constituents of my
4 district.

5 "As I have previously
6 stated, I am urging the CEC to
7 reject Tierra Energy's
8 application to build the
9 Eastshore Energy power plant in
10 Hayward for many reasons.

11 "Most important is the
12 plant's close proximity to homes,
13 schools and businesses and its
14 potential affects on human
15 health, air quality, and our
16 environment in general. Within a
17 mile of the Eastshore Energy
18 Plant are three colleges with a
19 combined student population of
20 more than 16,000 students.
21 Within a mile of the power plant
22 are single and multi-family homes
23 with a population of
24 approximately 8,000 residents.
25 Within a mile of the power plant

1 is the Eden Gardens Elementary
2 School educating 540 kindergarten
3 to sixth grade children. If
4 approved, the power plant is
5 permitted to release 54 tons of
6 nitrogen oxides, 84 tons of
7 carbon monoxide, 64 tons of
8 particulate matter known as PM10
9 and 6 tons of sulfur dioxide on
10 an annual basis.

11 "These emissions will create
12 enormous environmental problems
13 and adversely impact the region's
14 air quality resulting in higher
15 rates of respiratory ailments
16 such as asthma among our seniors
17 and children. According to the
18 California Department of Health
19 Services, more than 37,000
20 Californians sought hospital care
21 due to asthma in the year 2000.
22 Those most affected were children
23 under age five, women and
24 seniors. The 2007 Asthma
25 Disparities Summit held in

1 Berkeley reported that low-income
2 communities and communities of
3 color experienced disparities in
4 asthma prevalence,
5 hospitalization, and deaths.
6 Reasons given were access to
7 health care, differences in
8 asthma medication, and the
9 environmental injustice their
10 communities face.

11 "The neighborhoods
12 immediately affected by Eastshore
13 are lower income, Minority-
14 Majority communities who need
15 greater access to health care.

16 "Secondly, the City of
17 Hayward has done its fair share
18 by recently approving an energy
19 plant several miles away from the
20 proposed Eastshore Power Plant.
21 The residents of Hayward, and the
22 surrounding communities, have
23 done their fair share in
24 shouldering the burden of
25 California's energy demands.

1 "I urge the CEC to reject
2 Tierra Energy's application to
3 build the Eastshore Energy Plant
4 in Hayward.

5 Sincerely, Mary Hayashi."

6 HEARING OFFICER GEFTER: Thank you very
7 much for coming today.

8 PRESIDING COMMISSIONER BYRON:
9 Mr. Parman, thank you as well. The Assembly
10 Member expressed some similar concerns to me
11 privately and I appreciate her putting her
12 comments on the record today, thank you.

13 HEARING OFFICER GEFTER: Thank you.

14 And Mayor Sweeney, do you want to wait
15 until later or do you want to address us now?

16 MAYOR SWEENEY: On Tuesday.

17 HEARING OFFICER GEFTER: Tuesday, all
18 right. Okay.

19 We had originally planned to break at
20 one for lunch and we all do need a break. I just
21 want to ask Alameda County, you do have your
22 witness, Dr. Zannetti. How long do you expect him
23 to testify on direct?

24 MR. MASSEY: I had envisioned him
25 briefly summarizing his report so I guess that is

1 contingent on how many questions others have for
2 him.

3 HEARING OFFICER GEFTER: Okay. Just a
4 second, let me just see whether we want to break
5 now and then come back. But we really can't begin
6 again until 2:30 because I noticed the hearing to
7 begin at 2:30.

8 Let's try it this way. Do you think we
9 can have his direct before we break and then take
10 a break and he can come back on cross at that
11 point? Would that be possible? Is that
12 reasonable to plan that? In other words, take his
13 direct before we break and then take our break.
14 This way we can be more expeditious in terms of
15 our time.

16 MR. MASSEY: I informed him to be as
17 brief as possible because he had already submitted
18 a written report.

19 HEARING OFFICER GEFTER: Okay. Well
20 then let's do that. Why don't you have your
21 witness come forward. We'll have his direct and
22 then we'll take a break and he'll come back on
23 cross later. Thank you. Dr. Zannetti.

24 Dr. Zannetti, we'll find you a seat.
25 Perhaps one of the Air District folks could move

1 away. But don't go too far because we may need
2 you later. And then Dr. Zannetti can come
3 forward. There we go, thank you.

4 And depending on how much cross
5 examination, we might just press on and then take
6 a break and still be back here by 2:30. Let's see
7 what happens.

8 MR. MASSEY: I think we'll probably be
9 able to do that.

10 HEARING OFFICER GEFTER: Okay, okay.
11 Dr. Zannetti, if you could please stand up, tell
12 us your name and I will swear you in.

13 DR. ZANNETTI: My name is Paolo
14 Zannetti.

15 HEARING OFFICER GEFTER: Thank you.
16 Whereupon,

17 DR. PAOLO ZANNETTI
18 was duly sworn.

19 HEARING OFFICER GEFTER: Please sit
20 down and identify yourself for the record.

21 MR. MASSEY: Dr. Zannetti, could you
22 please identify yourself for the record.

23 DR. ZANNETTI: Give me 30 seconds to
24 get my computer out just in case.

25 HEARING OFFICER GEFTER: While we're

1 waiting for Dr. Zannetti I do have a housekeeping
2 matter, which is the parties to move their air
3 quality testimony and exhibits into the record.
4 So after Dr. zannetti completes testimony and
5 cross I will ask all the parties to move their air
6 quality exhibits into the record.

7 DIRECT EXAMINATION

8 BY MR. MASSEY:

9 Q Dr. Zannetti, could you please identify
10 yourself for the record.

11 A My name is Paolo Zannetti. I am the
12 president of EnviroComp Consulting. I have my own
13 company.

14 Q Did you submit a statement of
15 qualifications to accompany your declaration and
16 proposed testimony?

17 A Yes, I sent you my CV.

18 Q Do you have any changes or amendments
19 to make to that statement of qualifications?

20 A No.

21 Q You submitted along with your
22 declaration a report; is that correct?

23 A Yes I did.

24 Q Do you have any --

25 HEARING OFFICER GEFTER: Do you want to

1 identify that for the record as an exhibit under
2 your exhibits?

3 MR. MASSEY: It is marked as Alameda
4 County Exhibit 500.

5 HEARING OFFICER GEFTER: Thank you.

6 BY MR. MASSEY:

7 Q Dr. Zannetti, do you have any changes
8 to the written report that you submitted as
9 evidence in this proceeding?

10 A Yes, I would like to clarify one point.
11 At page nine on my report, point number two. I
12 wrote the air modeling to address the concern in
13 item one was proposed but we couldn't find it.
14 And now I found the information in all the
15 documents I received describing the accidental
16 modeling of ammonia releases. So I found the
17 document. I never received, however, the computer
18 files to be able to replicate the results.

19 Q Thank you. And could you please give a
20 brief summary of the main points you make in your
21 report.

22 A Certainly. As described in section
23 two, page five, there are three points of concern
24 that were raised. On the first point of concern
25 was the difficulties in estimating the selected

1 catalytic reduction system that was proposed.

2 Now here I am testifying on behalf of
3 my chemical engineer because I am a physicist, an
4 atmospheric scientist. But I had a team helping
5 me in the review of these documents. My chemical
6 engineer, my senior chemical engineer, Dr. --
7 Professor Aaron Jennings has reviewed the document
8 and he is very uncomfortable with the information
9 he found in relation to maintenance, malfunctions,
10 the details of the system. We wrote down some of
11 our questions in our report and we continue to be
12 uncertain about the system itself.

13 I also have a note that I received from
14 Professor Jennings in which he says, the question
15 is whether the plant would incorporate the latest
16 development in SCR technology. Since the
17 technology was not defined in terms of the type of
18 catalyst, the operating conditions and the
19 optional sources of ammonia it was not clear what
20 technology will actually be applied.

21 So it will be hard for me to answer
22 questions on this topic but this is what my
23 chemist has reported. The other two issues I will
24 be able to have a more complete discussion, I
25 hope.

1 Number two is the modeling. That is my
2 field of expertise, air pollution modeling. That
3 is what I have done all my life. And we look at
4 the modeling results presented in the documents
5 and we recalculated the worst-case, one hour
6 impact of NO2. Because we believe there is an
7 error in what they have done.

8 The conditions for the start-up have
9 not been included and we are talking about 300
10 start-ups a year. So during the starting of the
11 system the exit velocity of the plumes and the
12 temperature is going to be lower. So it is
13 incorrect to simulate start-up with normal
14 operating conditions of more than 600 degrees
15 Fahrenheit and 20 meters per second of exit
16 velocity. So by redoing the worst-case, one hour
17 scenario we obtained data that are higher and they
18 exceed the current California standard for NO2.

19 The results that we have are -- So if
20 we try to take into account the fact that at the
21 beginning of the start-up the temperature is lower
22 or the fumes is lower, and the exit velocity is
23 lower we have that the maximum one hour
24 concentration of NO2 is calculated to be 431
25 micrograms per cubic meter. And if we add the

1 background, which is 143, we obtain a total
2 concentration of 574 micrograms per cubic meter,
3 which is exceeding the current standard in
4 California of 470. And of course we also exceed
5 the new standard, which is even more conservative.

6 The third point is the offsets. As a
7 scientist I feel very concerned about everything I
8 heard this morning on the offsets. The physics
9 and the chemistry of the atmosphere does not
10 support what has been said here today.

11 Of course if you have an emission like
12 a particulate matter, and you want to mitigate
13 that emission, the only way to do it is to have
14 local emissions very close to the source to be
15 reduced. That is the only way that has a
16 potential of working. And the only way to be 100
17 percent sure is to do proper modeling. You run
18 the model with the emissions, and by reducing the
19 other emission you calculate whether the entire
20 area is protected.

21 But once you start reducing the
22 emissions that are miles away for PM10 it is
23 almost ridiculous. There is no way that these
24 emissions that are 10, 20, 30 miles away of PM10
25 are going to mitigate the impact of PM10 in

1 Hayward. They are negligible, they are completely
2 negligible.

3 It is always good to reduce emissions,
4 I agree with that. But there is no way to justify
5 with science, with the physics of the atmosphere
6 and with modeling, the reduction of PM10 twenty
7 miles away with benefits in Hayward. By the time
8 the plume reach Hayward it is going to be
9 absolutely negligible in comparison with the local
10 emissions. So this is one issue.

11 The other issue even more troubling
12 from a point of view of science is the
13 interpollutant offsets. The idea that you reduce
14 SO2 and you have a benefit in PM10 is absolutely
15 theoretical and is something that needs to be
16 proven with real analysis and with modeling.

17 I can tell you that yes, if you reduce
18 SO2 you are going to have eventually a reduction
19 in sulfates. And sulfates are a small particle
20 that contributes to PM10 and also even more to
21 PM2.5. But the science is very shaky here. It
22 may take days for the plume to convert SO2 to SO4.
23 A typical, a typical value of conversion rate SO2
24 to sulfate is one percent per hour. That means
25 that it will take typically in normal condition

1 will take days.

2 There can be exceptions. There can be
3 stagnant conditions, there can be -- there are all
4 these exceptions in science. But in normal
5 condition if you reduce SO2 in California, in the
6 Bay Area, the benefits will be almost negligible
7 and probably you will be able to measure them in
8 Nevada. I am not exaggerating here. It takes
9 typically one percent per hour for SO2 to convert
10 to SO4.

11 So as a scientist I know the physics
12 and the chemistry of air pollution and I am very
13 surprised of all this discussion on emission
14 credits. I am not convinced.

15 Q Does that conclude your summary of your
16 direct testimony?

17 A I can talk much longer if you want
18 because I am known for this, but I think that's
19 enough.

20 (Laughter)

21 MR. MASSEY: Well thank you.

22 Dr. Zannetti is available for cross
23 examination to the extent any parties wish.

24 HEARING OFFICER GEFTER: Well thank you
25 very much.

1 My first question to you, Dr. Zannetti,
2 is how familiar you are with the Air District
3 protocol and scenario on how the Air District
4 works with the California Air Resources Board, US
5 EPA, the federal air resources. You know, the
6 entire protocol for analyzing a new source review
7 program. Because it sounds like from your
8 description that you --

9 I am asking, have you ever worked with
10 the Air District in terms of their program or are
11 you familiar at all with what the Air District has
12 done in this case? Have you read the FDOC in this
13 case, have you read the FSA?

14 DR. ZANNETTI: I am an atmospheric
15 scientist more than anything else. I am not
16 really an expert in regulatory application. I
17 have done regulatory modeling in the past,
18 especially in the '80s when I was working in
19 Pasadena for AeroVironment. But most of my
20 current work is not regulatory process and I give
21 my opinion mostly on scientific issues.

22 HEARING OFFICER GEFTER: Thank you. So
23 more of your work is done in sort of more of an
24 academic setting rather than in a regulatory
25 setting like this.

1 DR. ZANNETTI: No, I wouldn't call it
2 academic. Half of my work is dealing with
3 accidental releases of air pollution so I am
4 heavily involved in litigation cases in California
5 and Louisiana. And the other half of my work is
6 research and development.

7 HEARING OFFICER GEFTER: Okay. Does
8 anyone have cross examination of Dr. Zannetti,
9 putting in context his experience and background
10 and his concerns about the protocol and the
11 regulatory scheme that, you know, we are
12 constrained by. Is there any questions?

13 MS. HOLMES: I guess I just would have
14 one question just so that I can make sure that the
15 record is clear.

16 CROSS EXAMINATION

17 BY MS. HOLMES:

18 Q When you conducted your modeling for
19 the NO2 emission impacts you didn't follow then
20 the BAAQMD's modeling guidance, did you?

21 A I got the computer files from the
22 applicants and I ran the model exactly as they
23 have done. The only modification I made is a
24 variation in the temperature of the release and
25 the exit velocity for the first half an hour.

1 Which I think is more correct, let's say, than
2 what has been done by the applicants to take some
3 account of the fact that the plume is not at
4 normal temperature at the very beginning.

5 Q And I am asking you whether or not that
6 is consistent with the Bay Area Air Quality
7 Management's modeling guidelines?

8 A I don't think -- I don't know if my
9 approach has been submitted to the Bay Area
10 District. I believe that -- I would expect any
11 scientist at the District to agree more with our
12 modeling approach than what has been done by the
13 applicants. But of course I look forward to
14 hearing their opinions.

15 Q Perhaps that would be a redirect
16 question I could ask the Air District.

17 HEARING OFFICER GEFTER: Perhaps so.
18 Do you have any questions, Ms. Luckhardt?

19 MS. LUCKHARDT: I do.

20 CROSS EXAMINATION

21 BY MS. LUCKHARDT:

22 Q Mr. Zannetti, isn't it correct that you
23 did not get the exit velocity out of the modeling
24 files that you used in your analysis out of the
25 applicant's modeling files?

1 A Yes, I think that's what I said, that
2 they are using 20 meters per second and we used
3 about 14, 15 meters per second to take some
4 account on the fact that the start-up is different
5 from normal operating conditions.

6 Q Okay. So you created your own exit
7 velocity; is that correct?

8 A I changed the exit velocity to better
9 represent the physics of the phenomena.

10 Q And in addition you changed the
11 temperature.

12 A That is correct.

13 Q As well; is that correct?

14 A Using the same logic.

15 MS. LUCKHARDT: Thank you.

16 HEARING OFFICER GEFTER: Dr. Zannetti,
17 do you have any comments on a mitigation plan in
18 this project based on what you have heard today
19 and what you read in terms of the documents you
20 have looked at?

21 DR. ZANNETTI: Maybe yes. My comments
22 agree with this text I found on the web. They
23 say, EPA continues to discourage interpollutant
24 trading due to the scientific uncertainty of
25 acceptable pollutant trading ratios.

1 HEARING OFFICER GEFTER: This is what
2 you say in your report?

3 DR. ZANNETTI: Pardon?

4 HEARING OFFICER GEFTER: This is what
5 you say in your report?

6 DR. ZANNETTI: No, this is something
7 else that I am replying to your question. That
8 will be my opinion too, that I would really
9 discourage interpollutant tradings like reducing
10 SO2 to have benefit of PM10 within an area. That
11 really doesn't make sense to me.

12 MS. LUCKHARDT: I'm sorry, what
13 document are you referring to?

14 DR. ZANNETTI: I am referring to a web
15 page of comments of the EPA on interpollutant
16 tradings that I am using to answer a question.

17 HEARING OFFICER GEFTER: This is his
18 opinion and he is qualified as an expert.
19 Unfortunately, Dr. Zannetti, you have indicated to
20 us that you are not an expert on the regulatory
21 scheme under which we all are operating here. So
22 I think to some extent a lot of your observations
23 which may be scientifically based don't really fit
24 into the process under which we are operating. So
25 it is as if, you know, we are talking across

1 currents here.

2 At some point I had recommended that
3 Alameda County provide you with the FDOC and the
4 FSA and the AFC so that you could see, in fact,
5 what the Air District has required. Because the
6 Air District has required a number of conditions
7 which address a lot of your questions and they are
8 contained in the FDOC.

9 So any other questions of the witness?

10 DR. ZANNETTI: I would disagree with
11 you. After 35 years of study of air pollution I
12 am very familiar with all the issues related to
13 science.

14 HEARING OFFICER GEFTER: No, I am not
15 questioning your expertise.

16 DR. ZANNETTI: And regulations deal
17 with science. And interpollutant trading is
18 science, it's not just a regulation. So it is not
19 just picking up a number like 3 or 5.1, it has to
20 be justified.

21 Because you asked me a question and I
22 couldn't finish. The EPA says that the ratio will
23 be determined after adequate modeling, public
24 notice and EPA concurrence. No serious modeling
25 has been done or I have seen that would justify

1 three or five or ten or 100. It is an issue that
2 doesn't take into account the science of air
3 pollution.

4 HEARING OFFICER GEFTER: Thank you.
5 And I am not questioning your expertise. I was
6 just saying that in this context we are in a
7 regulatory program and there is a disconnect
8 somehow.

9 MR. MASSEY: Ms. Gefter, I recognize
10 that Dr. Zannetti is taking a different approach
11 to the same information and we thought it was a
12 valuable point of view that you should take into
13 consideration. Particularly because the applicant
14 has requested an override and that expands the
15 scope of the kind of issues that you need to
16 consider and the factors that will go into the
17 override balance in question.

18 And we think that Dr. Zannetti, in
19 addition to offering an important contribution to
20 the mitigation issues, also his testimony goes to
21 the ultimate override question as well in terms of
22 the weighing that the Commission will ultimately
23 have to do on the value of this project.

24 HEARING OFFICER GEFTER: I understand
25 and I really appreciate that also. And I did not

1 mean to undermine your testimony. I am just
2 explaining to the parties and also to the members
3 of the public how we are constrained by the
4 regulatory system.

5 MR. MASSEY: Thank you.

6 HEARING OFFICER GEFTER: Thank you.

7 Any other questions. Okay.

8 Dr. Zannetti, thank you very much.

9 DR. ZANNETTI: Thank you.

10 HEARING OFFICER GEFTER: Do you have
11 any redirect at this point?

12 MS. HOLMES: I do.

13 HEARING OFFICER GEFTER: Let's do it
14 before we break for lunch.

15 MS. LUCKHARDT: Do we get an
16 opportunity to ask questions of staff and the Air
17 District? I do have a few questions.

18 MS. HARGLEROAD: And I also had
19 mentioned that too.

20 HEARING OFFICER GEFTER: Yes, I know
21 that. Staff has some redirect of her witnesses
22 and then applicant and then Ms. Hargleroad and
23 then we'll break.

24 MS. HOLMES: Thank you. I will try to
25 keep it very short. My first two questions are

1 for the staff witness, Mr. Birdsall.

2 REDIRECT EXAMINATION

3 BY MS. HOLMES:

4 Q Mr. Birdsall, earlier this morning you
5 were asked questions about guidance that the Air
6 Resources Board has provided regarding permitting
7 of power plants in California. Do you recall that
8 line of questioning?

9 A Yes I do.

10 Q Is that guidance provided by the Air
11 Resources Board to the Energy Commission or Air
12 Districts or any other lead agencies to govern how
13 they deal with adverse impacts under CEQA?

14 A No, I view the environment or the
15 guidance or that the purpose of the guidance is to
16 provide guidance to permitting agencies in their
17 implementation of a new source review, which is
18 the responsibility of the local air district and
19 that the CEQA process would be separate.

20 Q Thank you. Secondly, there was
21 extensive discussion this morning regarding the
22 project's particulate impacts. Do you believe
23 that the project's impacts will be local, regional
24 or both with respect to particulate matter?

25 A Clearly they are both. The pollution

1 is transported.

2 MS. HOLMES: Thank you.

3 And I have a couple of questions of the
4 District.

5 REDIRECT EXAMINATION

6 BY MS. HOLMES:

7 Q There was discussion including some
8 discussion by the most recent witness regarding
9 the use of banked emission reduction credits.
10 Could you please briefly explain how allowing the
11 use of banked emission reduction credits, that is
12 shutdowns of sources that have happened in the
13 past, nonetheless allows for an air quality
14 improvement throughout the basin.

15 A Well every year we have to demonstrate
16 that our permit program has no net increase of
17 ozone precursors in particular. So we go through
18 that exercise and we do that every year to show
19 that the permit system has not allowed an increase
20 in ozone precursors.

21 There was a baseline, I forget the
22 exact year, I think it's 1991, and that was kind
23 of the zero year. Credits are put in and out and
24 there's a lot of confusion about it. But
25 basically what happens is when a project shuts

1 down we don't give them all of those emissions
2 that they had. So they only get a portion of them
3 based on what is reasonably available to control
4 those emissions. When the shutdown occurs they
5 don't get the whole delta, they get a portion of
6 it.

7 And then when a new project comes in
8 they have to provide a 15 percent surplus in
9 tonnage of emissions for ozone precursors. And so
10 15 percent of the tonnage is kind of taken off the
11 bank and that is not available for use by other
12 facilities.

13 And that is the simplest way I can
14 state it. And if Brian has anything to add I
15 would appreciate it.

16 MR. BATEMAN: Yes, I could add one
17 element to that. Banked emission reductions are
18 retained in the District's emissions inventory for
19 planning purposes. So the Air District is
20 required to prepare air quality plans.

21 I mentioned before that the District is
22 non-attainment for both state and federal ambient
23 air quality standards for ozone. So the emission
24 reductions of precursor organic compounds and NOx,
25 which are precursors to ozone formation, banked

1 emission reductions are retained in the plan. So
2 those excess emissions, if the District has to
3 achieve standards, have to come from other places.
4 There have to be additional emission reductions to
5 make up for those banked credits, in essence.

6 BY MS. HOLMES:

7 Q Thank you.

8 There are times, are there not, when
9 the District does require particulate matter
10 emission reduction credits?

11 A Under our current rules you would have
12 to emit over 100 tons a year and then you would
13 have to provide particulate emission reduction
14 credits.

15 Q When that kind of a requirement is
16 applicable to a project does the district
17 typically apply any kind of locational restraints
18 on those emission reduction credits?

19 A Our rules allow regional use of
20 credits.

21 MS. HOLMES: Thank you.

22 REDIRECT EXAMINATION

23 BY MS. HOLMES:

24 Q And then my last question goes to the
25 discussion that we just heard about the modeling

1 protocol for NO2 impacts. I believe, if I have it
2 correctly, the witness stated that if asked the
3 District would -- I don't want to mischaracterize
4 what he said, but agree that the approach that he
5 was referencing was better than the approach that
6 was used by the staff and the applicant. I was
7 wondering whether or not the District could talk
8 about how their modeling guidelines address
9 modeling NO2 impacts.

10 A First of all the Air District's rules
11 and regulations in this particular case did not
12 require an ambient air quality impact analysis for
13 NO2. And second, we have not reviewed in any
14 level of detail Dr. Zannetti's analysis. So I
15 really can't comment on that in terms of whether
16 or not it would conform with Air District modeling
17 guidance. We would need to take a look at that in
18 more detail.

19 Q Maybe I can just ask you a specific
20 question about that. Does any of the modeling
21 guidelines that you provide for NO2 modeling call
22 for modeling NO2 impacts in 15 minute increments?

23 A No, typically the averaging period for
24 the air quality models that we use, the regulatory
25 dispersion models, is one hour. However, if there

1 was a condition where the emissions within a one
2 hour period -- I think his main comments were on
3 the stack parameters, the exit velocity and the
4 temperature.

5 If during that one hour period the
6 conditions were such that the average temperature
7 or the average exit velocity during that period
8 might be something other than what it would be,
9 say at full load, then yes you would model it at
10 those, at those reduced conditions. That would be
11 the appropriate procedure to do that.

12 MS. HOLMES: Thank you.

13 HEARING OFFICER GEFTER: Ms. Luckhardt.

14 MS. LUCKHARDT: Okay, starting with
15 Mr. Birdsall.

16 CROSS EXAMINATION

17 BY MS. LUCKHARDT:

18 Q Isn't it true that your testimony does
19 not provide supporting calculations for the SO2 to
20 PM10 ratio you propose?

21 A The testimony is mainly a reflection of
22 the Russell City Energy Center testimony. It has
23 some elements that are -- this is Appendix A of
24 the air quality staff assessment. It has data
25 from ambient monitors that is, that is taken and

1 used in a ratio with itself. Meaning that the
2 data from the ambient monitors is essentially just
3 divided from one column to the next in order to
4 get at the ratio. So the calculation is very easy
5 to reproduce.

6 I think what I have heard from your
7 side of the table is that our analysis was not
8 transparent and not good science. And I have
9 reviewed Mr. Westbrook's testimony and he follows
10 a very similar path to arrive at what actually are
11 very similar conclusions when looking at the
12 Concord station and the San Pablo station and the
13 San Francisco station. Which I think are the
14 three locations that are most relevant to this
15 project.

16 So I don't think that the method of
17 analysis provided by Mr. Westbrook and myself or
18 the Russell City Energy Center decision, I don't
19 think the method is all that different.

20 Q But there are no calculations provided
21 in your testimony, correct?

22 A That's true, there are no calculations.
23 But the calculation is very simple, divide one
24 column from the next.

25 Q But it is not there, correct?

1 HEARING OFFICER GEFTER: Are we
2 referencing Air Quality Appendix 1 --

3 MS. LUCKHARDT: The FSA.

4 HEARING OFFICER GEFTER: -- at the end
5 of your section on air quality? This is a table
6 that you brought in from Russell City, apparently.

7 MR. BIRDSALL: Yes, in Air Quality
8 Appendix 1 there is simply a table, the
9 calculation is not explained. But I would be
10 happy to do that for you if you'd like.

11 MS. LUCKHARDT: Okay, turning to the
12 District. And I'll let you guys pick who should
13 respond.

14 CROSS EXAMINATION

15 BY MS. LUCKHARDT:

16 Q Is selective catalytic reduction the
17 best available control technology for NOx control
18 for this project?

19 A Yes, we determined that that is the
20 best available control technology.

21 Q Are you aware of the District's prior
22 use of SO2 for PM10 trades?

23 A I don't have an extensive background.
24 I know that it was done in the Russell City
25 proceeding and I know that the San Francisco

1 Electric Reliability project that has been brought
2 up also had interpollutant trading for SO2 for PM.
3 That's about my level of knowledge of it.

4 Q Are you aware of what ratio the
5 District has used in the past?

6 A I think as has already been established
7 in the record, the San Francisco project was three
8 tons of SO2 to one ton of particulate matter.

9 CROSS EXAMINATION

10 MS. LUCKHARDT: Thank you. I
11 understand that neither of you run the fireplace
12 retrofit program but isn't it true that providing
13 100 percent funding for a program such as this
14 encourages replacement of unused fireplaces?

15 MR. BATEMAN: I would assume that would
16 be true, yes.

17 HEARING OFFICER GEFTER: But we were
18 going to ask the parties, both applicant and
19 staff, to work with the Air District to locate
20 information on the existing program, as we
21 mentioned earlier.

22 MS. LUCKHARDT: Does the District's new
23 source review rule allow the use of emission
24 reduction credits from anywhere within the
25 district?

1 MR. LUSHER: I think that has been
2 stated in the record, yes it does.

3 MS. LUCKHARDT: When you are analyzing
4 projects that are not power plants do you perform
5 the CEQA analysis?

6 MR. BATEMAN: At times the lead agency
7 for CEQA is more typically a city or county
8 agency. But if the city or county does not have
9 approval over an aspect of the project then that
10 can fall to the Air District, yes.

11 MS. LUCKHARDT: Is the project setting
12 a new level for NOx impacts, NOx emission rate?

13 MR. LUSHER: Well on an emission rate
14 basis, other plants in California have tried to
15 meet the five PPM standard proposed for this
16 project and had some difficulty. But there is
17 also a facility in Nevada that appears to meet
18 that requirement so this is -- to my knowledge
19 there is the Nevada facility, which has emission
20 rates expressed in pound per hour that are
21 corresponding roughly to five PPM. And this would
22 be a new achievement practice back level for the
23 source category.

24 MS. LUCKHARDT: And then isn't it
25 correct that ammonia slip is tied to NOx control?

1 Nitrous oxides control, sorry.

2 MR. LUSHER: Yes it is. And it is also
3 tied to catalyst life. Because the applicant has
4 proposed a very low NOx limit I think they were
5 very conservative initially with 20 PPM ammonia
6 slip and now they are at 10.

7 And that being said, some of the data
8 that I have looked at from other facilities, we
9 usually see early in catalyst life very low slip
10 levels. And then just before they change it
11 you'll have a short period where the slip level
12 would approach the permit limit.

13 That being said, over the average
14 lifetime of the catalyst you are not going to be
15 emitting at ten PPM slip the entire time.

16 MS. LUCKHARDT: And would you rather
17 see a lower NOx level or a lower ammonia slip?

18 MR. BATEMAN: There are more stringent
19 regulatory requirements for NOx than there are for
20 ammonia so I think the answer to that question is
21 we would rather see NOx reductions than ammonia
22 reductions.

23 MS. LUCKHARDT: I have nothing further.

24 HEARING OFFICER GEFTER: Thank you.

25 Ms. Hargleroad.

1 MS. HARGLEROAD: I just have some quick
2 follow-up questions also.

3 RECROSS EXAMINATION

4 BY MS. HARGLEROAD:

5 Q To start off with, Mr. Birdsall, if you
6 could go your Table 20, 4.1-31. And that
7 reflects, that page says, the applicant in
8 conjunction with the Energy Commission and Bay
9 Area Air Quality Management staff identified the
10 following potential new sources within six miles
11 of the project. And listed is the, the first item
12 on the list is the Russell City Energy Center.

13 My question is, does this include the
14 daily start-ups and shutdown operations in Table
15 20 for Russell?

16 A Table 20 in my staff assessment shows
17 the combined cumulative effects of the Eastshore
18 power plant then the Russell City power plant and
19 the other new sources that you are asking about.
20 The Russell City modeling assessment does include
21 its short-term emission rates for the short-term
22 averaging periods. Meaning for carbon monoxide
23 one hour averaging period there would be the
24 short-term carbon monoxide emission rate from both
25 Eastshore and Russell.

1 Q Because presently Russell is authorized
2 to start up and shut down twice a day I believe;
3 is that correct?

4 A I couldn't say what it is authorized
5 to.

6 Q Well if it's authorized to do it isn't
7 that going to be relevant to your analysis as to
8 whether or not it is included in this table?

9 A The emissions from Russell during its
10 start-up phase happen on a short-term basis. For
11 example, like I was saying, the carbon monoxide.
12 And if those start-up emissions during its start-
13 up, whether it be once or twice a day, if those
14 are included in the analysis of the one hour
15 carbon monoxide concentration in Table 20 then it
16 doesn't matter if it starts more than once or
17 twice a day. We are assuming, basically, it is
18 starting every hour in that modeling assessment.

19 Q Okay. Additionally there is the toxic
20 air contaminants.

21 MS. HOLMES: Could you please reference
22 a page of the testimony.

23 BY MS. HARGLEROAD:

24 Q Well I'm just referring to the toxic
25 air contaminants. Can you tell me, is there a

1 complete inventory of the toxic air contaminant
2 levels in the Hayward area? Not just the ones
3 that the Bay Area Air Quality Management District
4 regulates but in general a total inventory.

5 A If you are asking about a total
6 inventory of toxic air contaminant emissions for
7 all of the sources in the Bay Area.

8 Q That exist now.

9 A I don't know. I am not preparing an
10 assessment on toxic air contaminant emissions in
11 this air quality section of the analysis.

12 Q Okay. So your analysis is going
13 towards new, additional, potential emissions.

14 A My analysis is focused on air quality
15 criteria pollutants and not toxic air
16 contaminants, which are addressed in public
17 health.

18 Q Okay.

19 A And yes, I am addressing new stationary
20 sources in this Table 20 that we are talking
21 about.

22 Q Also there is a predicted, the
23 localized generation of PM10 and PM2.5 impacts.
24 As far as the generation of that number and what
25 those impacts are, did you also include the

1 contribution of ammonia slip?

2 MS. HOLMES: Again, can you please
3 reference a page in the testimony to which you are
4 referring so that we can look, make sure we're
5 looking at the same numbers.

6 MS. HARGLEROAD: Well, the air quality
7 section.

8 MS. HOLMES: Right, which page?
9 There's a number of tables in there.

10 MR. BIRDSALL: Maybe if you rephrase
11 the question.

12 BY MS. HARGLEROAD:

13 Q Okay, thank you.

14 Well, we have a contribution. This
15 project is going to emit a certain amount of PM10
16 and PM2.5 impacts, is that correct? Right?

17 A Yes.

18 Q Okay. So in calculating what those
19 impacts are did you also include the contribution
20 of ammonia slip, which takes place with the
21 production of the energy?

22 A The ambient air quality impacts that I
23 have modeled in Table 20 do not include the
24 reactivity of ammonia slip and whatever secondary
25 pollutants may come of that.

1 Q Okay.

2 A In order to address those impacts we
3 mitigate the other precursors like sulfur oxides
4 and nitrogen oxides and go for essentially the
5 full PM10 mitigation in the AQ-SC8 and also
6 essentially require the lower ammonia slip
7 emission limit of ten PPM.

8 Q Also group petitioners submitted
9 Exhibit 705. I don't know if you have had an
10 opportunity to look at that.

11 A Maybe if you summarize it.

12 Q It's the emission factor documentation
13 for AP-42 section 3.2, natural gas-fired
14 reciprocating engines.

15 HEARING OFFICER GEFTER: Right, that's
16 the same as Mr. Sarvey's 802.

17 MS. HARGLEROAD: We missed a
18 duplication.

19 HEARING OFFICER GEFTER: Yes. So
20 Mr. Sarvey already asked a question about that.

21 MS. HARGLEROAD: Okay.

22 HEARING OFFICER GEFTER: I don't know
23 if you're repeating the same question.

24 MS. HARGLEROAD: All right. Well I'd
25 like to follow up on that.

1 BY MS. HARGLEROAD:

2 Q Can you tell me how many engines will
3 be tested. There are several engines in this
4 project.

5 A I think that information is in our
6 conditions of certification that come from the Air
7 District's requirements.

8 Q Is that maybe more appropriate for the
9 Air District to respond to?

10 A Yes, or we can all read together if we
11 go and find it in the conditions. It's up to you.

12 CROSS EXAMINATION

13 BY MS. HARGLEROAD:

14 Q Well I'll ask the Air District, they
15 might have the answer to that.

16 A Let me try to understand what you're
17 asking. It appears you're asking about what data
18 is available now for these engines.

19 Q Well no, my question is --

20 A Or how often do they get tested.

21 Q How many engines are going to be
22 tested?

23 A For particulate matter all 14 will be
24 tested one year out. Actually when they start up,
25 one year out and then it goes to a three year or

1 8700 hour schedule.

2 Q Okay.

3 A And all 14 are tested for particulate
4 matter. They will have continuous emission
5 monitors for nitrogen oxides and carbon monoxide
6 so that will be an ongoing thing. And there's
7 also requirements to test for organics and toxics
8 as well.

9 Q Well related to that also is will the
10 applicant be allowed to use the emission factors
11 or banking in lieu of a physical -- wait one
12 second. I take banking away. Will the applicant
13 be allowed to use emission factors in lieu of or
14 to waive a physical source test?

15 A We spell out the frequency of source
16 testing in the permit. The applicant will track
17 emissions using that source test data if that is
18 your question. But it doesn't get them out of a
19 source test, specifically.

20 Q Okay. So they --

21 A And if --

22 Q The source test, the physical source
23 test is going to be required regardless?

24 HEARING OFFICER GEFTER: Ms.

25 Hargleroad, let me interrupt here. If you look at

1 the FSA it incorporates all of the conditions from
2 the FDOC and they explain all the source testing
3 that the Air District requires. So if you take a
4 look you can ask the Air District specifically,
5 you know, condition by condition. But we can all
6 read them as well.

7 MS. HARGLEROAD: Okay, I'm going to --

8 HEARING OFFICER GEFTER: So the line of
9 questioning really isn't very helpful to the
10 record because we know where to find these
11 conditions.

12 MS. HARGLEROAD: Okay, thank you. I am
13 not sure if this is a question for staff or the
14 Air District but how many fireplaces will be
15 required to be retrofitted to satisfy the
16 mitigation goal?

17 MR. BIRDSALL: The mitigation goal has
18 two options, there is the fireplace program and
19 then there is the ERC surrendering that could be
20 used as an alternative to that. So the number of
21 fireplaces that need to be retrofit depends on
22 whether or not the applicant comes forward with
23 emission reduction credits.

24 MS. HARGLEROAD: Well going back to the
25 emission reduction credits. I understand the Bay

1 Area Air Quality District has testified that there
2 are some credits available, I believe that's
3 correct. And my question is, we also have the
4 Russell project out there too. And is that
5 assuming that the Russell project has not
6 purchased any or is that after the purchase of
7 credits for Russell?

8 HEARING OFFICER GEFTER: That may not
9 be within this witness's purview.

10 MR. BIRDSALL: It may be a question --

11 MS. HARGLEROAD: It may be the Air
12 District, that's why I pose it for either
13 organization.

14 HEARING OFFICER GEFTER: The Air
15 District could perhaps answer that question.

16 MR. LUSHER: All I can say is that all
17 credits that are available are on the web site in
18 the bank and both projects might be chasing
19 similar credits if that's the point you're trying
20 to make

21 MS. HARGLEROAD: Okay. So your
22 statement that there are presently credits
23 available does not take into consideration the
24 purchase that would be necessary for the Russell
25 project.

1 MR. LUSHER: Well I have no knowledge
2 of what Calpine has obtained or not obtained but
3 the available credits are on the web site.

4 HEARING OFFICER GEFTER: Do you have
5 many more questions.

6 MS. HARGLEROAD: Well, I don't think I
7 really got an answer to the fireplace, how many
8 fireplaces would have to be retrofitted.

9 HEARING OFFICER GEFTER: I think you've
10 asked that several times.

11 MS. HARGLEROAD: Well. Also the Bay
12 Area, the District -- Let me ask. You did issue a
13 Preliminary Determination of Compliance, correct?

14 MR. LUSHER: Yes, that's correct.

15 MS. HARGLEROAD: Okay. And aren't you
16 required to have a public hearing for that?

17 MR. LUSHER: Not to my knowledge.

18 HEARING OFFICER GEFTER: It is part of
19 the AFC process, they had workshops on it.

20 MR. LUSHER: There is a regulation 2-3.

21 HEARING OFFICER GEFTER: Right. No, I
22 don't think there is a problem with any of --

23 MR. BATEMAN: I'm sorry. We are
24 required to have a public comment period, we are
25 not required to have a public hearing.

1 HEARING OFFICER GEFTER: Right. And
2 there was a workshop that staff sponsored on air
3 quality.

4 MS. HARGLEROAD: Okay. And that is
5 satisfying your regulation 2-4-4-0-5?

6 MR. LUSHER: I'm sorry, I said the
7 wrong reg. That's the one that's power plants, I
8 apologize.

9 MS. HARGLEROAD: Okay, thank you.

10 MR. LUSHER: Yes.

11 HEARING OFFICER GEFTER: In the
12 meantime I would want to move all the air quality
13 exhibits into the record so I'm asking the parties
14 again to be ready to do that when you complete
15 your cross and recross.

16 MS. HARGLEROAD: I think that's all the
17 questions I have, thank you.

18 HEARING OFFICER GEFTER: Thank you.

19 I assume there is no more redirect or
20 recross going on here and we can move on to moving
21 the exhibits. Applicant.

22 MS. LUCKHARDT: Okay. Applicant moves
23 the air quality sections of the AFC, that's
24 Exhibit 1; the air quality and public health
25 sections of the Hayward application for

1 development permit, Exhibit 3; the air quality
2 sections of Exhibit 2; the air quality sections of
3 Exhibit 12; the air quality sections of Exhibit 6;
4 the cumulative air quality impact analysis
5 modeling files, that's Exhibit 11; the air quality
6 comments on the Preliminary Staff Assessment,
7 that's Exhibit 13; the project owner's
8 supplemental testimony on air quality, that's
9 Exhibit 15; and the project owner's -- well, I
10 think we'll hold off on public health.

11 HEARING OFFICER GEFTER: What about 20?
12 We talked about 20. I know it's traffic but you
13 also talked about it.

14 MS. LUCKHARDT: Yes, that is -- It is
15 part of Exhibit 20. The first bullet is the
16 modeling input, which was part of the AFC,
17 attached to the exhibits to the AFC, so that is in
18 Exhibit 1.

19 HEARING OFFICER GEFTER: Okay.

20 MS. LUCKHARDT: And we also have, at
21 some point we would like to move in the conditions
22 of certification. They are air quality conditions
23 associated with the two documents that were part
24 of our prehearing conference statement.

