

SUPPLEMENTAL 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 )  

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 )

VOLUME I

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

MONDAY, JULY 21, 2008

1:00 P.M.

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

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Jeffrey D. Byron, Presiding Member

Susan Gefter, Hearing Officer

Gabriel Taylor

STAFF, CONTRACTORS AND WITNESSES PRESENT

Brewster Birdsall, PE, QEP, Aspen Environmental  
Group

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

Caryn Holmes, Staff Counsel

Bill Pfanner, Project Manager

PUBLIC ADVISER

Elena Miller

Nicholas O. Bartsch

APPLICANT

June E. Luckhardt, Downey Brand, outside counsel

Greg Trewitt, Tierra Energy

Jennifer Scholl, CH2MHILL

David A. Stein, PE, CH2MHILL

Gregory S. Darwin, Atmospheric Dynamics

INTERVENORS

Paul N. Haavik

City of Hayward

Todd Smith, Pillsbury Winthrop Shaw Pittman,  
outside counsel to the City of Hayward

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

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

Steven Jolly, City of Hayward Fire Department

Alameda County

Andrew J. Massey, Office of County Counsel

Lindsey Stern, Office of County Counsel

Cindy Horvath, Alameda County Community  
Development Agency

Steve Jolly, Hayward Fire Department

Chabot-Las Positas

Laura Schulkind, Liebert Cassidy Whitmore,  
outside counsel to Chabot-Las Positas

Group Petitioners

Jewell Hargleroad, outside counsel to Group  
Petitioners

Jay White, California Pilots Association

Suzanne Barba

Robert Sarvey

ALSO PRESENT

Mayor Michael Sweeney, City of Hayward

Assembly Member Mary Hayashi, California State  
Assembly, 18th District

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

Supervisor Gail Steele, Alameda County Board of  
Supervisors

Council Member Barbara Halliday, Hayward City  
Council

Don Campbell, Northern California Chapter of the  
National Electrical Contractors Association

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

Dr. Sherman Lewis

Laurie Price

David Fouquet

Jesus Armas

Carol Ford, California Pilots Association and  
Skywest Townhouse Homeowners Association

Andrew Wilson III

Michael Toth

Audrey LePell, Citizens Against Pollution

Joanne Gross, Citizens Against Pollution

Croft Jarvis

Catherine Combs

Clarissa Arafiles

ALSO PRESENT

Juanita McDonald

Juanita Gutierrez

Rob Simpson

Jesse Shijie Liu

Wafaa Aborashed, Environmental Air Quality  
Coalition

Stephania Widger

Monica Schultz

Arvin Reddy

J. V. McCarthy

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

1:10 p.m.

PRESIDING MEMBER BYRON: Good

afternoon. My name is Jeff Byron, Commissioner with the Energy Commission and the Presiding Member on the Eastshore Energy Center Application for Certification. And I would like to welcome you to today's hearing. It's a Supplementary Evidentiary Hearing. And Ms. Gefter, our Hearing Officer to my right, has a schedule that's outlined for us in the meeting notice that will take us until about two o'clock, where we will go into the Supplementary Evidentiary Hearing. We will do that first and do the Committee Conference second.

We are going to certainly break at five o'clock for a short dinner break. And I understand that maybe there will be some things to see outside. And then we are going to come back for Public Comment at six.

If I could just make a couple of remarks. I would like to thank the City once again for hosting us here at this beautiful venue. Today's hearing, part of which the purpose is to receive comments from all the parties and the

1 public on the Presiding Member's Proposed Decision  
2 for the Eastshore Energy Center.

3 I would like to begin by apologizing to  
4 everyone that it is has taken us so long to sort  
5 through all this evidence and determine a  
6 recommendation that I will be making to the full  
7 Commission.

8 I would like to also thank those of you  
9 who have been very civil and patient through all  
10 of this process. I think today's hearing should  
11 probably complete that process but we'll see.

12 I would also like to emphasize that we  
13 clearly take this as seriously as the members of  
14 this community do and that's partly why it has  
15 taken as long as it has.

16 I am going to go ahead and turn this  
17 over to our Hearing Officer, Ms. Gefter. But not  
18 until I introduce my advisor, who is actually no  
19 longer my advisor, Gabriel Taylor. But he has  
20 agreed to remain on through the course of this  
21 proceeding in order to assist me. Ms. Gefter.

22 HEARING OFFICER GEFTER: Well let's  
23 start by introductions of the parties. And I am  
24 going to ask staff to go first.

25 MS. HOLMES: My name is Caryn Holmes, I

1 am staff counsel. And with me up here today is  
2 Brewster Birdsall and Dr. Alvin Greenberg, who  
3 will be testifying later this afternoon.

4 HEARING OFFICER GEFTER: And the  
5 applicant?

6 MS. LUCKHARDT: I remembered how to  
7 turn it on. My name is Jane Luckhardt from Downey  
8 Brand, on behalf of Eastshore. To my left is  
9 Gregory Darwin, our air quality witness. And to  
10 Greg's left is Greg Trewitt from Eastshore Energy.

11 HEARING OFFICER GEFTER: Then the  
12 intervenors. Mr. Haavik.

13 MR. HAAVIK: Paul Haavik from the city  
14 of Hayward, Intervenor.

15 HEARING OFFICER GEFTER: And  
16 Mr. Sarvey.

17 MR. SARVEY: Bob Sarvey, Intervenor.

18 HEARING OFFICER GEFTER: And the City  
19 of Hayward.

20 MR. SMITH: Good afternoon.

21 HEARING OFFICER GEFTER: And once you  
22 get it on just leave it on, okay. [Referring to  
23 wireless microphone]

24 MR. SMITH: Good afternoon, Todd Smith  
25 with Pillsbury Winthrop Shaw Pittman on behalf of

1 the City of Hayward.

2 MR. HINDUS: Michael Hindus, Pillsbury  
3 Winthrop Shaw Pittman, also on behalf of the City  
4 of Hayward.

5 HEARING OFFICER GEFTER: Okay. And the  
6 County, Alameda County.

7 MR. MASSEY: Andrew Massey, Office of  
8 County Counsel, on behalf of the County of  
9 Alameda. With me today to my right is Lindsey  
10 Stern, also of our office and author of our  
11 comments today. And behind me is Cindy Horvath  
12 from the Department of Planning.

13 HEARING OFFICER GEFTER: And Group  
14 Petitioners.

15 MS. HARGLEROAD: Group Intervenors.  
16 Jewell Hargleroad here for the California Pilots  
17 Association, San Lorenzo Village Homes Association  
18 and Hayward Area Planning Association. And I also  
19 have Suzanne Barba here. And we expect the  
20 general counsel of the California Pilots  
21 Association any time, Jay White, as well as  
22 Director Carol Ford. And Sherman Lewis of the  
23 Hayward Area Planning Association also plans to  
24 try to make it this afternoon.

25 HEARING OFFICER GEFTER: And tell us

1 your name, please.

2 MS. HARGLEROAD: Oh, I did. Jewell  
3 Hargleroad.

4 HEARING OFFICER GEFTER: Thank you.

5 We delayed opening the hearing today  
6 ten minutes waiting for the representative from  
7 the Chabot-Las Positas College District and that  
8 attorney has not arrived yet. So when she does we  
9 will introduce her for the record.

10 Also is there anyone here from PG&E  
11 today?

12 We are going to ask -- We have a new  
13 Public Adviser for the Energy Commission. We are  
14 going to ask her to come forward. Introduce  
15 yourself to everyone. It's Elena Miller.

16 MS. MILLER: Hi everybody. I am Elena  
17 Miller. I am the new public adviser. I took the  
18 job on July 3 so I have been at it for about two  
19 weeks now. I understand there's a lot of public  
20 involvement in this case and so I am here if  
21 anybody has questions. I think that people are  
22 well informed. I have Nick Bartsch with me.

23 The most important business issues are  
24 we have lots of blue cards for public comment  
25 later today. I understand that is when we are

1 doing that. But also please come and introduce  
2 yourselves to me because I am new. And you are  
3 all new to me and I would welcome the opportunity  
4 to meet you and also to hear from you at our  
5 office. Thank you.

6 HEARING OFFICER GEFTER: Thank you,  
7 Elena. We were going to ask members of the  
8 public. If you can't stay until six o'clock, if  
9 you want to fill out a blue card and put down your  
10 comment we will file those comments in our docket  
11 unit. Otherwise if you are planning to be back at  
12 six o'clock please give a blue card to Elena and  
13 we will call on you at that time.