25 HEARING OFFICER GEFTER: Okay, we need

1 to give them some exhibit numbers if you would
2 like to do that.

3 MS. LUCKHARDT: Okay. The first
4 document was submitted with our prehearing
5 conference statement and it is the proposed
6 revisions to conditions of certification,
7 Eastshore Energy Center. It is the larger of the
8 two documents and contains revisions to conditions
9 in redline strikeout.

10 The second document is our errata to
11 Eastshore Energy Center's prehearing conference
12 statement dated November 20, the other one was
13 filed November 19. And the second document just
14 contains a modification to AQ-SC8.

15 HEARING OFFICER GEFTER: Okay, so as I
16 can follow what you're saying, the proposed
17 revisions to conditions would be Exhibit 53. The
18 errata to your prehearing conference statement, is
19 that what you're calling it?

20 MS. LUCKHARDT: Yes.

21 HEARING OFFICER GEFTER: Which is
22 Exhibit 54. And your modification of AQ-SC8 would
23 be Exhibit 55.

24 MS. LUCKHARDT: That is actually
25 contained in Exhibit 54.

1 HEARING OFFICER GEFTER: It's in 54?

2 MS. LUCKHARDT: Yes.

3 HEARING OFFICER GEFTER: Okay, so we'll
4 make two exhibits, right?

5 MS. LUCKHARDT: Yes.

6 HEARING OFFICER GEFTER: Okay. The
7 modification to AQ-SC8 is also part of Exhibit 54.
8 All right, so you're moving those in at this time.

9 MR. SARVEY: I object to Exhibit 11.

10 HEARING OFFICER GEFTER: I'm sorry.

11 MR. SARVEY: I object to Exhibit 11.

12 MS. LUCKHARDT: You object to the
13 cumulative air quality impact analysis modeling
14 files?

15 MR. SARVEY: Yes I do.

16 HEARING OFFICER GEFTER: And on what
17 basis is that?

18 MR. SARVEY: I have requested these
19 files twice from the applicant and they have given
20 me some unaccessible e-mail address. I have
21 requested them from Dockets three times. I have
22 all the documentation right here. They are not --
23 As far as I'm concerned I haven't had the ability
24 to review them.

25 HEARING OFFICER GEFTER: Okay, we'll

1 ask the applicant to provide them to you again; in
2 the interim we will accept the exhibits. Are
3 there any other objections?

4 MS. LUCKHARDT: Yes, we actually set
5 them up for Mr. Sarvey to download. He asked for
6 additional instructions, we provided them and
7 heard nothing further so I assumed he was able to
8 download them.

9 HEARING OFFICER GEFTER: Okay, well
10 that can be worked out between the applicant and
11 Mr. Sarvey. Are there any other objections to the
12 applicant's exhibits?

13 Hearing none, all of the exhibits that
14 applicant has identified regarding air quality are
15 now received into the record. Staff.

16 MS. HOLMES: I thought we had already
17 moved in the FSA.

18 HEARING OFFICER GEFTER: Okay.

19 MS. HARGLEROAD: And the PSA, which
20 were Exhibits 200 and 202. But at this time I
21 would also like to move in the Final Determination
22 of Compliance, which is Exhibit 201.

23 HEARING OFFICER GEFTER: I assume there
24 are no objections to the FDOC, Exhibit 201.

25 Hearing none that exhibit is moved into

1 the record.

2 City of Hayward, you didn't have any
3 air quality exhibits.

4 MS. GRAVES: No.

5 HEARING OFFICER GEFTER: Okay. Alameda
6 County, you had a number of exhibits on air
7 quality, do you want to move them now?

8 MR. MASSEY: I believe we only had two,
9 Exhibits 500 and 501, 500 being Dr. Zannetti's
10 testimony and 501 is an accompanying declaration.

11 THE REPORTER: Please pass him the mic.

12 HEARING OFFICER GEFTER: I'm sorry,
13 please repeat that for the record.

14 MR. MASSEY: The only air quality
15 exhibits the County had were exhibits 500 and 501.
16 Exhibit 500 is the testimony of Dr. Zannetti and
17 Exhibit 501 is his accompanying declaration and
18 r, sum, .

19 HEARING OFFICER GEFTER: Any objections
20 to Exhibits 500 and 501?

21 Hearing none those exhibits are now
22 received into the record.

23 MS. HARGLEROAD: Are we going to be --

24 HEARING OFFICER GEFTER: Let's finish
25 this first and then I'll take your question.

1 Okay. In fact, Ms. Hargleroad, we are
2 now on your exhibits. So if you would like to
3 move your exhibits on air quality.

4 MS. HARGLEROAD: Yes I would, please.

5 HEARING OFFICER GEFTER: Do you want to
6 identify which ones you are moving right now.

7 MS. HARGLEROAD: Yes, that's 705. Just
8 705.

9 HEARING OFFICER GEFTER: Okay. And
10 that was the same exhibit as Mr. Sarvey's 802.
11 It's a public document, it's a US EPA document.
12 There shouldn't be any objection to that, even
13 though nobody has actually verified it except for
14 Mr. Birdsall. But in any event we will take
15 notice of that and accept it into the record,
16 Exhibit 705.

17 And Mr. Sarvey, move your exhibits.

18 MR. SARVEY: Yes, I move Exhibits 800
19 to 806, please.

20 HEARING OFFICER GEFTER: Okay. And
21 we'll note that 802 is the same as 705.

22 What about 806, your proposed
23 condition. Do you want to move that in?

24 MR. SARVEY: Yes, please.

25 HEARING OFFICER GEFTER: Thank you.

1 All right. I know there are a number
2 of technical objections to Mr. Sarvey's exhibits,
3 however, we are going to accept them because
4 Mr. Sarvey has identified them and we have heard
5 his testimony. So we'll just take his exhibits
6 and give them the weight that they are due for the
7 purposes of this hearing.

8 Okay, Mr. Sarvey, thank you very much.
9 You're welcome to stay. I know that you've
10 completed your testimony but please stay if you
11 have any other insights for us today.

12 PRESIDING COMMISSIONER BYRON:

13 Mr. Sarvey, I notice you're a long ways away from
14 the rest of us. I'm not sure if it's the
15 microphone, the only microphone over there that
16 works or if it's a quarantine but thank you for
17 your participation. (Laughter)

18 MR. SARVEY: Thank you, Commissioner
19 Byron.

20 HEARING OFFICER GEFTER: So at this
21 point we're going to break for our lunch break and
22 be back I guess, by 2:30 if we can, or as soon as
23 possible thereafter and then we're going to start
24 with the public health testimony.

25 PRESIDING COMMISSIONER BYRON: And I

1 also wanted to thank Messrs. Bateman and Lusher
2 for being here. Extremely helpful in answering
3 many of our questions today. Thank you,
4 gentlemen, for your time.

5 HEARING OFFICER GEFTER: Thank you very
6 much. Off the record.

7 (Whereupon, the lunch recess
8 was taken.)

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1 AFTERNOON SESSION

2 HEARING OFFICER GEFTER: Let's get
3 started. I am going to ask the applicant to begin
4 with your public health testimony. Identify your
5 witnesses please and we'll swear them in.

6 MS. LUCKHARDT: Okay. The witnesses
7 have already been sworn.

8 But before we do that I just want to
9 note that Dave Stein is delivering a copy of the
10 cumulative modeling files that Mr. Sarvey
11 requested to him on disc right now.

12 HEARING OFFICER GEFTER: Well thank you
13 very much. Mr. Sarvey, there you go.

14 MS. LUCKHARDT: We will be calling Dave
15 Stein and James Westbrook to testify in the area
16 of public health. I will start with Mr. Westbrook
17 since he is sitting here.

18 DIRECT EXAMINATION

19 BY MS. LUCKHARDT:

20 Q Was a statement of your qualifications
21 attached to your testimony?

22 A Yes it was.

23 Q And does your testimony --

24 HEARING OFFICER GEFTER: Wait a minute,
25 one more thing. If you could please identify the

1 exhibits, especially the testimony with respect to
2 public health.

3 MS. LUCKHARDT: Okay, with respect to
4 public health we are offering Exhibit 19, which is
5 the supplemental testimony. We are also offering
6 the public health section of the AFC, which is
7 Exhibit 1, the public health section of Exhibit 3,
8 the public health section of Exhibit 2, the public
9 health section of Exhibit 12, Exhibit 6, and
10 Exhibit 19, which I have already identified.

11 HEARING OFFICER GEFTER: Thank you.

12 MS. LUCKHARDT: Those are the exhibit
13 numbers. And those are all identified on
14 Mr. Westbrook's testimony on Exhibit 19.

15 BY MS. LUCKHARDT:

16 Q Mr. Westbrook, do you have any
17 corrections to your testimony at this time?

18 A No.

19 Q Insofar as your testimony contains
20 statement of fact are those facts true and correct
21 to the best of your knowledge?

22 A Yes.

23 Q Insofar as your testimony contains
24 statements of opinion do they represent your best
25 professional judgment?

1 A Yes.

2 Q And do you now adopt all these exhibits
3 as your sworn testimony?

4 A Yes I do.

5 MS. LUCKHARDT: Okay.

6 DIRECT EXAMINATION

7 BY MS. LUCKHARDT:

8 Q And then Mr. Stein, were you
9 responsible for preparation of the AFC?

10 A Yes.

11 Q And did you provide peer review of the
12 public health section?

13 A Yes I did.

14 FURTHER DIRECT EXAMINATION

15 BY MS. LUCKHARDT:

16 Q And Mr. Westbrook, can you explain why
17 you believe AQ-24 protects public health.

18 A Yes. AQ-24 protects public health
19 because it requires a representative source test
20 on a single engine for the compounds stated in the
21 condition, which are the compounds which are of
22 the most concern to health risk impacts. And the
23 results of the tests we would expect to be much
24 lower than the conservative emission estimates
25 based on default emission factors that were

1 provided in the application for certification.

2 Q And what is your concern with the
3 condition of certification in public health?

4 A Staff have recommended a source testing
5 program that is fairly extensive. And while we
6 appreciate staff's consideration of the different
7 sources of emission factors and what is
8 characterized as uncertainty in the emissions data
9 we feel that the amount of testing required is
10 unreasonable and unnecessary.

11 We share the confidence, as I just
12 stated, that the actual emissions will be much,
13 much, much lower for this engine that is burning
14 clean, natural gas. These emissions of toxic
15 compounds that are trace constituents from that
16 combustion, we believe that the tests will show
17 that the results are much lower.

18 So we would stay consistent in our
19 recommendation of what the District has proposed.
20 However, we would add a level of stringency in
21 that if the source test methodology of testing one
22 engine in triplicate, because the District
23 requires three test runs for each test, if that
24 does not provide three valid test runs then we
25 would select another engine. And we would keep

1 selecting engines until we get three valid test
2 runs for all the compounds for all three runs on
3 each engine.

4 Q Thank you.

5 A One more -- I'm sorry, one more concern
6 with the testing requirement for acrolein. The
7 District does not have a appropriate method for
8 acrolein at this time and therefore we would
9 propose the acrolein testing not be required under
10 Public Health-1 consistent with District policy.

11 MS. LUCKHARDT: Our witnesses are
12 available.

13 HEARING OFFICER GEFTER: Okay, thank
14 you very much. I am going to ask the staff to
15 present its witness too and then make both
16 witnesses available for cross.

17 MS. HOLMES: The staff's witness is
18 Dr. Alvin Greenberg, he needs to be sworn.

19 HEARING OFFICER GEFTER: State your
20 name, please.

21 DR. GREENBERG: Alvin Greenberg.
22 Whereupon,

23 DR. ALVIN GREENBERG
24 was duly sworn.

25 HEARING OFFICER GEFTER: Thank you.

1 Proceed.

2 DIRECT EXAMINATION

3 BY MS. HOLMES:

4 Q Dr. Greenberg, did you prepare the
5 public health sections of Exhibit 200, which is
6 the FSA, and Exhibit 202, which is the PSA?

7 A Yes I did.

8 Q And was a statement of your
9 qualifications included with Exhibit 200?

10 A Yes it is.

11 Q Do you have any corrections to make to
12 that testimony?

13 A No I do not.

14 Q Are the facts contained in that
15 testimony true and correct to the best of your
16 knowledge?

17 A Yes they are.

18 Q And do the opinions contained in that
19 testimony reflect your best professional judgment?

20 A Yes they do.

21 Q Could you please provide a brief
22 summary of your analysis.

23 A Yes I will. You asked me to provide a
24 very brief summary of my qualifications. Just to
25 point out a few salient features, besides

1 receiving a PhD from the University of California
2 San Francisco Medical Center I served as Assistant
3 Deputy Chief for health with Cal-OSHA in the Jerry
4 Brown administration. I was appointed then by
5 Jerry Brown when he was Governor to the Cal-OSHA
6 Standards Board.

7 I have served as a member and Chairman
8 of the Bay Area Air Quality Management District
9 Hearing Board and I have been a consultant to the
10 Energy Commission since 1993. I am the author of
11 over 100 human health risk assessments and I have
12 reviewed and evaluated over 100 air toxics health
13 risk assessments for the Office of Environmental
14 Health Hazard Assessment.

15 I have served on many advisory
16 committees for both state and federal governmental
17 agencies, two of which are most relevant, one
18 being the California EPA advisory committee on
19 stochastic human health risk assessment methods
20 and the US EPA work group on cumulative risk
21 assessment. That's the short version.

22 Q Could you please summarize your
23 testimony.

24 A I think the hearing officer and the
25 Commissioner are aware of the differences between

1 air quality assessment and public health
2 assessment. Public health addresses toxic air
3 contaminants. Air quality, which was heard this
4 morning, addresses the criteria air pollutants for
5 which there are national ambient air quality
6 standards.

7 When addressing toxic air contaminants
8 in the State of California one follows a
9 methodology to produce a human health risk
10 assessment. I conducted an independent analysis
11 using the 2003 guidelines from the Office of
12 Environmental Health Hazard Assessment and using
13 emission factors recommended by the California Air
14 Resources Board.

15 Just as an aside, the Bay Area Air
16 Quality Management District also conducted a
17 separate and independent analysis.

18 One of the reasons that we use a
19 standardized methodology is so that when I am
20 talking to you about human health risks from a
21 proposed power plant in Chula Vista or the Bay
22 area or anywhere else in the state you have the
23 confidence of knowing that I used the same
24 methodology. And we use the same databases, the
25 same toxicity factors from Cal-EPA, so that you

1 can compare and contrast any risks or hazards from
2 these various proposed power plants.

3 The other reason is that California
4 methodology has embedded in it a certain level of
5 what we call conservatism in that it is health
6 protective. It tends to overestimate the health
7 risks. Not that we want to overestimate the
8 health risks but what we want to do is assure
9 ourselves that we are not underestimating the
10 health risks.

11 So when I tell you that there is a
12 certain risk of cancer or a certain hazard
13 associated with non-cancer impacts, these are
14 overestimations. There is conservatism built in
15 there. Conservatism in the air dispersion models,
16 in the toxicity values that come from Cal-EPA
17 where there are safety factors to ensure that we
18 are protective of the most sensitive members of
19 our population, what we can sensitive receptors.
20 These include the very young, the elderly, those
21 with preexisting medical conditions.

22 I also looked besides at the 14
23 Wartsila engines burning natural gas. I also
24 looked at the emergency diesel generator and added
25 in those results because that emergency diesel

1 generator has to be tested a certain number of
2 hours each year to make sure that it is able to
3 provide emergency power should it be needed.

4 If you refer to Public Health Table 4
5 on page 4.7-13 of Exhibit 200 you will see a
6 comparison between what the AFC calculated, or
7 estimated rather as a health risk, and what I
8 estimated as a health risk. And you will see in
9 all cases that they are below the applicable
10 significant threshold. For cancer risk the
11 threshold is ten excess cancers in a million,
12 utilizing toxics best available control
13 technology.

14 For a chronic hazard index or an acute
15 hazard index. This is the assessment of the non-
16 cancer toxicological end points such as
17 respiratory disease or liver disease or
18 cardiovascular disease, the threshold is 1.0 and
19 these values are all less than one, indicating
20 that I do not predict that there would be any non-
21 cancer health impacts in the population in the
22 area.

23 Turning now to Public Health Table 7 on
24 page 4.7-17. I also conducted a cumulative risk
25 assessment of considering emissions from both the

1 Eastshore Energy Center and the Russell City
2 Energy Center. And again that table shows that
3 the cumulative impacts are still below a level of
4 significance with a cancer risk being 3.9 in a
5 million, a chronic hazard index of .11, an acute
6 hazard index of .40.

7 I also identified what I would term
8 mitigation monitoring as being necessary to ensure
9 the protection of public health. This is
10 reflected in staff's Proposed Condition of
11 Certification, Public Health 1. And as the
12 applicant just mentioned, this is slightly more
13 stringent than the Air District's requirements in
14 the FDOC, the Final Determination of Compliance,
15 for conducting actual source tests.

16 This would also require the applicant,
17 at this point it would be the project owner if
18 this project is indeed licensed, to prepare a new
19 health risk assessment based on the monitoring,
20 the source testing of the stacks.

21 I believe that this mitigation
22 monitoring is necessary and appropriate for two
23 simple reasons. One, there is a great deal of
24 public concern about the impacts on public health
25 and I think that we need to assure the public that

1 the emission factors that I used and that the
2 applicant used and that the Air District used were
3 indeed conservative. That we were overestimating
4 the emissions and overestimating the risks. So
5 this is very important for this.

6 The second reason, and I have to walk a
7 very fine line here. While I have confidence in
8 the use of the surrogate emission factors from the
9 California Air Resources Board database that we
10 are pretty much directed by state guidelines to
11 use, the emission factor database doesn't contain
12 emission factors for these very exact engines,
13 these precise engines, using the pollution control
14 equipment that these engines will have.

15 That means that in comparison to other
16 projects where we have gas turbines and we use
17 surrogate emission factors I have slightly less
18 degree of confidence in the emission factors. A
19 little bit more uncertainty. Not enough
20 uncertainty to reject the emission factors from
21 the California toxic emission factor database
22 that's run by Air Resources Board, but enough to
23 ensure that the values that I used in my risk
24 assessment were either accurate or overestimated
25 the emissions and hence the risks.

1 So I would urge you to adopt this
2 particular condition of certification. What it
3 does is it starts out with a requirement that they
4 test four engines, not one engine but four engines
5 out of the 14.

6 And that if the emissions of toxic air
7 contaminants from these four engines fall within a
8 range such that there are no outliers in the
9 result they're done testing. If it turns out that
10 for one or two toxic emission -- emissions rather
11 of toxic air contaminants it falls out of a
12 certain range, then they'll have to test another
13 group of four.

14 Also these four engines they test first
15 need to be randomly chosen. There is some
16 variation. And testing just one, in my view,
17 doesn't give you the needed level of assurance
18 that that is going to be reflective of all 14.
19 Testing four gives you a much better level of
20 confidence that you're not going to find one
21 engine that is going to go completely different.
22 It is different and the applicant has questions
23 about that but I believe that that is an
24 appropriate mitigation monitor.

25 The bottom line, my conclusions are the

1 Eastshore Energy Center, if certified and
2 operated, will not cause a significant risk to
3 public health and will not cause a significant
4 risk to even the most sensitive members of our
5 population.

6 Q Dr. Greenberg, in your FSA did you
7 respond to public comments and concerns?

8 A Yes I did.

9 Q Could you very briefly please summarize
10 how you responded to those.

11 A Is that less brief than my --
12 Members of the public raised a number
13 of concerns on public health, one of which
14 concerned the emission factor of a particular
15 substance known as acrolein.

16 By the way as an aside, you will often
17 hear the mispronunciation of acrolein as acrolein.
18 Let's accept both. But it is proper to call it
19 acrolein according to the International Union of
20 Pure and Applied Chemistry. But I may be the only
21 organic chemist here so we'll let the
22 mispronunciations go.

23 The emission factor for acrolein varied
24 between the California Air Resources Board
25 database and the US EPA database. Now I attempted

1 to address some of this uncertainty in the risk
2 assessment.

3 In Public Health Table 6 on page 4.7-14
4 where I ran the risk -- I calculated the risks
5 with the mean values with the oxidative catalyst
6 providing a reduction, the mean values with the
7 oxidative catalyst not even present, and then the
8 maximum values from the California toxic emission
9 factor database with the oxidative catalyst
10 running. And as you can see once again, while
11 there are some differences they are still all
12 below the levels of significance.

13 Now I would caution you about using an
14 emission factor for acrolein from another source
15 such as the US EPA AP-42 tables. The reason I
16 would caution you is two-fold. I spoke with the
17 Air Resources Board staffer who is basically in
18 charge of the California database. And it is his
19 opinion that the emission factors for acrolein
20 from US EPA or California are based on the same
21 methodology. And that the methodology, both have
22 both of them. Therefore the numbers are as good
23 as the other and does not recommend that I use
24 another number from another agency.

25 The second reason is, and I don't mean

1 to disparage anybody who makes the suggestion, but
2 in a way a sort of cherry picking data. If you
3 want to use US EPA data then you should use all US
4 EPA data, not just for one substance. You should
5 also use their toxicity values.

6 Well, there would not be any ability to
7 conduct an analysis of the acute, the short-term
8 impacts of acrolein using EPA data because they
9 don't have an acute reference exposure limit.
10 California EPA does. So basically what has been
11 suggested is, let's take some data from US EPA,
12 let's take some data from Cal-EPA. Maybe we'll
13 take some data from the state of Massachusetts or
14 from Sweden. I am aware of toxicity factors that
15 differ around the world.

16 We are here in California and quite
17 frankly I am required to use California values
18 unless the agency that I rely on in Cal-EPA, the
19 Air Resources Board or the Office of Environmental
20 Health Hazard Assessment tells me that their
21 values are no good, use somebody else's. So we
22 want to be consistent so I use California values.
23 And these are the values that use and I've tried
24 to explain that to the public. That no matter how
25 I look at it using California values and toxicity

1 values that there still is no impact.

2 Interestingly, since writing the PSA
3 and since publishing the FSA the Office of
4 Environmental Health Hazard Assessment has decided
5 that the toxicity value for acrolein, which is
6 0.19 micrograms per cubic meter of air, that's the
7 reference exposure level below which no impact is
8 predicted, has put out for public comment a
9 revision up to 2.3 micrograms per cubic meter.

10 Now I have not included that difference
11 which would make the hazard index drop even
12 further. What they are saying is that it is more
13 than ten times less toxic to humans. I've kept in
14 the .19 number and my air dispersion modeling and
15 risk assessment calculations show that the maximum
16 one hour concentration of acrolein at the point of
17 maximum impact would be .05 micrograms per cubic
18 meter. So if you compare that to the Cal-EPA new
19 number of 2.3 micrograms you can see how much less
20 .05 micrograms per cubic meter is. And it is
21 still less than .19 micrograms per cubic meter.

22 Nevertheless I still think it is
23 important that we have mitigation monitoring and
24 the source testing will confirm, or hopefully will
25 confirm, that the emissions of acrolein are going

1 to be less than even what I have used in my risk
2 assessment.

3 There also was concern raised and there
4 was a brief discussion under air quality about the
5 possible carcinogenicity of PM2.5. Does it cause
6 cancer in and of itself, by itself, as opposed to
7 constituents within PM2.5?

8 What I can say to that and what I did
9 say in my FSA section is that there are several
10 articles that tend -- that show that there is a
11 relationship between airborne PM2.5 in cities, in
12 urban air, and increase in lung cancer. But it
13 doesn't say what type of PM2.5 or what the source
14 is.

15 In fact, when I review those articles
16 and I review the emissions data in the South Coast
17 Air Quality Management District and the North
18 Coast Air Quality Management District and airborne
19 concentrations predicted as a result of those
20 efforts to locate sources, in my professional
21 opinion the association between PM2.5 and cancer
22 track very nicely with diesel particulate matter
23 in the air being the causative agent of those
24 increase in cancer.

25 Nevertheless, even if I thought that

1 PM2.5 was a carcinogen in its own right I could
2 not assess it because we do not have it identified
3 as a carcinogen, either by Cal-EPA or US EPA.

4 US EPA in 2005 published 166 pages
5 entitled their Carcinogen Identification Policy.
6 If you are with US EPA and you want to get
7 something identified as a carcinogen you have to
8 go through that. It talks about the strength of
9 the evidence and the weight of the evidence and
10 how good the studies are.

11 The California process, there is a
12 carcinogen identification committee. And it must
13 go through them, it must go through the scientific
14 review panel and then it must go out for public
15 comment and then it comes back. So we have a
16 system that works very well and very efficiently
17 that has not yet identified that as a carcinogen.

18 But lest you think that I am not
19 addressing cancer-causing substances associated
20 with PM2.5, I am and so has the District and so
21 did the applicant. Because again it is my
22 professional opinion that the cancer-causing
23 substances from a natural gas-fired power plant
24 would consist of the polycyclic aromatic
25 hydrocarbons that are adsorbed to the surface of

1 particulates.

2 And this is not just my theory or
3 professional opinion but there is an example in
4 the scientific literature that I do cite in my
5 final staff assessment. I believe the Air
6 District also alluded to that earlier. So we are
7 addressing the cancer potential of what is emitted
8 from the facility.

9 MS. HOLMES: Thank you.

10 HEARING OFFICER GEFTER: I just wanted
11 to tell the reporter that Dr. Greenberg could
12 spell some of those words for you later in case
13 you didn't follow him.

14 DR. GREENBERG: But I did avoid all the
15 abbreviations.

16 HEARING OFFICER GEFTER: Yes, you
17 didn't say PAH.

18 Okay, I have a question. Again this
19 has been raised by members of the public in many
20 of their comments regarding the dispersion of
21 toxic air contaminants. And in your testimony in
22 the FSA you indicate the location of the point of
23 maximum impact. And I thought maybe you could
24 explain that again on the record to those members
25 of the public who are here right now.

1 DR. GREENBERG: Yes. The air
2 dispersion model does predict a point of maximum
3 impact, which for both chronic, non-cancer health
4 impacts and for cancer impacts appears to be maybe
5 50 yards to the east in a parking lot. And the
6 location for the maximum acute impacts would be
7 just on the north end of the facility fence line.

8 Regardless of whether or not an
9 individual could possibly live their entire 70
10 year life at the point of maximum impact, which
11 quite frankly is a physical impossibility, we
12 nevertheless use that as our measuring stick of
13 what is acceptable or what is not.

14 Now the risks to anybody located any
15 distance away drop off dramatically. One hundred
16 feet, a block, two blocks, three blocks. We don't
17 even go out as far as a mile because the risks
18 drop off so greatly after that.

19 But that is the standard that we use
20 and when we use it consistently once again we know
21 that we can compare risk assessments around the
22 state but we also are assured that we are not
23 underestimating the risk or the hazard to anyone.

24 HEARING OFFICER GEFTER: And with
25 respect again to how far out the health risk

1 assessment looks in terms of a radius and then
2 connecting that with the air quality analysis and
3 also the EJ analysis. I wonder if you could
4 explain that as well.

5 DR. GREENBERG: Well I am not sure,
6 Hearing Officer Gefter, that I understand your
7 question.

8 HEARING OFFICER GEFTER: There is a six
9 mile radius, apparently, in the EJ-air quality
10 analysis. Is that something you are familiar
11 with?

12 DR. GREENBERG: Yes I am. In the human
13 health risk assessment we only go, really we look
14 at the point of maximum impact. We sometimes
15 would put in a specific receptor location such as
16 a school or a hospital. In this case I did not
17 because the risks were so very, you know, below
18 the level of significance at the point of maximum
19 impact. What I can tell you is that, once again,
20 you go out further, the risks are less than what
21 you see there in -- let me get the table right.
22 Less than what you see in Public Health Table 4.

23 HEARING OFFICER GEFTER: At this point
24 are you done with your direct?

25 MS. HOLMES: (Nodded)

1 HEARING OFFICER GEFTER: Okay, I am
2 going to then open the questioning up for cross
3 examination by the parties. And this time I am
4 going to start with the City of Hayward and then
5 go back the other way. So City of Hayward first
6 for cross examination on public health.

7 MS. GRAVES: We have no questions.

8 HEARING OFFICER GEFTER: All right.
9 Alameda County?

10 MR. MASSEY: No questions.

11 HEARING OFFICER GEFTER: Okay.
12 Ms. Hargleroad, group petitioners on public
13 health.

14 CROSS EXAMINATION

15 BY MS. HARGLEROAD:

16 Q Let me ask if you had an opportunity to
17 review the group petitioners' prehearing
18 conference statement. Did you review that at all?

19 A Yes I did.

20 Q Okay. And it sounded as you may have.
21 So can you tell us though about in looking at the
22 background, the existing conditions for this area,
23 there is also the interchange of 880 and Highways
24 92. You're familiar with that?

25 A Yes I am.

1 Q Okay. And that this project is
2 extremely close also to that location.

3 A Define extremely.

4 Q Define extremely. I think it's -- I
5 would say less than a mile.

6 A I'd say that it's close, not extremely.

7 Q Close. It's close, okay.

8 A Whenever you use an adjective you get
9 trouble with an expert witness.

10 Q Okay, all right. So there is a toxic
11 air contaminant background level, is that correct?

12 A Background for the entire Bay Area,
13 yes.

14 Q Okay. And does that include that
15 interchange of Highway 880 and 92?

16 A Yes it would.

17 Q Okay. So your staff report in the
18 background includes an analysis of the existing
19 toxic air contaminants.

20 A For the San Francisco Bay Area, yes.

21 Q And the San Francisco Bay Area is
22 defined as?

23 A Nine Bay Area counties within the Bay
24 Area Air Quality Management District.

25 Q Okay. And does the toxic air

1 contamination level vary among the counties?

2 A To a certain extent there is some
3 variation, yes.

4 Q And do we know what the toxic air
5 contamination level is within a one to two mile
6 radius of the proposed location for this plant?

7 A I do not know because I am not aware
8 that there is a toxic air contaminant monitoring
9 station from any entity at all within one mile of
10 the proposed location.

11 Q And where is the closest toxic air
12 contamination monitoring station?

13 A Well as I state on page 4.7-4 at the
14 top of the page, there are three locations in
15 Oakland, one in San Leandro and one in Fremont and
16 those would be the closest ones.

17 Q So Oakland and Fremont?

18 A And San Leandro.

19 Q And San Leandro, okay.

20 Going to -- Did you have an opportunity
21 to review the group petitioners' supplemental or
22 amendment to our exhibit list?

23 A Is that the one I just got Saturday?

24 Q It might be. It's the amendment.

25 A Please ask the --

1 Q It was docketed.

2 A Please ask the question.

3 Q It was docketed last week.

4 A Please go ahead and ask the question
5 and if I haven't reviewed it I'll let you know.

6 Q Well it has a list of various articles,
7 scientific journals and articles about acrolein
8 and the cancer --

9 HEARING OFFICER GEFTER: Ask the
10 question, please.

11 BY MS. HARGLEROAD:

12 Q On page 4.7-11 of the Final Staff
13 Assessment there is an indication that inhalation
14 cancer is not associated with acrolein exposure;
15 is that correct?

16 A That is correct.

17 Q Okay. And are you familiar with the
18 study that is in Exhibit 719 which is entitled --
19 a scientific journal article, Acrolein is a Major
20 Cigarette-Related Lung Cancer Agent?

21 A Yes, I am familiar with that article.

22 Q Okay. So if you are familiar with that
23 article how can you be sure that acrolein exposure
24 does not create a significant cancer hazard?

25 A As I explained in my direct testimony,

1 I am bound by certain regulations that require me
2 to consider carcinogens that have been identified
3 through a very rigorous scientific process either
4 in Cal-EPA or in US EPA. Neither of those
5 agencies have indicated that either acrolein is a
6 known or potential human carcinogen or have given
7 me a potency slope on which I can calculate a
8 human health risk assessment.

9 Furthermore in reviewing that article I
10 note that it is not considered in that article a
11 direct acting carcinogen but rather a promoter.
12 That means there is a different mechanism of
13 action and a different type of what we call cancer
14 risk assessment if it turns it is indeed a
15 promoter and it would come up with a potency slope
16 that might be different if it were a direct acting
17 carcinogen.

18 It certainly is beyond my expertise.
19 And I've got a lot of expertise but I don't have
20 this expertise to calculate my own cancer potency
21 factor. And I really wouldn't be allowed to do so
22 even if it were within my area of expertise.

23 Q So basically your testimony is
24 somewhat, I don't want to use the verb controlled
25 or regulated, but limited to those elements which

1 have been officially or formally recognized. Is
2 that correct?

3 A I'd say that is a fair
4 characterization. That we do have a process in
5 California, we have a process in the United
6 States, and for better or for worse we have to let
7 that process work. As I have stated in the Final
8 Staff Assessment, I do rely on the very excellent
9 scientists at Cal-EPA to provide certain
10 toxicological information.

11 Q Well my question though is, what
12 happens when there is research that Cal-EPA may be
13 investigating but may not have officially or
14 formally recognized yet? Does that mean that is
15 simply, that new research or science is ignored
16 until it is officially recognized?

17 MS. LUCKHARDT: I have an objection to
18 this question. In my experience the Energy
19 Commission does not set new health standards.
20 These types of issues have been argued in numerous
21 cases before. The Energy Commission has
22 consistently found that a siting it is not the
23 location to set or discuss or evaluate new health
24 standards.

25 MS. HARGLEROAD: I am simply --

1 HEARING OFFICER GEFTER: Your objection
2 is sustained.

3 MS. HARGLEROAD: Can I reply before you
4 sustain her objection?

5 HEARING OFFICER GEFTER: You may
6 respond.

7 MS. HARGLEROAD: And that simply is I
8 am attempting to examine Dr. Greenberg on his
9 opinion and the limitations of his opinion. So I
10 think that that should be relevant. It is
11 unfortunate that whatever --

12 HEARING OFFICER GEFTER: I believe that
13 Dr. Greenberg has already answered your question
14 previously.

15 BY MS. HARGLEROAD:

16 Q The applicant has stated that the acute
17 hazard index of .66 out of 1.0 -- And this is
18 referring to public health section 4.7-12 again
19 and if you continue to 4.7-13.

20 (Coughed) My PM2.5 exposure here.

21 And staff has indicated an acute hazard
22 index of .32. Can you explain the difference?

23 A No, I cannot.

24 Q Okay. Additionally, what statistical
25 confidence or interval is incorporated into your

1 health risk analysis and how do we account for the
2 variability in the data to have a quantifiable
3 level of confidence that the acute hazard index
4 will not exceed one?

5 MS. HOLMES: Can I please ask that you
6 just break that down into two, separate questions.

7 MS. HARGLEROAD: Sure, sure.

8 MS. HOLMES: One after the other would
9 be better.

10 MS. HARGLEROAD: Sure.

11 BY MS. HARGLEROAD:

12 Q What statistical confidence interval is
13 incorporated into your health risk analysis?

14 A There is none and let me explain why.
15 This is what we call a tier one human health risk
16 assessment. I am referring to the 2003 guidelines
17 on conducting health risk assessments under the
18 Toxic Hot Spots Act, AB 2588, that the Cal-EPA
19 Office of Environmental Health Hazard Assessment
20 promulgated. There are four tiers.

21 A tier one assessment is what we call a
22 point estimate assessment. We use one point for
23 exposure, for emission factors, et cetera. All
24 the factors or ingredients, if you will, that go
25 into a health risk assessment. These are upper

1 bound, for the most part upper bound levels, and
2 therefore that is why I stated earlier in my
3 direct testimony that they are an overestimation
4 of the risks.

5 If you want to get to confidence
6 intervals you conduct a tier three or tier four
7 stochastic. Stochastic is another word for
8 probablistic risk assessment. The Cal-EPA Office
9 of Environmental Health Hazard Assessment
10 promulgated guidance on that. That was the
11 advisory committee that I was on. I have
12 conducted probablistic or stochastic risk
13 assessments.

14 That is not what we are required to do
15 in conducting these health risk assessments.

16 Q Okay. So it hasn't been done because
17 there is no requirement at this point in time.

18 A Yes but that may be a
19 mischaracterization. It is not needed in my view.

20 Q Okay, and why is that?

21 A Because this is already an upper bound.
22 If you do a stochastic assessment more likely than
23 not you'll come out with a number very similar to
24 this or lower, depending on the percentile of risk
25 that you would like to look at. If you look at

1 the 95th percentile you'll probably come out with
2 the same number. If you look at the 90th or the
3 85th or 80th percentile you'll come out with lower
4 numbers.

5 Q Well maybe you can explain to me then
6 how, how do we account for the variability in the
7 data to have that quantifiable level of
8 confidence?

9 MS. HOLMES: I'm sorry, which
10 variability and which data? So that I can follow
11 along with this.

12 BY MS. HARGLEROAD:

13 Q The emission factors used for the
14 calculation.

15 A I see. Well, as I mentioned, we don't
16 account for that variability. We use a point
17 estimate and we use an emission factor for each
18 one of these substances.

19 If I did a stochastic assessment then I
20 would use a range. I would also have to do a
21 statistical analysis, or maybe by professional
22 opinion, to determine the shape of the
23 variability. Whether it's normally distributed,
24 whether the data is lognormally distributed or
25 whether it's a probit-type distribution, and put

1 those in. We don't do that for a tier one
2 assessment.

3 Q If you go to public health 4.7-14. In
4 your computation of the acute hazard index did you
5 use the emission factor for the compound acrolein
6 as published in the California air toxics emission
7 factors database?

8 A Yes I did.

9 Q And do you think that or believe that
10 the mean emission factor for acrolein published in
11 California air toxics emission factors database,
12 given the test population size of two for the
13 engine type being proposed for the Eastshore, is
14 statistically sound enough to use to protect the
15 public health? And I refer you to our group
16 petitioners Exhibit 707.

17 A I understand your question, I also
18 understand the concerns by the member of the
19 public sitting to your right who has raised this
20 issue. And I have tried to explain and I will do
21 so again.

22 Even with my experience I don't have
23 all the expertise in the world. So I rely on the
24 California Air Resources Board to give me their
25 best professional opinion. And I did talk with

1 the person at the California Air Resources Board
2 who told me that these were just as good emission
3 factors as from EPA, given the problems that both
4 Air Resources Board and US EPA have had with the
5 methodology for measuring acrolein.

6 That is one of the reasons why the Air
7 District, all the Air Districts around the state
8 have been advised by the Air Resources Board to
9 not base any type of permit decision on acrolein
10 emissions. The analytical method is very suspect.
11 They have been working on this for over ten years.
12 It's a tough one to analyze at these low levels.
13 It is highly reactive in the atmosphere, it has a
14 half-life anywhere between 12 and 20 hours, and so
15 it breaks down immediately.

16 So I relied on the Air Resources Board
17 and did not conduct an independent evaluation of
18 which database was better. But I also gave you
19 other reasons that we can't just pick which
20 emission factor we want to use from which agency.

21 Q Can you tell me who at the Air Resource
22 Board you spoke to?

23 A Certainly. His name is Mr. Chris Halm,
24 H-A-L-M.

25 Q And his position is, or department?

1 Division? Area of expertise, shall we say.

2 A He is an air quality engineer. I
3 apologize, I do not have his phone number with me.
4 Well, I might.

5 Q Not his phone number but his division.

6 HEARING OFFICER GEFTER: While he looks
7 for that why don't we ask another question. He'll
8 get you that information.

9 MS. HARGLEROAD: He can --
10 Dr. Greenberg can provide that to me later.

11 DR. GREENBERG: Very simply, you can go
12 on the ARB web site and go to their list of
13 contacts and by alphabetical order you'll get it.

14 BY MS. HARGLEROAD:

15 Q I'm asking you though who you spoke to
16 and you relied on, right. So you're aware of the
17 Air Board's policy that the acrolein emission
18 factors in the California air toxic emission
19 factors database should not be used because they
20 are based on a decertified test method. And I
21 refer to group petitioners Exhibit 706.

22 A They recommend that they not be used
23 for permitting purposes. I used it in my health
24 risk assessment because I felt that I needed to
25 include that in the health risk assessment. So

1 despite the use, despite the warnings or
2 admonition that it not be used for permitting I
3 thought I should use it anyway in human health
4 risk assessment. Otherwise it wouldn't be
5 included.

6 Q Well are you aware of the US EPA AP-42
7 mean emission factor for acrolein?

8 A Yes I am and I did cover that in my
9 direct testimony.

10 Q Right. And that is 88 times higher
11 than the California air toxic emission factors.

12 HEARING OFFICER GEFTER: I think we are
13 going way off base here. I am not sure what --

14 MS. HARGLEROAD: No, that is his direct
15 testimony.

16 HEARING OFFICER GEFTER: And he
17 explained his position on that. But I am not sure
18 where you are going with all these questions.
19 Where does this get us? What's your point? Where
20 are you going?

21 MS. HARGLEROAD: Well, if -- I think as
22 we have just been talking about is, if we don't
23 have all of the information in front of us or the
24 Commission does not have a full picture then it is
25 somewhat difficult to draw certain conclusions.

1 MS. HOLMES: But there is no factual
2 dispute. He has testified to the fact that he
3 didn't use the EPA number and he has testified as
4 to the reason why. I don't see a factual dispute
5 that should be the basis of continuing cross
6 examination on this topic.

7 MS. HARGLEROAD: Okay.

8 BY MS. HARGLEROAD:

9 Q Going to 4.7-15, page 15. So let me
10 ask you this, then. As you discuss asthma, there
11 is a discussion about asthma that you have
12 provided. So the contribution of acrolein
13 emissions that will be emitted here are not
14 included; is that correct?