14 Also we wanted to note that there may  
15 be elected officials here. I know that Mayor  
16 Sweeney was planning to be here at some point  
17 today. And also the Chabot College Chancellor,  
18 Dr. Kinnamon, was also going to be here. We are  
19 expecting them to address us at six o'clock so if  
20 they are not here right now we will see you later.

21 Okay. The format for today's  
22 proceeding is we have three different items on the  
23 agenda. The first thing is the Supplemental  
24 Evidentiary Hearing that we noticed for three  
25 issues. And these are very limited issues and

1 those items include: The first one is Air  
2 Quality, whether the project complies with the new  
3 California NO2 standard that was adopted by the  
4 Air Resources Board in March of 2008.

5 And the second issue is whether the Air  
6 Resources Board's March 2008 Draft Health Risk  
7 Assessment on Diesel Particulate Matter in the  
8 Oakland Area is relevant in characterizing the  
9 ambient air quality for the public health  
10 assessment required in our Eastshore Condition  
11 Public Health-1.

12 And the third issue is the drafting of  
13 a new condition to mitigate the project's  
14 cumulative impact on the Hayward Fire Department  
15 services.

16 So these are very limited issues. We  
17 received testimony on these issues and we are  
18 going to take that testimony now. And the way we  
19 are going to do this is that the record will be  
20 reopened for the limited purpose of taking the  
21 testimony on these issues.

22 With respect to the air quality issues.  
23 Staff and the applicant submitted additional  
24 testimony. Also on public health the staff and  
25 the City of Hayward submitted testimony. I'm

1       sorry, the staff and the applicant submitted  
2       testimony on public health. And then on the fire  
3       protection issue the staff and the City of Hayward  
4       submitted testimony.

5               The oral testimony will be offered by  
6       the parties and taken under oath. Every party has  
7       a right to cross-examine the witnesses and to  
8       rebut evidence of the other parties.

9               We are going to identify the testimony  
10       as follows: To follow along with the way we have  
11       done the exhibits in the past we are just going to  
12       in-line number the exhibits. So the applicant's  
13       supplemental testimony, which is dated July 5,  
14       2008, is Exhibit 58. So when you refer to that  
15       exhibit please note it is 58.

16              The staff's supplemental testimony,  
17       which is dated July 15, 2008, is Exhibit 211.

18              MS. HOLMES: I'm sorry, that was what?

19              HEARING OFFICER GEFTER: Two-eleven.

20       It just follows in line with staff's list of  
21       exhibits.

22              And then the City of Hayward's  
23       Declaration of Steve Jolly related to the fire  
24       protection issue dated July 10, 2008 is Exhibit  
25       419. And that follows in line with the City's

1 exhibits.

2 I would like to get started with the  
3 air quality testimony. We have testimony filed by  
4 the applicant and staff, like I said earlier, and  
5 we will ask the applicant to begin with Mr.  
6 Darwin. And also refer to his testimony as  
7 Exhibit 58. Okay, so I will ask Ms. Luckhardt to  
8 begin.

9 MS. LUCKHARDT: Okay. Applicant's  
10 witness is Gregory Darwin. Would you like to  
11 swear him back in at this point?

12 HEARING OFFICER GEFTER: I think  
13 Mr. Darwin is still under oath from the previous  
14 hearing and the record is now reopened to take  
15 your testimony.

16 MS. LUCKHARDT: Okay.

17 DIRECT EXAMINATION

18 BY MS. LUCKHARDT:

19 Q Mr. Darwin, if you could state your  
20 full name and spell your last name for the record.

21 A Gregory Darwin. The last name is  
22 spelled D-A-R, V as in Victor, I-N.

23 Q And were your qualifications attached  
24 to the testimony submitted earlier in this  
25 proceeding?

1           A     Yes they were.

2           Q     And are you sponsoring today the Air  
3     Quality portion of Exhibit number 58?

4           A     I am.

5           Q     And do you have any corrections to your  
6     testimony at this time?

7           A     No corrections at this time.

8           Q     And insofar as your testimony contains  
9     statement of fact are those facts correct to the  
10    best of your knowledge?

11          A     Yes they are.

12          Q     And insofar as your testimony contains  
13    statement of opinion do they represent your best  
14    professional judgment?

15          A     They do.

16          Q     And do you now adopt the Air Quality  
17    portion of Exhibit 58 as your sworn testimony in  
18    this proceeding?

19          A     I do.

20          Q     And could you please summarize your  
21    testimony.

22          A     Briefly, the project had to demonstrate  
23    compliance with a one-hour NO2 standard. At the  
24    time that the project originally received its air  
25    quality permit the older standard of 470

1 micrograms was in place.

2           Since that time there has been a new  
3 standard that has been adopted. I believe it was  
4 promulgated sometime in March of '08. And with  
5 that the standard went from 470 down to 338.

6           Part of my work was to show if this  
7 project could comply with the new standard. It  
8 does, using the modeling techniques we outlined in  
9 the modeling protocol that was submitted prior to  
10 the evidentiary hearings or when this whole  
11 project began back in 2004.

12           MS. LUCKHARDT: Okay. Mr. Darwin is  
13 available for cross.

14           HEARING OFFICER GEFTER: What I would  
15 like to do is have staff put their testimony on  
16 first and then the parties may cross-examine  
17 either witness subsequent to the staff's  
18 testimony.

19           MS. HOLMES: Thank you. Staff calls  
20 Brewster Birdsall as its Air Quality witness. I  
21 believe that Mr. Birdsall was previously sworn.

22           HEARING OFFICER GEFTER: That's  
23 correct. Mr. Birdsall will testify; he was  
24 previously sworn. We refer to Exhibit 211 for  
25 your testimony.

1 MS. HOLMES: Thank you.

2 DIRECT EXAMINATION

3 BY MS. HOLMES:

4 Q Mr. Birdsall, could you please state  
5 your name for the record.

6 A Hello, I am Brewster Birdsall. The  
7 last name, B-I-R-D-S-A-L-L. And I am a contractor  
8 consulting with the California Energy Commission  
9 on the topic of Air Quality.

10 Q And was a statement of your  
11 qualifications previously included in your  
12 testimony in this proceeding?

13 A Yes it was.

14 Q Did you prepare the Air Quality portion  
15 of what has been identified as Exhibit 211?

16 A Yes.

17 Q Do you have any corrections to that  
18 testimony?

19 A No.

20 Q Are the facts contained in this  
21 testimony true and correct to the best of your  
22 knowledge?

23 A Yes they are.

24 Q And do the opinions contained in this  
25 testimony represent your best professional

1 judgment?

2 A Yes.

3 MS. HOLMES: Mr. Birdsall is available  
4 for cross examination.

5 MR. MASSEY: Madame Hearing Officer, I  
6 need to object to Mr. Birdsall's testimony in  
7 part. Specifically the second paragraph, the  
8 final sentence. I believe that's a legal  
9 conclusion and I don't believe he is qualified to  
10 make that legal conclusion. Specifically, whether  
11 or not the appropriate standards are those that  
12 were in effect at the time the application was  
13 determined to be complete, consistent with BAAQMD  
14 rules. I don't have any objection to the rest of  
15 his testimony but to that sentence.

16 HEARING OFFICER GEFTER: Ms. Holmes.

17 MS. HOLMES: That's the staff position.  
18 If you would like to hear oral argument on it we  
19 could do that as well.

20 MS. HARGLEROAD: Just for the record,  
21 Group Intervenors join in with that objection.

22 HEARING OFFICER GEFTER: Okay. We will  
23 take that under advisement. That sentence could  
24 be deleted from the testimony and staff could take  
25 that position in arguing. Would you agree to

1 delete that particular sentence from the  
2 testimony, Ms. Holmes?

3 MS. HOLMES: I would like the record to  
4 reflect that that statement is supported by a Bay  
5 Area Air Quality Management District rule. I  
6 don't believe that the specific section is cited  
7 in the testimony but I can provide that for the  
8 Committee. But I do think that that ought to be  
9 in the record. I think that's important.

10 HEARING OFFICER GEFTER: Okay. If you  
11 can cite to the section that would be helpful too.

12 MR. SARVEY: Are you entertaining  
13 objections right now? Because I object both, the  
14 testimony of both parties.