15 A I'm afraid I don't understand. Are not
16 included in what?

17 Q Well, in your analysis. Have you --
18 Well let me ask you this. Have you considered the
19 contribution of acrolein emissions to the
20 exacerbation of asthma?

21 A While it is not included in the
22 specific discussion it is included in the hazard
23 index because respiratory impacts are one of the
24 non-cancer impacts that are assessed. And not
25 just acrolein but all the other compounds, toxic

1 air contaminants, that may cause a respiratory
2 problem or disease or have respiratory impact are
3 also included. And they are all added up and it
4 is still less than the level of significance. So
5 the answer to your question is, I did include
6 acrolein.

7 Q Okay, all right. If you go to 4.7-18,
8 there was discussion about, we've been talking
9 about natural gas particulate matter potentially
10 contributing to cancer. Somewhat similar to the
11 information, the recent information which has been
12 discussed concerning diesel particulate matter 2.5
13 also may have a cancer contributing risk.

14 It is stated here that in declining to
15 factor the whole natural gas particulate matter
16 into the cancer risk assessment that the cited
17 studies cannot ascribe the risk of cancer to any
18 source or type of particulate matter. Is that
19 correct?

20 A That is correct.

21 Q Okay. I refer you to our Exhibit 726,
22 our amended exhibits.

23 HEARING OFFICER GEFTER: Why don't you
24 tell him what that is, identify it.

25 BY MS. HARGLEROAD:

1 Q That is the source contributions to
2 mutagenicity of urban particulate air pollution by
3 Hannigan.

4 A Yes.

5 Q Okay. And you are familiar with that
6 article?

7 A Yes, that is one that I received on
8 Saturday.

9 Q Okay.

10 A I have not read every word but several.

11 Q Okay. And that finds that the largest
12 source contributions to PM mutagenicity are
13 natural gas combustion and diesel fuel engines.

14 A Not precisely.

15 Q Okay. Can you clarify in your opinion
16 what the discussion is.

17 A It's natural gas combustion from home
18 appliances, not power plants.

19 Q Not power plants.

20 A Which actually confirms what those of
21 us who have studied indoor air pollution since
22 1981 know, in that indoor air pollution is often
23 higher than outside air pollution. It very
24 specifically refers to indoor appliances burning
25 gas.

1 Q Okay.

2 A It is uncontrolled burning and there is
3 no oxidative catalyst compared to a natural gas-
4 fired power plant.

5 Q Going to 4.7-20. There is a statement
6 concerning the confidential data from the engine
7 manufacturer to provide assurance that the engine
8 proposed does not exceed the published emission
9 factors. You're familiar with that I gather.

10 A Yes I am.

11 MS. HARGLEROAD: Okay. Not that the
12 witness, it's appropriate, but we certainly have
13 an objection to that.

14 HEARING OFFICER GEFTER: Do you
15 understand that it is proprietary information
16 which we hold confidential?

17 MS. HARGLEROAD: Well I understand
18 that.

19 HEARING OFFICER GEFTER: We have a lot
20 of documents filed with the Commission and with a
21 lot of state agencies that are held confidential
22 because they are proprietary.

23 MS. HARGLEROAD: I understand that but
24 we are also talking about a project that has the
25 potential to create a substantial impact on this

1 community and relevant information is being
2 withheld under the theory that it is proprietary.

3 HEARING OFFICER GEFTER: I think you
4 can argue that in your brief but don't argue with
5 the witness.

6 MS. HARGLEROAD: I understand that.

7 BY MS. HARGLEROAD:

8 Q There is a discussion about eye
9 irritation for five minutes in your staff report.

10 A Yes.

11 Q Okay. And that having irritated eyes
12 for a five minute period is not significant.

13 A I don't believe it says not significant
14 but it does -- What I am doing is exactly what the
15 Office of Environmental Health Hazard Assessment
16 guidelines direct someone to do and that is, to
17 look at the basis of the reference exposure level.

18 And not only did I do this but it turns
19 out concurrently the Office of Environmental
20 Health Hazard Assessment toxicologists did the
21 same thing and they came up with 2.3 micrograms
22 per cubic meter as a reference exposure limit
23 instead of 0.19.

24 Q That is being proposed, I gather.

25 A That's right.

1 Q That has not been adopted.

2 A No, and I am not using that.

3 Q Okay.

4 A I am still using the 0.19 level. What
5 I am trying to say here, counselor, is that when
6 you take normal, healthy individuals and put them
7 in a chamber where they know they are going to be
8 exposed to something and then you ask them, now do
9 you feel anything in your eyes and they express
10 that it is a mild irritation, and then you add a
11 safety factor of sixty-fold to the lowest exposure
12 level that they noticed that there was some mild
13 eye irritation, that that is not a significant,
14 that does not mean that it presents a significant
15 probability that there will be an adverse health
16 impact.

17 Now one of the documents that is in
18 your filing is the Agency for Toxic Substances and
19 Disease Registry 2007 toxicological profile for
20 acrolein. And in there they mention a much higher
21 concentration that people were exposed to
22 experiencing some irritation and that the eye
23 irritation went away after 30 minutes. So it
24 seems as if the human eye may get a little bit
25 adjusted to that.

1 I certainly am not trying to dismiss
2 the fact that acrolein is a toxic substance. But
3 we have -- one of the basic tenets of toxicology
4 is dose response. You get lower responses the
5 lower the dose. And there is a level below which,
6 we call that a threshold, below which you will not
7 experience toxic effects.

8 I am sure are aware since you read the
9 Agency for Toxic Substances and Disease Registry
10 toxicological profile that the human body produces
11 small amounts of acrolein as a result of the
12 metabolism and breakdown of fatty acids in the
13 body. So it is not like it is any substance is
14 going to cause a problem, it is only the
15 concentration that will cause the problem. And I
16 submit to you that this is below a level of
17 concentration that will cause a problem.

18 Q So you're saying that the emissions
19 then produced by this plant that may generate eye
20 irritation to the neighbors --

21 MS. HOLMES: Excuse me, that misstates
22 the witness's testimony. He did not say that the
23 acrolein emissions from this project are going to
24 or could cause mild eye irritation. He did not
25 say that. He said that the level was below the

1 reference exposure level.

2 MS. HARGLEROAD: I didn't say the -- I
3 simply am referring to the staff report that is
4 talking about five minutes of eye irritation.

5 MS. HOLMES: That is contained in the
6 discussion of acrolein.

7 HEARING OFFICER GEFTER: I sustain
8 Ms. Holmes' objection. We can all read what it
9 says at page 4.7-20. It does not talk about
10 emissions from this project causing five minutes
11 of eye irritation, it is a study that
12 Dr. Greenberg referred to. I think it is time to
13 move on from acrolein.

14 MS. HARGLEROAD: Is mild eye irritation
15 a significant health impact? Is eye irritation a
16 significant health impact?

17 DR. GREENBERG: Emissions of acrolein
18 will not cause eye irritation in the population.

19 HEARING OFFICER GEFTER:
20 Ms. Hargleroad, I am sorry to try to control your
21 cross examination. We have gone on for almost an
22 hour. If you have another line of questioning I
23 think it is time for us to move on.

24 MS. HARGLEROAD: Okay.

25 HEARING OFFICER GEFTER: I think we

1 have beaten the acrolein issue to death here.

2 MS. HARGLEROAD: Okay. I don't know if
3 there's any other intervenors who have, or any
4 other parties who have questions for Dr. Greenberg
5 and I'll just simply state not at this time, I
6 will finish at this time. And if there's anybody
7 else who has any other questions I'll just follow-
8 up.

9 HEARING OFFICER GEFTER: Thank you.
10 Ms. Schulkind for the Chabot College District.

11 MS. SCHULKIND: Thank you very much,
12 Hearing Officer Gefter.

13 CROSS EXAMINATION

14 BY MS. SCHULKIND:

15 Q Good afternoon, Dr. Greenberg. My name
16 is Laura Schulkind, I am counsel to the Chabot-Las
17 Positas community College District. Thank you for
18 being here this afternoon.

19 I have a few questions on a very
20 different line so we'll be switching gears a
21 little bit. It really follows up on your comments
22 about developing a public assurance in the
23 analysis that went into your conclusions. I'd
24 like to get a better understanding of some of the
25 methodology that was utilized.

1 To start with I'd like to make sure
2 about terminology as it is being used in the Final
3 Staff Assessment. If you could look briefly and
4 then we will turn back to the public health
5 section. If you could turn briefly -- this is a
6 little difficult holding the microphone and
7 handling the binder -- the section of the
8 environmental justice chapter that addresses
9 public health at 7-2. Do you have that in front
10 of you, Doctor?

11 A Yes, I'm reading it right now.

12 Q First, just so we understand the
13 internal process for CEC staff. Can you tell me
14 who prepared this paragraph. Were you involved in
15 preparing it?

16 A It looks like the project manager,
17 Mr. William Pfanner, prepared this.

18 Q Okay, thank you. And there is a phrase
19 in the middle of the paragraph that I would like
20 to compare to language in the public health
21 section where it refers to utilization of a
22 conservative methodology. Do you see that?

23 A Yes I do.

24 Q That accounts for impacts to the most
25 sensitive individuals, et cetera. That's the last

1 I will ask you about the environmental justice
2 section.

3 If you could turn to the public health
4 section at 4.7-1. And there in language that
5 seems roughly similar it describes what is called
6 a health protective methodology that accounts for
7 impacts to the most sensitive individuals. Can
8 you tell me whether that health protective
9 methodology is the same as the conservative
10 methodology that is referred to in the
11 environmental justice section?

12 A Yes it is.

13 Q Okay.

14 A In fact I even used those words
15 interchangeably in my direct testimony.

16 Q Okay, thank you. So what I would like
17 to do then is ask you a bit about this health
18 protective methodology that you utilized. And to
19 simplify the questioning if any of the answers
20 would be different based upon what health events
21 you are analyzing I would like to ask that you
22 answer with regard to acute and chronic non-cancer
23 health effects as opposed to the cancer because I
24 understand the methodologies may be somewhat
25 different.

1 It appears that you assume a
2 hypothetical individual that has a higher
3 sensitivity to environmental stressors than
4 perhaps just a person at random in the population;
5 is that correct?

6 A I'm sorry, I missed that because
7 someone was coughing so please repeat the
8 question.

9 Q I started by saying as the premise am I
10 correct in understanding that the health
11 protective methodology utilizes, for analyzing
12 potential health impacts, an individual with a
13 greater sensitivity to potential environmental
14 stressors than a person picked in random from the
15 populace; is that correct?

16 A Yes indeed. It would be either the
17 young, a newborn, the elderly, someone who is
18 already ill. In other words already has a
19 condition and therefore would be more susceptible
20 to environmental toxicants.

21 Q Are there any other factors that you
22 assume that the, let's say hypersensitive
23 individual has? What I have heard you mention are
24 age and somebody that may already have a medical
25 condition. Is there anything else you factor in?

1 A Well let me disabuse you once again of
2 the notion that I factored in anything. I rely on
3 the Office of Environmental Health Hazard
4 Assessment which takes those factors into
5 consideration in setting acceptable levels of
6 exposure which we call RELs, reference exposure
7 levels. They do so under the guidance of
8 legislation. For example, the Children's Health
9 Environmental Act, and also with environmental
10 justice considerations.

11 But I do not, I do not set these levels
12 myself. I take them from Cal-EPA. I understand
13 the basis of them and I can explain the basis as I
14 did in my staff assessment.

15 Q Okay, so let me make sure I understand
16 that. Looking at this sentence then in your
17 summary of conclusions where it says:

18 "Staff's analysis of
19 potential health impacts from the
20 proposed Eastshore project was
21 based on a health protective
22 methodology that accounts for
23 impacts to the most sensitive
24 individuals."

25 Is that a methodology then that was implemented by

1 CEC staff or by others that you then utilized in
2 your analysis?

3 A We follow the methodology, as I
4 mentioned in my direct testimony, of the Office of
5 Environmental Health Hazard Assessment. There are
6 conservative health protective assumptions at
7 various stages of the health risk assessment, from
8 the air dispersion model to the exposure
9 assessment to the toxicity values. And all of
10 that is put together to render a risk assessment
11 result that is health protective to ensure that we
12 do not underestimate the risk.

13 Q And what I'd like to find out is what
14 are embedded in the assumptions of that health-
15 sensitive individual. Whether CEC staff created
16 those assumptions or relied on other assumptions.
17 And did it assume anything other than the age-
18 based sensitivities? Age being elderly or
19 newborn, or that the individual is suffering from
20 another medical condition.

21 A Well you're asking then about the
22 specific toxicity values. You are not talking
23 about emission factors and you are not talking
24 about exposure duration, routes of exposure. You
25 are just asking about toxicity?

1 Q I'm asking about the factors that were
2 included where it says, most sensitive
3 individuals, and then it references age. What
4 else, if anything -- Let me ask this. In this
5 most sensitive individual does that factor in
6 anything along the lines of income status of
7 individuals?

8 A Now that you've asked the specific
9 question about income status, no, I do not believe
10 that Cal-EPA when assessing the risks or hazards
11 of a toxic air contaminant and applying a safety
12 factor takes into account the income status of an
13 individual. I believe those scientists, as I do,
14 look only at the biologic end point for those
15 individuals with the best science available.

16 Q Okay.

17 A And of the best science available today
18 that meets, of course, certain scientific and
19 legal criteria as being generally accepted in the
20 scientific community and has been peer-reviewed,
21 they would take those values and adjust the
22 reference exposure level accordingly.

23 Q So the answer is that the sensitivity
24 profile does not take into consideration income
25 status; is that correct?

1 A My answer is as I answered it.

2 Q And just to be clear. I understand
3 generally the principle you're articulating.
4 Would it also be correct then that this analysis
5 does not factor in an individual's access to
6 regular health care as a sensitivity factor?

7 A Not to my knowledge.

8 Q Thank you.

9 HEARING OFFICER GEFTER: Ms. Schulkind,
10 Ms. Schulkind, excuse me, I'm sorry to interrupt
11 but --

12 MS. SCHULKIND: I really would like to
13 just finish this line of questioning.

14 HEARING OFFICER GEFTER: I know but --

15 MS. SCHULKIND: Thank you.

16 HEARING OFFICER GEFTER: At page 4.7-5
17 the actual list of sensitive --

18 MS. SCHULKIND: I have read those and I
19 would like to make my record.

20 HEARING OFFICER GEFTER: Okay.

21 MS. SCHULKIND: And I am going to ask a
22 few questions and it will go more briefly, I
23 assure you.

24 BY MS. SCHULKIND:

25 Q Is it also correct then that in

1 considering an individual that already has a
2 health condition, would that include an
3 individual's susceptibility to develop chronic
4 conditions?

5 A I believe it would. If you look at
6 some of the toxicological profiles produced by the
7 office of Office of Environmental Health Hazard
8 Assessment -- I keep saying that because I have
9 been reminded not to use an abbreviation, so it
10 gets long.

11 Q I appreciate it, being the person who
12 made the request.

13 A Yes.

14 Q So thank you very much.

15 A Okay, you're welcome. You will see
16 that they do indeed discuss exposure of that
17 chemical, that toxic air contaminant, to people of
18 varying susceptibilities due to preexisting
19 illnesses.

20 Q Would it take into consideration the
21 risk of an acute condition becoming chronic
22 because of lack of access to health care or
23 failure to treat a medical condition?

24 A I would not know.

25 Q Do you know whether or not that profile

1 would include things such as employment status?

2 A No, I would not know.

3 Q Or language ability?

4 A That one I don't think it does.

5 Q Would it include housing conditions?

6 A No, it includes objective toxicological
7 and medical evidence and physiologic parameters
8 that have been published and peer reviewed in the
9 scientific literature.

10 Q Does that include housing conditions?

11 A No, I don't believe so.

12 Q Have you by any chance had an
13 opportunity to review the declaration that was
14 provided by Dr. Sperling? In particular the
15 exhibits that were attached to that.

16 A Yes I have.

17 Q In particular I wanted to take just a
18 moment and go over with you if you are familiar
19 with it, one of the exhibits. It was Exhibit 604.
20 The treatise Ensuring Risk Reduction in
21 Communities with Multiple Stressors, Environmental
22 Justice and Cumulative Impacts.

23 MS. HOLMES: Is this the NEJAC
24 document?

25 MS. SCHULKIND: Yes it is. Also,

1 Ms. Holmes, if it is easier, I --

2 MS. HOLMES: I would like to have it in
3 front of him.

4 MS. SCHULKIND: Okay.

5 DR. GREENBERG: What exhibit number is
6 this, please?

7 BY MS. SCHULKIND:

8 Q Six-O-four.

9 A I don't have that one.

10 Q I did make copies of the few pages I
11 wanted to reference if there are parties that
12 don't have the exhibit available. I only copied
13 the limited pages that I wanted to take a look at
14 with you. Are you familiar with this document,
15 Dr. Greenberg?

16 A No, I am not.

17 Q If you wouldn't mind I'd like to just
18 look at a couple of things with you on pages 21
19 and 22. If you could look at page 21 there is an
20 italicized excerpt from a document reviewing the
21 EPA framework for cumulative risk assessments and
22 how it defines a stressor. If you wouldn't mind
23 just looking at that briefly.

24 MS. HOLMES: At this point, Hearing
25 Officer Gefter, I think that what is going on here

1 is that there is cross examination on what the
2 appropriate methodology for assessing risk should
3 be. Dr. Greenberg has testified that he used a
4 methodology that has been adopted by regulatory
5 agencies.

6 We are not interested in debating
7 whether that is right or wrong. I think that that
8 may be a subject for briefs but I don't think it
9 is a subject for cross examination of this witness
10 who has already testified as to what method he
11 used and why.

12 HEARING OFFICER GEFTER: And again,
13 your objection is sustained. The same --

14 MS. SCHULKIND: May I please respond
15 before you sustain the objection?

16 HEARING OFFICER GEFTER: The same as
17 Ms. Luckhardt's objection --

18 MS. SCHULKIND: I'd like to --

19 HEARING OFFICER GEFTER: -- which is
20 that this is not a forum to argue over which
21 methodology ought to be used or ought to be
22 adopted. Because as Ms. Holmes indicated the
23 witness testified to what methodology he used and
24 why. So this additional information could be
25 argued in your brief. And you may respond now.

1 MS. SCHULKIND: First I would like the
2 record to reflect that the objection was sustained
3 before I was permitted an opportunity to respond
4 and I find that problematic.

5 I would now like to respond to the
6 objection and I believe it is inappropriately
7 sustained. I am not challenging the methodology.
8 I am entitled to probe whether or not the
9 methodology that is required by regulation was
10 properly implemented by Dr. Greenberg.

11 I believe that this treatise describes
12 some of the things which I will argue in my
13 briefing are required by your own regulations and
14 therefore I am entitled to his opinion as to
15 whether or not these are a part of the regulatory
16 requirements, are not part of the regulatory
17 requirements, and if so why not. That is directly
18 relevant to whether or not and how this
19 methodology was applied in this instance.

20 MS. LUCKHARDT: Then I would also --

21 HEARING OFFICER GEFTER: The witness
22 had testified that he was not familiar with this
23 document.

24 MS. SCHULKIND: He is an expert. I can
25 put a document in front of him that another expert

1 has submitted and ask his opinion on it. That is
2 standard cross examination of an expert witness.

3 MS. LUCKHARDT: I would object to this.
4 First of all this document has not been
5 authenticated at this point and to imply that it
6 is a regulatory standard I think is beyond what
7 has been done with this document so far. In
8 addition Dr. Greenberg did not rely on this
9 document in creating his testimony so I don't
10 think it is proper to expect him to be able to
11 respond to it.

12 MS. HOLMES: We have no objections to
13 questions about the specific methodology that
14 Dr. Greenberg did follow.

15 MS. SCHULKIND: Thank you, I appreciate
16 that.

17 HEARING OFFICER GEFTER: And you may
18 ask questions along those lines.

19 MS. SCHULKIND: Thank you.

20 BY MS. SCHULKIND:

21 Q Dr. Greenberg, would you please read
22 the italicized portion on page 21. It's a short
23 paragraph.

24 A Yes.

25 Q Thank you, I appreciate your patience.

1 The first sentence, or part of it, appears to echo
2 what you have said in your direct testimony, I
3 would like to confirm that, that a stressor is a
4 physical, chemical, biological or other entity
5 that can cause an adverse response in a human. Is
6 that roughly a correct statement?

7 A I believe so.

8 Q Thank you.

9 A I would agree with that statement.

10 Q Then moving down to the middle of the
11 paragraph. It also states that a stressor may not
12 cause harm directly but it may make the target
13 more vulnerable to harm by another stressor. Is
14 that a true statement in your opinion?

15 A Yes it is.

16 Q In the health analysis methodology that
17 is utilized are these sorts of indirect stressors
18 identified or captured or measured?

19 A If they are they are captured and
20 measured by the Cal-EPA Office of Environmental
21 Health Hazard Assessment in calculating cancer
22 potency slopes and reference exposure levels. I
23 do not add or detract from that.

24 Q So again so I understand. So when you
25 refer to the health protective methodology, that

1 is the methodology that EPA used to come up with
2 its levels, rather than the methodology that you
3 implemented?

4 A That is correct. And just say Cal-EPA,
5 not EPA.

6 Q Okay, thank you. And then just to
7 follow up briefly. And then the very next
8 sentence states that a socioeconomic stressor, for
9 example, might be the lack of needed health care,
10 which could lead to adverse effects. Do you agree
11 with that statement as just a generally true
12 statement about public health. The part -- I'll
13 ask a follow-up regarding its application in this
14 process. But as a public health expert is that a
15 true statement?

16 A Yes it is, I would agree with that
17 statement.

18 Q And am I also correct in understanding
19 that it is your understanding that those sorts of
20 socioeconomic stressors are not part of the Cal-
21 EPA analysis that leads to the health protective
22 methodology that you reference in your document?

23 A I don't know one way or the other so I
24 don't want to mis-speak. It would just be
25 conjecture on my part.

1 Q But you do know that they use infants
2 and the elderly, correct?

3 A Yes, and those are preexisting
4 conditions which could be as a result of these
5 stressors. So again I don't wish to mis-speak.

6 Q I'm not sure I understood the last part
7 of your answer. As a lay-person looking at this
8 what I see is that you are aware that the health
9 protective methodology takes into consideration
10 age, and that you are aware that it takes into
11 consideration preexisting health conditions. Are
12 there any other -- And I'm asking, are there other
13 factors that you are aware of that are taken into
14 consideration?

15 A Just to reiterate my last response,
16 those preexisting health conditions could be as a
17 result of the stressors mentioned in this
18 paragraph.

19 Q I see. So they would be measured to
20 the extent that they are manifested by physical
21 ailments or physical conditions.

22 A Yes.

23 Q Thank you. And could you please take a
24 quick look at page 23 of the same document. In
25 particular I wanted to ask a couple of questions,

1 briefly, regarding the paragraph that is sub-
2 headed Susceptibility/Sensitivity.

3 A I've completed reading it.

4 Q Thank you, I appreciate that. And
5 again the same questions I asked regarding the
6 last section. The first sentence:

7 "A sub-population may be
8 susceptible or sensitive to a
9 stressor if it faces an increased
10 likelihood of sustaining an
11 adverse effect due to a life
12 state."

13 Then it gives some examples. Again, as a public
14 health expert would you consider that to be a
15 correct statement?

16 A Without incurring the wrath of counsel
17 to my right let me say that I agree with the
18 entire paragraph.

19 Q Okay, thank you very much. Not to put
20 too fine a point on it. My last question regards
21 the end of that last sentence in that paragraph
22 that says:

23 "Then children in low-income
24 and people of color communities
25 must be considered an even more

1 susceptible group within that
2 sub-population."

3 So your agreement includes that last section?

4 A Yes it does.

5 Q Thank you. And are you aware of
6 anything in the methodology utilized to determine
7 public health impacts that factors in the low-
8 income status or susceptibilities of an ethnic
9 group population other than what you just
10 described, which is that if it manifests itself in
11 physical conditions, yes, but otherwise no?

12 MS. HOLMES: I just want ask for a
13 clarification. The reference in that paragraph to
14 low-income refers to children, is that what you're
15 referring to?

16 MS. SCHULKIND: Yes.

17 MS. HOLMES: You're asking him whether
18 or not --

19 MS. SCHULKIND: My question -- I'm
20 sorry, go on.

21 MS. HOLMES: Maybe if you rephrase the
22 question and include the word children it would
23 more accurately reflect that last sentence.

24 MS. SCHULKIND: Are you aware -- Strike
25 that, I think it has been asked and answered.

1 In your direct testimony -- And I'm
2 finished with that document, thank you.

3 In your direct testimony you indicated
4 that in some situations staff might look at a
5 particular community or a particular sub-
6 population within a target area under certain
7 circumstances and I was hoping that you could
8 elaborate on that a little bit. For example, if
9 CEC staff were aware of a unique, vulnerable
10 population in close proximity to a proposed site
11 would its internal processes include analyzing
12 potential impacts on that community?

13 MS. HOLMES: Is there a specific
14 section of the FSA that you are referring to?

15 MS. SCHULKIND: Actually it was the
16 oral presentation that Dr. Greenberg just made.

17 MS. HOLMES: Thank you.

18 BY MS. SCHULKIND:

19 Q And I believe you made reference to in
20 some instances you might look at a specific
21 population. And I believe you used the example of
22 a school if it was in the area.

23 A What I said was in the air dispersion
24 modeling we give the airborne concentrations,
25 actually it's called ground level concentration,

1 at the point of maximum impact. Sometimes we
2 would include other locations just by putting in
3 the UTM, that's universal transverse mercator,
4 coordinates of a school or a hospital or a day
5 care.

6 And I want to -- But I also went on to
7 say and I wanted to reassure you that the airborne
8 concentrations at any location that I might have
9 added here in this particular project would be
10 considerably less than that which I estimated at
11 the point of maximum impact.

12 Q I understand that. I was trying to,
13 again, as I indicated in my opening remarks, just
14 want to understand the methodology. So for
15 example if there were an AIDS clinic within close
16 proximity to a proposed site would it be a likely
17 process that you would look at the impacts on that
18 specific community in addition to your overall
19 analysis?

20 A There you go with those adjectives
21 again. You used the word likely. I may or may
22 not. And I don't mean to be flippant, counselor.

23 Q I understand you're not and I
24 appreciate your candor. What would be the factors
25 that would cause you to determine one way or the

1 other? What would be relevant to your analysis?

2 A Professional judgment first of all.
3 And second of all let's say that I calculated a
4 risk that was just below the level of significance
5 as opposed to a considerably lower level of
6 significance. Then I would probably add some
7 different receptors in there just to reassure the
8 community and provide more information. Forgive
9 me for not doing so in this case.

10 Q You anticipated my next question, which
11 is that you did not identify any unique receptors
12 that required specific analysis in the Eastshore
13 case; is that correct?

14 A That is correct.

15 Q Is it correct that no potential impacts
16 were considered specific to the students at Chabot
17 College?

18 A Once again, the students at Chabot
19 College are included in the analysis as is any
20 member of the public if the impacts were below the
21 level of significance at the point of maximum
22 impact. That means they are lower than that at
23 any other receptor.

24 Q So just so I have a clear record. I
25 think I understood your answer but the answer is

1 no, the Chabot students were not considered a
2 unique population that were studied separate and
3 apart from the population as a whole; is that
4 correct?

5 A That is not what I said, I did not say
6 that. One can make that conclusion by looking --
7 One can make the conclusion that I made by looking
8 at the words that I wrote. If it is below the
9 level of significance at the point of maximum
10 impact everywhere else it is even less than that.
11 What I didn't do is specifically give the ground
12 level concentrations as an index of cancer risk at
13 Chabot College.

14 Q Thank you. That therefore also applied
15 to the employees there too, correct?

16 A Correct.

17 Q To your knowledge was the day care
18 center that is located at Chabot College
19 identified as a sensitive receptor and provided
20 with the outreach that was given to other day care
21 centers in the area?

22 MS. HOLMES: I don't think that is a --
23 I mean, you're welcome to ask that question of a
24 witness who has more information about outreach
25 but I don't think Dr. Greenberg had anything to do

1 with public notice.

2 BY MS. SCHULKIND:

3 Q Okay. And that is part of what we're
4 trying to figure out is how these different things
5 are delegated among the various staff. So perhaps
6 I should have asked first whether or not
7 identifying institutional sensitive receptors is
8 part of what you did in the public health
9 analysis.

10 A That question is best directed to the
11 applicant who provides a list of sensitive
12 receptors within a certain mile radius of a
13 proposed power plant. And I believe the applicant
14 is here.

15 Q Does that mean that if the applicant
16 fails to identify a sensitive receptor that staff
17 does not do its own independent identification of
18 sensitive receptors?

19 A No, normally we would do an
20 identification of sensitive receptors, not listing
21 them in the Preliminary or Final Staff Assessment,
22 but rather ensuring that they did not miss one
23 that would be close in. A receptor 1.5 miles
24 away, if they missed that I would consider that to
25 be insignificant.

1 Q And did you pick 1.5 miles because that
2 is the estimate of where the Chabot Campus is or
3 were you just picking that? What would be
4 significant?

5 A Only if they missed one where my
6 calculations show that they risks would be above
7 the level of significance. When I talk in terms
8 of significance it is not a professional opinion,
9 it's a CEQA definition.

10 Q Okay. And have you prepared any
11 written analysis regarding the health effects of
12 the Eastshore site other than what has been
13 submitted as your testimony in this case?

14 A I think I missed some words in the
15 middle there, I'm sorry.

16 Q Have you prepared any written
17 recommendations or analysis regarding the health
18 impacts of the Eastshore plant that have not been
19 made a part of this proceeding?

20 A No.

21 MS. LUCKHARDT: Thank you, I have no
22 further questions.

23 HEARING OFFICER GEFTER: Mr. Haavik,
24 are you asking any questions?

25 MR. HAAVIK: None.

1 HEARING OFFICER GEFTER: Okay.

2 Applicant, do you have any cross
3 examination of Dr. Greenberg?

4 MS. LUCKHARDT: Can I also ask some
5 questions of the Air District since they've been
6 here.

7 HEARING OFFICER GEFTER: All right.

8 MS. LUCKHARDT: Wake you guys up a
9 little bit.

10 (Laughter)

11 CROSS EXAMINATION

12 BY MS. LUCKHARDT:

13 Q Is the district satisfied that its
14 Final Determination of Compliance condition 24 is
15 adequate to protect public health?

16 A Yes it is.

17 Q And why is the district satisfied by
18 testing only one engine?

19 A Because I reviewed the available toxics
20 data for the source category from identical
21 engines from a twin facility and the emissions
22 were very low. I recognize that the oxidation
23 catalyst that is going to be installed on these
24 engines is toxics best available control
25 technology.

1 The applicant, to my knowledge, this
2 the only engine plant of this type that is
3 proposing to install continuous emission monitors
4 on every engine instead of checking on a monthly
5 or quarterly basis. And I am using carbon
6 monoxide emissions as a surrogate that will let me
7 know if there is a problem with the oxidation
8 catalyst.

9 Q Does the District have an approved test
10 method for acrolein? I'll try and get it right.

11 A That compound first came to my
12 attention in the early '90s and I actually have
13 tried to measure that compound. It has not been
14 resolved in all these years so it is an open
15 issue. I talked to the same expert that Dr.
16 Greenberg talked to. You know, there is data out
17 there. No one is really very comfortable with the
18 repeatability of the method.

19 That being said, I've heard a lot of
20 testimony regarding the compound. My technical
21 basis of why I am not overly concerned about the
22 compound is that the formaldehyde results from the
23 twin facility, it has now been tested again, so we
24 have 28 tests that all clearly show that we were
25 conservative in our risk evaluation.

1 And when you review the body of
2 available data on the emission of aldehydes, which
3 would be formaldehyde and acrolein and
4 acetaldehyde you tend to see higher formaldehyde
5 results than you do acrolein results. And because
6 we have very low formaldehyde results I can't say
7 with any exact certainty what the number is but I
8 know that it is fairly low.

9 MS. LUCKHARDT: Thank you.

10 Moving to Dr. Greenberg. I gave you a
11 little break.

12 CROSS EXAMINATION

13 BY MS. LUCKHARDT:

14 Q Did you work on the Inland Empire
15 Energy Center when GE changed the machine from a
16 Frame 7F to a Frame H?

17 A I don't believe I did. I worked on the
18 original AFC and siting. Did they change that
19 during the initial or is that the subsequent
20 amendment?

21 Q It was the amendment, I believe.

22 A I didn't then.

23 Q Did you work on the Los Esteros II
24 project?

25 A Yes I did.

1 Q And isn't it true that staff only
2 requested that one engine out of four be tested?

3 A That's correct. But those are gas
4 turbines.

5 Q You mentioned in your testimony or
6 discussed the analytical problems with testing for
7 acrolein, acrolein. I'm trying.

8 A Acrolein.

9 Q Correct? Do you remember the question?

10 A No. (Laughter)

11 Q Okay. When you were discussing test
12 methods for acrolein you admitted that the
13 analytical method has problems and is suspect,
14 correct?

15 A That is correct.

16 Q And isn't it correct that nonetheless
17 you are requiring Eastshore to test for acrolein?

18 A That is correct. And I think you are
19 also missing one important part and that is you
20 submit a test protocol to the Energy Commission
21 compliance project manager.

22 And if it turns out that there is not a
23 good test for acrolein if this project should be
24 licensed and if it is built and now you are
25 commissioning and you start testing, that is the

1 time that you can present that information to the
2 compliance project manager in the form of a
3 protocol. And the compliance project manager will
4 review and approve that protocol.

5 Q So then would you agree that if there
6 is not an accepted test method that the applicant
7 would not be required to specifically test for
8 acrolein?

9 A I think that can be addressed at that
10 time. You note that I did not put in any
11 specific test methods in this condition of
12 certification. That is because this proposed
13 condition of certification is a hybrid between a
14 performance standard which just says, go ahead and
15 test, and a specification standard which would
16 spell out exactly, we want you to do this and we
17 want you to do it this way.

18 We want you to identify the best test
19 methods at the time when you start doing your
20 testing. Because I don't know when you'll build
21 this power plant if it is indeed certified. And
22 at that time is when you can make your case to the
23 compliance project manager.

24 If you are not willing to trust the
25 CPM, the compliance project manager, at this time

1 I am certainly willing to entertain some
2 additional wording in here that spells that out
3 more clearly.

4 Q Dr. Greenberg, do you have a copy of
5 Exhibit 804, which was the exhibit that was handed
6 out today by Mr. Sarvey.

7 A No, but I think I am going to be given
8 one.

9 Q I am looking at Exhibit number 804 and
10 it is listed on the top as 804-13.

11 A 804-13, yes.

12 Q Okay. Is the information presented in
13 this table from the Berrick facility

14 A Yes it is. It looks like the date is
15 October 1 of '07.

16 Q Are the numbers presented --

17 A Excuse me, that is the date that the
18 Bay Area Air Quality Management District produced
19 the table. The test dates are October 21, 23,
20 2005 and November 2005.

21 Q That's correct. Are the numbers
22 presented there an order of magnitude below those
23 used in your health risk assessment? I believe
24 these numbers are for formaldehyde.

25 A Yes they are for formaldehyde. If you

1 look at the terminology, HCHO test results, that's
2 the chemical formula for formaldehyde. So it was
3 obviously written by an analytical chemist as
4 opposed to someone who really speaks English here.

5 So for these units I see that looking
6 down the right hand column, the average, and
7 looking at the very last figure, the average of
8 all test runs of 0.0198 pounds per hour for
9 formaldehyde emissions.

10 Actually, Counselor, it is not one
11 order of magnitude different, it is actually a
12 little bit more than two orders of magnitude.
13 More than a hundred-fold greater the value that I
14 used in my health risk assessment. So the actual
15 emissions are more than a hundred-fold less than
16 what I used in my health risk assessment for
17 formaldehyde.

18 MS. LUCKHARDT: Thank you, I have
19 nothing further.

20 HEARING OFFICER GEFTER: And again you
21 were referring to the project that is in Nevada
22 that is the mirror image or the twin, I guess, of
23 this proposed project.

24 MS. LUCKHARDT: Yes.

25 HEARING OFFICER GEFTER: Okay. I think

1 we need to get some clarification, though, between
2 the Air District's FDOC Air Condition 24, which
3 only requires testing on one unit.

4 MR. LUSHER: Yes.

5 HEARING OFFICER GEFTER: And the
6 proposed Public Health 1 condition, which proposed
7 testing four units. And I understand,
8 Dr. Greenberg, that the reason you are requesting
9 four units is to ensure a level of confidence in
10 your analysis and to make sure that it actually
11 correlates your testing.

12 DR. GREENBERG: Yes, this is a
13 mitigation monitoring condition. And I still
14 believe that when you are looking at 14 engines
15 you can, despite the learned opinion of the Air
16 District engineers -- I don't have any problem
17 with their arguments but I just think for a
18 greater level of comfort that one engine is a
19 little too few.

20 In the Preliminary Staff Assessment I
21 recommended all 14 be tested. The applicant
22 objected and made some cogent arguments that 14
23 was too many. So I think four --

24 And toxicologists like to come up with
25 the number four as that renders some statistical

1 significance to the number. So if you get four
2 different engines tested, and yes there are three
3 runs per engine. Now you've got some data that
4 you can sink your teeth into.

5 HEARING OFFICER GEFTER: The other
6 thing that there is inconsistency is actually the
7 timing of these tests. It really doesn't make
8 much sense although maybe the Air District can
9 explain why you are requiring the tests to begin
10 within 136 days. I am not sure. That is like
11 four months and six days or something or whatever
12 it is, almost five months. And then you are
13 requiring it within nine months, 170 days. And it
14 seems -- I am not really clear on the timing
15 because they are very inconsistent in terms of
16 when the testing should occur.

17 MR. LUSHER: I believe that is directly
18 associated with a specific rule that I cannot cite
19 off the top of my head.

20 HEARING OFFICER GEFTER: Okay.

21 MR. LUSHER: But there is a 180 day
22 window where certain activities have to occur and
23 136 was deemed to be the time frame to meet that
24 requirement.

25 DR. GREENBERG: Hearing Officer Gefter

1 I can modify my condition to conform with the
2 timing of the Air District's.

3 HEARING OFFICER GEFTER: Because your
4 proposed condition has several different time
5 lines and that would be helpful if it were
6 consistent.

7 Also in terms of the FDOC condition AQ-
8 24, which is based on certain rules within the Air
9 District. I understand that your proposed public
10 health condition has more to do with a concern
11 regarding a CEQA level of confidence where you are
12 not constrained by the Air District's rules but
13 you can request additional testing to ensure that
14 your public health analysis is accurate.

15 DR. GREENBERG: That is correct.

16 HEARING OFFICER GEFTER: So that would
17 be the distinction then for members of the public.
18 Because we've talked about how in so many ways
19 your analysis is constrained by existing protocols
20 and the studies that exist at OEHHA and other
21 agencies that you rely on. Whereas in this case
22 your proposed condition is not constrained
23 necessarily by the Air District's rule; is that
24 correct?

25 DR. GREENBERG: That is correct.

1 HEARING OFFICER GEFTER: Well what
2 would be really helpful is for the staff, the
3 applicant and the Air District to get together and
4 try to coordinate these two conditions to see
5 whether or not you can come to some sort of
6 agreement and some language where the Air District
7 gets what they need and staff can be assured of a
8 confidence level either, you know, by looking at
9 four engines rather than one engine. And that way
10 the timing is coordinated so the applicant doesn't
11 have to produce several tests over different
12 periods of time. That would be great.

13 Are there any other, any recross or any
14 other questions of --

15 MS. HOLMES: I have a few questions on
16 recross.

17 HEARING OFFICER GEFTER: Redirect,
18 actually.

19 MS. HOLMES: Redirect. Thank you.
20 It's getting late already.

21 REDIRECT EXAMINATION

22 BY MS. HOLMES:

23 Q Back to this issue of reference
24 exposure levels. Are reference exposure levels
25 set to protect individuals rather than

1 communities?

2 A Yes, they are set to protect any
3 individual, sensitive individual. And there are
4 safety factors put in there so that it is not like
5 we expect that there would be an adverse impact if
6 there was an exposure just above that line.

7 Q And when they are set there is not an
8 assumption that a certain percentage of people
9 fall into the sensitive receptor group and others
10 are outside it. So the reference -- Let me state
11 that another way.

12 Does the reference exposure level look
13 only at effects on sensitive receptors?

14 A It's supposed to look at all people and
15 protect everyone, even down to one person if
16 necessary.

17 Q So if a hazard index created by a
18 project fell below the level of significance no
19 one who was affected by that project would
20 experience a significant adverse health impact; is
21 that correct?

22 A Yes.

23 Q And would that be true if everybody who
24 was affected by the project were a sensitive
25 receptor?

1 A Yes.

2 MS. HOLMES: Thank you.

3 MS. SCHULKIND: Can I ask one follow-up
4 on cross?

5 HEARING OFFICER GEFTER: Yes.

6 RE CROSS EXAMINATION

7 BY MS. SCHULKIND:

8 Q Is it possible that the sensitive
9 receptor, the way that that is defined though,
10 could fail to recognize a particular vulnerability
11 or sensitivity that could change the conclusion as
12 to whether or not there was a negative impact?

13 A Well you asked the question, is it
14 possible, as opposed to, is it probable.

15 Q That's correct.

16 A If you're saying, if you're asking me
17 what are the limits of science, then yes, it is
18 possible. Because science recognizes that
19 sometimes we don't have all the information.
20 Science does march on and we learn more.