15 HEARING OFFICER GEFTER: Both staff and  
16 applicant's?

17 MR. SARVEY: Yes I do.

18 HEARING OFFICER GEFTER: Okay. You  
19 want to tell us why.

20 MR. SARVEY: Well, the Committee asked  
21 them to consult with the Air Resources Board and  
22 come up with a protocol for modeling and neither  
23 party did what the Committee asked. So at this  
24 point I would like to object to both portions of  
25 the testimony.

1 MS. LUCKHARDT: We can respond to that.

2 MS. HOLMES: I would like to respond as  
3 well.

4 HEARING OFFICER GEFTER: I'm sorry,  
5 Ms. Holmes.

6 MS. HOLMES: I said I would like to  
7 have the opportunity to respond to that.

8 HEARING OFFICER GEFTER: Yes, okay. We  
9 will ask -- Go ahead and then I will ask  
10 Ms. Luckhardt to respond.

11 MS. HOLMES: I think our testimony  
12 clearly states that we did consult with the Air  
13 Resources Board, which told us that there was no  
14 protocol available for conducting this modeling at  
15 this point.

16 HEARING OFFICER GEFTER: Okay. And  
17 Ms. Luckhardt?

18 MS. LUCKHARDT: We used modeling  
19 techniques that had previously been approved by  
20 both the Air District and the Energy Commission  
21 staff in conducting our modeling. So we did not  
22 use any new or different modeling techniques that  
23 weren't already approved for use on this project  
24 to conduct the modeling that we did.

25 HEARING OFFICER GEFTER: Along those

1 lines I wanted to ask staff whether you -- in  
2 reviewing the applicant's testimony whether you  
3 had any comment with respect to the modeling  
4 protocol that was used. Because in the staff's  
5 testimony you are saying that there isn't a  
6 modeling protocol yet for the new standard. So  
7 how do you reconcile your position with what the  
8 applicant has done.

9 MS. HOLMES: I think that is an  
10 appropriate question for the Committee to ask the  
11 witness if they would like. Are we moving on to  
12 cross examination?

13 HEARING OFFICER GEFTER: That is my  
14 question.

15 MS. HOLMES: Okay. Mr. Birdsall.

16 (Ms. Schulkind entered the  
17 hearing room.)

18 MR. BIRDSALL: I have reviewed the  
19 applicant's testimony dated July 15. And this is  
20 the analysis from Mr. Darwin that takes the  
21 analysis from the AFC and moves it into the sort  
22 of next-tier or the next step of rigorous  
23 modeling.

24 The protocol that came in the AFC  
25 involved a background concentration for NO2 that

1 was the maximum one-hour background concentration  
2 for three years, the most recent three years of  
3 local, background NO2 data.

4 And the protocol at that time, and this  
5 was the protocol from 2006 before the new standard  
6 was adopted. The protocol was to use that  
7 background concentration throughout the modeling  
8 of the NO2 impacts from the project.

9 Well what's new in the applicant's  
10 analysis is the use of concurrent NO2 background  
11 data. Instead of assuming that the NO2 locally is  
12 at its highest that was observed in 2003 to 2005  
13 the applicant is now using the NO2 local  
14 concentrations that correspond with the modeled  
15 impacts of NO2. So you have a closer fit of  
16 project impacts to include the local and  
17 concurrent ozone as well as local and concurrent  
18 NO2 data from the years of meteorological data.

19 Now that last step of taking the  
20 concurrent NO2 background data is one that we at  
21 staff have not normally needed to go to but it is  
22 not excluded from the applicant's protocol. And  
23 the applicant's protocol was written vaguely  
24 enough so that it could be, it could be used as  
25 the next step in refinement in the modeling.

1                   But like I say, it is not a step that  
2                   we have needed to go to in the past. In the past,  
3                   though, the standard was, as you all know, much  
4                   higher.

5                   So I hope I am answering the question  
6                   but I guess my bottom line is that what the  
7                   applicant has done in this final step of analysis  
8                   has been to try to create a closer fit. Meaning,  
9                   by taking a look at the concurrent NO2 as well as  
10                  ozone that were occurring in real time or in  
11                  actual time in Fremont at the time of the modeled  
12                  impacts.

13                  Our position at staff is that, as  
14                  spelled out in my written testimony, that this  
15                  step isn't necessary because the appropriate  
16                  standard to gauge this project's performance by is  
17                  the one that was in place at the time of filing.

18                  HEARING OFFICER GEFTER: So I think,  
19                  Mr. Birdsall, your testimony covers the two  
20                  motions or the two objections that we have on the  
21                  floor. The first objection from the County where  
22                  they disagree with your statement that the  
23                  standard to use is the one that was in effect at  
24                  the time the AFC was found data adequate. And you  
25                  just said, basically your testimony is consistent

1 with that position.

2 And so is the applicant's according to  
3 -- Is that correct? Applicant, is your testimony  
4 consistent with that position as well? That you  
5 are using the same standard, the same protocol  
6 that you used at the time that the AFC was deemed  
7 data adequate?

8 MS. LUCKHARDT: Yes, we believe that we  
9 are using the protocol that has been approved and  
10 was previously approved. We also don't disagree  
11 with staff's position regarding what standards  
12 should or should not apply. But we went ahead and  
13 did the modeling anyway to be sure that we had  
14 covered all bases.

15 HEARING OFFICER GEFTER: And then  
16 Mr. Sarvey is objecting to both sets of testimony  
17 because he asserts that it is not consistent with  
18 the Order which asked both parties to consult with  
19 the Air Resources Board.

20 And what I understand both the  
21 applicant and staff are saying is that it wasn't  
22 necessary because the staff -- according to staff  
23 in the paragraph it says the Air Board recommended  
24 amending the ambient standards in '07. Then you  
25 went and talked about what the Air Board had said

1 but it doesn't say that you actually consulted  
2 with the Air Board. Is that part of the  
3 testimony?

4 MS. HOLMES: I believe you should look  
5 at the next paragraph.

6 HEARING OFFICER GEFTER: Okay. I knew  
7 there was a paragraph in here. Okay, where it  
8 says, Air Board has recently confirmed that no  
9 formal guidance is available.

10 MS. HOLMES: Right.

11 HEARING OFFICER GEFTER: Okay. So you  
12 did consult with the Air Board and this is what  
13 you determined.

14 MR. BIRDSALL: That's right,  
15 Ms. Gefter. The PMPD upon its release triggered a  
16 conversation that I had with the Air Resources  
17 Board. So I called one of the modelers who is  
18 easily accessible there. I had talked with him  
19 about the NO2 standards, talked with him about the  
20 steps of modeling that the applicant had proposed  
21 in its original protocol. And then also the use  
22 of the concurrent ozone and NO2.

23 And he confirmed for me verbally that  
24 those steps and procedures are essentially the  
25 same as had been available prior to 2006. And

1       they continue to be available and that there is no  
2       new, special protocol to be followed now that the  
3       new standards are released. So I think that we  
4       did answer that question from the PMPD.

5                   HEARING OFFICER GEFTER: And then I  
6       wanted to go back also to the issue of whether  
7       it's the legal position that staff is taking with  
8       respect to using the standard that was in effect  
9       at the time the project was deemed data adequate.  
10      And Ms. Holmes has said that there is a District  
11      rule which is consistent with that position.

12                   MS. HOLMES: Yes, if you look at the  
13      staff comments on the PMPD there is a very brief  
14      discussion of the fact that the standards that  
15      apply to this project are those that are in effect  
16      at the time that the project is deemed complete.  
17      That's Bay Area Air Quality Management District  
18      Rule 2-1-409.

19                   The staff as you know, as a result of  
20      the MOU that the Energy Commission entered into  
21      many years ago with the Air Resources Board relies  
22      on the local district for determination of the  
23      applicability of the various rules that apply to  
24      the project. And in this case the Bay Area has a  
25      rule that says the standard that is in effect is

1 that which is on the books at the time that the  
2 application was deemed complete. That's the basis  
3 for the staff conclusion.

4 HEARING OFFICER GEFTER: And this is at  
5 page three of the staff comments?

6 MS. HOLMES: I believe it's on several  
7 pages. It's on page one as well.

8 HEARING OFFICER GEFTER: Okay.

9 MR. MASSEY: The nature of our  
10 objection is that I don't believe that Mr.  
11 Birdsall is the one who is actually making that  
12 conclusion. I believe that's Ms. Holmes. And she  
13 is speaking through Mr. Birdsall and it is, in  
14 effect, the lawyer who is testifying.

15 I don't have a problem with your  
16 earlier proposal that that sentence is stricken,  
17 Ms. Holmes gets to argue that in her papers. I  
18 can argue it in mine. I don't believe it is an  
19 appropriate conclusion because -- Well, I am going  
20 to make a different legal argument about it. But  
21 if that becomes testimony then that's --

22 HEARING OFFICER GEFTER: I understand  
23 your position, Mr. Massey, and I tend to agree  
24 with you. So at this point we will take the  
25 motion under advisement. And the staff can argue

1 their position and you can argue you position if  
2 we are going to do briefs on this. I don't know  
3 if we are going to actually get to the point of  
4 doing briefs. But right now we are not going to  
5 rule on it but I need to be persuaded that it  
6 needs to be part of the testimony.

7 MS. HOLMES: Then I would like to ask  
8 that the Committee take official notice of that  
9 District rule as well as the -- I think it's the  
10 1979 MOU between ARB, CAPCOA and the California  
11 Energy Commission.

12 HEARING OFFICER GEFTER: And I  
13 understand your argument as well so we will look  
14 at that.

15 MS. HOLMES: Yes, I'm requesting, I'm  
16 requesting a ruling on my motion for judicial  
17 notice.

18 HEARING OFFICER GEFTER: Right. And  
19 what I will do is when we do a revised PMPD we can  
20 indicate the Committee's ruling on that. Unless  
21 we get to a point where -- I really don't think we  
22 need to brief this. I don't think we need to  
23 spend a lot of time briefing this. I think what I  
24 want to do is just rule on it in the PMPD, the  
25 Revised PMPD.

1                   So I will take judicial notice,  
2                   administrative notice of the MOU and of the  
3                   District rule. And also Mr. Massey's concern that  
4                   it is -- rather than testimony it should be a  
5                   legal finding. I don't think that's a real  
6                   problem, whether or not. I can rule on it in the  
7                   Revised PMPD.

8                   MS. HOLMES: Not as long as we have  
9                   administrative notice.

10                  HEARING OFFICER GEFTER: Okay. And  
11                  Mr. Sarvey, with respect to your concern about  
12                  consultation with the Air Board. Do you have  
13                  further comment?

14                  MR. SARVEY: Yes, I had a couple of  
15                  comments. One, as we found out in other  
16                  proceedings, the Bay Area air quality permit is  
17                  not final until it passes through the EPA through  
18                  the PSD process. And this actual item is being  
19                  adjudicated right now with the EAB over Russell  
20                  City project. So I don't think it is too early  
21                  for staff to draw that conclusion.

22                  And I also believe that this modeling  
23                  that is being presented by the applicant, having  
24                  only five days to take a look at it with a CD I  
25                  couldn't open. I'm a little bit concerned about

1       it being in the record so I'd object to it being  
2       in the record on that basis as well.

3               MS. LUCKHARDT: I guess I just have one  
4       response to that. This project is not subject to  
5       PSD review and so it is not going through the same  
6       type of evaluation and review that the Russell  
7       City project is.

8               HEARING OFFICER GEFTER: Thank you.  
9       Mr. Sarvey. What we will do, we are going to take  
10      your motion under advisement as well and we will  
11      also indicate the ruling in the Revised PMPD. I  
12      don't believe we need to brief it.

13              MR. SARVEY: All right, thank you.

14              HEARING OFFICER GEFTER: What we can do  
15      now is we can go to cross examination and you will  
16      have the opportunity to cross examine the  
17      witnesses on their testimony. I would like to  
18      start, however, with --

19              PRESIDING MEMBER BYRON: Ms. Gefter, if  
20      I may interrupt all this objecting.

21              HEARING OFFICER GEFTER: Yes.

22              PRESIDING MEMBER BYRON: We do have  
23      counsel here from Chabot-Las Positas.

24              HEARING OFFICER GEFTER: Do you want to  
25      introduce yourself? We waited to start without

1 your presence and we said we would introduce you  
2 once you got here.

3 MS. SCHULKIND: I apologize, I was held  
4 up in traffic. Laura Schulkind for the District  
5 intervenors, Chabot-Las Positas Community College  
6 District and Chabot Faculty Association.

7 HEARING OFFICER GEFTER: Thank you very  
8 much.

9 MS. SCHULKIND: Thank you very much.

10 HEARING OFFICER GEFTER: And also we  
11 mentioned that Chancellor Kinnamon is going to be  
12 speaking at six o'clock this evening.

13 MS. SCHULKIND: That is my  
14 understanding, yes.

15 HEARING OFFICER GEFTER: Thank you.

16 MS. SCHULKIND: Thank you very much.

17 HEARING OFFICER GEFTER: All right. I  
18 would like to ask the intervenors if they would,  
19 if they have cross examination of the Air Quality  
20 witnesses, both the applicant and staff's  
21 witnesses. So let's start with the City.

22 MR. SMITH: The City of Hayward does  
23 not.

24 HEARING OFFICER GEFTER: The County?

25 MR. MASSEY: The County does not.

1 HEARING OFFICER GEFTER: Okay.

2 MS. HARGLEROAD: Just briefly to  
3 Mr. Birdsall.

4 CROSS EXAMINATION

5 MS. HARGLEROAD: Who is the name, what  
6 is the name of the modeler who you talked to?

7 MR. BIRDSALL: At the Air Resources  
8 Board I called Tony Servin. There is a citation  
9 in my written testimony to his name and division  
10 at the Air Resources Board.

11 MS. HARGLEROAD: Okay.

12 HEARING OFFICER GEFTER: Ms. Schulkind?

13 MS. SCHULKIND: No questions.

14 HEARING OFFICER GEFTER: Mr. Haavik?

15 MR. HAAVIK: I have no cross.

16 HEARING OFFICER GEFTER: Okay.

17 Mr. Sarvey.

18 MR. SARVEY: Just a couple of  
19 questions. Preliminary questions since I haven't  
20 had a real chance to review the applicant's  
21 testimony.

22 CROSS EXAMINATION

23 BY MR. SARVEY:

24 Q Mr. Darwin, you got your background  
25 changed from 143 to 131. Was that different years

1 that you utilized to come up with a different  
2 background or could you explain that for me.

3 A That might be a typo.

4 Q A typo? Okay, thank you.

5 Now your modeled NO2 impact one-hour is  
6 157 micrograms per cubic meter and previously it  
7 was 314. Now it's half of what you modeled  
8 originally. Can you explain? I mean, was there  
9 different -- Did you use different air quality  
10 data? What brought this very large 100 percent  
11 change in this number?

12 A You mean besides dividing by two?

13 (Laughter) What I used to calculate that was the  
14 Ozone Limiting Method, which is incorporated into  
15 the ISCST3 dispersion model. And as outlined in  
16 the protocol we used, ozone limiting, hourly ozone  
17 limiting with hourly background concentrations.  
18 And that produced the 153.

19 Q Thank you.

20 A You're welcome.

21 HEARING OFFICER GEFTER: May we go back  
22 for a minute, Mr. Darwin. You mentioned something  
23 might be a typo. Could you show me where that is  
24 in the testimony.

25 MR. DARVIN: Well the background should

1 be 143.

2 HEARING OFFICER GEFTER: What page?

3 MS. LUCKHARDT: Do you recall,  
4 Mr. Sarvey, where you saw that data? We're trying  
5 to find it.

6 MR. SARVEY: Well, you know, I don't  
7 have page numbers on your testimony otherwise I  
8 could give it to you. I have it right here on my  
9 computer.

10 MS. LUCKHARDT: Actually there are page  
11 numbers on the testimony. I believe you may be  
12 looking at the comments on the PMPD.

13 HEARING OFFICER GEFTER: Later on,  
14 Mr. Sarvey, could you point it out to me on the  
15 comments.

16 MR. SARVEY: Sure, I will.

17 HEARING OFFICER GEFTER: Because the  
18 applicant's comments do not have page numbers, we  
19 noticed that. And it was difficult to look  
20 through the comments. So let's do that later and  
21 please proceed with your cross examination.

22 MR. SARVEY: Those are the only  
23 questions I had at the moment, thank you.

24 HEARING OFFICER GEFTER: You are all  
25 finished? Do you have any questions of staff?

1                   MR. SARVEY: I don't really have any  
2                   questions of staff. It is contradictory to the  
3                   testimony they gave during the hearing but I don't  
4                   want to -- I don't think there's any reason to  
5                   prosecute that at this point so I'll just let it  
6                   go, thank you.