21 And just as I explained with acrolein,
22 sometimes you find that it is not as toxic as you
23 originally thought. Sometimes you find a
24 substance is more toxic and then you go ahead and
25 make the adjustments. But as of today this is the

1 best that science can provide.

2 Q I guess I was asking something
3 different following up on Ms. Holmes' question
4 about sensitive receptors. And that is, you
5 indicated in our discussion that to your knowledge
6 the sensitive receptor calculations do not take
7 into consideration things such as low income
8 status, except to the extent that they are
9 manifested in a physical ailment or other -- Is it
10 possible that in a methodology that specifically
11 took into consideration the vulnerabilities of
12 lack of health care that you could end up with a
13 different conclusion?

14 A You know, that is really hard to say
15 but you are asking my professional opinion. And I
16 think it probably comes down to if you have
17 disparate impacts in populations but they're both
18 below a level of significance is there any type of
19 significant impact. And I would say no there is
20 not, even though you might be able to calculate
21 something. Even though there is some difference
22 they are both below the level of significance.

23 If we are looking at a human population
24 in which to base our reference exposure level then
25 we have at least human error. And I am sure you

1 aware that many of the reference exposure levels
2 are based on animal data. So obviously we don't,
3 we can't factor in things other than biologic
4 mechanisms.

5 But what we try and do and what Cal-EPA
6 scientists do do is look at the most sensitive,
7 toxicological end point, regardless of whether
8 someone might consider it to be mild or
9 inconsequential, and then add various safety
10 factors. So it is not like we're looking at overt
11 toxicity and then just say that the reference
12 exposure level is a microgram per cubic meter
13 below that level and causes overt organ system
14 failure.

15 Instead we look at the most sensitive
16 end point, add safety factors to take into account
17 the sensitivity. The best that we can as
18 scientists. I recognize there are emerging
19 technologies, so does Cal-EPA. Cal-EPA will use
20 these emerging technologies as they become
21 scientifically defensible.

22 MS. SCHULKIND: Thank you.

23 HEARING OFFICER GEFTER: I just wanted
24 to ask Dr. Greenberg on this topic, because this
25 does seem to be an issue both for you,

1 Ms. Schulkind, and also for you Ms. Hargleroad,
2 which is, if there is new scientific evidence why
3 isn't Dr. Greenberg using it? And Dr. Greenberg
4 just explained that when it is scientifically
5 accepted by peer review then those different
6 studies are then incorporated into the protocols
7 and the rules of the different agencies.

8 MS. HARGLEROAD: That's not --

9 MS. SCHULKIND: Hearing Officer, could
10 I respectfully ask, are you testifying? I am not
11 sure I understand.

12 HEARING OFFICER GEFTER: No, I am just
13 asking him if that is accurate.

14 DR. GREENBERG: Yes, Hearing Officer
15 Gefter, that is exactly it.

16 HEARING OFFICER GEFTER: Right.
17 Because what I think is happening is that we sort
18 of, we keep getting a lot of questions about, what
19 about this scientific study and that scientific
20 study. And the witness has testified over and
21 over as to what he did.

22 MS. HARGLEROAD: I just want to make it
23 clear on the record that I think that is a mis-
24 characterization.

25 I would like to just ask Dr. Greenberg

1 just a few quick questions.

2 RE CROSS EXAMINATION

3 BY MS. HARGLEROAD:

4 Q On 4.7-5 you state that you used the
5 highest levels of pollutants that could be emitted
6 from the plant for your risk screening purposes;
7 is that correct?

8 A Correct.

9 Q Okay. And does that take into
10 consideration start-up conditions for both the
11 Russell City Energy Center and the Eastshore
12 plant?

13 A It's a compound question, I'll take the
14 first one first.

15 Q Okay.

16 A It does not consider start-up. Start-
17 up for these engines is really a matter of
18 minutes. The gas turbines could take as long as
19 30 minutes to an hour. The air dispersion
20 modeling protocols have the shortest time frame of
21 one hour.

22 Q Okay. And usually there's high levels
23 of pollutants that are emitted during the start-up
24 time.

25 MS. HOLMES: Excuse me, can we have a

1 question and not testimony through the counsel,
2 please.

3 MS. HARGLEROAD: No, I am simply asking
4 Dr. Greenberg.

5 BY MS. HARGLEROAD:

6 Q I mean, is that correct?

7 A You put in one of those adjectives
8 again, high levels. There are higher levels. But
9 for these particular engines it is a shorter
10 period of time than if it was a gas turbine.
11 There is no doubt it does take a while for it to
12 warm up, just as your automobile takes a little
13 time to warm up to get the catalytic converter
14 going. So yes. But it is such a short period of
15 time. And we don't have any test data for that.
16 Nobody has any test data for that.

17 Q Following up on if you could -- Well
18 how do you account then for the background of the
19 local toxic air contaminant levels then in your
20 health risk assessment also?

21 A We don't, and I'll explain why. The
22 reason we don't account for background cancer
23 risks is because, once again, the methodology
24 requires us to look at the incremental
25 contribution of this particular project. Very

1 much the same as if it were a hazardous waste site
2 and one was looking at what the incremental
3 contribution caused by hazardous waste might be.

4 The reason for that is because the
5 background cancer risk in the Bay Area is already
6 above the level of significance. As I stated in
7 my Final Staff Assessment it is around 165 in a
8 million. If we were to add background basically
9 you couldn't build anything, you couldn't drive
10 your automobile, you couldn't take the bus because
11 they all emit toxic air contaminants and
12 everything would come to a standstill. What we
13 are looking at for CEQA purposes is the
14 incremental increase in cancer and is that below a
15 level of significance.

16 Now when it comes to non-cancer health
17 risk we would consider the non-cancer hazard index
18 and background if the Air District said, you know,
19 this hazard index is very close to one, we'd like
20 you to add in background. It is not close to one,
21 it is -- excuse me while I get the precise number
22 out. It is .32, as I calculated it. And the Air
23 District has not asked me to look at background.
24 So that is the reason why background wasn't
25 included.

1 Q Okay. And just because I have to ask
2 you this question. You have been telling us to be
3 careful with those words. How do you define just
4 below the level of significance?

5 A A .9, a .8 hazard index. The Air
6 District may or may not ask us to include it.

7 Q Okay, and what is considerably below
8 the level? You did use --

9 A More than half.

10 Q Okay.

11 A More than 50 percent less.

12 Q What if -- Going back to the
13 background. What if the background was close to
14 one?

15 A Then I would include it.

16 Q Okay. So you would --

17 A I'm sorry, not the background.

18 MS. HOLMES: Excuse me.

19 DR. GREENBERG: You mean if the project
20 were close to 1.0.

21 BY MS. HARGLEROAD:

22 Q Yes.

23 A Okay, I'm sorry, you caught me. If a
24 project were close to the 1.0, if it was .9 then I
25 probably would look at background.

1 Q But then you also have the background
2 in addition to the project. And what if the
3 background was close to one?

4 A I don't know what the background is for
5 non-cancer health effects in the immediate area.
6 I would know what it would be in the Bay Area in
7 general and that's what I would look at. But no,
8 I would not add the background unless the project
9 as defined had an incremental non-cancer hazard
10 index close to 1.0 or if the Air District asked me
11 to do so.

12 Q Well I ask you that because of the
13 proximity of the project to Highways 880 and 92.
14 So that the background one would presume would be
15 different for that proximity than it may be for
16 the general area; is that correct? For the San
17 Francisco Bay Area in general.

18 A I would say you are quite correct.
19 That non-cancer and cancer impacts along high
20 density traffic corridors are much greater than in
21 the general area. It tends to drop off after a
22 quarter to a half of a block. There are numerous
23 studies that document that.

24 MS. HARGLEROAD: Okay, thank you.

25 And I have one more question for the

1 applicant's witness. And that goes --

2 CROSS EXAMINATION

3 BY MS. HARGLEROAD:

4 Q Am I correct that the applicant is
5 urging that there be no testing for acrolein; is
6 that correct? Do you still maintain that?

7 A That is not correct. The condition
8 language change is to test if there is an
9 acceptable method. So we are really on the same
10 page, it is just a matter of how that is
11 presented.

12 Q Have you had an opportunity to review
13 the group petitioners' exhibits 722, 723 and 724,
14 which is the fourier transform infrared method to
15 test acrolein for continuous emission monitoring
16 systems?

17 A I have reviewed that, yes.

18 Q Okay. And would that be useful?

19 A Probably not because you have heard
20 testimony from the District that you are expecting
21 very low levels of acrolein. So that method
22 probably would not be appropriate. But the staff,
23 the District could talk more about that than I
24 can.

25 Q Okay.

1 MR. LUSHER: I would just state that
2 from talking with the ARB expert that nobody seems
3 very happy with the FTIR results either, sorry to
4 use the acronym. But it does tend to have a
5 higher detection limit than the alternate method
6 that we have tried to use. What we have tried to
7 do for years is try to use a variant of the
8 formaldehyde/acetaldehyde test method, which is
9 widely accepted and has very repeatable results,
10 excuse me. Our efforts to apply that to this
11 particular compound have been very difficult.

12 I should point out that in ambient air
13 or something you can see the compound. You can
14 use, there's ways to do it. The problem at least
15 my limited understanding of the problem is that it
16 is very difficult to measure in a combustion
17 matrix of gases. And it is very hard to keep the
18 compound stable and to get really repeatable,
19 reproducible results.

20 MS. HARGLEROAD: That's all my
21 questions, thank you.

22 MS. LUCKHARDT: I have one additional
23 question of Mr. Greenberg.

24 MS. SCHULKIND: I have one
25 housekeeping --

1 HEARING OFFICER GEFTER: You have a
2 redirect? Who has another question? I thought it
3 was -- I'm sorry, it was Ms. Schulkind.

4 MS. SCHULKIND: I'm sorry, I had one
5 housekeeping.

6 HEARING OFFICER GEFTER: Okay.

7 MS. SCHULKIND: I should have asked
8 this and I didn't. Dr. Greenberg referred, you
9 referred a number of times to the Cal-EPA
10 methodology that you relied upon and I am not
11 aware of whether that is already part of the
12 record. Is that incorporated as one of your
13 exhibits? And if not could I ask that what you
14 are relying upon is incorporated into the record
15 so I can review it and refer to it in our
16 briefing.

17 DR. GREENBERG: I believe it may be
18 referenced in -- the precise document is
19 referenced on page 4.7-5, the next to the last
20 paragraph. That's OEHHA 2003. It kind of looks
21 like this. It's called Air Toxics Hot Spots
22 Program Risk Assessment Guidelines, the Air Toxics
23 Hot Spots program Guidance Manual for Preparation
24 of Human Risk Assessments, August 2003. It is
25 obtainable on the Office of Environmental Health

1 Hazard Assessment web site.

2 MS. SCHULKIND: I would like to ask
3 that it be made an exhibit to the proceeding so
4 that it can be properly referred to.

5 MS. HARGLEROAD: We agree.

6 MS. HOLMES: We don't have a copy of
7 it. Perhaps you could take notice of it, I don't
8 know.

9 MS. SCHULKIND: Taking notice of it,
10 however is expedient.

11 HEARING OFFICER GEFTER: Certainly we
12 can take official notice because it is a public
13 document.

14 MS. SCHULKIND: Okay, thank you. So we
15 are taking judicial notice of this so it will be
16 -- How will we refer to it? As a --

17 HEARING OFFICER GEFTER: You can just
18 refer to it as if it is, you know --

19 MS. SCHULKIND: A staff exhibit or just
20 a --

21 HEARING OFFICER GEFTER: It doesn't
22 need to be -- You don't even need to say it is a
23 staff exhibit.

24 MS. SCHULKIND: Okay.

25 HEARING OFFICER GEFTER: However, it is

1 listed at the References. At the end of the
2 public health testimony there are a list of
3 references at page 4.7-24.

4 MS. SCHULKIND: Yes, I understand that
5 but in my mind I wasn't sure that meant they were
6 in the record and that we could refer to them in
7 our briefing.

8 HEARING OFFICER GEFTER: Oh yes.

9 MS. SCHULKIND: So you are taking
10 judicial notice, thank you.

11 HEARING OFFICER GEFTER: Right.
12 Anything else?

13 MS. LUCKHARDT: I have one additional
14 question of Dr. Greenberg.

15 RE CROSS EXAMINATION

16 BY MS. LUCKHARDT:

17 Q Dr. Greenberg, you were asked about
18 start-up emissions. Do you believe that your
19 analysis is conservative, even with the
20 variability in emissions during start-up?

21 A Yes I do, particularly in light of the
22 recent information provided by Mr. Sarvey that
23 came from the Bay Air Quality Management District
24 on the actual emissions of a sister engine in
25 Nevada. The few minutes that it would take, in my

1 understanding it may be as little as ten minutes,
2 of start-up to get it up to operating temperature,
3 would be more than accounted for by my 200-fold
4 overestimation of the emission factor for
5 formaldehyde.

6 It would be my expectation that the
7 other aldehydes such as acrolein would also behave
8 in the same manner and that it would be I have
9 overestimated the emission. But the source
10 testing will be the proof in the pudding.

11 FURTHER RECROSS EXAMINATION

12 BY MS. HARGLEROAD:

13 Q Just to follow up on the start-up. I
14 just want to clarify. You stated that you did not
15 include the start-up emissions. And that would --
16 we had -- my question was earlier compact. That
17 would include Russell I would gather, right?

18 A That is correct.

19 Q Okay. As well as the proposed
20 Eastshore project?

21 A Correct.

22 Q Thank you.

23 A You're welcome.

24 HEARING OFFICER GEFTER: We want to
25 move the exhibits into the record on public

1 health, please. And I will start with the
2 applicant.

3 MS. LUCKHARDT: Yes, at this point we
4 move applicant's exhibits on public health into
5 the record. Those exhibits include exhibit, the
6 public health section of Exhibit 1, the public
7 health section of Exhibit 3, Exhibit 19, and the
8 public health comments of Exhibit 13. I believe
9 that's it.

10 HEARING OFFICER GEFTER: You had
11 mentioned 12 earlier, I don't know if that was --
12 if you meant to say 13.

13 MS. LUCKHARDT: I would rather move it
14 in than leave it out so we'll do anything that has
15 public health in it in Exhibit 2, 12, 6, 11, 13 or
16 15.

17 HEARING OFFICER GEFTER: All right,
18 great, okay. And Ms. Schulkind, do you want to
19 move your exhibits in now on public health. You
20 referred to a few exhibits.

21 MS. SCHULKIND: The exhibits that I
22 have appear to have been listed under
23 socioeconomics and environmental justice. I'm
24 happy to ask them be moved now.

25 HEARING OFFICER GEFTER: Sure.

1 MS. SCHULKIND: Or when we get to those
2 topics, however you would like to proceed.

3 HEARING OFFICER GEFTER: Well you
4 referred to, at least in Exhibit 604 you asked
5 Dr. Greenberg to comment on that.

6 MS. SCHULKIND: Yes.

7 HEARING OFFICER GEFTER: So 604,
8 without objection we'll move that into the record.

9 MS. SCHULKIND: Thank you.

10 HEARING OFFICER GEFTER: Thank you.
11 Ms. Hargleroad, do you want to move your exhibits
12 on public health?

13 MS. HARGLEROAD: Yes, please. We would
14 like to move in Exhibits 700 through 704, 705 is
15 already admitted. Exhibit 706 through Exhibit
16 710, although 710 I understand we can take
17 administrative notice.

18 HEARING OFFICER GEFTER: Yes.

19 MS. HARGLEROAD: Also we have been
20 discussing the various scientific journals and
21 there has been substantial discussion concerning
22 what science is available. So we would ask to
23 also admit the Exhibit 719-A and 720 through 726.

24 HEARING OFFICER GEFTER: And you know,
25 as noted, those exhibits were offered late.

1 However, in the interest of time and the fact that
2 we did discuss them we'll go ahead and accept them
3 into the record without objections and give them
4 the weight that they are due.

5 MS. HARGLEROAD: Well I'd just like to
6 clarify there's a few. Not all of the exhibits,
7 only the exhibits starting with 719-A.

8 HEARING OFFICER GEFTER: Right, I know,
9 719-A through 726. And you still have some
10 pending on aviation.

11 MS. HARGLEROAD: Yes we do.

12 HEARING OFFICER GEFTER: And we'll look
13 at those later.

14 MS. HARGLEROAD: But we haven't talked
15 about that.

16 HEARING OFFICER GEFTER: Okay, thank
17 you. Okay, great. Any other exhibits on public
18 health that I have missed at this point?

19 Okay, in that case public health is
20 submitted other than the language on the
21 conditions in terms of timing, coordinating timing
22 with the Air District.

23 You know, I think we all need a break
24 and then we're going to come back on local system
25 effects. So why don't we take a break for ten

1 minutes and reconvene around five.

2 (Brief recess)

3 HEARING OFFICER GEFTER: I'm sorry,
4 everyone. The Committee has decided that we will
5 go ahead and take our evening break now from five
6 to six and come back at six for public comment.
7 And then we'll do local system effects after
8 public comment and we'll just go in the evening.

9 Off the record now.

10 (Whereupon, a recess was
11 taken.)

12 --oOo--

13

14

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18

1 EVENING SESSION

2 PRESIDING COMMISSIONER BYRON: Good
3 evening, my name is Jeff Byron. I am the
4 Presiding Member of this evidentiary hearing of an
5 application for certification for the Eastshore
6 Energy Center in Hayward and the continuing saga
7 of our trips to Hayward it seems. Thank you so
8 very much for having us here at this wonderful
9 facility.

10 I am just going to say a few things and
11 then I am going to turn the hearing over to our
12 hearing officer, Ms. Susan Gefter. To my left is
13 my advisor, Gabriel Taylor. And unfortunately my
14 Associate Member on this committee, John Geesman,
15 Commissioner Geesman could not be here due to
16 personal reasons.

17 I just wanted to indicate to you that
18 we have noticed from six to eight some time for
19 public comment in our evidentiary hearing today
20 and Susan, Ms. Gefter, is going to explain that
21 we're going to probably rearrange things a little
22 bit without objection from all the parties that
23 are here. But Susan, why don't you go ahead and
24 explain what we're going to do this evening and
25 maybe introduce parties and we'll start the public

1 comment period.

2 HEARING OFFICER GEFTER: Absolutely.
3 Right before we start the public comment period,
4 as Commissioner Byron has indicated we have not
5 completed testimony. We haven't gotten as far as
6 we had hoped so this evening we would like to take
7 testimony on environmental justice. So at some
8 point during the public comment period we are
9 actually going to stop taking public comment and
10 we are going to ask Chabot College to present its
11 witness on environmental justice. I know a lot of
12 you are here to hear that testimony.

13 (Applause)

14 HEARING OFFICER GEFTER: And also, you
15 know, this is not a theater or entertainment so
16 please don't clap. You are welcome to be here and
17 participate but please show respect for the
18 speakers, thank you.

19 So the first thing is that Supervisor
20 Gail Steele, Alameda County Supervisor Gail Steele
21 wanted to speak right at six o'clock. I am going
22 to ask her to come forward if she is here.

23 And then after that I have a student
24 from Chabot College who has finals and he would
25 like to go first before the Chabot College people

1 want to speak. So I am going to ask Ahmad Asir to
2 speak after Supervisor Steele.

3 And then after Ahmad speaks then Joel
4 Kinnamon, the Chancellor of Chabot will come up and
5 we'll take it from there.

6 So Supervisor Steele, welcome this
7 evening. It is good to see you.

8 SUPERVISOR STEELE: Thank you. I
9 really appreciate you allowing me to go early. I
10 don't feel as well-prepared as many of the people
11 that are here. We have had hearings before and we
12 have a number of people in Hayward that are
13 extremely knowledgeable, far more knowledgeable
14 than I. But I am here to tell you that I have
15 represented Hayward now for a lot of years. I was
16 eight years on the City Council and fifteen-and-a-
17 half years on the Board of Supervisors.

18 Hayward is a very special place. It
19 has a very special community in a whole lot of
20 ways. But what happens is we are probably not the
21 most visually pretty city in the world. And what
22 happens is everything happens to us. And when we
23 have needs they don't get taken care of.

24 And for there to be two power plants in
25 Hayward is unconscionable. The first one it

1 sounds like you've approved, although I know some
2 of us are still fighting it. But the second one
3 is near a highly industrial, urban area. I
4 understand that particular plant is very noisy.
5 The issue of pollution in the urban area over
6 schools, Chabot College, the whole community, is
7 not acceptable. I sometimes feel that because
8 Hayward has a minority community, a low-income
9 community, people don't take care of us.

10 I would really challenge you if this
11 electricity isn't going to Hayward, and I
12 understand it is not, most of it is going to other
13 areas, then you should put the power plants in San
14 Francisco or wherever you want to put them.

15 Actually I don't think any of these
16 power plants should be done right now because I
17 think we are trying to go toward a green way of
18 doing things and these power plants don't sound
19 green to me.

20 I think there is a cumulative effect of
21 the air quality with both plants. I think that
22 the other thing that I wanted to make a comment on
23 is that, is that I don't know whether we can say
24 what happens to property values or not. But I do
25 think that you don't put power plants in areas and

1 think they won't become depressed. Because I
2 think there is a perception of depression and
3 often perceptions become realities.

4 So I am really urging you to pay
5 attention to all the people that come here to
6 speak because they have many more facts than I do.
7 But I come here to represent the community. This
8 community does not want any power plants and we
9 certainly don't want the second one. So I hope
10 you will consider that, thank you.

11 (Applause)

12 HEARING OFFICER GEFTER: Thank you,
13 Supervisor Steele. I also want to ask the
14 audience, please don't clap. It takes up a lot of
15 time and we have a lot of people to hear from
16 tonight. And we know your views. Please don't
17 clap because we don't have time, really.

18 Actually I am going to ask for Ahmad
19 Asir to please come up, he is a student at Chabot.

20 Please stop clapping, thank you.

21 Ahmad, please come on up and let's hear
22 what he has to say. And appreciate your coming
23 out tonight, I know you have finals. Ahmad, when
24 you come to the microphone could you please spell
25 your name for the reporter.

1 MR. ASIR: Okay.

2 HEARING OFFICER GEFTER: Thank you.

3 MR. ASIR: Hi, my name is Ahmad Asir,
4 spelled A-H-M-A-D, the last name A-S-I-R. I am a
5 student at Chabot College and I am also a part of
6 the student senate.

7 And I guess my main criticism about the
8 Russell Energy Center and more specifically the
9 Eastshore power plant they are attempting to pass
10 is that it is counter-intuitive to what direction
11 the State of California is going towards. Because
12 just last year California passed an initiative
13 that would attempt to decrease pollutants that go
14 into the atmosphere by ten percent, trying to meet
15 the standards that our government has not passed,
16 the Kyoto Protocol Standards, which was passed
17 during the early 1990s.

18 And I think if that is the direction
19 our State Legislature is going for, and that's the
20 beliefs that our Governor has, then I think it
21 makes it simple that the City of Hayward shouldn't
22 be counter-intuitive to what direction the State
23 of California is heading towards. And I think we
24 would be doing a disservice to our state
25 government, and most importantly the residents of

1 Hayward.

2 For instance, just last week four of
3 the seven days were emergency spare the air days
4 simply because of the pollutants that are going
5 out into the atmosphere. The fact of the matter
6 is that if these energy centers are produced then
7 it just creates even more of a problem for the
8 community.

9 And in all honesty there hasn't been
10 enough -- Like I was here for the hearings prior
11 to this and I sat in for at least two hours and
12 there hasn't been enough information about what
13 these power plants are doing, the technologies.
14 Like we have scrubbers that are available that
15 would be able to purify the pollutants that go
16 into the atmosphere, the byproducts that come out
17 of these power plants. And I haven't heard any
18 type of information regarding those situations.

19 So I would like to, if anything, extend
20 the hearings because we have petitions that we
21 weren't able to meet by the deadlines. But over
22 465 Chabot students and people in the City of
23 Hayward have signed petitions. And although I was
24 not able to submit it on time on November 17 I
25 would like the council and everyone to recognize

1 that students at Chabot College are firmly against
2 this energy plant.

3 And if anything, even if we don't make
4 a decision now I think we are calling for
5 extensions. Just allow the public, and most
6 importantly the officials who are attempting to
7 pass this plant, to provide more information so
8 there can be more transparency and more
9 representation here.

10 HEARING OFFICER GEFTER: Thank you,
11 Mr. Asir. And also I wanted to tell you that you
12 are welcome to file your petitions because members
13 of the public were not precluded as of November
14 17, that was just the official parties.

15 MR. ASIR: Okay.

16 HEARING OFFICER GEFTER: So if you want
17 to file your petitions and send them to Sacramento
18 you are welcome to do that. You can send them to
19 Mr. Pfanner, Bill Pfanner, who is the project
20 manager on this project for the Energy Commission.
21 And you are welcome to send any comments you wish
22 in writing to the Energy Commission.

23 MR. ASIR: How would I go about that
24 process?

25 HEARING OFFICER GEFTER: You can speak

1 to him off the record. Let's ask somebody else to
2 come on up.

3 PRESIDING COMMISSIONER BYRON: Also our
4 Public Adviser, Mr. Asir.

5 HEARING OFFICER GEFTER: Our Public
6 Adviser in the back.

7 PRESIDING COMMISSIONER BYRON: Nick,
8 would you raise your hand, please.

9 HEARING OFFICER GEFTER: Mr. Bartsch
10 also can assist you in sending in the petitions to
11 the Energy Commission. So you can speak to either
12 one of them. Thank you for being out tonight.

13 PRESIDING COMMISSIONER BYRON: Good
14 luck on your finals.

15 HEARING OFFICER GEFTER: Yes, on your
16 finals.

17 Next we have a number of people from
18 Chabot College, administrators. We have
19 Chancellor Kinnamon who would like to address us.
20 Thank you for being here tonight, appreciate your
21 coming out.

22 DR. KINNAMON: Thank you very much.

23 HEARING OFFICER GEFTER: Could you
24 please spell your name for our reporters.

25 DR. KINNAMON: Yes, it is K-I-N-N-A-M-

1 O-N.

2 Good evening Hearing Officer Gefter,
3 Commissioner Byron, very nice to see you. Thank
4 you for this opportunity to participate in this
5 proceeding. My name is Joel Kinnamon, I am the
6 Chancellor for the Chabot-Las Positas Community
7 College District.

8 I am here today with leaders from all
9 sectors of our community--trustees, faculty,
10 classified staff and students.

11 We all come with essentially the same
12 three-part message:

13 The Chabot-Las Positas Community
14 College District has a deep, long-standing
15 interest in the well-being of the community it
16 serves.

17 Despite this unquestionable interest,
18 its proper status as an interested governmental
19 agency was not recognized, in violation of this
20 Commission's own procedures and the principle of
21 full inclusion that it espouses.

22 This failure to invite the District
23 into the process and solicit our input discredits
24 the process and casts serious doubt on the
25 environmental justice, public health and the

1 socioeconomic impact analysis of the Final Staff
2 Assessment.

3 First, our District's educational and
4 economic interest in and contributing to this
5 community is beyond question.

6 The District governs two comprehensive,
7 public, community colleges in Alameda County--Las
8 Positas College located in Livermore, and Chabot
9 College in Hayward. The Eastshore power plant is
10 less than three miles from Chabot College.

11 Indeed, the District has been providing
12 education and employment opportunities to Bay Area
13 residents for over 44 years.

14 The Chabot Campus alone serves
15 approximately 15,000 students per semester, which
16 means that Chabot serves about one quarter of the
17 high school graduates in its service area and
18 impacts, to some extent, nearly every household.

19 Second, I am truly at a loss as to how-
20 - given our educational and economic role in the
21 community, and Chabot's proximity to the Eastshore
22 site--the District never was included on the
23 Commission's list of interested agencies, never
24 received notice of these proceedings, and most
25 importantly, never was invited to provide its

1 input and recommendations.

2 Additionally, I am troubled that the
3 staff analysis of socioeconomic impacts nowhere
4 considers the potential impact of Eastshore on
5 Chabot, despite the fact that it is both a school
6 and a public service.

7 Finally, as I stated above, this
8 failure is to the detriment of the process itself.
9 One of the things that makes me so proud to be
10 associated with Chabot is that the community
11 colleges such as ours, reach out to and serve
12 traditionally disenfranchised groups, minorities,
13 the poor, immigrants, first-generation college
14 students. By ignoring Chabot, staff failed to
15 consider impacts on a significant component of the
16 surrounding community.

17 Our students don't just mirror the
18 community at large, they have particular
19 vulnerabilities that were never considered in
20 assessing the impacts of this proposed plant on
21 the community. Specifically, there is no analysis
22 of the plant's potential impact on a community of
23 students that are at high risk for dropping out.
24 I am very concerned that any additional stress on
25 many of our students will increase dropout rates.

1 This potential risk, its negative impact on the
2 community and Chabot itself whose funding depends
3 on enrollment has never been analyzed.

4 Thus, the Chabot community urges
5 Commission staff to take the time to truly look at
6 the community surrounding this proposed site and
7 analyze the potential for significant adverse
8 impacts on this community. Until this analysis is
9 done the findings will be fundamentally flawed and
10 should not be relied upon to approve this plant.
11 Thank you.

12 And I would like to enter these
13 comments and this letter into the record.

14 HEARING OFFICER GEFTER: Absolutely.

15 DR. KINNAMON: Thank you.

16 HEARING OFFICER GEFTER: Please give
17 them to the reporter. And thank you very much,
18 Chancellor, for being here tonight.

19 Dr. Hal Gin. Is that how you pronounce
20 your name? And Dr. Gin is on the Board of
21 Trustees of Chabot Community College District.
22 Please spell your name when you come up here and
23 also pronounce it properly for me.

24 DR. GIN: Thank you very much. It's
25 Hal Gin.

1 HEARING OFFICER GEFTER: Gin.

2 DR. GIN: Just like gin.

3 HEARING OFFICER GEFTER: Okay, got it.

4 DR. GIN: G-I-N.

5 HEARING OFFICER GEFTER: Thank you,

6 thank you.

7 DR. GIN: Happy Holidays.

8 Hearing Officer Gefter, Commissioner
9 Byron, ladies and gentlemen, thank you for this
10 opportunity to address you tonight. My name is
11 Hal Gin, I am the trustee representing Area 6 of
12 the Chabot-Las Positas Community College District.
13 Area 6 geographically encompasses Chabot College
14 and the site for the proposed plants.

15 The Chabot-Las Positas Community
16 College District is deeply troubled with the
17 approval process and have unanimously voted to
18 intervene in this proceeding to urge you not to
19 approve this application, or at the very least,
20 postpone the decision until there has been a fair
21 opportunity to analyze the proposal and that the
22 analysis be duly considered.

23 As Chancellor Kinnamon just previously
24 noted, Chabot College plays a significant
25 educational role in the community, preparing

1 students to succeed in their education, to gain
2 meaningful placement in the work place, and engage
3 and contribute to the civic and cultural life of
4 the global community.

5 However, Chabot College contributes
6 even more. Our facilities serve our students and
7 the community at large. The Performing Arts
8 Center hosts both student and community
9 presentations; our athletic fields and sports
10 facilities serve as home for many youth teams in
11 our community. Our Children's Center provides day
12 care services second to none to infants and
13 toddlers, thus making it possible for their
14 parents to attend the college.

15 Make no mistake, Chabot College serves
16 as an educational leader, contributing its
17 resources to the intellectual, cultural, physical,
18 and economic vitality of the region.

19 Ladies and Gentleman, allow me to
20 assure the Commission that had the Board of
21 Trustees been provided notice and been informed of
22 the District's right to provide input and
23 recommendations, you would have heard from us long
24 ago. The Board of Trustees would have assembled a
25 team to evaluate the project and determine the

1 effects it would have on the District, Chabot
2 College and the community at large.

3 And, had we had the opportunity to
4 this, the Commission and the community would have
5 had the benefit of this input in a timely fashion,
6 rather than to be here tonight at this late stage
7 to present our case.

8 And particularly we would like to ask,
9 we would like to ask you consider the following:
10 One, The process went forward without the benefit
11 of the District's input, perspective and analysis;
12 two, the District is not only an interested local
13 agency, its own student community has unique
14 concerns; and three, these unique concerns should
15 have been considered in the staff's environmental
16 justice analysis and in assessing the potential
17 socioeconomic impact of the Eastshore Project on
18 the District.

19 Any action short of this is considered
20 suspect with questionable results. The Board
21 urges this Commission to deny this application, or
22 at the very least, postpone making a decision
23 until Commission staff can conduct a more thorough
24 analysis.

25 We are hopeful that you are hearing us

1 now. The Chabot-Las Positas Community College
2 District asks that you give serious consideration
3 to the concerns raised throughout this process,
4 not just by us but by the concerned public that
5 you were sworn to serve.

6 In closing, I ask you to listen to our
7 voices and passionate pleas. Please do the right
8 thing to protect the environmental quality and the
9 livability of our community. Is that asking for
10 too much?

11 Thank you for your time.

12 HEARING OFFICER GEFTER: Thank you,
13 Dr. Gin. Please don't clap because we have more
14 representatives from Chabot College.

15 Diane Zuliani, are you here tonight? I
16 have your blue card. If you could come on up.
17 Thank you. And please spell your name for the
18 reporter.

19 MS. ZULIANI: I will. It is Diane, D-
20 I-A-N-E, Zuliani, Z like zebra, U-L-I-A-N-I. I am
21 the president of the Academic Senate at Chabot
22 College and I thank you very much, Commissioner
23 Byron, Hearing Officer Gefter, and you can also
24 pass my comments along to Commissioner Geesman. I
25 am grateful for the opportunity to be able to

1 speak with you this evening on behalf of the
2 faculty and the students of Chabot.

3 In the eyes of the state legislature,
4 academic senates, over which I preside, have
5 primacy over issues pertaining to student success
6 in higher education. As President of the Academic
7 Senate of Chabot, I represent the voice of my
8 Senators, who in turn represent the faculty as a
9 whole on matters of student success. And my
10 senate is proud of its students and proud of its
11 school.

12 Which brings me to the observation I'd
13 like to begin with. While the socioeconomic
14 impact of the Eastshore Energy Center on schools
15 has been assessed by your staff scientists, the
16 Center's impact on Chabot College has not because
17 your definition of a school is a purveyor of K
18 through 12 level education only, and of course
19 that is not Chabot's charge. So since Chabot is
20 not considered a school, no socioeconomic impact
21 analysis was required of your staff.

22 However, even if you do not consider my
23 college a school, or my district a school
24 district, we do offer a tremendous public service
25 and under that label I believe an analysis should

1 have been prompted, though it was not. So I am
2 going to take some time this evening to make you
3 aware of the public service Chabot offers, and in
4 turn, makes you aware of the centrality of student
5 recruitment and retention, as well as faculty
6 recruitment and retention to our enterprise, and
7 the possible negative impacts the Eastshore Energy
8 Center might have on that enterprise.

9 Chabot College educates nearly 22,000
10 Bay Area Californians every year. As an
11 educational institution Chabot is many things to
12 many people. It is the route to higher education
13 for the majority of our low-income neighbors; it
14 provides access to language and citizenship for
15 thousands of immigrants annually; Chabot retrains
16 workers in an economy changing more rapidly than
17 any in history; and Chabot is the last hope for
18 older citizens seeking skills and involvement in
19 their communities.

20 To do these things well, to bring
21 excitement and power into the lives of students so
22 diverse and needing so much, to serve the East Bay
23 and larger California economy and society through
24 our service to these students requires a deep
25 commitment from all who engage in or intersect

1 with Chabot's operations. This includes all who
2 teach and learn, all who administer and counsel,
3 all who fund and regulate, and all who coexist
4 with us as neighbors in what must remain an
5 educationally fertile environment.

6 To be absolutely clear, neither I nor
7 my senators are experts in issues of air quality,
8 cumulative emission impacts or mitigation
9 efficacy. Our specializations fall outside these
10 fields. However, we have read and heard a number
11 of statements by witnesses who are experts in
12 these areas, including staff contributors to your
13 Final Assessment, and air quality engineers with
14 the Bay Area Air Quality Management District, that
15 leave us with doubts that the Eastshore Energy
16 Center will safeguard our learning environment in
17 the way that it must.

18 One of the experts I refer to is Brian
19 Lusher, he is an air quality engineer from the Bay
20 Area Air Quality Management District. Mr. Lusher
21 identifies five criteria pollutants to be emitted
22 from the Eastshore Energy Center in the amount of
23 hundreds of tons annually. Again, I am anything
24 but an expert on such matters, but even an
25 academic from the humanities, as I am, can grasp

1 the gist of the EPA's meaning when it defines
2 these criteria pollutants as harmful to human
3 health, the environment and property.

4 Now certainly my senate and I
5 understand that mitigation measures are to be
6 implemented, summarized in the Final Staff
7 Assessment as AQ-SC6 and AQ-SC8, requiring the
8 project owner to obtain and surrender emission
9 reduction credits. We are aware that these
10 measures will satisfy the legal regulations for
11 air quality.

12 But it is our understanding, after
13 hearing from another air quality expert, Brian
14 Bateman, Director of the Engineering Division of
15 the Air Quality Management District, that
16 mitigation in the form of credits will not change
17 the harmful criteria pollutants emitted from
18 Eastshore for up to 4,000 hours annually and at a
19 distance of just one-half mile from Chabot, into
20 harmless elements when they are breathed in by
21 Chabot's students.

22 Thus the Eastshore Energy Center stands
23 to negatively impact our learning environment by
24 introducing into it criteria pollutants, which, by
25 their power to harm human health, have the

1 potential to impede the ability of students to
2 achieve their educational goals.

3 The siting of a power plant in such
4 close proximity to our college raises issues --
5 concerns of student retention. Like all
6 California community colleges, Chabot is funded by
7 state appointment based on full-time equivalent
8 students, that's FTES. This number is all-
9 important to our operation and it drives planning
10 and budget for all we do.

11 But today's FTES statistics system-wide
12 throughout the state are well below their
13 projected levels. Remuneration from the state for
14 FTES has not kept pace with the growth or the cost
15 of living. And in fact, the California community
16 college system has experienced a two-decade long
17 period of under-funding from the state, which has
18 negatively impacted the enrollment rates of
19 California adults in our system. And that,
20 coupled with the removal of requirements for
21 district residency in the early 1980s, created a
22 free-flow system in which neighboring districts
23 now compete with each other for enrollment.

24 You may see these difficulties as
25 irrelevant to the Eastshore plant. But if you are

1 a supporter of the California community college
2 and of Chabot -- and I venture to say that some of
3 you may have been a product of our system, and at
4 least one of Eastshore's chief representatives,
5 Gordon Galvan, was himself a Chabot student.

6 I hope you see a situation in which the
7 siting of power plants in such close proximity to
8 our college, mitigation assurances
9 notwithstanding, has the very real potential to
10 drive Chabot students, a great number of whom are
11 devotees of Al Gore's message in An Inconvenient
12 Truth, to Ohlone College in Fremont, or to Laney
13 and Merritt Colleges in Oakland, or Las Positas in
14 Livermore, and elsewhere in the Bay Area. I am
15 currently teaching a class of 110 students, and
16 when I asked them what they would do if a natural
17 gas power plant were sited half a mile away from
18 Chabot, their answer was virtually unanimous: I
19 will go to Chabot -- excuse me, I will go to
20 Ohlone, is what they told me.

21 When I contacted Mark Wade Lieu,
22 President of the Statewide Academic Senate, about
23 your efforts to site two power plants near our
24 campus, he joked darkly that he would know the
25 outcome of your approval process if his enrollment

1 took a leap upward and he teaches at Ohlone.

2 The Senate sends me today to assert a
3 final concern that is at the heart of our mandate.
4 Because the learning environment is also the
5 teaching environment, the introduction of criteria
6 pollutants into our surroundings may not only
7 negatively impact student success and student
8 retention, it may also hinder Chabot's ability to
9 recruit and retain qualified faculty.

10 You may not realize that Chabot College
11 already competes with 16 Bay Area community
12 colleges for instructional faculty. They have
13 their choice of where to teach. And most of them,
14 if given the choice of teaching in an environment
15 with or without criteria pollutants, will choose
16 the latter, mitigation assurances and emission
17 credits notwithstanding.

18 One can see a binding connection
19 between student success and the quality, breadth,
20 and experience of the faculty. Faculty service
21 and student achievement are so irrevocably tied
22 together that the researchers for the Center for
23 Teaching Quality now urge policy makers at the
24 national level to recognize that one essential
25 tool for improving student success and closing the

1 achievement gap between high- and low-income
2 students is the improvement of working conditions.
3 And actually they call it teaching conditions,
4 quote/unquote teaching conditions of all teachers.

5 Teaching conditions are not exactly the
6 equal of the working conditions of familiar labor
7 language. Teaching conditions encompass the
8 physical and other circumstances conducive to the
9 well-being of those who teach. For well-being,
10 research shows, begets a desirable chain reaction
11 leading to satisfaction, professional development,
12 empowerment, and finally, leadership.

13 And the introduction of criteria
14 pollutants into the teaching and learning
15 environment seems counter-intuitive to the
16 conditions of faculty well-being and satisfaction.
17 And a degradation of teaching conditions at Chabot
18 threatens faculty retention, particularly for our
19 300 or so adjunct instructors, which in turn will
20 threaten our student success.

21 Now do I think that retention of
22 tenured faculty is also at risk? I do. I myself
23 have had thoughts of leaving Chabot should this
24 plant be approved, since the notion of working for
25 the next 15 years in an environment where my

1 exposure to criteria pollutants is higher than it
2 might be elsewhere is unappealing, mitigation
3 assurances and credits notwithstanding.