7                   HEARING OFFICER GEFTER: Okay. Well  
8                   one of the things, Mr. Sarvey, is I wanted to be  
9                   sure you had an opportunity to ask all the  
10                  questions you wanted to on this NO2 issue since  
11                  that was the issue that you raised at the original  
12                  hearing. And once we close the record we are  
13                  going to be closed on this topic so I really  
14                  wanted to provide you the time and the opportunity  
15                  to cross examine these witnesses now.

16                  MR. SARVEY: I think at this time I am  
17                  done but I appreciate the opportunity, thank you.

18                  HEARING OFFICER GEFTER: Okay. I'm  
19                  glad you could be here for this discussion.

20                  MR. SARVEY: Thank you.

21                  HEARING OFFICER GEFTER: Okay. Is  
22                  there any redirect of the witnesses?

23                  And Mr. Sarvey, while the parties are  
24                  getting ready for their redirect could you find  
25                  that notation and let me know where there is a

1           typo in the applicant's comments.

2                       MS. LUCKHARDT: I think we might take a  
3           minute here just to clarify this issue. Is have  
4           Mr. Darwin, now that he has the table sitting in  
5           front of him on the comments on the PMPD so that  
6           we can clarify Mr. Sarvey's concerns. So if we  
7           could take a minute we'd appreciate that.

8                       HEARING OFFICER GEFTER: Okay, let's go  
9           off the record for a minute.

10                      (Whereupon a short  
11           discussion was held off the  
12           record.)

13                      HEARING OFFICER GEFTER: We are back on  
14           the record now.

15                      MS. LUCKHARDT: Okay, we are looking at  
16           applicant's comments on the PMPD. It is listed as  
17           Air Quality Table 16 page 138. And that's where  
18           the background concentration of 131 appears for  
19           the NO2 concentration. So I would ask Mr. Darwin  
20           to explain why 131 is used there instead of a  
21           background of 143.

22                      MR. DARVIN: The 131 represents the  
23           concurrent, monitored background concentration  
24           based on the time span that the model predicted  
25           the max impact. So we typically take the max

1 modeled and then the concurrent background at that  
2 exact same time and add the two up for the total  
3 of 288. So the max background that was recorded  
4 over the last two years was 143 but the background  
5 at the exact time that the model predicted 157 was  
6 that 131.67.

7 HEARING OFFICER GEFTER: Thank you.  
8 Anything else, Ms. Luckhardt?

9 REDIRECT EXAMINATION  
10 BY MS. LUCKHARDT:

11 Q I guess the only other thing I would  
12 like to clarify. Mr. Darwin, is it correct to say  
13 that your comment that you were simply dividing by  
14 two was meant in jest?

15 A Meant in jest, yes.

16 MS. LUCKHARDT: Thank you.

17 HEARING OFFICER GEFTER: Ms. Holmes, do  
18 you have any redirect?

19 MS. HOLMES: No additional questions.

20 HEARING OFFICER GEFTER: Okay.  
21 Mr. Sarvey, did you have anything further on  
22 Mr. Darwin's or Mr. Birdsall's testimony? Any  
23 recross?

24 MR. SARVEY: No, I just restate my  
25 objection to its admission. Other than that I

1 have nothing else.

2 HEARING OFFICER GEFTER: All right. So  
3 at this point hearing no requests for any further  
4 testimony on the NO2 issue in Air Quality the  
5 topic of air quality is now closed.

6 And we will move on to the Public  
7 Health issue, which was identified in the notice  
8 of today's hearing. And that is with respect to  
9 the new Air Resources Board draft health risk  
10 assessment on diesel particulates in the Oakland  
11 area. And we will ask the applicant to begin with  
12 your testimony on that topic.

13 MS. LUCKHARDT: Okay, we are just  
14 changing witnesses here.

15 HEARING OFFICER GEFTER: Yes, that's  
16 fine. And again refer to your Exhibit 58, thank  
17 you.

18 MS. LUCKHARDT: Okay. We are recalling  
19 David Stein who was previously sworn and  
20 previously testified in this proceeding.

21 HEARING OFFICER GEFTER: And the record  
22 is now reopened for Public Health on this topic.

23 MS. LUCKHARDT: Okay.

24 DIRECT EXAMINATION

25 BY MS. LUCKHARDT:

1           Q     Mr. Stein, can you please state your  
2 full name and spell your last name for the record.

3           A     David Stein, S-T-E-I-N.

4           Q     And was a statement of your  
5 qualifications attached to your previous  
6 testimony?

7           A     Yes.

8           Q     And are you sponsoring the Public  
9 Health section of Applicant's Exhibit 58 today?

10          A     Yes.

11          Q     And do you have any corrections to your  
12 testimony?

13          A     No, I do not.

14          Q     And insofar as your testimony contains  
15 statements of fact are those facts correct to the  
16 best of your knowledge?

17          A     Yes.

18          Q     And insofar as your testimony contains  
19 statements of opinion do they represent your best  
20 professional judgment?

21          A     Yes they do.

22          Q     And do you now adopt the public health  
23 portion of Exhibit 58 as your sworn testimony?

24          A     Yes.

25          Q     And could you please summarize your

1 testimony.

2 A I would be happy to. I had an  
3 opportunity to review the March 19, California Air  
4 Resources draft report titled Diesel Particulate  
5 Matter Health Risk Assessment for the West Oakland  
6 Community. That is a draft report that has not  
7 yet been finalized.

8 That report is intended to evaluate the  
9 impacts from diesel particulate emissions on the  
10 West Oakland community associated with Port Union  
11 Pacific Railroad sources and so it is very much  
12 focused -- and the local freeways. So it was very  
13 focused specifically on diesel particulate matter.  
14 Other air pollutants were not considered in this  
15 study. There was no ambient air quality data that  
16 was collected as part that effort.

17 The Eastshore project would not emit  
18 diesel particulate matter. It is a natural gas  
19 burning facility that is being proposed by Tierra  
20 Energy. So other than a very small, emergency,  
21 diesel electric generator there is no source of  
22 diesel particulate matter from the proposed  
23 Eastshore facility.

24 The staff and Committee proposed Public  
25 Health-1 actually comes from the BAAQMD's

1 Determination of Compliance and as a condition  
2 that requires the applicant, the project owner, to  
3 validate the emission factors that were used in  
4 the original health risk assessment that was  
5 performed for the project.

6 There is really nothing in the ARB  
7 study that would inform the revalidation of that  
8 risk assessment once actual source test data are  
9 collected from the operational facility.

10 MS. LUCKHARDT: Thank you. Mr. Stein  
11 is available for cross.

12 HEARING OFFICER GEFTER: I am going to  
13 ask staff to present the testimony on staff's  
14 behalf first and then we will allow the parties to  
15 cross examine the witnesses.

16 MS. HOLMES: The staff's Public Health  
17 witness is Dr. Alvin Greenberg. He sponsored  
18 testimony earlier in this proceeding and I  
19 understand remains under oath.

20 HEARING OFFICER GEFTER: Yes, he was  
21 sworn previously in this proceeding. And the  
22 testimony is in Exhibit 211?

23 MS. HOLMES: Yes it is.

24 HEARING OFFICER GEFTER: Thank you.

25 DIRECT EXAMINATION

1 BY MS. HOLMES:

2 Q Dr. Greenberg, was a statement of your  
3 qualifications filed with the testimony that was  
4 submitted earlier in this proceeding?

5 A Yes it was.

6 Q And did you prepare the Public Health  
7 portion of Exhibit 211?

8 A Yes I did.

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

11 A No I don't.

12 Q Are the facts contained in your  
13 testimony true and correct?

14 A Yes they are.

15 Q And do the opinions contained in your  
16 testimony reflect your best professional judgment?

17 A Yes they do.

18 MS. HOLMES: Thank you. Dr. Greenberg  
19 is available for cross examination.

20 HEARING OFFICER GEFTER: I am going to  
21 ask the City if you have any cross examination of  
22 the witnesses?

23 MR. SMITH: The City does not.

24 HEARING OFFICER GEFTER: Thank you.

25 Alameda County.

1 CROSS EXAMINATION

2 BY MR. MASSEY:

3 Q Just a couple of questions.

4 Dr. Greenberg, I wanted to direct you to the last  
5 sentence of the first paragraph. I have a problem  
6 with the last sentence of the first paragraph of  
7 everything, don't I? Of your testimony beginning  
8 with: "It does not specifically address." And to  
9 that first phrase: "It does not specifically  
10 address the impact of those emissions on distant  
11 communities such as those in the City of Hayward."