4 Perhaps your response to this statement
5 will be the same as your response to the gentleman
6 who commented publicly that he would sell his
7 house and move his family out of Hayward if the
8 Eastshore Energy Center is built. Your response
9 to that gentleman was that if your property is
10 sold someone will likely buy it and join the
11 community so the population would be more or less
12 stable and therefore there would be no significant
13 adverse socioeconomic impacts as a result of the
14 Eastshore facility.

15 Perhaps your response to my saying that
16 I have thought of leaving Chabot would be the
17 same, and it is true that if I left Chabot you
18 would look -- you might look -- you could look at
19 my leaving and my being replaced as a simple, one
20 equals one, equation with no apparent loss to the
21 college. But you cannot replace my experience nor
22 that of my colleagues. I have not asked them but
23 if my colleagues are, like me, having thoughts of
24 leaving Chabot because of the encroachment of
25 Center and its emissions into our environment I

1 can only hope these colleagues do not act on those
2 thoughts.

3 The Academic Senate of Chabot College
4 thanks the Commissioners for the opportunity to
5 speak this evening. Although your staff
6 assessment ignores Chabot and the public we serve
7 in critical ways, the senators and I ask
8 Commissioner Byron and Commissioner Geesman to
9 bear our college, its students and our mission in
10 mind now as you consider the possible siting of
11 the Eastshore Energy Center in our neighborhood.

12 Although we read your staff's
13 conclusion that, quote, health protection from
14 this project is likely to be achieved, and that,
15 quote, an incremental cancer risk of ten in one
16 million is acceptable, and that there are no
17 significant health risks posed by the Center, the
18 Senate has also seen Public Health Figure 8 of the
19 Final Staff Assessment with an isopleth indicating
20 that the maximally impacted receptor center for
21 cumulative acute hazards produced by the two power
22 plants is my college, Chabot College itself. We
23 are alarmed by this potential breach of our
24 educational environment.

25 Now in your parlance, significant risk

1 and insignificant risk are legal terms, but in
2 ours they are relative terms. And when applied to
3 human beings to whom we are committed and in fact
4 love, your legalism offers insufficient
5 reassurance. The Chabot faculty have dedicated
6 our lives to educating socially and economically
7 overlooked people, people your report calls,
8 sensitive receptors.

9 The introduction of criteria pollutants
10 into the teaching and learning environment where
11 these sensitive receptors--that is, students,
12 people--are to learn, has the very real potential
13 to adversely impact student recruitment and
14 student retention as well as faculty recruitment
15 and faculty retention.

16 Such negative impacts would be
17 incalculable; they would threaten Chabot's ability
18 to meet its core mission, the mission for which we
19 were created in the first place; to ensure our
20 students' success and thereby ensure the future
21 success of California.

22 I appreciate the difficulty of the
23 decision ahead of you. As you deliberate I ask
24 that you consider this: you are the California
25 Energy Commission; I am a California Community

1 College. We both exist for the good of
2 California. But we do California a disservice if
3 your ability to meet your mission undercuts my
4 ability to meet mine. I thank you so much for
5 your time.

6 (Applause)

7 HEARING OFFICER GEFTER: Dr. Zuliani.
8 Please don't clap. Dr. Zuliani, do you have a
9 copy of your statement that you could give to the
10 reporter and they can get the verbatim?

11 MS. ZULIANI: Is it okay if it is full
12 of my scribbles and notes?

13 HEARING OFFICER GEFTER: Or you could
14 get it to them another time too.

15 MS. ZULIANI: I'll hand it in this
16 evening.

17 HEARING OFFICER GEFTER: If you want to
18 print out a clean copy, sure.

19 MS. ZULIANI: I'll hand it in this
20 evening.

21 HEARING OFFICER GEFTER: Okay.

22 MS. ZULIANI: Who do I give this to?

23 HEARING OFFICER GEFTER: To the
24 reporters so that they can incorporate it into the
25 record. Thank you.

1 MS. HARGLEROAD: Perhaps we can, I'd
2 like to be able to offer Dr. Zuliani's public
3 comment into the evidentiary record.

4 HEARING OFFICER GEFTER: Well it is
5 going to be, it is a public comment and it will be
6 incorporated into the record.

7 MS. HARGLEROAD: I understand that but
8 I think that it is significant enough that it
9 should be included in the evidentiary record and I
10 would request that. And if that is necessary to
11 swear her in as a witness.

12 HEARING OFFICER GEFTER: No.

13 MS. HARGLEROAD: Okay. I am simply
14 asking that it be included.

15 HEARING OFFICER GEFTER: It is included
16 in the record, it is part of the record. It is
17 incorporated into the --

18 MS. HARGLEROAD: It is not part of the
19 evidentiary record. That is my point.

20 HEARING OFFICER GEFTER: The next
21 witness would be -- The next public comment would
22 be from Rachel Ugale who is also from Chabot
23 College.

24 MS. UGALE: I wanted to donate my time
25 to the next speaker.

1 HEARING OFFICER GEFTER: Okay, thank
2 you. The next -- We have a couple more people
3 from Chabot and then we are going to take
4 testimony from Dr. Sperling because she has to
5 leave early. So we are going to break and
6 continue the evidentiary record.

7 But first I wanted to ask a few more
8 people from Chabot who sent in their cards. I
9 think it is Jove Meyer from the ASCC at Chabot.
10 Come on up and spell your name, please.

11 MR. MEYER: Good evening, it is J-O-V-
12 E, last name Meyer, M-E-Y-E-R.

13 Good evening, my name is Jove Meyer and
14 I am a second year student at Chabot Community
15 College and also the Vice President of the student
16 government. What that equates to is representing
17 more than 15,000 students and their opinions. I
18 tonight can only speak for myself, as each of us
19 can, but I am here representing them because they
20 are helpless and ill-knowledged at the fast pace
21 that we are moving to put such a dangerous thing
22 into our city so close to our school.

23 As a student I am grateful for Chabot
24 College and the education and opportunities it has
25 provided me. As a student of a single parent

1 family, a low-income, single-parent family, I work
2 34 hours a week to provide for myself, to pay
3 rent, to pay tuition, and all the other things you
4 folks know so well. The cost of life.

5 I do not feel that it be necessary to
6 burden college students with another burden. We
7 have tests, we have work, we have stress, we have
8 no job. I mean, there's countless issues of being
9 a student. And to have to think about, am I going
10 to get sick while being at school? Is this
11 migraine potentially caused by the harm and the
12 ill-effects of a power plant?

13 Well maybe the studies and the research
14 may state that it may not be linked to causing
15 disease or illness but most of us feel in our gut
16 that it is. And most of us as people would like
17 to be treated as such, not as numbers, not as
18 residents, not as citizens but as people. As
19 human beings.

20 I would like to take from a personal
21 example. I think most of us have seen The
22 Inconvenient Truth and many other videos that are
23 urging us as Americans to wake up and to go green
24 and to build a nation that is sustainable for our
25 future and for ourselves.

1 You have children, you have
2 grandchildren, you have friends. And to think,
3 oh, well luckily my house is 20 miles from there.
4 It is not going to affect me, it is not going to
5 affect my neighbors. Well you know what, it will
6 affect a minimum of 15,000 people, students, human
7 beings trying to achieve an education. The
8 elementary schools, the day care programs, the
9 youth programs, the houses around that area.

10 And the fact that she made the comment
11 that you said, oh well, he'll move away and
12 someone will move in. To me that is completely
13 unacceptable. What kind of city doesn't care
14 about its residents and only gives us numbers and
15 ID tags. For me that is beyond.

16 And I know that that's not what we are
17 here to discuss tonight but really it is. What is
18 you're building is for our benefit. But if it
19 ultimately will lead to our harm then you are not
20 doing us any good, any good at all.

21 So it is not proven black and white
22 that it leads to cancer but there are so many
23 links that the pollutants that this power plant
24 will be emitting can lead to cancer. And I just
25 have to plead to you tonight to rethink that.

1 Because my mother four years ago was diagnosed
2 with cancer. I'm sorry. She had six children and
3 five years to live. At no will of her own. No
4 will. She didn't decide. She didn't wake up and
5 say, I'll bear the burden, I'll take the cancer.

6 We lived next to power plants in
7 Southern California where I came from. And there
8 too we were promised, everything will be fine.
9 Everyone will be great. It is for the bigger
10 whole, the better picture for our future.

11 We are the brightest, richest nation in
12 this world. We can come up with ultimate, better
13 solutions to creating energy and creating power.
14 How are you trying to get power for people who you
15 are killing slowly in the process? This plant
16 isn't something that you can build and then
17 realize 10, 20 years down the road, oops, we made
18 a mistake, oops, all of these kids, these
19 thousands of innocent children we're infecting
20 because we thought it would be great.

21 This is not a decision you can go back
22 on once it's made. And albeit I am here to
23 represent my students and my college. I am
24 representing myself and asking you for me and for
25 everyone to make a real decision based on people

1 and lives. Ten lives per million is acceptable?
2 I'm here to say it is not acceptable. No lives at
3 the stake of money and power and something that is
4 unnecessary are acceptable to take.

5 Your decision should be made and it
6 should be clear. If a life is at risk or ten
7 lives are at risk the book is closed. So I beg
8 you, I plead that you consider human life.

9 I know environment is important but our
10 life just comes once. Yes, I am only at Chabot
11 for two years and I'll move on to bigger and
12 brighter things. But to put those people at risk,
13 those faculty at risk. We are trying to live, we
14 are trying to succeed. And to have to think, oh
15 gee, I wonder if I am going to be sick.

16 Well I know if that power plant moves
17 here I know I won't be raising my children
18 anywhere near this city because it didn't attempt
19 to care for its citizens, which is what a city and
20 a government is meant to do. A moral and
21 righteous people. And that is who are and that is
22 why we were founded. And I just hope and pray you
23 can consider that as you go forward and make this
24 difficult decision. Thank you.

25 HEARING OFFICER GEFTER: Thank you very

1 much. Lynn Tomkunas, also from Chabot. Lynn, do
2 you want to come up and speak? And then after
3 Lynn, Catherine Powell.

4 And then we'll adjourn, everyone can
5 stay and we'll take the testimony from
6 Dr. Sperling.

7 And Lynn, could you spell your name for
8 the record, please.

9 MS. TOMKUNAS: Sure. It's Lynn, L-Y-N-
10 N, and T-O-M-K-U-N-A-S.

11 I am just going to be very brief. I am
12 not a resident of Hayward, I am a resident of
13 Fremont, but I go to Chabot College. And my
14 friends that go there are from San Leandro and
15 they are from Castro Valley, they are from
16 Hayward, they are from Newark. It is not just a
17 Hayward decision.

18 When I decided to come back to school
19 the fact that Chabot College was there, willing to
20 accept me, made all the difference for me.

21 But if I knew then that there were two
22 power plants in the neighborhood I might have
23 chosen Ohlone. It does make a difference.
24 Because even if everything is okay, perception can
25 become reality. And if people just think that

1 there is a problem or they don't want to be under
2 the shadow of a power plant they may choose other
3 schools.

4 And the only thing I wanted to ask is,
5 because this doesn't just affect Hayward, because
6 it does affect residents of Fremont and Newark and
7 Castro Valley and anybody that goes to Chabot,
8 were any of those other cities ever consulted or
9 asked? Did they get any input? And why isn't
10 this a county decision instead of a city decision?

11 HEARING OFFICER GEFTER: This is a
12 State of California decision.

13 MS. TOMKUNAS: Okay. So who is making
14 this decision now then?

15 HEARING OFFICER GEFTER: The California
16 Energy Commission, we're from Sacramento.

17 MS. TOMKUNAS: Okay, thank you very
18 much.

19 HEARING OFFICER GEFTER: Thank you.

20 And then Catherine Powell, also from
21 Chabot College. Thank you. Could you please
22 spell your name for the record.

23 MS. POWELL: Certainly. Catherine, C-
24 A-T-H-E-R-I-N-E, P-O-W-E-L-L.

25 HEARING OFFICER GEFTER: Thank you.

1 MS. POWELL: And I am here to speak to
2 you, thank you so much for the opportunity to
3 speak to you tonight on behalf of the classified
4 employees of Chabot College. Those are the folks
5 who work in the division offices, who keep the
6 grounds and the computer systems working so
7 magnificently well. Those who work in the
8 libraries and the computer labs.

9 And the want the message sent as well
10 that this power plant is not good for our
11 community. I will not go into the details as my
12 predecessors have so eloquently stated already.
13 But we support absolutely what the students and
14 faculty say at Chabot College.

15 I would also like to speak as a
16 resident of West Hayward, as a 14 -- excuse me --
17 16 year resident of Madeline Lane. So my entire
18 life, my work, my home, is spent within a very
19 close proximity to this proposed facility. I have
20 children who attend local schools.

21 When I think about what concerns me
22 most about this, I got thinking about why this
23 location where there are so many public gathering
24 places. So as a reminder tonight I want to read
25 you a list of those facilities. Just as a

1 reminder of the preschools, elementary schools,
2 middle schools, high schools and colleges which
3 are within I would say a three mile proximity to
4 this proposed power plant.

5 So we have the Chabot College
6 Children's Center, Helen Turner Children's Center,
7 Montessori Preschool, Leah's Preschool, Eden
8 Gardens Elementary School, Southgate Elementary
9 School, Lorin Eden Elementary School, Longwood
10 Elementary School, Ochoa Middle School, King
11 Middle School, Mount Eden High School, Chabot
12 College, Life Chiropractic College, Heald College.

13 We have Kaiser Hospital, Saint Rose
14 Hospital. All within a very close proximity.
15 These gathering places, of especially the
16 children, the preschool/elementary, are of great
17 concern to the folks in the community so we wanted
18 to remind you. Thank you so much.

19 HEARING OFFICER GEFTER: Thank you for
20 coming out tonight.

21 The formal parties have agreed to take
22 testimony from Dr. Sperling on the issue of
23 environmental justice. She has to leave in a few
24 minutes. So although we have a couple of other
25 witnesses -- I know the county had Ms. Witt who

1 was going to testify on that same topic.

2 So what we could do is first we would
3 take Dr. Sperling's testimony on environmental
4 justice and present your direct and then we could,
5 if there is any cross examination. We could
6 finish that so that she could leave and then we'll
7 hear from Ms. Witt. Okay? All right.

8 So we are going to swear the witness.
9 We are going to identify the exhibits that you are
10 sponsoring. We'll ask your counsel to do that.
11 And first before you sit down tell us your name
12 and I'll swear you in.

13 DR. SPERLING: My name is Dr. Susan
14 Sperling.

15 HEARING OFFICER GEFTER: Spell it for
16 the record, please. Could you spell it for the
17 record.

18 DR. SPERLING: Yes. My last name or
19 both?

20 HEARING OFFICER GEFTER: Your last
21 name.

22 DR. SPERLING: S, P as in Peter, E-R-L-
23 I-N-G.

24 HEARING OFFICER GEFTER: Thank you,
25 Dr. Sperling.

1 Whereupon,

2 DR. SUSAN SPERLING

3 was duly sworn.

4 HEARING OFFICER GEFTER: Thank you.

5 Please be seated.

6 MS. SCHULKIND: Thank you, Hearing
7 Officer Gefter. I would like to thank the
8 Commission and my colleagues for the collegiality
9 in allowing Dr. Sperling to testify --

10 PRESIDING COMMISSIONER BYRON: For the
11 benefit of the public that is here would you
12 please identify yourself and who you are
13 representing.

14 MS. SCHULKIND: Certainly. Laura
15 Schulkind, Liebert Cassidy Whitmore, representing
16 Chabot-Las Positas Community College District.

17 PRESIDING COMMISSIONER BYRON: As an
18 intervenor in this --

19 MS. SCHULKIND: As an intervenor in
20 this proceeding.

21 HEARING OFFICER GEFTER: Right. Chabot
22 College is a formal party in this proceeding and
23 that is why we are swearing the witness in.

24 Also I wonder if the people in the
25 audience might want to see you. If you want to

1 Q And I would like to identify those.
2 Did you sponsor a report entitled Opportunities
3 for Environmental Justice in California Agency by
4 Agency?

5 A Yes I did.

6 Q And that has been offered as Exhibit
7 603. And did you also sponsor another exhibit
8 which has already gotten some discussion today and
9 been entered into the record already as Exhibit
10 604, Ensuring Risk Reduction in Communities with
11 Multiple Stressors, et cetera, which is put out by
12 NEJAC?

13 A Yes I did.

14 Q And that has been offered as Exhibit
15 604. Dr. Sperling, do you have any corrections to
16 the testimony which you have submitted in writing
17 in this proceeding?

18 A No.

19 Q And to the extent that you assert facts
20 in your written testimony are they true and
21 correct to the best of your knowledge?

22 A Yes.

23 Q And in addition, to the extent you
24 express your opinion in that testimony is it your
25 best professional opinion as expressed in that

1 written testimony?

2 A Yes it is.

3 Q And do you adopt the written testimony
4 that you have submitted as your sworn testimony
5 here this evening?

6 A Yes.

7 Q Could you briefly summarize the
8 testimony that you have submitted in this
9 proceeding.

10 A Yes, I will. I think I was expecting
11 you were going to ask me to summarize my CV so
12 we'll skip that.

13 MS. SCHULKIND: Let me just say this.
14 We offer Dr. Sperling as an expert in the area of
15 environmental justice.

16 HEARING OFFICER GEFTER: There is no
17 objection from any of the witnesses.

18 MR. CARROLL: Your Honor, I may wish to
19 voir dire the witness but she may as well go ahead
20 and summarize her testimony first if it is all
21 right with you.

22 DR. SPERLING: Okay. May I say a
23 little bit about my background? I am a
24 biocultural anthropologist. I received my
25 doctorate from Berkeley in 1985 and I have

1 undertaken among other things National Institute
2 of Mental Health-funded research at UCSF Medical
3 School on biocultural stress in immigrant communities.

4 I have also taught first and second
5 year medical students at UCSF in the culture and
6 behavior across the curriculum program, which is a
7 mandatory -- it is now a required part of medical
8 education and it informs medical students of the
9 larger, behavioral, cultural context in which
10 health care is delivered and received.

11 I am also a tenured faculty member of
12 21 years at Chabot College.

13 In reading over the staff reports in
14 the FSA, the final staff analysis of the
15 California Energy Commission on the plant I have
16 identified a number of problems that I would like
17 to summarize briefly with both the methodology
18 employed by staff in analyzing environmental
19 justice issues and also some of the data.

20 So let me start with methodology. I am
21 referencing the FSA, Final Staff Assessment
22 Executive Summary 1-4 which outlines the steps
23 that are to be followed in an assessment of
24 environmental justice issues. So let me quote
25 from the FSA:

1 Generally technical staff first
2 describe the existing setting. Second, analyze,
3 quote, unique circumstances, if any, of the
4 affected population. And third, analyze the
5 project's direct, indirect and cumulative impacts.
6 It goes on from there.

7 In a very real sense in reading through
8 the sections of the FSA that deal directly with
9 the issue of environmental justice or the issues
10 of environmental justice as well as the separate
11 elements of the FSA that reference environmental
12 justice, because the Commissioners of course are
13 familiar with what I am referring to. But this is
14 a very big document and environmental justice is
15 sprinkled and referenced throughout it.

16 The staff has in a very real sense I
17 think put the cart before the horse in their
18 analysis. At least as they state analysis is
19 supposed to progress. Step two, analyze unique
20 circumstances, if any, of the affected population,
21 followed by step three, analyze the project's
22 direct, indirect and cumulative impact.

23 In fact, in reading the environmental
24 justice section of the FSA, 7-2, which asserts
25 that there is no disparate public health impact on

1 what is admittedly an environmental justice
2 population. About that there is no controversy,
3 the FSA has acknowledged that.

4 So first the FSA in this section on
5 environmental justice and others says there is no
6 disparate public health impact on environmental
7 justice populations and therefore there are no
8 environmental justice issues. There are no issues
9 that would disparately affect minority, low-
10 income, immigrant, disenfranchised communities.

11 It seems to me that the staff really
12 did the adverse impact study before examining the
13 unique vulnerabilities and susceptibilities of
14 affected populations in proximity to the proposed
15 plant. And I want to speak specifically about the
16 potentially affected population of Chabot College
17 students, 15,000 or so students per semester.

18 These students who are in many cases
19 from low socioeconomic backgrounds, the first in
20 their families to be receiving a college
21 education. Often English is their second
22 language. They have in many cases poor access to
23 health care and other stresses that are associated
24 with low socioeconomic status. Immigrant
25 backgrounds. I should also mention we have many,

1 we have a number of refugee communities including
2 a large Afghan community coming from really very,
3 very distressed circumstances in their homeland to
4 our area.

5 So the FSA in a asserting that there
6 are no disparate impacts because there are no air
7 pollution issues that can't be mitigated. And
8 these impacts, such as they are, are shared by
9 everyone, I think has not followed their own
10 stated procedure of first analyzing the specific
11 vulnerabilities and specific stressors of an
12 environmental justice population. So that's one
13 methodological problem that I have identified.

14 A second problem and one very much
15 connected to the first is the way in which staff
16 have defined most sensitive receptors as
17 essentially infants or -- I believe it's a 70-
18 year-old person. A newborn or a 70-year-old.
19 There is a really large corpus of epidemiological
20 and public health science that introduces the
21 concept of multiple stressors --

22 MR. CARROLL: Your Honor, I need to
23 object at this point. She is testifying regarding
24 public health issues. Public health is closed and
25 she is not a public health expert.

1 HEARING OFFICER GEFTER: We are going
2 to allow it because a lot of the testimony
3 overlaps, environmental justice and public health
4 overlap, so I am going to allow her to continue.
5 She did, in fact, indicate these issues in her
6 prefiled testimony.

7 MR. CARROLL: But she was not offered
8 as a public health expert, she was offered as an
9 environmental justice expert.

10 HEARING OFFICER GEFTER: I understand
11 that but we are going to show some leeway here.

12 MR. CARROLL: Thank you, Your Honor.

13 HEARING OFFICER GEFTER: Thank you.

14 DR. SPERLING: In reference to multiple
15 stressors I want to mention the EPA report that I
16 entered into testimony as an exhibit. And that
17 talks about the fact that multiple stressors in a
18 community such as ours are not stressors that can
19 be understood in an additive fashion such as
20 occurs in the FSA but rather need to be understood
21 in terms of a kind of synergy.

22 And what I mean by that is that there
23 is a large body of very sophisticated and highly
24 regarded science that views the individual human
25 being undergoing multiple stressors, particularly

1 people from environmental justice categories, low-
2 income, low access to health care, poor access to
3 health care, English as a second language,
4 minority status, other forms of disenfranchisement
5 as at special risk.

6 At special risk so that the thresholds
7 established let's say in toxicology, an area which
8 I am certainly not able to testify about with any
9 expertise at all. But the kinds of thresholds for
10 instance, based on animal studies, that would say,
11 this kind of pollutant would have this effect on
12 such and such.

13 We don't really have the same
14 thresholds in an impoverished or a low-income or
15 an otherwise impacted, multiply stressed community
16 such as many, many of our students at Chabot. The
17 threshold is not the same according to these data
18 for these students as it would be for many
19 students at Stanford or at Harvard.

20 I could go into some of the science of
21 this but I think it is probably not appropriate
22 here and the studies are cited in my testimony.

23 I would like to talk a little bit
24 finally about cumulative impact. Cumulative
25 impact is discussed in the FSA. I am quoting page

1 336:

2 "A project may have a
3 significant adverse impact when
4 its effects are cumulatively
5 considered. Cumulatively
6 considered means that the
7 incremental effects of an
8 individual project are
9 significant when viewed in
10 connection with effects of past
11 projects, current projects and
12 possible future projects."

13 Again citing the EPA advisory group
14 study which I submitted as an exhibit as well as
15 Dr. Witt's testimony, there is a large body of
16 data that looks at these cumulative impacts not in
17 that kind of, let's add A to B to C to D way, but
18 looks at them rather synergistically as increased
19 susceptibility to multiple stressors in an
20 environmental justice community because of, as a
21 result of sociological, cultural, economic
22 factors. Factors having to do with
23 disenfranchisement.

24 Nowhere in the staff report are these
25 engaged. And ought they to be engaged? Well, if

1 the study group of Environmental Protection Agency
2 at the federal level strongly suggests that these
3 kinds of factors be incorporated into the science
4 around environmental justice I would say that's
5 pretty authoritative.

6 So I hope that the Commission will take
7 into account some of this testimony, my own,
8 Dr. Witt's, and will add it to the things that
9 they are considering in their consideration of the
10 plant proposal.

11 MS. SCHULKIND: Thank you,
12 Dr. Sperling.

13 HEARING OFFICER GEFTER: Is the witness
14 now available for cross examination?

15 MS. SCHULKIND: Yes, the witness is now
16 available for cross.

17 HEARING OFFICER GEFTER: We'll start
18 with the applicant. Thank you.

19 MR. CARROLL: Your Honor, Ms. Holmes
20 would like to go before me and that is all right
21 with me if that is all right with the Commission.

22 HEARING OFFICER GEFTER: I'm sorry, say
23 that again.

24 MR. CARROLL: Ms. Holmes would like to
25 go before I do.

1 HEARING OFFICER GEFTER: Okay. And
2 also, you know what, since this is your first
3 appearance here, I know you introduced yourself at
4 the beginning of this proceeding but if you can
5 identify yourself again for everybody who is here.

6 MR. CARROLL: Thank you. My name is
7 Dan Carroll, I am here for Eastshore.

8 HEARING OFFICER GEFTER: And Mr.
9 Carroll is an attorney for the Eastshore project.

10 Ms. Holmes is an attorney for the
11 Energy Commission staff and she would like to
12 cross examine the witness at this point.

13 DR. SPERLING: Would you like me to
14 shift around?

15 MS. HOLMES: Whatever works better for
16 you is fine.

17 DR. SPERLING: Okay.

18 CROSS EXAMINATION

19 BY MS. HOLMES:

20 Q Good evening, Dr. Sperling.

21 A Hi.

22 Q You have referenced in your testimony
23 and made reference in the summary that you just
24 gave about what you referred to as significant
25 flaws in the staff's environmental justice

1 methodology. Is your conclusion based on
2 standards for environmental justice analyses that
3 are contained in any guidance that has been
4 adopted by regulatory agencies?

5 A Yes.

6 Q Could you please reference which
7 agencies and which regulatory guidance.

8 A Yes. The impact assessment subheading
9 of the Commission's staff approach to
10 environmental justice. And I think I began there,
11 which describes the steps in order which are to be
12 followed in analyzing whether or not environmental
13 justice issues --

14 Q I'm sorry, what document are you
15 referring to and adopted by what agency?

16 A This is posted at the web site of the
17 California Energy Commission and the title is
18 California Energy Commission Staff Approach to
19 Environmental Justice.

20 HEARING OFFICER GEFTER: I believe that
21 is identified as Exhibit 710 by the group
22 petitioners and we take administrative notice of
23 the Energy Commission's web page.

24 BY MS. HOLMES:

25 Q And are you referring specifically to

1 something in this document under the demographics
2 heading?

3 A No.

4 Q Which section are you referring to?

5 A The section under the heading, Impact
6 Assessment. And beneath that, generally technical
7 staff, hyphen. I'm sorry, colon. One, describe
8 the existing setting. Two, analyze quote/unquote
9 unique circumstances, if any, of the affected
10 population. Three, analyze the project's direct,
11 indirect and cumulative impacts. Now I would
12 assume that those steps are stated in the order in
13 which staff are expected to undertake their
14 analysis.

15 Q Are you familiar with the, are you
16 familiar with any adopted regulatory guidance? In
17 other words, guidance that has been adopted by a
18 regulatory agency that tells other agencies how to
19 perform environmental justice analyses. There are
20 several referenced in the staff testimony, are you
21 familiar with any of them?

22 A I am somewhat familiar but this is not
23 my area of expertise.

24 Q I am wondering if you can tell me
25 whether or not you know whether the staff approach

1 is inconsistent with any of that regulatory
2 guidance?

3 MS. SCHULKIND: Could you please
4 specify which regulatory guidance you are
5 referring to.

6 MS. HOLMES: I believe that the staff
7 testimony, I need to find the page reference. On
8 page 1-4 of Exhibit 100 refers to the final
9 guidance for incorporating environmental justice
10 concerns in EPA's NEPA Compliance Analysis.

11 MS. SCHULKIND: Where are you reading
12 from, please? I missed what you said.

13 MS. HOLMES: Page 1-4 of Exhibit 100 --
14 200, sorry.

15 MS. SCHULKIND: You are referring to
16 the Final Staff Assessment?

17 MS. HOLMES: Yes.

18 MS. SCHULKIND: So this is page 1-4.

19 MS. HOLMES: And there is a reference
20 there to what is commonly referred to as the NEPA
21 guidance document. And I am just wanting to know
22 if the witness is familiar with that document.

23 DR. SPERLING: I've read it.

24 BY MS. HOLMES:

25 Q And is it your testimony that the staff

1 analysis is inconsistent with a portion of that
2 document?

3 A Well I would have to -- I don't have a
4 photographic memory and I don't have that document
5 in front of me. Would you like me to look at it?

6 Q I'd like to know which portion of it,
7 if you think that staff's testimony has been
8 inconsistent I would like you to identify the
9 portion.

10 A Let me answer in a way that I think
11 probably gets to the heart of your question but
12 correct me if I am wrong. Whether my testimony
13 complies with the narrow, legal recommendations
14 given the CEC is really not my issue.

15 Q Okay, fine. That's enough of an
16 answer, thank you.

17 A Okay.

18 Q I have one other line of questions, I
19 hope we can get through them fairly quickly.

20 I believe you were in the room earlier
21 this evening, were you not?

22 A Yes.

23 Q So you may have heard some of the
24 discussion about reference exposure levels.

25 A Yes I did.

1 Q Are you aware of how Cal-EPA, other
2 than the discussion that you heard here tonight,
3 are you aware of how the Cal-EPA Office of
4 Environmental Health Hazard Assessment establishes
5 reference exposure levels?

6 A Only in what I would characterize as a
7 kind of layperson's way. I have read what I can
8 but this is certainly not an area that I could
9 claim any expertise.

10 MS. HOLMES: Okay, thank you. Those
11 are my only questions.

12 HEARING OFFICER GEFTER: Thank you.

13 Does the applicant want to cross
14 examine the witness?

15 MR. CARROLL: Yes, thank you, Your
16 Honor. I hate to ask this but would it be
17 possible for Dr. Sperling to move to her right a
18 bit so I can see her. She is hidden by the
19 podium.

20 DR. SPERLING: Over here?

21 MR. CARROLL: Your right or your left,
22 whichever is best for you.

23 DR. SPERLING: Okay.

24 HEARING OFFICER GEFTER: Thank you very
25 much.

1 CROSS EXAMINATION

2 BY MR. CARROLL:

3 Q Dr. Sperling, I have reviewed your
4 curriculum vitae and you have a lot of
5 publications listed there. I don't note that any
6 of them are in the area of environmental justice.
7 Are any of them in the area of environmental
8 justice?

9 A No, no.

10 Q And have you ever performed an
11 environmental justice analysis before the one that
12 is contained in your testimony here, Exhibit 601?

13 A No.

14 MR. CARROLL: Your Honor, I would move
15 to exclude the witness's evidence regarding
16 environmental justice. She simply does not have
17 the qualifications to offer that evidence.

18 HEARING OFFICER GEFTER: I understand
19 your concerns. Ordinarily I wouldn't want to
20 qualify her any more than I qualified Mr. Sarvey
21 as an expert in the field of air quality. However
22 I believe that the witness is a professional
23 researcher and has done a lot of research in this
24 area and I think that -- I don't think that there
25 is a big problem with admitting her as an expert

1 at this point. It is not going to -- In terms of
2 her testimony, it will get the weight that it
3 deserves.

4 MR. CARROLL: Thank you, Your Honor.

5 HEARING OFFICER GEFTER: Thank you.

6 HEARING OFFICER GEFTER: I couldn't ask
7 for anything more than that.

8 BY MR. CARROLL:

9 Q Dr. Sperling, you testified about power
10 plant impacts on people at, for instance, Stanford
11 University as opposed to Chabot College. Are you
12 aware that there is a cogeneration power plant on
13 the campus at Stanford University?

14 A I was only using that by way of --

15 Q Doctor, that was not my question.

16 A No.

17 Q Could you answer my question yes or no,
18 please.

19 A No.

20 Q Okay, you weren't aware. Did you do
21 any analysis before giving is that testimony this
22 evening as to whether there were other upper-
23 income colleges where there were power plants in
24 place?

25 A No.

1 Q Are you aware that a number of the
2 University of Californias have cogeneration power
3 plants on their campuses?

4 MS. SCHULKIND: I am going to object as
5 irrelevant. The point of her testimony was to
6 explain that affluent communities may be impacted
7 differently from low-income communities. And that
8 was the point --

9 MR. CARROLL: Your Honor, is counsel
10 testifying or making an objection.

11 HEARING OFFICER GEFTER: Counsel is
12 objecting to your line of questioning.

13 DR. SPERLING: May I --

14 HEARING OFFICER GEFTER: And I
15 understand what you are doing is you are trying to
16 undermine her credibility. I understand that and
17 you can proceed. But it doesn't -- There is no
18 reason to treat the witness as a hostile witness
19 in this case.

20 (Appause)

21 HEARING OFFICER GEFTER: Okay, that's
22 enough. And that is a legal term of art by the
23 way.

24 MR. CARROLL: Very well, Your Honor,
25 but I would ask the witness to respond to my

1 questions as opposed to questions she would like
2 to hear.

3 HEARING OFFICER GEFTER: Okay.

4 DR. SPERLING: The point of my
5 mentioning this --

6 MR. CARROLL: No, there is no question
7 pending.

8 DR. SPERLING: I'm sorry.

9 HEARING OFFICER GEFTER: Did you
10 withdraw that question?

11 MR. CARROLL: I think she had an
12 objection and there wasn't a ruling on the
13 objection yet.

14 DR. SPERLING: I'm sorry, I was trying
15 to answer it.

16 MR. CARROLL: So there is no question
17 pending.

18 DR. SPERLING: I was trying to answer
19 your question but I didn't realize it had been
20 withdrawn.

21 HEARING OFFICER GEFTER: Okay. The
22 ruling is that you can ask the question but you
23 don't need to treat the witness as a hostile
24 witness.

25 MR. CARROLL: Thank you, Your Honor.

1 Did you do any analysis of other
2 communities with respect to -- excuse me, with
3 respect to other colleges that might have power
4 plants located on them that are not colleges of
5 the same nature as Chabot College?

6 MS. SCHULKIND: And I raised an
7 objection as to relevance because that was not the
8 point of her testimony.

9 HEARING OFFICER GEFTER: All right.
10 Can you answer the question. I think I understand
11 your concern about relevance.

12 MS. SCHULKIND: Are you overruling?

13 HEARING OFFICER GEFTER: I am going to
14 overrule it; I am going to let her testify.
15 Answer the question.

16 DR. SPERLING: I have done research on
17 the differential susceptibility and vulnerability
18 of people in low-income and other disenfranchised
19 populations to a variety of stressors. So in that
20 sense I would answer, yes.

21 MR. CARROLL: Did you do specific
22 research with respect to University of California
23 campuses that had cogeneration plants on them?

24 MS. SCHULKIND: Objection, asked and
25 answered.

1 HEARING OFFICER GEFTER: That is
2 sustained.

3 MR. CARROLL: Very well, Your Honor,
4 let me move on.

5 BY MR. CARROLL:

6 Q Let me ask you a question about Chabot.
7 Does it offer any student housing at all?

8 A No.

9 Q So that all students who attend Chabot
10 College live someplace other than on the campus of
11 Chabot College; is that correct?

12 A You know, I had several homeless
13 students in my classes this semester and they
14 appeared to me to be carrying their clothes in
15 bags to class. I don't know where they were
16 sleeping.

17 Q So that means you don't know whether
18 they lived on the campus of Chabot College or not,
19 do you?

20 A No, no.

21 Q No. You have submitted a document
22 labeled Exhibit 603 from Hastings Law School. Do
23 you recall that document?

24 A Yes I do.

25 Q Have you reviewed that document pretty

1 carefully?

2 A Very carefully.

3 Q You'll agree with me that there is no
4 statement of the qualifications of the authors of
5 that document?

6 A Well they are identified as members of
7 a law -- I would have to take a look at it and
8 I've got it here. They are identified as members
9 of a Hastings Law study group. So I would assume
10 that they were professors and/or law students at
11 Hastings.

12 Q Would you show me where that appears,
13 please.

14 A Yes. Yes. So this is the document
15 labeled The Public Law Research Institute
16 University of California Hastings College of the
17 Law and the title of the report is Opportunities
18 for Environmental Justice in California Agency by
19 Agency May 2003, It has the stamp of Hastings
20 College of the Law, University of California. The
21 authors would appear to be thus affiliated with
22 the law school.

23 Q It doesn't say that, does it?

24 A Well I would assume that unless they
25 are illegitimately using the official stamp of the

1 law school that they are so affiliated. And in
2 fact I would kind of bet my life on the fact that
3 John Auyong, Adante Pointer and Nicholas
4 Wellington are so affiliated.

5 Q That was not your original testimony,
6 Doctor. Your original testimony was that they
7 were members of the Public Law Research Institute.
8 Does it say anywhere there that those three
9 individuals are members of the Public Law Research
10 Institute?

11 A Well ordinarily, and --

12 Q Doctor, could you answer my question.

13 MS. SCHULKIND: I am going to object,
14 the document speaks for itself.

15 HEARING OFFICER GEFTER: Yes, and I
16 think counsel is correct. We can read the
17 document and we can give it the weight it's worth.
18 I don't think it is necessary to beat it to death
19 at this point. You can move on.

20 MR. CARROLL: Did you do any
21 independent research as to the identity of these
22 authors?

23 HEARING OFFICER GEFTER: You are
24 sustained.

25 MS. SCHULKIND: Objection, asked and

1 answered.

2 MR. CARROLL: No, I haven't asked that
3 question yet, Your Honor.

4 HEARING OFFICER GEFTER: No, he didn't
5 ask the question, I am sustaining your first
6 objection. Okay, now ask a question.

7 BY MR. CARROLL:

8 Q Did you do any independent research to
9 determine the identity and qualifications of those
10 authors?

11 A No, no I didn't.

12 Q Okay. Now I would like to call your
13 attention to Exhibit -- you didn't mark it as an
14 exhibit, I apologize. You cite a study by Latino
15 Issues Forum; is that correct?

16 A That is correct.

17 Q And you quote from Latino Issues Forum
18 an indication that they recommend a moratorium on
19 gas-fired generation development; is that correct?

20 A That is correct.

21 Q But your testimony does not address one
22 way or another whether that recommendation was
23 ever adopted, does it?

24 A Correct.

25 Q And your testimony does not address one

1 way or the other whether any of that report has
2 ever been turned into legislation or regulation.

3 A Correct.

4 Q Now calling your attention to your
5 Exhibit 604, the National Environmental Justice
6 Advisory Council paper that we heard something
7 about earlier today. Do you have that in mind?

8 A I do, I have it in front of me.

9 Q That document actually wasn't even
10 mentioned in your written testimony, was it?

11 A It wasn't, you know. If I may say we
12 had an extremely short time line for preparation
13 of written testimony and I had not had access to
14 this document, which I think is a very significant
15 one, until the CEC had desired our written
16 testimony be in Sacramento.

17 Q I take it then your answer is no, it
18 wasn't mentioned in your written testimony.

19 A No, but it has been entered as an
20 exhibit.

21 Q Now as to that document, has it been
22 turned into legislation or regulation as far as
23 you know?

24 A I don't know the answer to that but I
25 sure think the people who put it together hope it

1 will be since they so state.

2 Q But you don't know one way or the other
3 whether that's occurred yet, do you?

4 A No.

5 MR. CARROLL: Those are all the
6 questions I have, Your Honor.

7 HEARING OFFICER GEFTER: Thank you.

8 Does any other party have cross
9 examination of the witness?

10 MS. HARGLEROAD: I just want to --

11 PRESIDING COMMISSIONER BYRON: Would
12 you please identify yourself and who you are
13 representing.

14 MS. HARGLEROAD: I'm Jewel Hargleroad
15 and I am representing the group petitioners,
16 California Pilots Association, San Lorenzo Village
17 Homes and Hayward Area Planning Association.

18 CROSS EXAMINATION

19 BY MS. HARGLEROAD:

20 Q And I just have a brief clarification.
21 And that is on your discussion concerning the
22 difference on impact of a student at Harvard
23 versus an impact on a student who is a first-
24 generation college student, perhaps from a refugee
25 family.

1 A Um-hmm.

2 Q So basically you've reviewed the
3 environmental justice section of the Final Staff
4 Assessment and each section discusses air quality,
5 hazardous materials, land use, noise, public
6 health, socioeconomics and each conclusion states
7 that there would not be a disproportionate impact
8 on an environmental justice population.

9 A Yes.

10 Q So if there is no distinguishing point
11 here, or if in your opinion there is a difference
12 between that impact on the Harvard student and the
13 Chabot student, so that would not be a correct
14 conclusion; is that correct?

15 A If I am understanding your question
16 correctly that is, that is correct.

17 Q Okay. So as far --

18 A There would be likely a
19 disproportionate impact.

20 Q So you would not agree with the
21 conclusion.

22 A Correct.

23 Q Okay, thank you. And also just as a
24 clarification point. The applicant's attorney was
25 asking about cogeneration plants and there was no

1 qualification as to what size a power plant. We
2 all know there's lots of small cogeneration
3 plants.