12 You use the word specifically to modify  
13 address. Does the report generally address the  
14 impact of emissions, or address it in any way?

15 A Yes it does. The report does generally  
16 address the impacts of emissions from the port,  
17 from the railyard and from trucks all the way up  
18 to a ten in a million isopleth, which takes in  
19 roughly a third of the entire Bay Area.

20 Q Is it fair to say then that this report  
21 that you discuss in your testimony does bear some  
22 relevance to the City of Hayward?

23 A Well some relevance includes a lot of  
24 things.

25 Q Sure.

1           A     But it doesn't bear any relevance, in  
2 my professional opinion, to the project at hand.

3           Q     Does it bear any relevance to  
4 discussions of the existing health burdens on  
5 people in the City of Hayward?

6           A     Not any more than the -- Let me  
7 explain. This report does identify some sources  
8 that contribute to the overall cancer risk  
9 experienced due to background concentrations of  
10 diesel particulate matter in the Bay Area.

11                     Now I am sure you understand that no  
12 ambient air monitoring was conducted and so this  
13 is strictly based on dispersion modeling and  
14 estimates of emission inventories. And the report  
15 does indeed talk about the uncertainties that are  
16 involved in this report.

17                     The report was prepared in order to  
18 investigate the impacts on West Oakland. So that  
19 is particularly relevant for West Oakland. As far  
20 as outlying communities, it is contributing to the  
21 overall background concentration of diesel  
22 particulate matter in the air and therefore the  
23 overall risk or hazard as a result of that. So  
24 that is the relevance to a community in Hayward,  
25 Oakland, San Francisco, even Marin County.

1           Q     What in the West Oakland study is new  
2           that was not known before?  What is the main  
3           thrust of that report?

4           A     I think the magnitude of the impacts on  
5           the West Oakland community from the three emission  
6           sources identified in the report was probably new.  
7           I think it did come as a surprise to some people,  
8           the magnitude of that.

9                     Certainly it didn't come as a surprise  
10           to the professionals that I have talked with that  
11           there was some impact from those three sources.  
12           That was the premise behind conducting the study.  
13           But the magnitude of it might have been a  
14           surprise.

15           Q     Could you speculate, and I don't know  
16           that you can, if such a similar study was done in  
17           Hayward would we find similar results in terms of  
18           the order of magnitude?

19                     MS. HOLMES:  I am going to object to  
20           that question on the grounds that it calls for  
21           speculation.

22                     HEARING OFFICER GEFTER:  Mr. Massey.

23                     MR. MASSEY:  Fair enough.

24                     HEARING OFFICER GEFTER:  Okay.  Are you  
25           withdrawing the question?

1                   MR. MASSEY: I'll withdraw it, that's  
2 fine.

3                   HEARING OFFICER GEFTER: Okay.

4                   MR. MASSEY: Given what we have learned  
5 from the West Oakland study do you believe there  
6 would be value in conducting a similar study of  
7 the City of Hayward to the kind of analysis you  
8 performed in the Public Health section for  
9 Eastshore?

10                  MS. HOLMES: I would like to just ask a  
11 question of clarification. Is the question, would  
12 a study of diesel particulate emission impacts be  
13 useful in evaluating the impact of emissions from  
14 a gas-fired power plant? Is that the question?

15                  MR. MASSEY: I think the question is a  
16 little more broad than that. It was:

17 BY MR. MASSEY:

18                  Q     When you are evaluating the public  
19 health impacts, doing the analysis you performed  
20 for Eastshore. Would performing the kind of study  
21 that was done in West Oakland, performing that  
22 kind of study in the City of Hayward, assuming  
23 that was done. Would that have been of any value  
24 to you in performing the analysis on Eastshore?

25                  A     No, it would not. I am speaking

1 strictly to answer your question of a value for  
2 assessing the impacts of this particular power  
3 plant project.

4 Q And why is that your answer?

5 A As I have stated earlier, a report like  
6 this addresses the ambient or existing background  
7 cancer risk, and perhaps non-cancer hazard as  
8 well, from all other sources, in particular  
9 transportation sources.

10 When we are conducting a CEQA analysis  
11 here for a particular power plant we are looking  
12 at the increment of that power plant. We  
13 understand that the background is above a level of  
14 significance. It does not take a study to know  
15 that. The Bay Area Air Quality Management  
16 District has sufficient data. All urban areas in  
17 the United States are above a level of  
18 significance.

19 So if you are looking to say that  
20 somehow no project is viable as a result of the  
21 background being above a level of significance, we  
22 ought to shut down every industry, none of us  
23 should drive a car, because all of that  
24 contributes to a risk above the level of  
25 background. So that's not what we do.

1                   But what we do do is look at the  
2                   increment. And in this case if you look at the  
3                   increment the risk from this natural gas-fired  
4                   power plant is less than one percent of what this  
5                   study and the Bay Area Air District says is the  
6                   risk just from diesel particulates as an average  
7                   risk within the Bay Area. So we are really  
8                   looking at just the increment of this particular  
9                   power plant.

10                   Now I did do a cumulative impact  
11                   analysis considering the Russell City power plant.  
12                   But keep in mind also that every cumulative impact  
13                   analysis that I have done shows that unless you  
14                   have your sources literally a block from each  
15                   other or right next door to each other the plumes  
16                   don't merge to the extent that they would make an  
17                   insignificant risk a significant risk. So we are  
18                   looking at different things here.

19                   Q     When you just spoke of the cumulative  
20                   analysis you did with Russell City. You looked at  
21                   the cumulative increment and that cumulative  
22                   analysis did not take into account the background?

23                   A     No, I just explained it does not take  
24                   into account the background.

25                   MR. MASSEY: Thank you.

1 CROSS EXAMINATION

2 BY MS. HARGLEROAD:

3 Q Hi, Dr. Greenberg.

4 A Hi.

5 Q I just have a couple of questions  
6 concerning the study. Can you tell us where the  
7 outside boundary was on the study?

8 A I can only look at the isopleth map and  
9 the outside of the ten excess cancers and a  
10 million people exposed is depicted on several  
11 diagrams. A cumulative one from all three sources  
12 as well as individual isopleth maps from each of  
13 the three individual emission inventory sources.

14 Q And so that ten boundary line, so to  
15 speak, was south of the Hayward-San Mateo Bridge,  
16 I gather? Or south of the Dunbarton Bridge?

17 A South of the Dunbarton Bridge.

18 Q South of the Dunbarton Bridge. And it  
19 was also north, as far north as Vallejo.

20 A Yes, and as far north as Novato in  
21 Marin County.

22 Q Okay.

23 A And as far west maybe as the Farallons.

24 Q And as far as the Hayward area, you  
25 state that it is 15 miles. However, I believe

1       there's always Google Earth, as we, so to speak,  
2       that may show a closer approximation of this plant  
3       and the West Oakland port area.

4               MS. HOLMES:  Is that a question?

5               DR. GREENBERG:  Is that question.

6       BY MS. HARGLEROAD:

7               Q       You state in your testimony that it is  
8       15 miles.  So I am trying to understand from where  
9       you are measuring.  Because our Google Earth does  
10      not agree with that.

11              A       You know, I don't --

12              Q       Where did you measure from to get 15  
13      miles?

14              A       I don't recall whether I just went and  
15      looked at the map and used the ruler and the  
16      scale.

17              Q       Okay.  So if it was closer, such as ten  
18      miles, there would be a ten mile differential  
19      between the port, let's say, and the Eastshore  
20      project.  There would be a more significant level  
21      of impact, is that correct, the closer one becomes  
22      to the port or the concentration?

23              MS. HOLMES:  I am going to ask for a  
24      question clarification.  Are you asking whether --  
25      I think you need to ask the question by providing

1 a specific distance. In other words you need to  
2 say, if it were not 15 miles. If it were 12 miles  
3 would there be a difference or if there was one  
4 mile.