4 MR. CARROLL: Your Honor, counsel is
5 testifying for the fourth time today.

6 MS. HARGLEROAD: Well I really object
7 because we're talking -- before the council is a
8 150 megawatt power plant.

9 HEARING OFFICER GEFTER: Ms.
10 Hargleroad, Ms. Hargleroad, can you ask a question
11 of the witness specifically.

12 MS. HARGLEROAD: Well I am simply
13 making sure that is included in the record, that
14 we additionally object to that line of questioning
15 which is very misleading and I think that needs to
16 go to the weight of the objection.

17 MR. CARROLL: Your Honor, she should
18 have objected at that time, it's waived.

19 MS. HARGLEROAD: Your Honor, Madame
20 Hearing Officer, this is an administrative
21 proceeding. It is difficult because we know
22 we're actually in the middle of public comment so
23 I'm just trying to expedite this.

24 HEARING OFFICER GEFTER: Well right now
25 we are taking testimony. Okay, do you have any

1 redirect of your witness?

2 MS. SCHULKIND: I don't have any
3 redirect. I would merely like to point out that
4 Dr. Sperling eloquently reviewed her background
5 and expertise in her opening statement. It is
6 also reviewed in her written testimony. I think
7 it is beyond question that she has testified here
8 as an exceptional expert in the area of
9 environmental justice.

10 HEARING OFFICER GEFTER: We are
11 accepting her as expert.

12 MS. SCHULKIND: Yes. And that when you
13 state that you will accept her testimony for the
14 weight that it should be given I would argue that
15 it is entitled to significant weight.

16 HEARING OFFICER GEFTER: Thank you very
17 much and I understand that. I think that at this
18 point your witness has completed testimony. Would
19 you like to move the exhibits?

20 MS. SCHULKIND: Yes please. At this
21 point I would like to offer 601, the testimony of
22 Dr. Sperling, 603 and 604, the documents that she
23 has sponsored, and 605, her qualifications.
24 Exhibit 604 actually was already admitted so 601,
25 603 and 605 to be admitted at this time.

1 HEARING OFFICER GEFTER: Thank you.

2 MS. SCHULKIND: What I would also like
3 to ask is that at this time we also have two other
4 exhibits, witnesses where we offered them for
5 cross and no one indicated it. So without cross
6 we are asking at this time that the written
7 submitted testimony of Dr. Carolyn Arnold and
8 Classified Senate President Rachel Ugale be
9 admitted. Those are Exhibit 600 and 602.

10 MR. CARROLL: May I be heard, Your
11 Honor?

12 HEARING OFFICER GEFTER: Okay. Let me
13 just say that about the testimony of Carolyn
14 Arnold and of Rachel Ugale. We had spoken about
15 that previously with the other parties and they
16 were agreeing to admit that testimony on
17 declaration. You weren't planning to present
18 their direct testimony, right?

19 MS. SCHULKIND: No. My understanding
20 is because they were not requested for cross they
21 are not being presented. But I want to make sure
22 that those are in the record.

23 HEARING OFFICER GEFTER: That is how I
24 remember that discussion as well.

25 MS. SCHULKIND: So my understanding now

1 is that all of Chabot-Las Positas Intervenor's
2 Exhibits 600, 601, 602, 603, 604 and 605 are now
3 part of the record.

4 MR. CARROLL: No, Your Honor.

5 HEARING OFFICER GEFTER: No because the
6 applicant has an objection so let me hear his
7 objection.

8 MR. CARROLL: What is 605?

9 HEARING OFFICER GEFTER: It's the
10 r, sum, of Dr. Sperling.

11 MR. CARROLL: That is already in the
12 prehearing conference statement, very well.

13 HEARING OFFICER GEFTER: Yes.

14 MR. CARROLL: Okay. Exhibit 603 as I
15 pointed out is not properly authenticated. We
16 have no idea who authored it, why they authored
17 it, what their qualifications are, it should not
18 be admitted. I have no objection to the other
19 exhibits.

20 HEARING OFFICER GEFTER: Does staff
21 have any objections?

22 MS. HOLMES: No.

23 HEARING OFFICER GEFTER: I am going to
24 admit all the evidence, all the exhibits 600
25 through 605, and your objection is noted. It will

1 be considered.

2 MR. CARROLL: Thank you, Your Honor.

3 May I raise a question before Dr. Witt
4 takes -- My understanding is we're going to do
5 Dr. Witt and then return to public comment.

6 HEARING OFFICER GEFTER: Correct,
7 right.

8 MR. CARROLL: Our witness regrading
9 environmental justice is here but she covers both
10 environmental justice and socioeconomic.

11 HEARING OFFICER GEFTER: Right.

12 MR. CARROLL: We have no objection to
13 trailing her and allowing her cross examination
14 during socioeconomic but I wanted to be sure we
15 are all on the same page before we go ahead.

16 HEARING OFFICER GEFTER: What is the
17 name of the witness that you are referring to?

18 MR. CARROLL: Fatuma Yusuf.

19 HEARING OFFICER GEFTER: Okay. Now I
20 did not see that this person was going to be
21 testifying on socioeconomics.

22 MR. CARROLL: She is in Exhibit 21 and
23 she does the declaration for the socioeconomic
24 portions.

25 HEARING OFFICER GEFTER: Right. But

1 there was no indication that she was going to
2 testify.

3 MR. CARROLL: By the way, if no one has
4 cross examination on socioeconomic we're happy to
5 bring her in by declaration.

6 HEARING OFFICER GEFTER: Okay.

7 MR. CARROLL: But that means that we
8 probably should have her on environmental justice
9 later.

10 HEARING OFFICER GEFTER: And that's
11 fine, we're going to get to socioeconomics after
12 we finish environmental justice.

13 MR. CARROLL: Very well, thank you.

14 HEARING OFFICER GEFTER: And also on
15 environmental justice both the -- the staff was
16 going to offer its testimony in by declaration,
17 Mr. Pfanner's testimony. We'll move to that too
18 when we complete the direct from Dr. Witt.

19 MR. CARROLL: I would just ask then,
20 Your Honor, we don't have to decide this right
21 this moment. But if parties don't want to cross
22 examine Ms. Yusuf on socioeconomic then we'll only
23 need to do her for environmental justice. So if
24 we can just clarify that when the time comes that
25 would be fine.

1 HEARING OFFICER GEFTER: All right,
2 we'll get to that.

3 MR. CARROLL: Thank you, Your Honor.

4 HEARING OFFICER GEFTER: Because there
5 was no indication that anyone was going to cross
6 on socio.

7 MS. HARGLEROAD: I think we did. I
8 repeated that before at the prehearing conference.

9 HEARING OFFICER GEFTER: Let's move on
10 so we can finish. Dr. Witt is going to testify on
11 behalf of Alameda County.

12 And also if you would just come forward
13 here and then sit where Dr. Sperling was sitting
14 that would be great. And please state your name
15 for the record and spell your last name.

16 DR. WITT: My name is Sandra Witt, W-I-
17 T-T.

18 HEARING OFFICER GEFTER: I am going to
19 swear you in.

20 Whereupon,

21 DR. SANDRA WITT

22 was duly sworn.

23 HEARING OFFICER GEFTER: Thank you.

24 Please identify yourself and your position.

25 DR. WITT: Sandra Witt, Deputy Director

1 of Planning Policy and Health Equity for Alameda
2 County Public Health Department.

3 HEARING OFFICER GEFTER: And now your
4 attorney is behind you.

5 MR. MASSEY: It may be a public health
6 concern.

7 (Laughter)

8 HEARING OFFICER GEFTER: If you sit
9 that way that's fine. Everybody can see you in
10 the audience, that's fine. Because we can see you
11 on the TV screen so it's fine, thank you.

12 DR. WITT: Thank you.

13 HEARING OFFICER GEFTER: Mr. Massey,
14 you want to introduce yourself for the people who
15 are here this evening. I don't think you have
16 spoken yet.

17 MR. MASSEY: Yes, of course. My name
18 is Andrew Massey, I am with the Alameda County
19 Office of County Counsel.

20 DIRECT EXAMINATION

21 BY MR. MASSEY:

22 Q Dr. Witt, did you attach a statement of
23 qualifications with your declaration and sworn
24 testimony in this matter?

25 A Yes I did.

1 Q Is that statement of qualifications
2 still current?

3 A Yes.

4 Q You also provided a statement to serve
5 as your testimony in this matter. Has your
6 statement changed in any way since the time that
7 you authored it?

8 A No.

9 Q Thank you. Could you please briefly
10 summarize the main points of your testimony in
11 this matter.

12 A Sandra Witt, Deputy Director of
13 Planning Policy and Health Equity, Alameda County
14 Public Health Department. I also have a doctorate
15 in public health from the University of California
16 at Berkeley. And for the last seven years I have
17 directed a unit within the department that is
18 responsible for monitoring the health status of
19 all county residents.

20 In monitoring and analyzing health
21 outcomes one resounding theme stands out. Poor
22 health and premature death are by no means
23 randomly distributed in Alameda County. Low-
24 income communities and communities of color suffer
25 from substantially worse health outcomes and die

1 earlier. Many studies --

2 HEARING OFFICER GEFTER: Dr. Witt, it
3 is hard to hear you. I wonder if you used the
4 microphone that counsel is using over there and
5 just hold it right next to you when you're
6 speaking. Then I think people hear you better.

7 DR. WITT: Can you hear me now?

8 HEARING OFFICER GEFTER: Yes, that is
9 much better, thank you.

10 DR. WITT: Okay. Let me just say in
11 monitoring and analyzing health outcomes one
12 resounding theme stands out. Poor health and
13 premature death are by no means randomly
14 distributed in Alameda County. Low-income
15 communities and communities of color suffer from
16 substantially worse health outcomes and die
17 earlier. Many studies note that these differences
18 are not adequately explained by genetics, access
19 to health care or risk behaviors but instead are
20 to a large extent the result of adverse
21 environmental conditions.

22 As a public health official I must
23 testify against the proposed Eastshore power plant
24 because it is sited in a geographic area already
25 disproportionately burdened by illness and death

1 from air pollution-associated conditions.

2 The presence of a disproportionate
3 concentration of persons with asthma, chronic lung
4 disease, congestive heart failure and other
5 chronic conditions that are exacerbated by air
6 pollution must factor into the decision of where
7 to site this power plant. Especially because
8 these populations are predominately low-income
9 communities of color.

10 In our view these populations are the
11 actual sensitive receptors. They are not
12 distributed throughout the population randomly but
13 instead are concentrated disproportionately in
14 proximity to the proposed Hayward site.

15 As noted in the CEC staff report,
16 Hayward is more ethnically diverse, with a
17 significantly larger, non-white population than
18 Alameda County. The proportion of Latino
19 residents is even higher when you look at who
20 lives within a three mile radius of the proposed
21 plant.

22 A three mile radius of the proposed
23 plant includes a population of approximately
24 117,000. Within the three mile radius there are
25 several low-income areas where at least 20 percent

1 of residents live in poverty and 80 percent of the
2 population is non-white.

3 In these areas residents have a
4 mortality rate 50 percent higher than residents
5 living in the rest of the three mile radius and on
6 average they live five years less than the county-
7 wide expectancy rate.

8 In our analysis we examined mortality
9 and morbidity due to air pollution-associated
10 diseases in this area. Death rates from air
11 pollution-associated diseases such as coronary
12 heart disease, chronic lower respiratory disease,
13 are substantially and statistically significantly
14 higher in the three mile radius around the
15 proposed site than those for the County,
16 representing an ongoing, excess burden of
17 mortality. The rate of death from chronic lower
18 respiratory diseases was 43 percent higher and the
19 rate from coronary heart disease was 16 percent
20 higher than the County rate.

21 Hospitalizations due to air pollution-
22 associated diseases is substantially higher in the
23 zip codes close to the proposed site. From 2003
24 to 2005 the hospitalization rates for coronary
25 heart disease, chronic obstructive pulmonary

1 disease, congestive heart failure and asthma in
2 the two zip codes nearest the proposed site, 94544
3 and 94545, was statistically significantly higher
4 than Alameda County rates. Which means they not
5 occur by chance.

6 Specifically, hospitalization rates due
7 to coronary heart disease was 60 percent higher;
8 chronic obstructive pulmonary disease, 20 percent
9 higher; congestive heart failure, 35 percent
10 higher; and asthma hospitalization rates 14
11 percent higher than the County rate. A
12 disproportionate burden of the cost of these
13 preventable hospitalizations, particularly among
14 the uninsured, is borne by Alameda County
15 taxpayers.

16 The fact that rates of these illnesses
17 are significantly higher in the proposed plant
18 area than in the rest of the county suggests a
19 level of vulnerability in this population that is
20 not explained by age.

21 The environmental justice argument
22 against this proposal is made even stronger by the
23 fact that the risk assessment model may
24 underestimate the health risk of substances that
25 interact synergistically, as pointed out in the

1 risk assessment guidelines. The potential for
2 multiple and varied air and non-airborne
3 pollutants to act synergistically, rather than
4 additively as assumed by the risk assessment
5 model, requires an analysis of the overall toxic
6 burden associated with this Hayward location.

7 Low-income, minority populations have
8 historically been exposed to a much higher burden
9 of environmental toxicity. The CEC environmental
10 justice analysis does not accept the existing
11 ordinate disease nor does it adequately measure
12 the health risks associated with potential,
13 synergistic interactions among the substances,
14 profoundly important aspects of environmental
15 justice.

16 Siting the Eastshore power plant in
17 Hayward will disproportionately impact the
18 geographic area, home to a comparatively high,
19 non-white population that is already burdened by
20 morbidity and mortality from diseases associated
21 with air pollution.

22 Until more is known about the
23 synergistic impacts of the multiple and varied air
24 and other pollutants it is Alameda County Public
25 Health Department's conclusion that new sources of

1 toxicity should not be sited in this vulnerable
2 community.

3 (Applause)

4 HEARING OFFICER GEFTER: Thank you.

5 MR. MASSEY: Dr. Witt is available for
6 cross examination at this time.

7 HEARING OFFICER GEFTER: Available for
8 cross examination, okay. Now the other attorneys
9 are going to cross examine you on your testimony.

10 Does the applicant have cross
11 examination of this witness?

12 MR. CARROLL: Your Honor, it seems to
13 be appropriate to ask that if counsel for any of
14 the other non-applicant, non-staff attorneys would
15 like to, parties would like to cross examine they
16 cross examine first and that we go after them. So
17 if Ms. Hargleroad has any cross it would be
18 appropriate.

19 HEARING OFFICER GEFTER: I am going to
20 ask the staff to go next then. Staff may go.

21 MS. HOLMES: Thank you.

22 Good evening, Dr. Witt. In your
23 testimony on page two you state that the CEC staff
24 failed to reference analysis of the existing
25 burden of toxic pollution. And on page four you

1 state that our analysis failed to factor in uneven
2 distribution of exposure to sources of toxicity.
3 Do you recollect that testimony?

4 HEARING OFFICER GEFTER: Excuse me, we
5 need to identify her testimony as Exhibit 532 and
6 her r, sum, is Exhibit 533 for the record.

7 MS. HOLMES: Actually I believe her
8 declaration is 533.

9 HEARING OFFICER GEFTER: Right.

10 MS. HOLMES: With her qualifications
11 attached.

12 HEARING OFFICER GEFTER: Okay, thank
13 you.

14 CROSS EXAMINATION

15 BY MS. HOLMES:

16 Q Do you recollect that testimony?

17 A Yes I do.

18 Q In reaching that conclusion did you
19 have access to data that identifies level of
20 exposure specifically in Hayward residents to
21 toxic air contaminants?

22 A No. Let me just say, can I just say
23 something about this comment? Again, we didn't
24 have a lot of time to review this. When we made
25 that comment I think we realized later that there

1 was some analysis and some reference to some other
2 pollutants in the document. So perhaps the
3 comment was a little strong. However, I think
4 that there still is some information that is
5 missing and could be helpful in this analysis.

6 Q Let me ask the question a different
7 way. Do you have access to data that identifies
8 differential level to toxic air contaminants of
9 specific neighborhood within Hayward?

10 A No.

11 Q When you reference the relationship
12 between air pollution and human disease what
13 specific types of air pollution are you referring
14 to?

15 A A number of different types of air
16 pollution. I actually -- Well I brought it but I
17 guess I can't enter it. Some references around
18 different types of air pollution like PM,
19 particulate matters, and cardiovascular disease,
20 cancers, et cetera.

21 Q What I am referring to --

22 A I have a list of those if you need them
23 or if you want them.

24 Q Perhaps another way to ask the question
25 would be whether or not -- which specific sources

1 of air pollution you are referring to in your
2 conclusions?

3 A I am referring to -- I am not
4 specifically referring to one type of air
5 pollution. I think the issue really for us was
6 more of the interactive effects of a number of
7 these air pollutants and non-air pollutants. And
8 we don't know, I don't think the science is there
9 yet. And my understanding is that these effects
10 are added on to each other as opposed to looked at
11 synergistically so their effects might be greater.
12 It might be less but it might even be greater than
13 what the model is able to do.

14 Q And are you aware of any approved
15 regulatory models that account for those
16 synergistic effects?

17 A No I am not, but I am saying that since
18 we don't know then we should just be cautious in
19 how we use them.

20 Q Thank you.

21 In your opinion does wood smoke
22 constitute air pollution that contributes to human
23 disease?

24 A Yes it does.

25 Q So would exposure to the wood smoke

1 contribute to the disease rates that you have
2 referenced in your testimony?

3 A Yes, I am sure it does.

4 Q And the same question for the freeways.
5 We heard reference earlier this evening to the
6 three major freeways. Would those contribute
7 also?

8 A Yes, they would.

9 Q Is it your testimony that the air
10 quality in Hayward causes the disproportionate
11 effects that you refer to on page three of your
12 testimony?

13 A Page three of my testimony?

14 Q Take a look.

15 A So ask that question again, let me make
16 sure I understand it.

17 Q Is it your testimony -- You referred
18 generally to disproportionate health impacts or
19 health effects. My question is, is it your
20 testimony that the air quality in Hayward is
21 causing those disproportionate effects?

22 A I think that there isn't one thing that
23 causes those disproportionate effects. I do think
24 air quality is one of those things that
25 contributes to it. But I think there are a number

1 of different things that contribute to that in
2 addition to low-income populations, communities of
3 color that have different kinds of stressors in
4 their lives that they have to go through. So I
5 think it is a complex question and that there is
6 not one simple answer but absolutely it's a
7 factor.

8 Q Do you know whether or not the levels
9 of criteria air pollutants are higher in Hayward
10 than they are in Alameda County?

11 A You know what, I know that I read that
12 in a document and I am not sure.

13 Q Are there other non-air pollution
14 factors that contribute to the diseases that you
15 reference?

16 A Yes.

17 Q Do you know the degree to which those
18 other factors are present in Hayward?

19 A There are a number of different
20 factors. I think you'd have to tease each one of
21 those things separately. And I would say that for
22 some things we might know and then for others we
23 don't. For example, we know -- And the analysis
24 that we looked at was just most mortality and
25 hospitalizations. Which is really the tip of the

1 iceberg because if you really --

2 We don't have that much information
3 about the prevalence of these diseases out in the
4 general population. So the things that I talk
5 about are just the tip of the iceberg. You can
6 imagine that the prevalence of those things that I
7 mentioned are much higher in the community that
8 we're looking at.

9 Q Do you believe that you know how to
10 attribute the relative contribution of the various
11 factors to the disproportionate effect that you
12 have identified in Hayward?

13 A No. I think there is some literature
14 out there that can -- For example, there is some
15 literature that says air quality, you know,
16 contributes to X number of days missed from school
17 or hospitalizations, et cetera. So there is some
18 information that CARB has put out looking at some
19 of those relationships. But again that is just
20 looking at one cause, air pollution, and then
21 there are other causes as well.

22 Q And then my last question is, are you
23 aware of any study that demonstrates that the
24 level of either toxic air contaminants or criteria
25 pollutants are higher in the neighborhoods near a

1 gas-fired power plant than they are in other
2 neighborhoods in that same community?

3 A No.

4 MS. HOLMES: Okay, thank you. Those
5 are all my questions.

6 HEARING OFFICER GEFTER: Any other
7 attorney who would like to cross examine the
8 witness? All right, so you want to submit your
9 witness's testimony at this point, Ms. Massey and
10 also the exhibits.

11 MR. CARROLL: Your Honor, Your Honor, I
12 am not allowed to cross examine the witness?

13 HEARING OFFICER GEFTER: You were
14 passing before so I'm sorry, I didn't know if you
15 wanted to.

16 MR. CARROLL: No, I didn't mean to
17 pass. I just think it is appropriate for the
18 applicant to be able to do her last as opposed to
19 in the middle. I'll be very brief, Dr. Witt.

20 CROSS EXAMINATION

21 BY MR. CARROLL:

22 Q First off, I take it from your
23 testimony that you have carefully reviewed the
24 environmental justice portions of the Energy
25 Commission staff's Final Staff Assessment.

1 A Yes.

2 Q And would that include the material
3 found on pages 2-4 to 2-5 of the Final Staff
4 Assessment concerning environmental justice?

5 A I'm sure I did but let me just check.

6 Q Please.

7 A Yes.

8 Q And on page 2-4 there is quoted a
9 California definition of environmental justice,
10 correct?

11 A Yes.

12 Q You do not quote that definition in
13 your testimony, do you?

14 A No

15 Q You quote a European definition in your
16 testimony.

17 A I did.

18 Q On page one of your testimony in the
19 last paragraph about five lines down you talk
20 about studies revealing certain things. Do you
21 see that testimony?

22 A Yes I do.

23 Q You do not footnote to the studies.

24 A Well I footnoted some of them.

25 Q Right there with that sentence you

1 footnoted some of them?

2 A Are you talking about footnote two?
3 I'm sorry, I don't know where you are.

4 Q So footnote two is the studies you're
5 referencing. I'm sorry, I was confused because it
6 didn't follow the sentence where you stated it.
7 You're saying those are the two studies you're
8 discussing?

9 A Yes. And actually on this one there
10 are many more studies that I could have cited.

11 Q But you only cited two?

12 A Just because of lack of time but yes.

13 Q And you didn't submit those with your
14 testimony.

15 A No I didn't.

16 Q Now on page two the first bullet
17 states, Hayward is more ethnically diverse than
18 Alameda County and you use a three mile radius to
19 identify the proportion of Latino residents,
20 correct?

21 A Yes.

22 Q Okay.

23 A I mean, Hayward is more ethnically
24 diverse, yes. And then when you look at the three
25 mile radius, yes, that percentage of Latino

1 residents in that three mile radius also.

2 Q But you don't explain at that point why
3 you used a three mile radius as opposed to the six
4 mile radius called for by the CEC, do you?

5 A Well, you know, there are a lot of
6 different geographic references in that whole
7 staff, in the whole report. There's 1,000 feet
8 for the health risk assessment, there was the six
9 mile. And for health outcomes we try to get as
10 detailed as possible depending on what the data
11 allow us to do so we felt six miles was way too
12 much of an area. We weren't going to be able to
13 pick up local variation within that. So we went
14 for three miles, which allows us get stable cases
15 to create rates for comparative purposes that are
16 stable and reliable.

17 Q And you didn't explain that in your
18 testimony, did you?

19 A No I didn't.

20 Q And six miles would actually increase
21 the data, wouldn't it?

22 A It would but if you're looking at rates
23 for six miles -- what we were trying to do was
24 come up with variations within that six mile area
25 to look at those pockets of more -- where there is

1 more poverty and low-income communities. We
2 didn't want to aggregate them all to six miles
3 when the data was available to look at more
4 detail.

5 Q And you don't disagree that the Energy
6 Commission uses a six mile radius for much of the
7 studies that it does?

8 A I don't disagree but I think you could
9 -- I mean, I think it's possible to look at other
10 degrees or other geographic areas.

11 MR. CARROLL: Very well. That's all I
12 have, Your Honor, thank you.

13 HEARING OFFICER GEFTER: Thank you.
14 Mr. Massey, do you want to move your exhibits?

15 MR. MASSEY: Yes, Alameda County would
16 move Exhibits 532 and 533 into evidence at this
17 time.

18 HEARING OFFICER GEFTER: Thank you.
19 Any objection to those exhibits being moved into
20 the record?

21 MR. CARROLL: No objection, Your Honor.

22 HEARING OFFICER GEFTER: Exhibits 532
23 and 533 are entered into the record.

24 MR. MASSEY: Thank you, Madame Hearing
25 Officer.

1 HEARING OFFICER GEFTER: Okay, thank
2 you. All right. Thank you very much, Dr. Witt,
3 appreciate your coming out tonight.

4 You know, we have many people here who
5 wanted to address us and we just took the
6 environmental justice testimony out of order.

7 I also want to ask the applicant and
8 the staff, especially the staff, to move your
9 environmental justice testimony in. I know we
10 already accepted the FSA but if you could formally
11 move in that section as well without objection.

12 MS. HOLMES: Staff will move the
13 environmental justice sections of the FSA.

14 HEARING OFFICER GEFTER: Thank you.
15 And that has been admitted.

16 MR. CARROLL: And Your Honor, I just
17 want to be --

18 HEARING OFFICER GEFTER: And that's
19 Exhibit 200.

20 MR. CARROLL: I just want to be sure
21 that is without prejudice to our environmental
22 justice material coming in later at the
23 appropriate time.

24 HEARING OFFICER GEFTER: Okay.

25 MR. CARROLL: Thank you.

1 HEARING OFFICER GEFTER: I am not aware
2 of your exhibits on environmental justice. Do you
3 want to identify those.

4 MR. CARROLL: I believe it is in
5 Exhibit 1, the environmental justice analysis is
6 in Exhibit 1, section 8.8, as part of
7 socioeconomics and there is an appendix 8.8-A to
8 Exhibit 1 as well. And those are the two
9 environmental justice sections of the AFC.

10 HEARING OFFICER GEFTER: All right.
11 Well we'll admit those sections.

12 We are not going to go on to
13 socioeconomics right now, I am going to continue
14 with public comment. We'll discuss socio at the
15 end of public comment.

16 MR. CARROLL: I want to be sure I
17 understood you. Then our environmental justice
18 material is in the record now?

19 HEARING OFFICER GEFTER: It is in the
20 record, yes.

21 MR. CARROLL: Thank you.

22 HEARING OFFICER GEFTER: Yes it is.
23 Because your AFC is already in the record. And
24 you have identified the sections regarding
25 environmental justice so they're admitted.

1 MR. CARROLL: Thank you very much, Your
2 Honor.

3 MS. HARGLEROAD: Isn't that with the
4 understanding that the applicant's witness is
5 going to be here to discuss both environmental
6 justice and socioeconomics? Am I correct? I just
7 want to clarify that.

8 MR. CARROLL: That is my understanding,
9 Your Honor.

10 MS. HARGLEROAD: Okay.

11 HEARING OFFICER GEFTER: We are going
12 to go on socio and you can cross examine the
13 witness.

14 MS. HARGLEROAD: Right.

15 HEARING OFFICER GEFTER: Originally we
16 hadn't planned on having cross examination on
17 socio.

18 MR. CARROLL: My understanding was not
19 that there was going to be any but --

20 HEARING OFFICER GEFTER: That's right.

21 MR. CARROLL: The Commission has been
22 liberal in that regard and if it's going to allow
23 it, it will.

24 HEARING OFFICER GEFTER: Let's discuss
25 it after we hear from members of the public.

1 MS. SCHULKIND: Just my final
2 clarification. We are going back to the public
3 comment now but we haven't finished with the
4 socio, I'm sorry, with environmental justice.

5 HEARING OFFICER GEFTER: We have
6 finished with environmental justice,
7 socioeconomics is a separate topic.

8 MS. SCHULKIND: Because we have cross
9 examination for Mr. Pfanner on environmental
10 justice.

11 HEARING OFFICER GEFTER: There wasn't a
12 plan to do that because he was submitting it on
13 declaration. I didn't know that anybody wanted to
14 cross examine him. Were you aware of that?

15 MS. SCHULKIND: I thought that was
16 clear, it's a contested area. And I believe I
17 spoke to you specifically about that and you told
18 me that I should wait and cross Mr. Pfanner. We
19 had that conversation.

20 HEARING OFFICER GEFTER: Well I'm sorry
21 that I don't remember that, it's late already.

22 MS. SCHULKIND: I understand. But I am
23 happy to wait and allow the public comment to go
24 forward.

25 MS. HOLMES: We're available, the staff

1 is available.

2 HEARING OFFICER GEFTER: Okay,
3 Mr. Pfanner would be available. So what we can do
4 since Mr. Pfanner will also be here through the
5 evening and tomorrow, we'll schedule some time for
6 cross examination of Mr. Pfanner.

7 MS. SCHULKIND: That's fine, I'd rather
8 get back to public comment.

9 HEARING OFFICER GEFTER: Yes.

10 MS. SCHULKIND: I just wanted to make
11 sure we weren't losing sight of it.

12 HEARING OFFICER GEFTER: All right, and
13 I am so sorry but, you know, it is getting late
14 and I would like to invite people to come forward.

15 MS. SCHULKIND: I understand.

16 HEARING OFFICER GEFTER: So let's go
17 back to public comment right now.

18 There are a couple of people here from
19 the Citizens Against Pollution, Audrey LePell and
20 also Karen Kramer. Do you want to come up
21 together so we can save some time here. If you
22 have different issues that's just fine but why
23 don't we, why don't you come up together since it
24 is the same organization.

25 Just come up here and you can either

1 sit down if you wish or you can stand over there.

2 And tell us how to spell your name.

3 MS. LePELL: How do you do. My name is
4 Audrey LePell.

5 PRESIDING COMMISSIONER BYRON:

6 Ms. LePell.

7 MS. LePELL: How do you do.

8 PRESIDING COMMISSIONER BYRON: Good to
9 see you again. I was going to ask our hearing
10 officer to do a quick count on how many, on how
11 many speakers we've got.

12 HEARING OFFICER GEFTER: Oh my gosh.
13 While you're speaking I'll let you know.

14 PRESIDING COMMISSIONER BYRON: Just a
15 quick count.

16 HEARING OFFICER GEFTER: I am going to
17 count while you speak.

18 PRESIDING COMMISSIONER BYRON: If you
19 will I'd just like to ask you, we have been here a
20 number of times already. Do you recall how many
21 times we have been in this room to take testimony
22 and public comment?

23 MS. LePELL: I have been here five
24 times.

25 PRESIDING COMMISSIONER BYRON: We want

1 you to make sure you say and cover whatever
2 material you wish to cover in your public
3 comments. But I will tell you and everyone else
4 here, we have heard the public comment, it is in
5 the record, you don't have to repeat anything.
6 Having said that, I would like you to be an
7 excellent example to how many people are behind
8 you.

9 HEARING OFFICER GEFTER: We have 21
10 people.

11 PRESIDING COMMISSIONER BYRON: There
12 are 21 more people. You can be an excellent
13 example or a poor example --

14 (Laughter)

15 PRESIDING COMMISSIONER BYRON: -- of
16 how late we'll be here this evening. Because we
17 are going to be taking some additional testimony
18 after the public comment period.

19 So having said that, it's good to see
20 you.

21 HEARING OFFICER GEFTER: And also would
22 you spell your name for the reporter.

23 PRESIDING COMMISSIONER BYRON: And go
24 right ahead.

25 MS. LePELL: Audrey is spelled with a

1 capital A-U-D-R-E-Y. LePell is spelled capital L-
2 E, capital P-E-L-L. And only history will say how
3 we spoke tonight.

4 So I wanted to say although I was asked
5 last June 2007 to look at the transportation
6 section of the amendment, which I normally would
7 call an EIR, environmental impact report,
8 regarding the proposal to build the Russell City
9 Energy Center, also known as Calpine, the CEC
10 staff recommended against that Center and the
11 Commission itself decided to okay or give approval
12 to the Calpine plant, even before a formal public
13 hearing took place in these very council chambers.

14 Mr. Byron, Mr. Geesman, CEC
15 Commissioners, had given approval even before the
16 public had a chance to speak. What a revelation.
17 And the same thing happened only two weeks ago
18 when the CEC staff was told to prepare to override
19 their own negative decision to not build Tierra
20 Energy Center or Eastshore, another name it has.

21 CEC people who vote against the Tierra
22 Energy Center were asked to prepare a statement to
23 okay the Tierra Center. That process astounds me
24 as I had never, ever seen or heard such behavior
25 by a commission at the local, county or state

1 level. Why? That's a rhetorical question.

2 Well, like Calpine, has the Tierra
3 Executive Center officials promised to pay an
4 agency, government or group in Alameda County to
5 get positive approval? Question mark, rhetorical.

6 Other not-answered questions to the
7 California Energy Commission. Where was the
8 public notice of this hearing put into our local
9 papers? So I would like to say that your staff
10 has written that you did publish a public notice
11 in the Daily Review last January the 29th. Well,
12 I have been watching the public notices and this
13 is like a very small exhibit. There's no public
14 notice about this meeting tonight. There was no
15 public notice about the meeting two weeks ago.
16 For the record. And as you know I am very
17 concerned about process.

18 To continue quickly. Why did private
19 citizens write letters reminding the public of
20 this very hearing? Where is the responsiveness on
21 the part of the CEC publicity department?

22 According to my data, another subject,
23 Bay Area Air Quality Management District's data
24 regarding the air quality in Hayward was based on
25 findings of two years ago. Where is the more

1 recent, up-to-date measurement? Why rely on
2 Oakland and San Leandro for quality air
3 assessments made in Hayward?

4 Why was AC Transit left out of the
5 process to assist workers to get to work if this
6 power plant is built? AC Transit, when I asked
7 the assistant director, had no answer.

8 Why were the ratings of Highway 92 at
9 Clawiter Road and A Street and Highway 880 taken
10 from documents dated 2001 and 2002? I personally
11 saw different and up-to-date ratings at one of
12 your staff workshops. Both intersections were
13 rated F, a failure grade. Both are already at
14 overcapacity.

15 And finally, when the CEC decides to
16 change its practices and begin to educate the
17 public about its own policies and attitude then
18 perhaps we can learn how to deal with the CEC on a
19 more positive level. And I thank you.

20 HEARING OFFICER GEFTER: Ms. Kramer,
21 you can move to that microphone if you would like
22 to and spell your name for the record, please.

23 MS. KRAMER: My name is Karen Kramer,
24 the last name is K-R-A-M-E-R.

25 HEARING OFFICER GEFTER: Thank you.

1 MS. KRAMER: Do you need Karen spelled?

2 HEARING OFFICER GEFTER: No.

3 MS. KRAMER: Okay. I have been here
4 before too, unfortunately. And I hope, like I
5 said before, I wish we weren't having to be here.
6 I am actually very overwhelmed tonight hearing
7 this information more -- The more information I
8 hear the more disgusted I am. It is just
9 appalling to me.

10 I live in that 94545 area code. I
11 tried to move. I was trying to move two years ago
12 because the Hayward School District is so poor,
13 bad, and my daughter happens to be very smart.
14 But unfortunately, economically I cannot afford
15 it. I looked for a year and a half. I spent a
16 lot of time, devoted my time trying to find a way
17 to move but I never did.

18 And now I am still following in the
19 paper the house prices in my neighborhood have
20 fallen from last summer near \$600,000. I Just saw
21 one around the corner from my house, the same
22 condition, style, year built, selling for -- sold
23 for \$399,000. Now that house is all I have.
24 There will be no way I can move now.

25 I already want to move because the

1 airplanes drive me crazy and the pollution from
2 them and the noise. Now you want to add more
3 pollution, more noise.

4 Like Dr. Witt said, and said way more
5 than I know, the area is already overburdened.
6 The train noise, we have trains that wake me up at
7 night. The area is overburdened with the highways
8 and the airplanes and the trains. For gosh sakes.

9 I wasn't even going to speak about
10 health tonight, I've spoken about that before.
11 But we all know that is your greatest wealth and
12 that is my number one concern. But I have spoken
13 about that before.

14 So tonight I was going to speak about
15 something I happened to find that I couldn't
16 believe. Or somebody led me to it I should say.
17 Do we even need these energy plants? According to
18 Calpine, who is the company building the first
19 energy plant, Russell Center, own bankruptcy
20 filing on September 27 of 2007. And I quote, it
21 is from their fourth amended disclosure statement.
22 If you would like a copy I brought an extra copy
23 if you wanted it. It says:

24 "For much of the 1990s,
25 utilities invested relatively

1 sparingly in new generation
2 capacity. As a result, by the
3 late 1990s many regional markets
4 were in need of new capacity to
5 meet growing electricity demand.
6 Prices rose due to capacity
7 shortages, and the emerging
8 merchant power industry responded
9 by constructing significant
10 amounts of new capacity. Between
11 2000 and 2003, more than 175,000
12 megawatts of new generating
13 capacity came 'on-line' in the
14 United States. In most regions,
15 these new capacity additions far
16 outpaced the growth of demand,
17 resulting in 'overbuilt' markets,
18 i.e., markets with excess
19 capacity. In the West, for
20 example, approximately 24,000
21 megawatts of new generation
22 capacity was added between 2000
23 an 2003, while demand only
24 increased by approximately 8,000
25 megawatts."

1 HEARING OFFICER GEFTER: Ms. Kramer, we
2 appreciate that because we have 21 other people
3 behind you. I know people are waiting and it is
4 getting late.

5 MS. KRAMER: I just want to say, in
6 general I do believe an carbon-polluting energy
7 source is going backward. Calpine also said in
8 the same file, quote: "California recently passed
9 legislation to reduce carbon emission levels."
10 Unquote.

11 So why are we building these outdated
12 energy plants? Why aren't we not moving forward?
13 Especially using, from what I heard, equipment
14 that is like dinosaur equipment that they can't
15 ever replace because they don't make that kind of
16 equipment anymore. That's ridiculous.

17 And lastly I wanted to say that I also
18 looked up the California ISO, which is the
19 Independent System Operator that shows the demand
20 for energy and the actual output. And I looked
21 up, I only could go to July. I was trying to get
22 a more recent look. And I looked at today and we
23 had plenty of energy compared to what the demand
24 was. And now I want to find out --

25 It's going back to -- this only says to

1 2003. So I looked up -- I could only get to July
2 2006. And there again we have sufficient forecast
3 ISO supply over the demand, actual peak demand.
4 So as far as I could see -- I mean, I don't even
5 see that there is a need.

6 But even if there were a need there is
7 no way you can in your conscience build it in this
8 location where there are so high a population in
9 density and already overpolluted. I could not
10 sleep if I were you.

11 And a more cynical person than I might
12 think that you had already decided on your opinion
13 on Eastshore before even hearing any of us or your
14 own staff who has said not to build it.

15 And for that matter the same goes for
16 Russell City. Did Mr. Geesman write his opinion
17 before the hearings on Russell City? Or of the
18 people and of all the people that were suing. Did
19 Mr. Byron write his opinion before hearing all of
20 us and the testimony of all the litigants? All of
21 us have said no to these power plants. But I
22 don't think you -- What part of no do you not
23 understand.

24 HEARING OFFICER GEFTER: Thank you.

25 MS. KRAMER: All right.

1 HEARING OFFICER GEFTER: Let's give
2 someone else a chance because there are so many
3 other people. Thank you very much for your
4 comments.

5 MS. KRAMER: Please, please consider
6 our health and economically too our future.

7 HEARING OFFICER GEFTER: Thank you. A
8 lot of people have to leave.

9 Professor Laurie Price. Are you still
10 here? Thank you.

11 A lot of people now are leaving,
12 unfortunately.

13 Thank you.

14 PROFESSOR PRICE: Hi, my name is Laurie
15 Price. I am a tenured professor at Cal State East
16 Bay. Even though we are a little higher up the
17 hill we're still very concerned about these power
18 plants for air quality reasons, among other
19 things. My name is spelled L-A-U-R-I-E and last
20 name Price, P-R-I-C-E. And I will make my
21 comments very brief.

22 HEARING OFFICER GEFTER: Thank you.

23 PROFESSOR PRICE: In Northern
24 California and increasingly in the rest of our
25 nation we are coming to understand that fossil

1 fuel combustion is a very flawed technology. We
2 didn't know that 50 years ago but now we do. The
3 carbon dioxide generated by Russell City,
4 Eastshore and other similar plants will undermine
5 the quality of life of humans and other species
6 for centuries to come.

7 It is time for a declaration of
8 interdependence. Time to consider the quality of
9 life of polar bears, redwoods, frogs, shore birds
10 and every other life form. In a worst case
11 scenario to which these plants contribute, 20 to
12 30 percent of known species will become extinct,
13 which is forever, by 2100 due to climate change
14 from greenhouse gas emissions.

15 These fossil-fueled power plants are in
16 direct contradiction to official California state
17 policy. In 2006 the State Legislature passed AB
18 32, California's Global Warming Solutions Act. It
19 was signed into law by Governor Schwarzenegger and
20 I think he is the California Energy Commission's
21 boss because he appoints you.

22 This law creates a statewide cap on
23 global warming pollution. We committed as a state
24 to reduce our greenhouse gas emissions back to
25 1990 levels by 2020, a reduction of 25 percent

1 over business as usual. And then the Governor
2 went one better. He signed an Executive Order
3 that calls for an 80 percent reduction by 2050.

4 The CEC's approval of new fossil fuel
5 power plants is a direct contradiction to this
6 state mandate to reduce CO2 generation.
7 Renewable, no-carbon energy technologies already
8 exist to meet our current power needs. If you go
9 to Mark Jacobson's web site, he is a climate
10 physicist at Stanford, his model shows that wind
11 energy, solar thermal, solar PV and a modest
12 amount of hydroelectric power can meet our entire
13 nation's electricity needs with only a modest
14 investment of capital.

15 I am deeply concerned about these new
16 commitments to fossil fuel power plants. Not just
17 these two in Hayward but all of the others that
18 are in the pipeline. On behalf of our children,
19 our children's children, fossil fuel burning is
20 bad for our world. It's bad for the ecosystem,
21 it's bad for the future of everybody.

22 If these are built Russell City and
23 Eastshore will contribute to the deterioration of
24 the quality of life of every person and most life
25 forms of earth for 50 or more years. I believe

1 that it is time for the CEC to make a firm
2 commitment to renewable, clean energy sources for
3 the people and the business of California. Thank
4 you for your attention.

5 HEARING OFFICER GEFTER: Thank you.

6 PRESIDING COMMISSIONER BYRON: Thank
7 you, Dr. Price. Would you mind, unless you
8 stated, what is your field of study?

9 PROFESSOR PRICE: My field is
10 anthropology and public health.

11 PRESIDING COMMISSIONER BYRON: Thank
12 you.

13 HEARING OFFICER GEFTER: We still have
14 a lot of people and we also were hoping to finish
15 some more testimony tonight so I would like people
16 to just be brief and summarize your comments since
17 many have been here before.

18 Wulf Bieschke, who is with the San
19 Lorenzo Village Homes Association and I know that
20 you are represented by Ms. Hargleroad. So if you
21 would come on up and spell your name and just be
22 as brief as you can.

23 MR. BIESCHKE: And I will be brief. My
24 name is Wulf, W-U-L-F, Bieschke, B-I-E-S-C-H-K-E,
25 and I am the President of the San Lorenzo Village

1 Homes Association. Our association represents
2 approximately 5600 homes or about 20,000
3 residents. I am here to express the concerns of
4 our residents and those concerns are with the
5 diversion of aircraft traffic that will result in
6 the operation of this plant.

7 Our community has been working and is
8 currently working with the airport to abate
9 aircraft noise over our homes. The Hayward
10 Airport is currently expanding and that's bringing
11 in additional corporate jets for refueling and
12 service. If aircraft traffic is diverted over our
13 homes we would not only be affected by noise but
14 also be subject to a higher risk of a catastrophic
15 accident. So our members urge you to decline this
16 project. Thank you very much.

17 HEARING OFFICER GEFTER: Thank you very
18 much for being here tonight, thank you.

19 I've got a card from Glenn Kirby of the
20 Sierra Club. He indicates he wants to submit
21 written comments so perhaps you can submit the
22 written comments and summarize them.

23 MR. KIRBY: Yes, thank you. I have
24 some written comments; I'd like to also just make
25 a very brief statement.

1 HEARING OFFICER GEFTER: Okay. And
2 please spell your name.

3 MR. KIRBY: My name is Glen Kirby, K-I-
4 R-B-Y.

5 HEARING OFFICER GEFTER: Thank you.

6 MR. KIRBY: I am a Hayward resident. I
7 am also Chair of the Alameda County Planning
8 Commission who is a party in this action and I'll
9 mention that I am also a part-time Chabot student.
10 But this evening I am here representing the Sierra
11 Club South Alameda County group.

12 We support the County and Chabot's
13 intervention and we support the community's
14 opposition to this project. As I mentioned I'll
15 be submitting some comments.

16 I'd just like to say that our
17 objections are that this project cannot meet the
18 test of mitigation. As a private project it could
19 not be built because of the identified impacts and
20 the inability of the proponent to adequately
21 mitigate those impacts. Public health impacts on
22 the local community will affect everyone but
23 particularly the elderly children and people with
24 respiratory conditions.

25 The plant will further degrade the air

1 quality of an area that is already below minimum
2 compliance levels for a substantial portion of the
3 year. The plant will affect the air quality and
4 contribute to global warming with the recognition
5 that power plants such as these contribute to
6 global warming. And while other communities are
7 developing sustainable energy sources this plant
8 uses technology that continues our over-reliance
9 on non-renewable fossil fuels and polluting
10 sources for power generation.

11 And the plant creates air traffic
12 hazards. We applaud the Energy Commission staff
13 for accurately bringing up the potential for air
14 traffic hazards. If anyone questions the impact
15 this plant will have on our community and the East
16 Bay region and the San Francisco Bay I can't think
17 of a better example than a recognition that the
18 plume of heated gases discharged from the stacks
19 is significant enough to pose a risk to passing
20 aircraft.

21 For this project to be certified the
22 Energy Commission would need to override local
23 ordinances, regulations and codes. We believe the
24 Commission cannot make the findings for public
25 convenience and necessity for such an override.

1 A recommendation for certification by
2 the Commission would permit a private company that
3 by its own analysis cannot mitigate the impacts of
4 this project to create a hazardous condition to
5 airports and thousands of residents' health and
6 safety through a finding that a local project is
7 necessary for the public convenience.

8 This project should not be approved.
9 The City and the Region and the State should work
10 towards finding safer, cleaner, more sustainable
11 means to meet its power generating needs. We are
12 submitting a letter to further address these
13 objections and I provided copies. Thank you.

14 HEARING OFFICER GEFTER: Thank you very
15 much. One minute, please.

16 MS. HARGLEROAD: I just want to --

17 PRESIDING COMMISSIONER BYRON: Just a
18 moment, please. Mr. Kirby.

19 MR. KIRBY: Yes sir.

20 PRESIDING COMMISSIONER BYRON: Thank
21 you for your comments. You are quite right. This
22 commission has to make certain findings in order
23 to do an override of local ordinances and
24 standards and regulations.

25 MR. KIRBY: Yes, LORS.

1 PRESIDING COMMISSIONER BYRON: And we
2 have not made our decision on this matter at all.
3 That's why we are here today and tomorrow is to
4 take evidence. I thank you very much for your
5 comment.

6 If you will just pause for one moment
7 we need to conference to figure out -- we have
8 experts that are here this evening that do not
9 have hotel reservations. We need to make a call
10 here as to whether or not we are going to try to
11 continue testimony or let them go home. So thank
12 you very much for your testimony but just give us
13 a second.

14 HEARING OFFICER GEFTER: Let's go off
15 the record for a minute, everyone can stretch.

16 (Whereupon, a recess was
17 taken.)

18 HEARING OFFICER GEFTER: Give us your
19 name.

20 MS. FINN: I feel that I need to speak
21 because these people are here to participate.

22 HEARING OFFICER GEFTER: Yes, okay.
23 Sure, go ahead.

24 MS. FINN: And as a community we are --

25 HEARING OFFICER GEFTER: Please tell us

1 your name.

2 MS. FINN: Kimberley Finn, K-I-M-B-E-R-
3 L-E-Y, Finn, F like Frank, I-N-N.

4 HEARING OFFICER GEFTER: Okay, thank
5 you. Okay, go ahead please, but keep it short so
6 other people can speak.

7 MS. FINN: My comment, my other comment
8 that I would like to address is the fact that a
9 few months back we attended, many of us here, the
10 hearing in Sacramento where you approved the
11 Russell City Energy Center.

12 The item I would like to address is
13 that the agenda item before the final approval for
14 the Russell City Energy Center was another power
15 plant in California. The item on the agenda was
16 the fact that once it had been built it had been
17 tested and it was not meeting its emissions
18 guidelines that was originally promised.

19 And what happened? It took you all
20 respectively less than 45 seconds to all those in
21 favor to double the ammonia slip for this plant,
22 say aye. Aye, aye, aye, aye. It took them 45
23 seconds, you all 45 seconds, to double the
24 pollution.

25 Now we are looking at 65 tons from one

1 plant and many, many more tons from the second
2 plant. And as soon as this thing is in, running,
3 pumping away into the atmosphere, if oh no, they
4 don't meet the guidelines, they are all going to
5 go back. And they know it, that's why just need
6 to get their foot in the door. They fill out a
7 form. I don't know the entire process. They come
8 before you. And it seems to me that you all will
9 be more than happy to rubber stamp a doubling of
10 their emissions.

11 I just think that the public needs to
12 know this because we might not just be looking at
13 900 tons of pollution, we could be looking at
14 thousands and thousands per year. Thank you.

15 HEARING OFFICER GEFTER: Thank you,
16 good point. Thank you.

17 Okay, come on up and state your name.
18 Please speak, just get to the salient points,
19 thank you.

20 MR. SHIN: Yes, thank you.

21 HEARING OFFICER GEFTER: Spell your
22 name, please.

23 MR. SHIN: My name is Harry the last
24 name is Shin, S-H-I-N. And I wanted to thank you
25 for finally getting an opportunity to speak.

1 HEARING OFFICER GEFTER: And I have
2 your blue card right here.

3 MR. SHIN: Okay, thank you.

4 The reason I wanted to come and speak
5 to this group tonight is because I'm a pilot and I
6 have an airplane based at Hayward Airport. I am
7 also a mechanical engineer. I work at the
8 Stanford Linear Accelerator Center, part of
9 Stanford University where we have a cogeneration
10 plant.

11 And I think that the siting of this
12 power plant is extremely poor. And the reason I
13 am concerned as a pilot, because I think that
14 there will be a tremendous amount of heat energy
15 coming off of this power plant, which will prevent
16 -- will pose a hazard to flight operations at
17 Hayward Airport. Specifically on the downward leg
18 of Runway 28-left.

19 The pattern altitude there is only 650
20 feet. You have to fly that low to stay underneath
21 the Oakland approach. It's called Class Charlie
22 airspace. Six hundred-fifty feet is about the
23 lowest I have ever seen a pattern fly. It's only
24 reason is to stay below Oakland.

25 Then we have another problem of noise

1 abatement for the people that live around there.
2 And they identify the areas which are specifically
3 to be avoided that are very sensitive to noise.
4 And I think that in trying to find around this
5 plume of heated air that we'll probably be flying
6 right over these sensitive areas. I think it is a
7 very bad, you get a very bad siting.

8 The problem with this plant as opposed
9 to a cogeneration plant is that, as you know, a
10 cogeneration plant uses waste heat in order to
11 heat other things. Like at Stanford they use it
12 to heat the hospital. So you get a way, you make
13 some power, and you don't have to use a boiler
14 then to heat up the building, okay.

15 In this case probably 15 percent of the
16 power plant's capacity is going to go up as heat,
17 waste heat. So you're going to be looking at
18 something like ten megawatts of heat energy just
19 being spilled up. It is going to really, I think,
20 be a very dangerous situation and I think it is
21 something that the Commission should look at very
22 closely. Very, very dangerous. Thank you.

23 HEARING OFFICER GEFTER: Thank you very
24 much. Okay, I know a lot of people now have lined
25 up. All right, if you come forward --

1 I want to indicate what we are going to
2 do tonight because I know that a number of people
3 still want to speak to us. We need to release the
4 witnesses who were going to speak on LSE, local
5 system effects, and alternatives and ask them to
6 come back tomorrow morning because we can't do
7 that tonight.

8 We are going to finish the public
9 comment, the people in line here. We are going to
10 go on and do the cross examination on EJ and socio
11 and we're going to close by ten p.m. Okay? And
12 that's the schedule for this evening.

13 And could you tell me your name, please.

14 MS. McDONALD: My name is Juanita
15 McDonald, J-U-A-N-I-T-A, M-C-D-O-N-A-L-D, and I am
16 half minority. I had a three paragraph paper that
17 I was going to read. I was going to skip over it
18 but you are allowing the public now?

19 HEARING OFFICER GEFTER: Yes.

20 MS. McDONALD: So I can read my three
21 little paragraphs. It is called, An Environmental
22 Injustice.

23 I am a 50 year resident of Hayward. We
24 in Hayward are predominately an blue-collar city
25 and a racially mixed city. As we have read in our

1 papers the children of our African-American
2 citizens have the highest incidence of asthma in
3 our nation. This is because they have lived
4 mostly in highly industrial areas and are subject
5 to the fumes and toxicities of those areas. This
6 power plant will definitely add to this situation
7 and more. This is an environmental injustice to
8 our community. To deny this would be to falsify a
9 truth.

10 The power companies have offered to buy
11 pollutant credits from other East Bay cities and
12 to partially, I stress partially, pay for the
13 conversion of the wood-burning fireplaces of the
14 Hayward citizens. Hence they are not denying that
15 they are adding to the pollutants in the air that
16 we breath. We also have to live with the car
17 fumes of 92 and 880.

18 I just want to add that I would give
19 myself to Dr. Witt of the public health of Alameda
20 County, this was added. That I am proof that
21 asthma is caused by fumes. I lived here three
22 years without asthma. I developed asthma after
23 living within one block of Highway 880. I raised
24 three sons with asthma.

25 My last paragraph: Al Gore won a Nobel

1 Peace Prize for his documentary on global warming
2 entitled An Inconvenient Truth. The world is
3 recognizing that we humans have damaged our
4 atmosphere and our Earth. Our politicians are now
5 looking into and advocating a search for greener
6 ways to produce energy. The people of Hayward
7 want to join in this effort and not be known as an
8 inconvenient city. Thank you.

9 HEARING OFFICER GEFTER: Thank you.

10 Next. Tell us your name and spell it,
11 please.

12 MR. LUBOVISKI: Yes. My name is Barry
13 Luboviski, the spelling is in the written card.

14 HEARING OFFICER GEFTER: No, the
15 reporter needs to hear your name.

16 MR. LUBOVISKI: Okay.

17 HEARING OFFICER GEFTER: And actually
18 you have appeared here before.

19 MR. LUBOVISKI: It's Barry, B-A-R-R-Y,
20 Luboviski, L-U-B-O-V-I-S-K-I.

21 HEARING OFFICER GEFTER: Right.

22 MR. LUBOVISKI: I am
23 Secretary/Treasurer for the Building and
24 Construction Trades Council. I spoke at the
25 previous hearing.

1 HEARING OFFICER GEFTER: Right.

2 MR. LUBOVISKI: So I will be extremely
3 brief here in deference to the long evening. We
4 did -- I did speak on issues of the airport
5 proximity but I want to briefly restate that it is
6 our understanding that the Eastshore Energy
7 project in its proximity to the airport has many
8 similarities to Russell City. It is outside of
9 the immediate safety zone.

10 There are risks involved with any heat
11 plume. But I would point out, as I did
12 previously, that when we get up in the morning and
13 the minute we get into the shower or bathtub there
14 is a risk involved of slipping and falling. So we
15 accept risks every day. The question is whether
16 or not the risk is acceptable.

17 It is outside the immediate safety
18 zone. We believe that it meets many of the same
19 parameters as Russell City. We think it is an
20 acceptable risk given that a risk of having
21 inadequate power can also very realistically cause
22 life- and other problems in our society. The
23 question is whether or not this is appropriate.
24 As a peaker plant the Building Trades Council
25 believes that this is an appropriate use and an

1 important use.

2 We're concerned about the proximity of
3 two power plants in one community. But
4 unfortunately, our understanding is that you can't
5 put these power plants out in the desert. There
6 is a reason they are here in terms of the context
7 of the power grid. We don't believe that they are
8 put here to serve distant communities but in fact
9 represent a direct benefit to not only Hayward but
10 the surrounding communities.

11 It is a difficult issue given the local
12 impacts. We think that a lot of those are
13 mitigated by state of the art technology, by
14 natural gas power plants, by the fact that it is a
15 peaker plant. When taken in total we think that
16 it is a project that is worthy of support and will
17 in fact help address the power needs in
18 California. Thank you.

19 HEARING OFFICER GEFTER: Thank you.

20 MS. WIDGER: Hello, I have also spoken
21 here before. My name is Stephania Widger, S-T-E-
22 P-H-A-N-I-A, W-I-D-G-E-R. I am also half
23 minority; that minority is Greek.

24 Anyway, I am a lifetime resident
25 between Hayward and Castro Valley and I am looking

1 up and seeing the City of Hayward, Heart of the
2 Bay. I'd like it to stay that way. And a heart
3 is red, it is not black with soot.

4 We are traveling down a dangerous path.
5 In a time when global warming is increasing to a
6 level of extreme danger does it make sense to
7 throw massive toxins into the air? We are also
8 faced with a health care crisis and no insurance
9 for many people throughout the county and
10 throughout the country. And instead of health
11 care we sending you down the path of poison.

12 Our air quality is getting worse and
13 worse by the day. I am also an asthmatic and I
14 had an uncle that had emphysema and that's what he
15 died of and we also know that cancer is on the
16 rise. All of these things are coming from these
17 plants of the gentlemen over here that are trying
18 to build them.

19 I feel that the environmental impact
20 report was incomplete. As I biologist I looked at
21 the impact report. I saw that there was
22 absolutely nothing done to protect the various
23 protected animals that were not addressed, the
24 marsh mouse, the clapper rail, the aquatic garter
25 snake, which is also an endangered species. These

1 were not addressed.

2 And I truly believe, after talking to
3 the biologist that I talked to that is part of the
4 CEC, it didn't look like it had been addressed and
5 I really think you need to go back to that.
6 Because once these are gone, they're gone.

7 As well as serving as an integral link
8 in the Pacific flight way, Dr. Cogswell at the Cal
9 State was integral in getting the marshlands up
10 and running and getting them back into shape and
11 now we're going to destroy them.

12 The socioeconomic, racial mix in
13 Hayward I think is one of the reasons why the
14 plants are here, different than what the gentleman
15 just said. We are a blue-collar, minority
16 community. We take the brunt of industrial
17 pollution. And if you look at the various
18 neighborhoods, Hunters Point and Richmond, we see
19 the same thing.

20 In fact, I was around when Richmond was
21 being -- they were saying that nothing would
22 happen, it was perfectly okay. One cancer rate in
23 ten million. And as we know right now that is not
24 the case. We the citizens of Hayward are fearful
25 that this is going to happen here.

1 The credits, I'd like to just address
2 the credits quickly. They will not change where
3 those poisonous pollutants are, they will still
4 remain here in our backyard.

5 So I ask you, think about our town as
6 your home. Would you live next door to these
7 plants? I challenge the vice president of Tierra
8 and Calpine to live in zip code 94544. If they
9 will do that and they will raise their families
10 here then maybe we have something to talk about.

11 And I also wanted to address the co- --
12 this is my last comment -- the cogenerational
13 power plants. These are much smaller, they have
14 nothing like the footprint of the plants that we
15 are talking about. I think they were ridiculous
16 to bring up. Thank you very much for your time.

17 HEARING OFFICER GEFTER: Thank you for
18 being here tonight.

19 MS. CORNU: Good evening, I am Sharon
20 Cornu, C-O-R-N-U, I am the executive officer of
21 the Alameda Labor Council. Ninety seconds, time
22 it. I represent 130 unions and 100,000 union
23 members in Alameda County.

24 Our members include electricians,
25 teachers, school aides, truck drivers, telecom,

1 health care, warehouse, manufacturing and
2 construction workers, as well as the City of
3 Hayward workers who work right here in this
4 building.

5 Hayward has the highest union density
6 in Alameda County. As a percentage of registered
7 voters, union membership is more concentrated in
8 this city than anywhere else in the county. Our
9 unions work with members to improve wages and
10 working conditions. It's the Labor Council's job
11 to work with our affiliated unions to represent
12 the interests of members on the job and in their
13 neighborhoods, as community residents.

14 That's why we've been involved in
15 trying to rescue Eden Medical Center from the
16 clutches of a profit-hungry corporation that
17 closes services for seniors and denies treatment
18 to indigent patients. That's why we've been
19 involved in affordable housing fights, campaigns
20 to improve K-12 education and our community
21 colleges, and efforts to improve air quality
22 around the Port of Oakland. We believe that our
23 members deserve the best representation on the
24 job, and that they also deserve a voice in
25 community issues that impact our quality of life

1 after work hours as well.

2 From this perspective, we must echo
3 residents' questions about the process for
4 approving two plants in Hayward and none in any
5 other city in Alameda County. Tonight's hearing
6 focuses on the Eastshore plant located near
7 several schools. Our classroom aides and teachers
8 are concerned about the long-term impact of the
9 plant on their health and their students' health.

10 Members of other unions have approached
11 our Council with concerns about the openness and
12 transparency of the approval process, and I find
13 it hard to reassure them that the process is fair
14 and balanced when Hayward is singled out for
15 siting two plants.

16 My questions to the Commission tonight
17 on behalf of our members who live and work in
18 Hayward are: Why does the City of Hayward need to
19 site both plants? Are adequate protections in
20 place for students, school employees and residents
21 near the Eastshore plant in particular? And has
22 the approval process provided adequate opportunity
23 for community input and review? Thank you.

24 MS. TAYLOR: Patricia Taylor. Taylor
25 is T-A-Y-L-O-R, Patricia. I want to talk about

1 power and I am not talking about electricity.

2 When I came here tonight I thought I
3 would review briefly the three things I had had to
4 say last time, which you probably recall. I
5 admonished you that you're Californians, I
6 reminded you that the first element in
7 conservation is reduction of use, and I told you,
8 and perhaps some people are hearing this for the
9 second time, if it is not good enough for my
10 backyard it is not good enough for anybody's
11 backyard.

12 I want to talk about power though
13 because that wasn't on my ticket here. I saw
14 several things. We sat down and we applauded, and
15 don't take this wrong, and you told us not to.
16 Then we applauded and you admonished us. And you
17 are in the position to be able to do that. That
18 was all fine, I understood the process.

19 Then I think it was the third speaker
20 who came up. And I'm speaking to these folks, not
21 to the rest of you because -- I'll address that in
22 just a second, I hope. You were speaking to you,
23 and you were taking a drink and then looking away
24 and then kind of listening in to their
25 conversation. And we have no reason to be here

1 except if you're listening. I'm still talking
2 about power and no, I am not talking about
3 electricity.

4 HEARING OFFICER GEFTER: I just want to
5 mention to you that the TV is right here so when I
6 look down I'm looking right at you.

7 MS. TAYLOR: Okay, Susan. And the
8 thing is, you did a wonderful job later then when
9 intimidation came into the room and I do very much
10 appreciate that. And I know you guys are tired.
11 I know that we are. We're not getting paid and I
12 think you are. I'm not sure about that but I
13 think you are.

14 And I'm not going to go over all the
15 other things about ten out of the million is too
16 many and I am not going to go over all the other
17 stuff. I am going to say that I was taught to err
18 on the side of caution. I'll just say that much,
19 err on the side of caution.

20 Then somebody, I think it was
21 Dr. Greenberg said, we have to let that process
22 work. First off, who is the we? And do we have
23 to let that process work if that process has shown
24 itself to not be -- And I am talking about the way
25 you make energy and the way we decide where the

1 power plants go. Do we have to go along with that
2 process? Wow, a brave soul here just walked up
3 here tonight and broke the process that you had
4 said. And I understand about process, I am not an
5 anarchist. However, who is we?

6 And I am not going to talk about
7 paradise yet because I want to get back to the
8 power. And that is, we have five Energy
9 Commissioners right? I learned that last time.
10 And tonight I think you're the only one here,
11 right, Mr. Byron? Who makes the final decision?
12 Only the five?

13 PRESIDING COMMISSIONER BYRON: That's
14 correct.

15 MS. TAYLOR: Okay. And we have only
16 one of you to speak to. And I know this gets into
17 the record but that's a lot of words for anybody
18 to be reading. So it's like you're so important
19 to us and you're the only one here. And there
20 your assistant is whispering in your ear again.
21 And I love you for supporting him but --

22 The power thing is important because
23 there is intimidation and look who is
24 intimidating. It's not just a white male -- that
25 was spontaneous on my part.

1 (Laughter)

2 MS. TAYLOR: But it was also the one
3 who has the most to lose if you think of money,
4 and the most invested if you are thinking about
5 money. But that's only if you're thinking about
6 money.

7 And the thing I really had -- As I'm
8 standing in line is, my golly, okay, everyone says
9 America is a democracy on the decay because no one
10 is participating. Well how do you anticipate
11 continuing asking us to participate when there is
12 a power, such a sense of disempowerment? And I am
13 not blaming you for being in the position of power
14 but people need to be, not just feel empowered,
15 there needs to be empowerment. Or we will
16 continue as a society not to vote as much, and not
17 as much, and then we'll make really bad decisions.

18 HEARING OFFICER GEFTER: Thank you very
19 much. Thank you, appreciate that.

20 MS. EDWARDS: Good evening. My name is
21 J. Edwards. I learned a lot this evening. I
22 wrote a statement. I am a resident of Hayward, a
23 two-year resident of Hayward. I was glad to hear
24 Commissioner Byron say the decisions have not been
25 made, that was very reassuring to me. I wrote

1 something tonight.

2 And before saying that I would just
3 like to say to any and of all of you, if you have
4 ever held the hand of a friend or a loved one
5 dying of cancer and dealt with that you would
6 understand, I think, why this is so frightening to
7 so many of us. Attorney Carroll, Attorney Holmes,
8 I hope you never have to have that experience.
9 But I am a person who has had that experience and
10 knows firsthand about the devastation of that,
11 having lost loved ones to that.

12 As a two-year resident of Hayward
13 actively dedicated to living the healthiest life
14 possible, I add my voice to the opposition of the
15 thousands who want our already compromised
16 environment as I learned tonight, to remain
17 unpolluted by power plants and the carcinogenic
18 emissions that are a part of their operation
19 typically and historically.

20 I also strenuously object to the danger
21 that will ensue for pilots who fly over my home if
22 their visibility is compromised by any potential
23 operation of the Eastshore and Russell City power
24 plants.

25 Given all the documented information

1 and recommendations against approval of the power
2 plant operations by some of the staff members who
3 assessed the risks, it is unfathomable to me that
4 these projects are still under consideration.

5 However, I understand that there are many
6 mitigating factors. I have sat in on many
7 corporate meetings and I understand how things are
8 weighed, and unfortunately sometimes valuable
9 human resources are not the first consideration.

10 Why despite all the historical,
11 scientific and medical evidence, would there be
12 consideration of a vote to endanger the lives of
13 children, women, men, grandmothers, grandfathers,
14 husbands, wives, and what amounts to for possibly
15 many, a potential environmental death sentence?
16 To the decision-makers, I implore you to consider
17 the cost if it were your loved one who might be at
18 risk of contracting a deadly disease because of
19 this particular decision.

20 Everything we know says this is not a
21 choice of wisdom or of practical consideration if
22 you project the medical costs and environmental
23 pollution costs. Additionally, the risk of planes
24 crashing into residential areas due to visibility
25 makes this a losing proposition for everyone

1 involved. And that is based on certain
2 projections that I have heard about.

3 I pray that you will offer Hayward and
4 our East Bay a chance at life instead of a short-
5 sighted solution that offers no visible personal
6 gain to those who have the most at stake.

7 And if there are undisclosed personal
8 and professional gains motivating the vote in
9 favor of the power plant operations I pray that a
10 crisis of conscience will direct you to vote
11 against the power plants being allowed to operate
12 in Hayward. Thank you.

13 HEARING OFFICER GEFTER: Thank you.

14 If you could keep it short, please.
15 Because I know you have come to just about every
16 one of our hearings so I know you have made your
17 comments before.

18 MR. McCARTHY: Actually not every one,
19 I've missed a couple.

20 HEARING OFFICER GEFTER: Not every one
21 but most of them.

22 MR. McCARTHY: At least a couple.

23 HEARING OFFICER GEFTER: Say your name,
24 please.

25 MR. McCARTHY: The name is -- I use my

1 initials for this, J as in John, V as in Vincent,
2 last name McCarthy, M-C-C-A-R-T-H-Y. I live
3 across the street. I'm sure counsel enjoys that.

4 Before I go on, I really imagine that
5 the construction trades guy is looking forward to
6 perhaps making some money off the construction of
7 this site so he can move a comfortable distance
8 away, say the other side of the foothills. That
9 would be seeming to be very predictable and normal
10 in these circumstances.

11 Since this is addressing the issue of
12 environmental justice I'd like to call a point to
13 attention on that issue having become involved
14 with another process across the Bay, the Hunters
15 Point Shipyard Restoration Advisory Board. I am
16 actually an assistant to the subcommittee, the
17 technical subcommittee chair.

18 One of the things that I noticed
19 relating to the applicant's environmental
20 consultant a few months ago was how they were
21 terminated for poor performance on environmental
22 sampling in the Hunters Point Shipyard. I have
23 some information on that with me tonight relating
24 to that.

25 Before I go any further, was it the

1 applicant's attorney or CH2MHILL that said
2 originally that the City of Hayward had no right
3 to consider an environmental agenda in the land
4 use decision? I remember this point came up early
5 on.

6 CH2MHILL, the applicant's consultant,
7 was terminated for their work at the Hunters Point
8 Shipyard. You can check the record with Lennar,
9 which I also don't recommend -- I don't recommend
10 Lennar. And relating to why they were terminated,
11 I have this juicy little tidbit here.

12 HEARING OFFICER GEFTER: You know what,
13 Mr. McCarthy. It is not particularly --

14 MR. McCARTHY: Okay, okay.

15 HEARING OFFICER GEFTER: For right now
16 could you just sum up what you were going to get
17 to.

18 MR. McCARTHY: I'm going to leave this
19 with the record guy here, okay?

20 HEARING OFFICER GEFTER: Leave it with
21 them and we'll incorporate it into the transcript.

22 MR. McCARTHY: Right, right.

23 HEARING OFFICER GEFTER: And if you
24 could just sum up for us, please.

25 MR. McCARTHY: I think it ought to be

1 -- Right. I think it ought to be brought up. I
2 am going to leave it with the record.

3 HEARING OFFICER GEFTER: Thank you very
4 much.

5 MR. MEDEIROS: Hi, my name is Mitchell
6 Medeiros.

7 HEARING OFFICER GEFTER: And spell your
8 name, please.

9 MR. MEDEIROS: Do you need an address
10 or just --

11 HEARING OFFICER GEFTER: I just need
12 you to spell your name for us, please.

13 MR. MEDEIROS: M-I-T-C-H-E-L-L,
14 Medeiros, M-E-D-E-I-R-O-S.

15 HEARING OFFICER GEFTER: Thank you.

16 MR. MEDEIROS: I'm against the power
17 plant.

18 HEARING OFFICER GEFTER: Yes.

19 MR. MEDEIROS: I'm about 300 yards away
20 from it so all the chemicals are going to come my
21 way. So I could call me the walking dead man,
22 that's what it sounds like.

23 But I was noticing Mr. Byron up there.
24 He's been rubbing his eyes and, you know, he looks
25 pretty tired and pretty exhausted. I guess in an

1 hour he'll be able to go, you know, he can go home
2 and stuff. But what he feels right now is pretty
3 much what pollution does to people all day. He'll
4 be able to leave but I will be stuck with that
5 kind of feeling. So I just wanted to say, please
6 turn it down.

7 HEARING OFFICER GEFTER: Thank you for
8 your patience for being here so late tonight,
9 thank you.

10 MR. WILLIAMS: Hello, my name is Bob
11 Williams and I will be mercifully brief.

12 HEARING OFFICER GEFTER: Thank you.

13 And at the end of Mr. Williams we are
14 going to go on to testimony. Okay, thank you.

15 MR. WILLIAMS: Mitchell lives two doors
16 from me so I am about 300 -- I'm closer to the
17 plant than he is.

18 You know, everyone has heard of the
19 word NIMBY. You know, it's a real estate term, it
20 means not in my backyard. Many of the people that
21 have advocated for the plant, for example the San
22 Leandro Board of Commerce or I forget who they
23 were, they were really gung-ho. But see, they
24 don't live in Hayward. And all of the people that
25 really like this plant don't live in Hayward.

1 Where I live there's jets flying over
2 all the time. There's a corridor of pollution
3 already there. So we're going to add to that.
4 And this accumulation of the synergistic effect,
5 who really knows what that is going to do?

6 And the last time I was here addressing
7 you I was also speaking to the PG&E people. I
8 said, what are you PG&E people bringing to the
9 table to actually mitigate not just the pollution
10 but the impact on our neighborhood in terms of our
11 property values and health and whatnot?

12 For example, if you've really got to
13 have the plants here why don't you contribute to
14 the schools in some way that makes our Hayward
15 more attractive to people to move here. That's
16 going to take some money. But see, PG&E doesn't
17 want to do that. It just wants to use our
18 neighborhood to make money. You know, it's a
19 tough thing to say but it's kind of like Hayward
20 is being raped and we're not even getting a kiss.
21 Thank you very much.

22 HEARING OFFICER GEFTER: Thank you,
23 Mr. Williams.

24 Now I see two more people in line.

25 MS. TOMKUNAS: I have one quick

1 question if I could just say it right now.

2 HEARING OFFICER GEFTER: You need to
3 come to the microphone.

4 MS. TOMKUNAS: It's just one quick
5 question.

6 HEARING OFFICER GEFTER: And state your
7 name, please.

8 MS. TOMKUNAS: Lynn Tomkunas, it's
9 already in the record.

10 My one quick question is, this is so
11 crucially important when we're talking about a
12 matter of power, citizens versus the Board. If
13 there are five people making this decision why is
14 there only one person here to hear us?

15 HEARING OFFICER GEFTER: The process is
16 that the five Commissioners assign two Committee
17 Members to take all the evidence and to hear all
18 these comments and then the two Committee Members
19 write a proposed decision. That is then sent out
20 to the public and reviewed by everybody. You have
21 a comment period. And all the public comments are
22 then, you know, sent to the full Commission and
23 then the five Commissioners review all that.

24 MS. TOMKUNAS: So only two write the
25 recommendation?

1 HEARING OFFICER GEFTER: At this point,
2 right.

3 MS. TOMKUNAS: So we're only talking to
4 one person, basically, Mr. Byron.

5 HEARING OFFICER GEFTER: Commissioner
6 Geesman is not here right now but he has attended
7 the other meetings.

8 PRESIDING COMMISSIONER BYRON: Well if
9 I could help, maybe I could help to answer your
10 question a little bit. There is a substantial
11 workload at the Commission. There's probably over
12 20 siting cases right now before the Commission.
13 So the idea of having all five Commissioners
14 involved just is not workable.

15 We also divide up on all kinds of other
16 committees around renewables, energy efficiency,
17 an electricity committee, natural gas,
18 transportation fuels. So I serve on probably
19 about 11 or 12 different committees as --

20 MS. TOMKUNAS: Well you can see why it
21 seems --

22 PRESIDING COMMISSIONER BYRON: Would
23 you step up to the mic.

24 HEARING OFFICER GEFTER: You have to
25 talk into the microphone.

1 PRESIDING COMMISSIONER BYRON: Please
2 step up to the microphone.

3 MS. TOMKUNAS: I just wanted to say,
4 you can see, though, why it seems a little
5 frustrating to all of us.

6 PRESIDING COMMISSIONER BYRON: Please
7 don't be frustrated. We are building a record of
8 evidence here.

9 MS. TOMKUNAS: Okay.

10 PRESIDING COMMISSIONER BYRON: We have
11 been doing it for nearly a year now. All that
12 information is available to every single
13 Commissioner. Now we try and condense that
14 information down into these short documents like
15 the final analysis report done by the staff --

16 (Laughter)

17 PRESIDING COMMISSIONER BYRON: -- and
18 the Presiding Member's Proposed Decision, which I
19 will draft for my fellow Commissioners. It is a
20 great deal of information. It is the only
21 workable way that we can get all that information
22 down to something that is readable, that they can
23 work with.

24 And they will quiz this as they did
25 when the major license amendment on the Russell

1 City plant came before the Commission last month
2 and there were questions asked about. But most of
3 the questions are already answered through this
4 process and the evidence that we collect.

5 MS. TOMKUNAS: Well thank you for
6 answering my question.

7 PRESIDING COMMISSIONER BYRON: My
8 pleasure.

9 MS. FORD: Ms. Gefter, I understood
10 that you were continuing this tomorrow. Are you
11 continuing tomorrow?

12 HEARING OFFICER GEFTER: There is an
13 evidentiary hearing tomorrow. We will continue.

14 MS. FORD: Well I'll be at that but I
15 was going to give -- During the public comment
16 tonight I was going to read a letter from the
17 Aircraft Owners and Pilots Association.

18 HEARING OFFICER GEFTER: Okay. Well I
19 think if you are going to be here tomorrow you can
20 -- first of all, tell us your name.

21 MS. FORD: I am Carol Ford.

22 HEARING OFFICER GEFTER: Okay,
23 Ms. Ford. And your counsel is here --

24 MS. FORD: Yes.

25 HEARING OFFICER GEFTER: -- and you are

1 going to have a section on aviation tomorrow.

2 MS. FORD: Right.

3 HEARING OFFICER GEFTER: Why don't you
4 do that with her tomorrow.

5 MS. FORD: And I'll be happy to do it
6 tomorrow but I wanted to be sure that I would be
7 allowed to.

8 HEARING OFFICER GEFTER: Yes, because
9 your attorney is here and she is going to be here
10 tomorrow also.

11 Okay, next in line. Now Juanita, you
12 have been here many, many times so if you could --

13 MS. GUTIERREZ: But always short.

14 HEARING OFFICER GEFTER: Okay, very
15 short. Please come on up, tell us your name,
16 spell it, and very short.

17 MS. GUTIERREZ: As always. I am
18 Juanita Gutierrez. I live just a few blocks from
19 the proposed plant.

20 I just want to say the same that I said
21 last time, short and brief. Please do not ignore
22 the opposition of the neighbors as you did when
23 you approved Russell.

24 And you said last time when we
25 mentioned Russell, you repeated the same words

1 that you said today. We have not made a decision
2 yet. We are here to listen to you. So then we
3 scream and say, we don't want Russell because it
4 is going to hurt the shore plants, it's going to
5 hurt everything. And then you ignore us and you
6 approved it.

7 I hope that doesn't happen again. That
8 you don't ignore the opposition of the neighbors.
9 Thank you.

10 HEARING OFFICER GEFTER: And than you
11 very much for coming out again. Thank you.

12 Okay, one more and then we really need
13 to take the testimony on environmental justice.
14 So identify yourself, spell your name.

15 MR. SIMPSON: Thank you. I am Rob
16 Simpson, S-I-M-P-S-O-N, and I am a ratepayer.

17 Some of the things I noticed, the no
18 project alternative ends with:

19 "it is thus difficult to
20 conclude that 'no project' would
21 or would not have serious long-
22 term consequences on the cost or
23 reliability of electricity in the
24 region."

25 I noticed that some of the

1 justification for these plants is that there is a
2 perception of more need for peaker facilities. I
3 think that is based upon the mischaracterization
4 of other peaker facilities. Metcalf now functions
5 as a peaker facility, Sutter functions as a peaker
6 facility, Russell City will function as a peaker
7 facility, yet on your web site they are all shown
8 to be baseload facilities.

9 Most of what I have here I pulled from
10 your web site. It shows that there is -- in one
11 document that there is no locus of responsibility
12 exists to ensure fuel diversity. That there are
13 long-term structural uncertainties.

14 Most of what I have heard here from the
15 public I read similar information in your 2007
16 Integrated Energy Report -- Policy Report.

17 PRESIDING COMMISSIONER BYRON: Excuse
18 me, did I understand you to say you've read our
19 Integrated Energy Policy Report?

20 (Laughter)

21 MR. SIMPSON: Yes.

22 PRESIDING COMMISSIONER BYRON: Thank
23 you very much.

24 MR. SIMPSON: Am I the first?

25 One excerpt:

1 "The cost per unit of
2 greenhouse gas reduction from
3 alternative levels of energy
4 efficiency is relatively
5 constant. Most importantly, the
6 cost is negative, meaning that
7 society is better off with these
8 higher levels than without them
9 even without a carbon cost adder
10 be included. Energy efficiency
11 is less costly than the
12 generating resources it
13 displaces, so not only does it
14 provide a public good in emission
15 reductions, it provides a
16 collective good to the
17 ratepayers."

18 That's me.

19 "Reductions in fossil fuel
20 generation that result from
21 increased penetrations of
22 efficiency and renewables are
23 attributable to the displacement
24 of production from some existing
25 fossil-fueled generation

1 facilities as well as the
2 deferral or elimination of some
3 anticipated fossil facilities."

4 So I think you're spelling out that there is not a
5 need for this type of facility.

6 It goes on to point out that:

7 "Investor-owned utility gas
8 costs are normally passed along
9 to ratepayers; under current
10 regulatory rules unexpectedly
11 high prices do not unduly burden
12 shareholders. The corrosive
13 influence of 'moral hazard where
14 decisions are made by entities
15 that are financially insulated
16 from the consequences of these
17 decisions should be obvious."

18 It goes on that:

19 "The criteria are not
20 universally transparent and
21 require a high degree of
22 subjective interpretation and
23 judgment."

24 That's referring to:

25 "Based on the Energy

1 Commission's review, California's
2 investor-owned utilities use
3 relatively primitive analytic
4 methodologies for assembling
5 their long-term procurement
6 plans. These plans fail to
7 adequately address the interests
8 of utility customers."

9 I'm skipping around a little bit here.

10 "They apply inappropriately
11 high discount rates to future
12 fuel costs, thereby understating
13 the impact upon consumers."

14 HEARING OFFICER GEFTER: Do you have a
15 point here? I mean, can you summarize it so that
16 we don't -- Because we can read --

17 MR. SIMPSON: I've got about two more
18 paragraphs.

19 HEARING OFFICER GEFTER: Yes, we can
20 read the IEPR.

21 PRESIDING COMMISSIONER BYRON: Excuse
22 me, Ms. Gefter, he's reading from the IEPR.

23 (Laughter)

24 HEARING OFFICER GEFTER: I know, I
25 know. And some of us can read the IEPR and some

1 of us can't, okay.

2 MR. SIMPSON: "If reliability-
3 triggered programs are included
4 as well, the utilities are
5 expected to achieve a 5.7 percent
6 reduction in peak demand.