5 MS. HARGLEROAD: Ten miles, ten miles  
6 was the question.

7 DR. GREENBERG: Yes, the concentrations  
8 do drop off at distance. So if you are closer or  
9 if you are farther this study, which was based  
10 strictly on air dispersion modeling, would show a  
11 higher or lower risk.

12 MS. HARGLEROAD: Okay. So if you are a  
13 community such as San Lorenzo, which is located  
14 between those two areas, you would be, so to  
15 speak, smack in the middle between those two  
16 sources; is that correct?

17 HEARING OFFICER GEFTER: Ms.  
18 Hargleroad, I think your line of questioning is  
19 going off point. The question we had here was  
20 whether or not this draft risk assessment applies  
21 at all to the Eastshore project. So all your  
22 hypotheticals are really not helping the record.

23 MS. HARGLEROAD: Well, I was just --

24 HEARING OFFICER GEFTER: If you could  
25 ask a specific question about the testimony that

1 Dr. Greenberg provided that would be more helpful.

2 MS. HARGLEROAD: I was simply trying to  
3 address Dr. Greenberg's testimony because his  
4 testimony was that it made no difference and we  
5 were talking about the -- He was earlier  
6 testifying about the intensity of the  
7 concentration and that certainly seemed to be  
8 relevant as far as location. His testimony is  
9 stating that there is a 15 mile distance and that  
10 this is a distant community. And in fact our  
11 position is that this is not a distant community.

12 HEARING OFFICER GEFTER: Okay, thank  
13 you.

14 MS. HARGLEROAD: Thank you.

15 HEARING OFFICER GEFTER: Ms. Schulkind,  
16 do you have any cross examination?

17 MS. SCHULKIND: Nothing from me.

18 HEARING OFFICER GEFTER: Okay.

19 Mr. Haavik?

20 MR. HAAVIK: Nothing.

21 HEARING OFFICER GEFTER: And

22 Mr. Sarvey?

23 MR. SARVEY: Nothing on this issue,  
24 thank you.

25 HEARING OFFICER GEFTER: All right. A

1 question I have for Dr. Greenberg is whether at  
2 the time that you did the risk assessment for the  
3 Eastshore project and you used the ambient air  
4 quality data from the Air District, has that data  
5 changed at all in terms of the information you  
6 looked at for the draft health risk assessment for  
7 the Port of Oakland study?

8 DR. GREENBERG: Hearing Officer Gefter,  
9 at the time that I wrote the Preliminary and Final  
10 Staff Assessment and conducted my own health risk  
11 assessment I did not use any ambient air quality  
12 data at all.

13 HEARING OFFICER GEFTER: Okay. And  
14 would you be using that if the applicant under  
15 Public Health-1, which is the condition that you  
16 drafted as part of your original testimony, they  
17 need to do a health risk assessment after the  
18 project is up and running. Would the applicant  
19 then be required to use an ambient air quality  
20 background in conducting that risk assessment  
21 under the condition?

22 DR. GREENBERG: No.

23 HEARING OFFICER GEFTER: Okay, that  
24 gets down to the nub of the issue.

25 Okay, does applicant have any redirect

1 of your witness or any cross of staff's witness?

2 MS. LUCKHARDT: No, we do not.

3 HEARING OFFICER GEFTER: Staff, do you  
4 have any redirect?

5 MS. HOLMES: I have one question.

6 REDIRECT EXAMINATION

7 BY MS. HOLMES:

8 Q Dr. Greenberg, after reading the study  
9 did you conclude that -- the draft study. Did you  
10 conclude that the information in the study would  
11 change your testimony about the overall background  
12 risk?

13 A No it would not.

14 MS. HOLMES: Thank you.

15 HEARING OFFICER GEFTER: Is there any  
16 more recross. Do you have a recross question?

17 MS. HARGLEROAD: Just very briefly, one  
18 question.

19 HEARING OFFICER GEFTER: Okay, you have  
20 to recross on the question that Ms. Holmes just  
21 asked her witness.

22 MS. HARGLEROAD: I was actually going  
23 to ask Dr. Greenberg about if he had an  
24 opportunity to observe or to read the CARB staff  
25 report dated May 22.

1                   HEARING OFFICER GEFTER: That's a  
2                   totally different issue and that's not part of  
3                   this topic right now.

4                   MS. HARGLEROAD: I understand that but  
5                   it was related to diesel.

6                   HEARING OFFICER GEFTER: Okay, we'll  
7                   get to that later.

8                   MS. HARGLEROAD: Thank you.

9                   HEARING OFFICER GEFTER: Okay, thank  
10                  you. If there is no more testimony on this  
11                  particular topic we are going to close the record  
12                  on Public Health. Thank you Dr. Greenberg. Thank  
13                  you, Mr. Stein.

14                  And then the next issue that we are  
15                  going to reopen the record on is the fire  
16                  protection question. And we asked the applicant  
17                  and the city and the staff to work together to  
18                  come up with a condition on mitigating the  
19                  cumulative impacts to the fire department services  
20                  as a result of the Eastshore project. We received  
21                  testimony from the city and I would like to start  
22                  with the city's testimony on that.

23                  MR. SMITH: Thank you, Hearing Officer.  
24                  I would like to call Steve Jolly at this time.  
25                  And I do not believe Mr. Jolly has been sworn.

1                   HEARING OFFICER GEFTER:  And Mr. Jolly  
2                   needs to be sworn.  He had not appeared before us  
3                   before.

4                   Whereupon,

5   STEVEN JOLLY

6                   Was duly sworn.

7                   HEARING OFFICER GEFTER:  And Mr. Jolly,  
8                   you need to hold the microphone to your face and  
9                   identify yourself and your position with the city.

10                   MR. JOLLY:  My name is Steve Jolly.  I  
11                   am the administrative analyst of the Hayward Fire  
12                   Department.

13                   HEARING OFFICER GEFTER:  Thank you.

14   DIRECT EXAMINATION

15                   BY MR. SMITH:

16                   Q     Thank you, Mr. Jolly.  Is your  
17                   declaration dated July 10, 2008 included as  
18                   Exhibit 419?

19                   A     Yes it is.

20                   MR. MASSEY:  And that is Exhibit 419 in  
21                   this proceeding.  Thank you.

22                   BY MR. SMITH:

23                   Q     Do you have any corrections to your  
24                   testimony as set forth in Exhibit 419 at this  
25                   time?

1           A     I do have one small correction.  Since  
2           preparing the declaration I have learned that the  
3           City did previously in October submit some cost  
4           information.

5                     HEARING OFFICER GEFTER:  I couldn't  
6           hear you, I'm sorry.  Would you say that again.

7                     MR. JOLLY:  If you look at paragraph  
8           six of my declaration there is a comment in there  
9           that there is a lack of available information.  
10          Since preparing this declaration I have learned  
11          that we did, in fact, provide information to our  
12          planning department and the planning department  
13          did, in fact, submit that information.

14          BY MR. SMITH:

15                 Q     Does that correction change the  
16                 conclusion in Exhibit 419?

17                 A     No it does not.

18                 Q     Is the testimony contained in Exhibit  
19                 419 true and correct to the best of your  
20                 knowledge?

21                 A     Yes it is.

22                 Q     Do you adopt Exhibit 419 as your  
23                 testimony today?

24                 A     With the one clarification previously  
25                 offered.

1                   MR. SMITH: That is the end of my  
2                   direct.

3                   HEARING OFFICER GEFTER: Thank you. I  
4                   am going to ask the Applicant to -- Staff, you  
5                   provided testimony on this or not?

6                   MS. HOLMES: Yes we did.

7                   HEARING OFFICER GEFTER: Well let me  
8                   ask staff first because they provided the  
9                   testimony. Okay, thank you. And that would be  
10                  again Exhibit 211. And that is Dr. Greenberg  
11                  again, correct?

12                  MS. HOLMES: That's correct.

13                  HEARING OFFICER GEFTER: Go ahead.

14                  MS. HOLMES: I think I will skip the  
15                  preliminaries this time.

16                                 DIRECT EXAMINATION

17                  BY MS. HOLMES:

18                   Q     Dr. Greenberg, did you prepare the  
19                   testimony on worker safety and fire protection in  
20                   Exhibit 211?

21                   A     Yes I did.

22                   Q     Do you have any corrections to your  
23                   testimony?

24                   A     No I don't

25                   Q     And are the facts in the testimony true

1 and correct?