7 "Achieving even a 5 percent
8 peak demand reduction would yield
9 several benefits for California.
10 Three of these benefits can be
11 quantified in a preliminary
12 projection. The first and most
13 significant benefit would be the
14 reduction in necessary peaking
15 generation capacity."

16 So in conclusion, as a ratepayer I
17 think we have demonstrated that we no longer have
18 a taste for fossil fuel burning and we would like
19 to see alternatives much as your Integrated Energy
20 Policy suggests.

21 HEARING OFFICER GEFTER: And thank you
22 very much for reading it.

23 I know, Jesus, you're going to be on
24 tomorrow as a witness. So rather than taking time
25 tonight why don't you save it for tomorrow if you

1 don't know.

2 MR. ARMAS: So long as I'll be provided
3 an opportunity.

4 HEARING OFFICER GEFTER: Absolutely.

5 MR. ARMAS: Because I was going to
6 amplify something that Mr. Simpson made reference
7 to.

8 HEARING OFFICER GEFTER: I understand
9 that. But why don't you do it tomorrow because
10 you are on a witness tomorrow.

11 MR. ARMAS: All right, that's fine.

12 HEARING OFFICER GEFTER: You can have
13 as much time as you wish when you --

14 MR. ARMAS: Mr. Byron, I would also
15 share with you because I noticed how elated you
16 were, that I also have a copy of that report. So
17 it's widely read.

18 PRESIDING COMMISSIONER BYRON: I'm
19 ecstatic.

20 HEARING OFFICER GEFTER: At least two
21 people have read it, yes.

22 We're going to take a five minute
23 break. We want you to get your questions ready.
24 Mr. Pfanner will be available for cross
25 examination on the EJ testimony.

1 (Whereupon, a recess was
2 taken.)

3 HEARING OFFICER GEFTER: Let's get
4 started. Ms. Schulkind had cross examination for
5 Mr. Pfanner on environmental justice. Mr. Pfanner
6 was sworn earlier today and he is still under
7 oath. Everyone has a copy of Exhibit 200, which
8 is the Final Staff Assessment and the section on
9 environmental justice. So Ms. Schulkind, why
10 don't you begin.

11 CROSS EXAMINATION

12 BY MS. SCHULKIND:

13 Q Good evening, Mr. Pfanner. Thank you
14 for, first, for being here so late in the evening.
15 We very much appreciate your making yourself
16 available for this dialogue. My name again is
17 Laura Schulkind. I am representing the Chabot-Las
18 Positas Community College District, an intervenor
19 party in this proceeding.

20 You are the project manager for this
21 project for the CEC; is that correct?

22 A That is correct.

23 Q And are you aware that during the
24 prehearing conference Ms. Holmes, your counsel,
25 represented that you would be the appropriate

1 witness to designate to respond to questions
2 regarding the environmental justice analysis?

3 A That is correct.

4 Q And is that accurate? Are you prepared
5 to respond to questions in that area?

6 A Yes I am.

7 Q Thank you. Am I correct then in
8 assuming that you prepared Section 7 of the Final
9 Staff Assessment, the environmental justice
10 section?

11 A That is correct.

12 Q And I also just want to confirm the
13 other, the portions that you may have prepared.
14 Did you prepare that portion of the executive
15 summary regarding environmental justice at pages
16 1-4 and 1-5?

17 A Yes I did.

18 Q Did you prepare the portion of the
19 introduction relating to environmental justice at
20 page 2-4?

21 A Yes I did.

22 Q There is also a fairly lengthy
23 environmental justice discussion within the
24 socioeconomic section at section 4.8-2. Did you
25 prepare that section?

1 A No, I did not.

2 Q And who prepared that section?

3 A That was Dr. Joseph Diamond.

4 Q Did you supervise Dr. Diamond on that
5 as the project manager?

6 A As project manager I do not supervise
7 him directly, there is a senior, a staff senior
8 that supervises him. I oversee the preparation of
9 the entire document so I do peer review of it, I
10 incorporate his information, but I do not
11 supervise him.

12 Q Are you familiar with that section of
13 the report?

14 A I don't feel comfortable in speaking to
15 details in that section.

16 Q Okay. I will attempt to ask my
17 questions of you. You were represented as the
18 person that could answer the environmental justice
19 section. Perhaps that won't become an issue.

20 A We'll try.

21 Q Thank you. I'd like to start with the
22 executive summary. And if you could please turn
23 to page 1-4. Are you there?

24 A Yes.

25 Q Thank you. In the first sentence I'd

1 like to draw your attention first to a phrase
2 where you reference the EPA Executive Order 12898
3 and there is a statement that states that -- it's
4 in the second sentence.

5 "Though the Federal
6 Executive Order and guidance are
7 not binding on the Energy
8 Commission, staff finds these
9 recommendations helpful --"

10 Do you see that statement there.

11 A Yes I do, yes.

12 Q And I'd like to know, first of all, why
13 do you find that section helpful?

14 A I'd say that that is the policy of the
15 Energy Commission. That my role is to implement
16 the policy of the Energy Commission.

17 Q And what is the policy of the Energy
18 Commission that you're referring to?

19 A The Energy Commission policy regarding
20 environmental justice is primarily a three step
21 process. The first step is demographics, where
22 the project manager when an application for
23 certification comes in works with cartography and
24 the demographics division to identify a one mile
25 and a six mile radius of the project site to

1 determine whether or not there is an identified
2 population of 50 percent or greater people of
3 color or low-income. That is the first thing that
4 is done.

5 This project did identify that there
6 was an environmental justice population and that
7 information is dispersed to the twenty-plus
8 technical disciplines that will be preparing the
9 Preliminary Staff Assessment and the Final Staff
10 Assessment, so that's the first step.

11 The second step is public outreach.
12 The Public Adviser's Office initiates a contact
13 list identifying local elected officials,
14 businesses, environmental groups, community
15 groups, schools, day cares, elder care facilities,
16 hospitals, large employers and such within the
17 project area. And there is a list of over 100
18 contacts that the Public Adviser's Office
19 identified associated with this project.

20 Staff, the siting committee then
21 identifies based on information submitted by the
22 applicant and through our own review, agencies and
23 interested parties that would be contacted
24 regarding a project and there is a list of some 50
25 agencies and parties on our list for that. And we

1 also have lists of property owners within 50 feet
2 -- 500 feet from any linear facilities and 1,000
3 feet from any property. So that's the outreach
4 process.

5 Then whenever there's notification for
6 hearings involving the PSA, workshops, et cetera,
7 we notify the agencies and our notification list
8 and the Public Adviser's Office has their agency
9 notification process that is separate from mine.

10 And then the third step is impact
11 assessment where staff of 11 of the PSA/FSA, 11
12 technical disciplines, and those are air quality,
13 hazardous material, land use, noise, public
14 health, socioeconomics, soil and water, traffic
15 and transportation, transmission line safety and
16 visual and waste management, they conduct their
17 environmental justice analysis to identify if
18 there is an significant impacts identified under
19 CEQA or non-compliance with LORS.

20 If there are no significant
21 environmental impacts or no non-compliance with
22 LORS there is a finding that there is not an
23 environmental justice issue. If there is
24 significant impact then it goes to the next level
25 of analysis, is there a disproportional impact on

1 an environmental justice population.

2 And the Energy Commission then, you
3 know, is working to implement the resource
4 agency's directives and the US EPA environmental
5 justice guidelines that staff is implementing
6 through its environmental review process.

7 Q Thank you for that summary, let me make
8 sure I understood a couple of things in that. So
9 what you just described, the three step process,
10 is that pursuant to your own policies?

11 A When you say, your own, do you mean the
12 Energy Commission?

13 Q Yes.

14 A That is the understanding of my
15 implementation of the Energy Commission EJ.

16 Q Am I correct in understanding that the
17 reason you find the Executive Order 12898 helpful
18 is because it parallels that approach?

19 A Yes, it is the directives that we are
20 to follow.

21 Q So if the Executive Order is something
22 that is not binding but is helpful guidance what
23 is it that you believe to be binding on the Energy
24 Commission in the way that it does its
25 environmental justice analysis?

1 A I think that's a legal question, I
2 couldn't answer that.

3 Q Did you write this sentence that stated
4 that the Executive Order is not binding?

5 MS. HOLMES: If there is a question
6 about the significance or the applicability of
7 various statutes, executive orders, guidance
8 documents that have been published by US EPA or
9 the resources agency I think that that would be a
10 matter that is more appropriate for briefing.

11 MS. SCHULKIND: I agree, Ms. Holmes,
12 and I am not asking Mr. Pfanner for a legal
13 opinion as to what is or is not binding. But he
14 wrote the statement that the Executive Order is
15 not binding so I was curious, since he wrote that,
16 what he thought was binding. Just in terms of
17 your own methodological approach.

18 MR. PFANNER: Well this is the
19 directive that I have been taught through the
20 Energy Commission and I couldn't go any further
21 than that.

22 BY MS. SCHULKIND:

23 Q Okay, the three step process that you
24 described is what you consider binding.

25 A Correct, correct.

1 Q Okay, thank you. Staying then with the
2 three step analysis that you've described here.
3 Here on 1-4 again, the steps that are listed are,
4 one, outreach and involvement; two, a screening-
5 level analysis to determine the existence of a
6 minority or low-income population; and there, if
7 warranted, a detailed examination of the
8 distribution. Is that essentially the process you
9 just described?

10 A Correct.

11 Q Now the way you just described it, I
12 don't know if this matters in your methodological
13 approach or not. I believe you described the
14 screening first and then outreach second in the
15 way you described it. Is there a specific step in
16 which these three steps are supposed to occur or
17 does that not matter in your approach?

18 A The first step is the demographics
19 identifying that there is an environmental justice
20 population. The public outreach is an ongoing
21 process. It is not one day, it's the entire
22 process. That is a critical part of the Public
23 Adviser's Office, of the notification of the
24 process. And then the analysis is the impact
25 analysis, the conclusions reached in the

1 Preliminary and Final Staff Assessment.

2 Q Okay. Leaving the outreach step aside
3 for now because I understand what you're saying,
4 it's an ongoing process. Is step two, what is
5 described as step two here, the screening level
6 analysis, the staff did do that analysis in the
7 Eastshore case, correct?

8 A Correct.

9 Q And it was determined that the
10 community surrounding the proposed site is 50
11 percent minority and low-income in the potentially
12 affected area, correct?

13 A Correct.

14 Q I am interested in the next step where
15 the language says, if warranted a detailed
16 examination of the distribution of impacts or
17 segments of the population is considered. What
18 does that -- what does, if warranted, mean there?

19 A If there is a significant environmental
20 impact identified under CEQA.

21 Q So the possibility of a
22 disproportionate impact on an environmental
23 justice community is conducted only in those areas
24 where staff first found that the project would
25 cause a significant impact; is that correct?

1 A That is correct. The analysis is
2 ensuring that there is an equal analysis of all
3 people in the region, regardless of ethnicity or
4 income. Staff looks at all people as being of
5 concern and that is the environmental impact
6 analysis. If there are no significant
7 environmental impacts there is not a
8 disproportional impact on an environmental justice
9 population.

10 Q So with respect to the Eastshore
11 application you analyzed possible disproportionate
12 impact on the environmental justice community only
13 for those sections of the FSA where staff found
14 that there would be a significant environmental
15 impact, correct?

16 A Correct, land use and traffic and
17 transportation.

18 Q Of the eleven there were two and those
19 were land use and traffic and transportation.

20 A That is correct.

21 Q Turning to Section 7 of the Final Staff
22 Assessment, please. So by way of example, at page
23 7-1 where the air quality section is discussed it
24 is correct then, my understanding is correct that
25 there was no disproportionate impact analysis

1 conducted regarding air quality; is that correct?

2 A The air quality analysis identified
3 that there was not a significant adverse impact
4 and therefore there was not a disproportional
5 analysis conducted.

6 Q And also by way of example turning to
7 page 7-2. No disproportionate impact analysis was
8 done with regard to public health impacts; is that
9 correct?

10 A That is correct for the same reasons,
11 no significant adverse impact under CEQA.

12 Q I think you may have been present
13 earlier today when Dr. Greenberg was good enough
14 to review certain portions of what has been marked
15 as Chabot Intervenor's Exhibit 604, the treatise
16 entitled Ensuring Risk Reduction in Communities
17 with Multiple Stressors Environmental Justice and
18 Cumulative Risk Impacts. Do you recall that
19 colloquy?

20 A Yes I do.

21 Q Is this a document that you are
22 familiar with, Dr. Pfanner?

23 A I am not a doctor.

24 Q Mr. Pfanner, sorry.

25 A Thanks for the promotion, though.

1 Q Mr. Pfanner, I got carried away.

2 A No, I would defer to Dr. Greenberg for
3 any technical analysis regarding public health.

4 Q Well this is actually a treatise
5 specifically on environmental justice, not on
6 public health.

7 A Okay.

8 Q Is it a document that you were aware of
9 before this proceeding?

10 A What is the name of it

11 Q It's a publication entitled Ensuring
12 Risk Reduction in Communities with Multiple
13 Stressors, Environmental Justice and Cumulative
14 Risk Impacts, prepared by the National
15 Environmental Justice Advisory Council.

16 A I am not familiar with that document.

17 Q Okay.

18 HEARING OFFICER GEFTER: Could you
19 identify the exhibit number on that one.

20 MS. SCHULKIND: Yes, I believe I said
21 it was Exhibit 604.

22 HEARING OFFICER GEFTER: Thank you.

23 MS. SCHULKIND: Thank you.

24 Do you by any chance have access to a
25 copy of it? I wanted to just show you a couple of

1 things.

2 And I will anticipate a potential
3 concern. They are not the same sections that I
4 asked Dr. Greenberg to look at. I am doing my
5 best not to duplicate any of the questions that I
6 asked Dr. Greenberg.

7 Are you able to give him a copy,
8 Ms. Holmes?

9 MS. HOLMES: I am. I have a, I have an
10 incipient objection. Number one, he said he is
11 not familiar with the document, and number two, he
12 has already testified as to how he directs the
13 staff to perform their environmental justice
14 analysis. So I am not sure that there is a
15 factual dispute that is the basis of any
16 questions.

17 MS. SCHULKIND: Here's my quandary.
18 One, Mr. Pfanner has been offered as the staff's
19 exhibit -- expert on environmental justice. We
20 were quite pointed in our questioning both at the
21 prehearing conference and after to ensure that we
22 had the expert here we could ask our questions of.

23 I understand that he has provided his
24 testimony. What our right is on cross examination
25 is to probe that and get a further understanding

1 of that. I believe if he is offered as an expert
2 I may put information in front of him and ask his
3 opinion of it and that is what I would like to do.

4 And if Mr. Pfanner is not the witness
5 who can answer the technical questions regarding
6 the environmental justice methodology then it
7 would appear that the incorrect witness was
8 offered and we'll have to ask that Mr. Diamond be
9 produced tomorrow.

10 MS. HOLMES: No, my objection goes more
11 to the point of whether or not there is a factual
12 dispute that is appropriately the subject of cross
13 examination. Is there a factual dispute about
14 which you wish to cross examine Mr. Pfanner?

15 MS. SCHULKIND: I am not sure -- I
16 don't quite understand the premise that cross is
17 limited to a factual dispute. I'm allowed to
18 prove the expertise of the witness, I am allowed
19 his thinking, the basis of his methodology,
20 whether he agrees or disagrees with certain
21 premises that are identified as central to
22 environmental justice analysis and whether they
23 inform his approach.

24 MS. HOLMES: It seems to me that
25 continuing to object is taking up more time than

1 having him answer the question.

2 HEARING OFFICER GEFTER: Right. I
3 would say, have Mr. Pfanner look at the sections
4 that you want you want him to look at.

5 MS. SCHULKIND: They are very brief.

6 HEARING OFFICER GEFTER: And see if he
7 can answer the questions. And if he can't he'll
8 tell you.

9 MS. SCHULKIND: I appreciate that.

10 HEARING OFFICER GEFTER: Ms. Holmes has
11 to find your document.

12 MS. SCHULKIND: I have the excerpted
13 pages readily available if that would facilitate
14 the process.

15 MR. PFANNER: Which sections?

16 BY MS. SCHULKIND:

17 Q Do you have the document in front of
18 you?

19 A I have Exhibit 604.

20 Q Thank you very much. And I just want
21 to look very briefly with you at page 25.

22 A Page 25.

23 Q Thank you. At the top there is a
24 bulleted section called Differential Ability to
25 Recover.

1 A Okay.

2 Q If you wouldn't mind just reading those
3 two paragraphs I'd appreciate it.

4 Also, to save time, I'll let you know I
5 also want to ask about page 24, Differential
6 Preparedness. So if you want to look at those
7 together so they're in context rather than in a
8 fragmented form.

9 Those are the only two areas that I was
10 going to ask about, I believe Maybe one other
11 short one.

12 MS. HOLMES: I would just note for the
13 record that the reference on page 25 addresses, it
14 appears to me, issues that are very similar to
15 those that were addressed under the public health
16 section earlier today.

17 HEARING OFFICER GEFTER: And if
18 Mr. Pfanner can't answer the questions then he can
19 indicate so.

20 MR. PFANNER: Okay, and now your
21 question is?

22 BY MS. SCHULKIND:

23 Q My question is, are you familiar with
24 the term or the concept of differential
25 preparedness?

1 A No, I am not familiar with that term.
2 But my observation of this is this is not the
3 Energy Commission's process for conducting
4 environmental justice.

5 Q That was going to be my next question.

6 A And I can attest to the process that
7 the Energy Commission follows, not what it could,
8 should, might, and that is what I am seeing here.

9 Q I appreciate that.

10 A Okay.

11 Q So in the step three risk assessment or
12 impact assessment process, differential
13 preparedness is not a factor that is taken into
14 consideration; is that correct?

15 A That is correct.

16 Q And I have the same question with
17 regard to differential ability to recover. That
18 the step three impact analysis does not take this
19 into consideration.

20 A That is not the Energy Commission's
21 analysis process for environmental justice.

22 Q Thank you. And then just very briefly.
23 If you could turn the page and look at page 26.
24 This is my last question regarding this document.
25 The paragraph that begins:

1 "As previously stated the
2 concept of vulnerability goes to
3 the heart of the meaning of
4 environmental justice. That is,
5 the idea that disadvantaged,
6 underserved and overburdened
7 communities come to the table
8 with preexisting deficits of both
9 a physical and social nature that
10 will make the effects of
11 environmental pollution more and
12 sometimes unacceptably
13 burdensome."

14 Apart from the analysis that you engage in, as the
15 expert that has been offered today on
16 environmental justice do you agree or disagree
17 with that statement?

18 A This isn't the process that the Energy
19 Commission follows.

20 Q I understand. But as an environmental
21 justice expert do you believe this is a true
22 statement?

23 A I don't feel comfortable in saying what
24 I feel on that.

25 Q I am asking, is it your opinion whether

1 or not this is a correct statement or not.

2 MS. HOLMES: Again this goes to the
3 same, this is the same topic that Dr. Greenberg
4 addressed earlier this afternoon. I wish that we
5 perhaps had not sent the public health witnesses
6 home. But this gets to the question of the public
7 health portion of the environmental justice
8 analysis, which Dr. Greenberg prepared.

9 MS. SCHULKIND: I respectfully
10 disagree. I was very careful in tailoring the
11 testimony so that the --

12 MR. PFANNER: The best I can answer you
13 is I am knowledgeable on the Energy Commission's
14 environmental justice process. I have been
15 project manager on four, major gas-fired power
16 plants and implemented the California Energy
17 Commission's process. I can't speculate on what
18 might be done or could be done or what someone
19 else does. I am knowledgeable and experienced
20 with the process that the Energy Commission uses.

21 BY MS. SCHULKIND:

22 Q Do you consider yourself an expert in
23 the area of environmental justice?

24 A I would say I am knowledgeable and
25 experienced with implementing the California

1 Energy Commission's environmental justice process.

2 Q Okay. And I am not sure whether that
3 is a yes, a no or a maybe to my question so if you
4 wouldn't mind answering.

5 A Define what is an expert.

6 Q Familiar with the body of literature on
7 environmental justice, being familiar with
8 emerging methodologies in the area of
9 environmental justice. Having read other
10 scientists and social scientists that apply
11 principles of environmental justice.

12 A By your definition I would not be an
13 expert in the technical field of environmental
14 justice, I am an expert in the Energy Commission's
15 implementation of the current process.

16 Q Does the staff, to your knowledge, have
17 anybody that you would consider to be an expert in
18 the area of environmental justice?

19 A No. Not by your definition.

20 Q Thank you.

21 A It would rely on the technical input
22 from someone like Dr. Greenberg. Someone that
23 deals with the environmental impacts and therefore
24 would look at what the implications are on a
25 disproportionate community.

1 Q Okay, thank you, I understand your
2 answer. I'm trying to limit my testimony based on
3 what you're saying so I don't tread over ground
4 unnecessarily.

5 I would like to look at the land use
6 section briefly in 7-1.

7 A Okay.

8 Q And you prepared this, correct?

9 A That is correct.

10 Q And unlike in the areas of air quality
11 and public health, significant adverse impacts
12 were found in the area of land use; is that
13 correct?

14 A That is correct.

15 Q And also in the area of traffic and
16 transportation, correct?

17 A That is correct.

18 Q And did this finding affect the way
19 that you did environmental justice analysis for
20 these sections?

21 A Yes in that the staff then looked at
22 the LORS impact and the impact on aircraft
23 maneuverability to determine whether or not there
24 was a disproportional impact. And these
25 categories did not find that there was a

1 disproportional impact to the environmental
2 justice community. Policy regarding airports, the
3 use by pilots coming in, those issues did not
4 warrant a further analysis. They are not
5 environmental justice-specific.

6 Q In the land use section you have, you
7 reflect that, you have a sentence that says:
8 However, the issue of sufficient aircraft
9 maneuverability and land use compatibility affect
10 all people in the region regardless of ethnicity
11 or income level?

12 A Correct.

13 Q And the statement that land use
14 compatibility affects all people in the region
15 regardless of ethnicity or income level. Are you
16 making a statement there that in your opinion is
17 generally true for land use or was it something
18 specific to the land use issues that were being --

19 A Specific to the airport land use
20 issues, not a blanket land use statement.

21 Q Okay, thanks. Am I correct that the
22 land use and traffic and transportation analysis
23 both focused on the specific adverse impacts that
24 were found? And in both instances I believe the
25 adverse impacts were all or almost entirely

1 related to the airport. Is that correct?

2 A That's correct. To LORS and to airport
3 maneuverability.

4 Q So in other words the only significant
5 land use impact that staff identified was in the
6 area of air traffic. So the only land use area
7 where you analyzed possible disproportionate
8 impact was in the area of air traffic.

9 A Correct.

10 Q And then on 7-2 if we could look at the
11 socioeconomic section briefly. You state -- Again
12 you prepared this section, correct?

13 A Correct.

14 Q And you state that because there are no
15 significant socioeconomic impacts there are no,
16 quote, environmental justice issues related to
17 this project. Do you see that language at the
18 very end there?

19 A Yes, correct.

20 Q I just want to make sure because the
21 phrasing is slightly different that your analysis
22 here is paralleling your analysis in the public
23 health section just above. Does this mean the
24 same thing as your statement above regarding
25 public health that, quote: There would not be a

1 disproportionate impact on an environmental
2 justice population?

3 A They are both the same. That there was
4 no significant impact found, therefore there would
5 not be a disproportional impact.

6 Q So it is essentially conveying the same
7 conclusion.

8 A Correct.

9 Q And now I would like to go to the
10 socioeconomic section 4.8, please. Now on 4.8-2
11 there is a description of a demographic screening.
12 Is that the demographic screening that you
13 describe in the executive summary as one of the
14 steps in the environmental justice process?

15 A That is correct.

16 Q Now there is also a statement that
17 socioeconomic impacts include impacts that
18 adversely affect acceptable levels of service for
19 among other things schools and other public
20 facilities. Do you consider Chabot College to be
21 a public facility?

22 MS. HOLMES: I'm sorry, can you
23 reference exactly where you are. I missed your
24 specific reference.

25 MS. SCHULKIND: I'm sorry. I neglected

1 to highlight where I had that on the page and now
2 I am not finding it. Give me one second, please.

3 BY MS. SCHULKIND:

4 Q Let me come back to that so I am not
5 wasting your time.

6 Let me just ask you this without even
7 referencing the section. Do you consider Chabot
8 College to be a -- to provide a public service?

9 A Are you asking me to answer that as the
10 writer of the socioeconomic section, as the
11 project manager, as --

12 Q The project manager.

13 A As project manager, yes.

14 Q Do you consider it a public facility?

15 A Yes.

16 Q Did staff conduct any analysis of the
17 socioeconomic impacts of the proposed Eastshore
18 plant on the Chabot-Las Positas Community College
19 District?

20 A I do not believe that was a specific
21 part of the analysis.

22 Q So the answer is no?

23 A Correct.

24 Q Also on page 4.8-3 -- I'll come back to
25 that, I didn't highlight that. I'm going to pull

1 out another document in a moment so I can do this
2 more quickly.

3 But I want to go back to the executive
4 summary briefly. And in conjunction with going
5 back to the three step process described in the
6 executive summary I also would like you to please
7 take a look at what has been accepted into
8 evidence as Exhibit 710, which is the
9 environmental justice web site that has been
10 discussed earlier. And if you don't have a
11 printed copy of it handy I have one here. Do you
12 have it up there and available?

13 MS. HOLMES: Is that California Energy
14 Commission's Staff Approach to environmental
15 justice?

16 MS. SCHULKIND: Yes, that is correct.

17 MR. PFANNER: Yes, I am familiar with
18 it.

19 BY MS. SCHULKIND:

20 Q I assume you have seen this before, is
21 that correct?

22 A Correct.

23 Q Were you at all involved in preparing
24 it?

25 A I was not.

1 Q Now the web site appears to describe
2 three steps, demographics, public outreach and
3 impact assessment. Is it fair to say that what is
4 described in here is consistent with the three
5 step process that you have described in the
6 executive summary?

7 A Yes.

8 Q And what I would like to do is look in
9 particular at the impact assessment description
10 here. And it indicates sort of five steps that it
11 says staff -- technical areas. I'm sorry.
12 Generally technical staff, then there's a colon
13 and there are those five steps.

14 A Yes, correct.

15 Q Do you see where I am? Okay.

16 Does that accurately describe the
17 Commission's environmental justice process?

18 A Yes it does.

19 Q Is it an accurate description of the
20 process that staff utilized for the Eastshore
21 project?

22 A Yes.

23 Q Okay. Can you please indicate where in
24 the Final Staff Assessment this five step process
25 is reflected.

1 A I'd say it's reflected in each
2 individual analysis that staff preparing the
3 Preliminary Staff Assessment and Final Staff
4 Assessment uses as their guidelines in their
5 analysis.

6 Q Are there any particular pages in the
7 report itself that you can refer to where these
8 steps are transparently analyzed?

9 A I would say in the areas that describe
10 the process such as the executive summary, the
11 introduction and the environmental justice
12 section.

13 Q Okay. Can you please point to anywhere
14 in the FSA where there is a specific analysis of
15 number two, the unique circumstances of the
16 affected population?

17 A Well that is a pretty broad term,
18 unique circumstances. I would have to go through
19 each technical area to try to pull out what the
20 section writer identified as a unique
21 circumstance. I think that is beyond what I can
22 do right now.

23 Q Okay, we'll just do --

24 A I mean that's a pretty broad, broad
25 term.

1 Q Okay, so let's just do one or two. So
2 for the public --

3 A Okay, public health.

4 Q Public health. Could you show me in
5 the FSA where there was an analysis of the unique
6 circumstances of the affected population?

7 A I would say that Dr. Greenberg
8 identified issues that were pertinent to the
9 population throughout his document. Do you want
10 me to --

11 Q If you could point to some that would
12 be helpful to me.

13 A I don't feel this is useful right now.
14 I don't, I don't feel it's useful.

15 MS. HOLMES: If I could, if I could
16 just at this moment, Ms. Gefter. I'm reluctant to
17 interrupt her cross examination but perhaps if I
18 gave a brief response to an earlier question it
19 would be helpful.

20 There are people in the legal office
21 who follow the regulatory guidance and the case
22 law. For example, cases that go to the Office of
23 Civil Rights under Title VI, that follow the
24 regulatory requirements that apply to
25 environmental justice. And we, in turn, provide

1 that information about those types of developments
2 to the siting division and we tell them what is
3 required and what is not required.

4 That is why my objections earlier had
5 to do with the question of whether or not what
6 you're asking is whether or not the staff analysis
7 is legally sufficient. Because the way we do the
8 environmental justice analysis at the staff level,
9 it's the legal office that says, that tells the
10 staff, what do you have to do, how do you do it
11 and assesses whether or not it's sufficient or
12 not.

13 We are familiar, as I said, with the
14 regulatory guidance. Some of us are somewhat
15 familiar with the reports that are prepared by
16 non-regulatory agencies such as Exhibit 604, which
17 is not a regulatory document. But the sufficiency
18 of the analytical approach is something that is
19 determined by the legal office because we regard
20 that as a legal issue, not a factual issue.

21 Does that --

22 MS. SCHULKIND: And I appreciate that.
23 I don't think I have asked once whether or not
24 Mr. Pfanner felt the process that he utilized was
25 legally sufficient. I don't believe I have asked

1 that. And right now I am asking something
2 entirely different, which is that Mr. Pfanner has
3 indicated that this is a process that staff
4 follows because it is his understanding this is
5 what the binding process is.

6 I have reviewed the FSA and it is my
7 position that unless staff can show me otherwise
8 that a step that staff have identified as
9 consistent with their policy has not been taken.
10 So precisely what you have suggested is relevant
11 here today, which is whether or not staff has
12 followed its own internal policies and procedures
13 is what I am probing.

14 And I do not believe that there has
15 been an analysis of the unique circumstances of
16 the affected population. And I am asking -- You
17 have offered Mr. Pfanner as the person who has the
18 expertise on environmental justice so I am asking
19 him whether this step on your own web site was
20 taken. And I don't see it anywhere in the FSA.

21 MR. PFANNER: And I would have to defer
22 to Dr. Greenberg.

23 MS. SCHULKIND: I have difficulty with
24 that as a result. And it is no reflection on you
25 and I very much appreciate your candor on this.

1 But initially I was discouraged from
2 even attempting to cross examine Dr. Greenberg
3 because I was told that my issues are really
4 environmental justice issues, not public health
5 issues. So I was strongly counseled not even to
6 cross him. But I did in a very limited way on the
7 understanding that the witness who would be able
8 to answer the environmental justice questions
9 would be Mr. Pfanner, and now Mr. Pfanner is
10 saying that I should have asked them of
11 Dr. Greenberg.

12 So I believe there has been, I will
13 accept unintentionally, but a bait and switch here
14 that is causing me some difficulty. Because I
15 believe that we are entitled to answers to these
16 questions. If it means that Dr. Greenberg needs
17 to come back tomorrow I am more than happy to put
18 these questions to him. But I am asking whether
19 or not this process has been followed.

20 And it is not at all clear. For
21 example, the area where there is the most detail,
22 Mr. Pfanner, appears in the socioeconomic section
23 as attempting or appearing to track these five
24 steps, it is not in public health. My concern is
25 Dr. Greenberg is going to come in and say, you

1 should ask Dr. Diamond this.

2 So I am happy to ask whichever witness
3 is the appropriate witness but I believe we are
4 entitled to the answer, has anywhere in the
5 environmental justice analysis the unique
6 circumstances of the affected population been
7 analyzed, and if so where?

8 MS. LUCKHARDT: I guess I have an
9 objection. You had quite a few questions of
10 Dr. Greenberg and went on for quite some time and
11 I believe went over this area. So I don't see
12 what is missing here or that an additional
13 analysis or bringing Dr. Greenberg back is needed.

14 MS. SCHULKIND: I am not asking to
15 bring Dr. Greenberg back. I am saying -- This
16 analysis actually appears in the -- or what
17 closely tracks it is the socioeconomics section,
18 which is not Dr. Greenberg either.

19 HEARING OFFICER GEFTER: The witness --

20 MS. SCHULKIND: If the witness, if the
21 proper witness on this is -- the most detailed
22 socioeconomic -- I'm sorry. The most detailed
23 environmental justice analysis in this report is
24 in the socioeconomic section. And when we asked
25 who is the witness on environmental justice we

1 were told that Mr. Pfanner. Perhaps it's
2 Dr. Diamond and Dr. Diamond is the witness that
3 staff should have produced.

4 MS. HOLMES: I think that there's just
5 simply a disagreement. The staff's environmental
6 justice analysis consists of whether or not
7 outreach and consists of identifying whether or
8 not there is a significant, adverse impact under
9 CEQA. And so the steps that the staff takes to
10 conduct that analysis it takes in each and every
11 one of the technical areas.

12 MS. SCHULKIND: But Ms. Holmes, you
13 have offered Mr. Pfanner as the environmental
14 justice expert. All I have asked is, here is your
15 environmental justice web site. There are five
16 environmental justice steps here. And I have now
17 asked, where is step two being taken, and the
18 response is, I am not the witness to answer the
19 question. I am asking an environmental justice
20 question. Not a public health question, not a
21 socioeconomic question. This is on your
22 environmental justice web site.

23 And I want to know where in this 700
24 page report you have anywhere considered -- I
25 don't care if its public health, air quality,

1 socioeconomic impacts. I would like to know where
2 the unique circumstances of the affected
3 population have been taken into consideration
4 pursuant to what has been identified as the
5 binding process for environmental justice. And
6 I'd like the witness who can answer the question.

7 HEARING OFFICER GEFTER: Okay, the
8 problem is that this witness cannot answer that
9 question right now. If you would pose an
10 interrogatory to staff and they could get you an
11 answer rather than having Dr. Diamond come all the
12 way down here for you to ask that question.
13 Because it may not be that he is the witness to
14 answer that question.

15 But Mr. Pfanner is the supervisor over
16 all of the people who wrote the sections of the
17 FSA. If you would like to pose that interrogatory
18 to Mr. Pfanner he could obtain that information
19 for you, yes or no, up and down, what page it
20 might be on or not, and get back to you, rather
21 than us having a parade of witnesses come in.

22 MS. SCHULKIND: I believe I am entitled
23 to live testimony and to observe the demeanor of
24 the witness and cross examine the witness. It is
25 the responsibility of staff counsel to have

1 brought the witness with the proper expertise and
2 she has failed to do so. I would like -- I am not
3 saying Dr. Diamond needs to be here. I'm saying
4 that we need the expert who can explain how this
5 process was implemented.

6 HEARING OFFICER GEFTER: It may be that
7 Mr. Pfanner could get that information, then you
8 can ask him the question once he has that
9 information.

10 MS. HOLMES: I cannot state any more
11 clearly that this analysis process that the staff
12 follows is to do a CEQA analysis in each technical
13 area. And if you have a question about how that
14 analysis was conducted you need to direct those
15 questions to the witnesses for those technical
16 areas.

17 Mr. Pfanner is testifying about the
18 process in terms of did he ensure that a
19 demographics analysis was included in the
20 socioeconomics section, did he coordinate with the
21 Public Adviser's Office in terms of outreach. Did
22 he when the individual CEQA analyses came in from
23 the individual technical areas summarize them and
24 go over them with the staff and put conclusions in
25 the beginning and in the back. That is what the

1 staff's environmental justice analysis is.

2 PRESIDING COMMISSIONER BYRON: Excuse
3 me, Ms. Schulkind. This has gone on long enough,
4 I think. We all grow weary, it's close to ten
5 o'clock. I would like to ask the staff to make
6 sure that we have the witnesses necessary to
7 address her questions, if necessary in person or
8 by phone if that would be acceptable to you,
9 tomorrow.

10 MS. SCHULKIND: I appreciate that as a
11 suggestion and that would be acceptable as well.
12 I think that's a very creative way to approach it.

13 PRESIDING COMMISSIONER BYRON: Is it
14 possible to make that work tomorrow?

15 MS. HOLMES: I don't know. First of
16 all I guess my question would be, is the area of
17 analysis where you would like the staff analytical
18 process established, is it public health, is it
19 something else? Again, it's --

20 MS. SCHULKIND: Here is the question
21 that we are having with and it's simply in the
22 description of the methodology for environmental
23 justice under impact assessment, which Mr. Pfanner
24 did indicate this is a correct reflection of the
25 steps that he expects to be taken. There is a

1 step called, analyze unique circumstances if any
2 of the affected population. I would like to know
3 where in terms of the environmental justice
4 analysis that has been done.

5 MS. HOLMES: Again, you need to
6 identify the technical area because the
7 environmental --

8 MS. SCHULKIND: All of them.

9 MS. HOLMES: Excuse me. You would like
10 a witness in each and every single technical area?

11 MS. SCHULKIND: Only if that is the way
12 it has ben organized. I would like to know if
13 anywhere the unique circumstances of the affected
14 population were taken into consideration. I am
15 surprised that you would find that unreasonable.

16 HEARING OFFICER GEFTER: Because when
17 we identified witnesses you said that you wanted
18 to talk to the environmental justice witness and
19 that is Mr. Pfanner, as Ms. Holmes has explained.

20 Now if you are interested in the
21 socioeconomics area where there is some discussion
22 of EJ then perhaps she can contact Dr. Diamond and
23 have him call in. But we can't parade every
24 witness on every topic in here on that subject.

25 MS. SCHULKIND: I am going to make a

1 brief note for the record and then I appreciate
2 Commissioner Byron's comments and I agree this has
3 gone on long enough. I would make an observation
4 that the difficulty that we are having here is
5 symptomatic of the mystification of this process.
6 And that the whole point of environmental justice
7 is to facilitate the public's understanding of
8 this process. And the difficulty that I am having
9 to get what I think is an answer to a very
10 straightforward question that is right off the web
11 site is symptomatic of a problem that I find very
12 troubling.

13 I would be happy to be able to put my
14 questions to the expert for socioeconomics or the
15 witness for socioeconomics. I believe
16 Dr. Greenberg has sufficiently indicated what his
17 answer would be to this question and I would not
18 ask him to come back. And I will accept that.

19 But I do note for the record that I
20 find it troubling that we are offered a witness
21 who is supposed to be the expert on this process
22 and then we're told, because there is a smattering
23 of environmental justice in all of the areas we
24 really have to bring everybody in if we want to
25 understand if there was a true environmental

1 justice analysis.

2 That to me is problematic and contrary
3 to the principles of environmental justice. But
4 if you would please make Dr. Diamond available I
5 would appreciate that.

6 PRESIDING COMMISSIONER BYRON: Thank
7 you, Ms. Schulkind, you're relentless. Let's stop
8 there, okay, you've said enough.

9 I want to make sure that the staff has
10 one or sufficient witnesses to answer Ms.
11 Schulkind's question. By phone will be
12 acceptable.

13 If you need to work it out afterwards
14 as to what technical areas. I don't want to go
15 through it again here in a round robin situation
16 if at all possible. And let's go ahead and make
17 sure. If it is one person, that's great. But I
18 think this is a relatively simple question to
19 answer. I am almost ready to answer it myself.

20 MS. SCHULKIND: Thank you. And I've --

21 PRESIDING COMMISSIONER BYRON: That's
22 enough. That's enough, we're going to move on.

23 MS. SCHULKIND: But I have a different,
24 very briefly a couple of other questions on a
25 completely different line. I will move on.

1 BY MS. SCHULKIND:

2 Q And that is, I wanted to go back to the
3 step one of the outreach process. Who in the CEC
4 staff oversees the outreach efforts?

5 A The Public Adviser's Office.

6 Q Are you of any, are you aware of any
7 efforts as the project manager to specifically
8 reach out to the Chabot-Las Positas Community
9 College District?

10 A I do know that the site visit and
11 information hearing was held at Chabot College and
12 I did see the list from the Public Adviser's
13 Office that did have Chabot College's name on it.
14 But I didn't prepare that list and I don't know
15 when that list was prepared.

16 Q And to your knowledge was the District
17 identified as an interested local agency? And by
18 that I mean an agency that was asked to provide
19 its input and recommendations in this process.

20 A To my knowledge, not.

21 Q Okay, thank you.

22 HEARING OFFICER GEFTER: Ms. Schulkind,
23 how many more questions? Because it's ten
24 o'clock.

25 MS. SCHULKIND: Two.

1 HEARING OFFICER GEFTER: Okay, we're
2 going to stop after you finish those.

3 MS. SCHULKIND: A hypothetical question
4 for you. If a third plant were proposed for an
5 area within three miles of the Chabot-Las Positas
6 Community College District and you were the
7 project manager would you see that they got notice
8 and an opportunity to provide input as an
9 interested local agency?

10 MR. PFANNER: Yes.

11 MS. SCHULKIND: No further questions.
12 Thank you for your patience.

13 HEARING OFFICER GEFTER: Thank you.
14 We're going to -- We're going to have to stop now,
15 it's ten o'clock.

16 I know that you might have some cross
17 examination tomorrow, Ms. Hargleroad, and we also
18 have several witnesses coming in tomorrow on other
19 topics. So if we can finish up with Mr. Pfanner
20 tomorrow and the staff can contact staff people in
21 Sacramento to call in. But if you can coordinate
22 your questions, Ms. Hargleroad, to be specific and
23 different from the questions asked by
24 Ms. Schulkind then we can move along because it is
25 now late.

1 So we are going to adjourn for this
2 evening and we will reconvene tomorrow morning at
3 ten a.m. Thank you. We're off the record now.

4 (Whereupon, at 10:02 p.m., the
5 Evidentiary Hearing was
6 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 2nd day of January, 2008.

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