2 A Yes they are.

3 Q And do the opinions in the testimony  
4 represent your best professional judgment?

5 A Yes they do.

6 MS. HOLMES: Thank you.

7 HEARING OFFICER GEFTER: Thank you,  
8 Dr. Greenberg. That's the only testimony that we  
9 had on this topic but the applicant in your  
10 comments on the PMPD had a position that you would  
11 like to express.

12 MS. LUCKHARDT: Right. We just  
13 included in our comments on the PMPD a revised  
14 Worker Safety-7 condition to include that the  
15 applicant would pay half of the cost of the  
16 Opticom system, which has been confirmed to be  
17 150,000 here. We have no quarrel with the amount  
18 and included that in our comments. They are in  
19 the comments at Worker Safety and Fire Protection,  
20 page 211 in our comments.

21 HEARING OFFICER GEFTER: Does anyone  
22 have any cross examination of Mr. Jolly?

23 MR. SARVEY: Yes, I do.

24 HEARING OFFICER GEFTER: Yes? Okay,  
25 Mr. Sarvey.

1 CROSS EXAMINATION

2 BY MR. SARVEY:

3 Q Mr. Jolly, do you agree with the  
4 \$850,000 estimate for the Opticom system for these  
5 two projects?

6 A I'm sorry, I am not familiar with that.  
7 The estimate I provided here was \$149,350.

8 Q And if this project was to be built,  
9 say five years from now, do you think that  
10 estimate would be a little bit higher?

11 A Yes I do.

12 Q And do you believe there should be an  
13 escalation clause attached to this to cover that  
14 just in case five years from now they build this  
15 project and you don't have enough money to  
16 establish that Opticom system?

17 MR. SMITH: I would object to that  
18 question as speculative.

19 HEARING OFFICER GEFTER: Mr. Sarvey?

20 MR. SARVEY: It's their money. If they  
21 want to object let them object.

22 HEARING OFFICER GEFTER: Apparently  
23 Mr. Sarvey is just trying to help the City make  
24 sure that they can afford the Opticom system. If  
25 the City is willing to accept half of the 149,000

1           then we could write the condition that way. What  
2           would you say, Mr. Jolly?

3                     MR. JOLLY: Yes, that would be fine.

4                     HEARING OFFICER GEFTER: So apparently,  
5           Mr. Sarvey, the City is not interested in an  
6           escalator clause in the condition.

7                     MR. SARVEY: That's fine with me.

8                     HEARING OFFICER GEFTER: All right.

9                     MR. SARVEY: Thank you.

10                    HEARING OFFICER GEFTER: And does the  
11           City then accept the applicant's offer that is in  
12           the draft for fire protection, is it seven, Worker  
13           Safety Fire Protection-7?

14                    MS. LUCKHARDT: Worker Safety-7, yes.

15                    HEARING OFFICER GEFTER: Worker  
16           Safety-7.

17                    MR. SMITH: We think it is ultimately  
18           the Commission's decision as to what is a fair  
19           share. But the 50 percent allocation does seem  
20           like a fair share allocation.

21                    HEARING OFFICER GEFTER: Thank you. So  
22           the City is in agreement with the staff and  
23           applicant on that position.

24                    And the draft, does staff have any  
25           changes or objections to the draft that the

1 applicant has put forth?

2 MS. HOLMES: Could we go off the record  
3 for one minute?

4 HEARING OFFICER GEFTER: Yes, off the  
5 record.

6 (Whereupon a pause was taken  
7 off the record.)

8 HEARING OFFICER GEFTER: Ms. Holmes.

9 MS. HOLMES: Staff would recommend that  
10 the condition be adopted with the modification as  
11 follows. In the verification it should read: At  
12 least 30 days prior to the commencement of  
13 commissioning the project owner shall provide CPM  
14 with evidence of payment, et cetera. In other  
15 words, we think it is more appropriate to have it  
16 prior to commissioning than to commercial  
17 operation.

18 HEARING OFFICER GEFTER: Applicant, do  
19 you agree with that?

20 MS. LUCKHARDT: That's fine.

21 HEARING OFFICER GEFTER: Okay great.

22 So the applicant's proposed Worker Safety-7  
23 condition, which is found in the applicant's  
24 comments on the PMPD under Worker Safety and Fire  
25 Protection, page 211, is acceptable to the

1 parties.

2 And where it says, the project owner  
3 shall provide half of the cost up to 75,000. Is  
4 that acceptable to the City?

5 MR. SMITH: It is.

6 HEARING OFFICER GEFTER: Okay. All  
7 right, thank you. I think we are going to close  
8 right now on fire protection. Worker Safety/Fire  
9 protection is closed on that topic.

10 I also want to talk about the exhibits  
11 that were provided for this particular evidentiary  
12 hearing. I know there is an objection.  
13 Mr. Sarvey objected to the submission of the air  
14 quality testimony, both applicant and staff's, and  
15 we are taking that under advisement. We will  
16 address it in the Revised PMPD.

17 At this point I am going to accept all  
18 of the Exhibits, the written testimony of the  
19 parties, Exhibit 58, Exhibit 211 and Exhibit 419.

20 MR. MASSEY: The County also had an  
21 objection.

22 HEARING OFFICER GEFTER: I'm sorry, and  
23 the County's objection. Thank you for reminding  
24 me. With respect to the language in the staff's  
25 air quality testimony about the standard that was

1 in existence at the time that the project was  
2 found data adequate would still be in effect at  
3 this point in time before it is certified. And I  
4 understand your concern was that it was a legal  
5 argument in the middle of the testimony. And we  
6 will also address that in the Revised PMPD.

7 But in the meantime we are going to  
8 accept all of the testimony. I can strike it as  
9 part of the ruling in the Revised PMPD if we  
10 decide to do that.

11 MS. HOLMES: Hearing Officer Gefter, I  
12 believe staff agreed to withdraw that one sentence  
13 in his testimony if administrative notice of the  
14 ARB, CEC, CAPCOA MOU as well as the district rule  
15 was granted.

16 HEARING OFFICER GEFTER: I didn't  
17 realize you were actually withdrawing the language  
18 because I said I would take administrative notice  
19 of those --

20 MS. HOLMES: Once administrative notice  
21 was granted, yes.

22 HEARING OFFICER GEFTER: Okay, you will  
23 withdraw. So Mr. Massey, they are withdrawing  
24 that language from the testimony. And then we  
25 will address the administrative notice of the MOU

1 and of the district rule in the Revised PMPD.

2 MR. MASSEY: It's just been brought to  
3 my attention that that same statement is made  
4 again in the final sentence of the testimony so it  
5 should be --

6 MS. STERN: You'll find it in two  
7 places.

8 MS. HOLMES: That's fine.

9 MR. MASSEY: Strike it there as well?  
10 Okay, thank you.

11 HEARING OFFICER GEFTER: Okay, we'll do  
12 that.

13 MR. MASSEY: Thank you.

14 HEARING OFFICER GEFTER: Thank you very  
15 much. Thanks for the clarification.

16 The Supplemental Evidentiary Hearing is  
17 now closed. The record is now closed. The  
18 testimony will be discussed in the Revised PMPD  
19 and our rulings will also be discussed in the  
20 Revised PMPD.

21 We are going to now move on to the  
22 comment discussion. The parties filed comments on  
23 the PMPD. I want to go through those comments  
24 with everyone. It will be more like a workshop.  
25 We are not going to be taking testimony during

1       this period of time.

2                       So what I would like to do is actually  
3       take a recess for five minutes. Let everyone take  
4       a break and then we'll come back and discuss the  
5       comments. Off the record.

6                       (Whereupon a recess was  
7       taken off the record.)

8                                       --oOo--

1 COMMITTEE WORKSHOP

2 HEARING OFFICER GEFTER: While we were  
3 in recess the parties indicated that they are  
4 ready to go forward to discuss the applicant's  
5 motion to reopen the record to conduct another  
6 fly-over test so we are going to focus on that  
7 right now, that issue.

8 The applicant filed a motion to reopen  
9 the record to conduct another fly-over test. And  
10 I would like the applicant to explain that to us  
11 at this point. Then I will ask the parties to  
12 present oral argument on your positions regarding  
13 this proposal. And then we will also give people  
14 an opportunity, the parties an opportunity to file  
15 written argument, written briefs on that by July  
16 28. And we will discuss that time line as well.

17 So we will start with the applicant.

18 MS. LUCKHARDT: Okay. Frankly we were  
19 quite shocked and surprised to find the short  
20 shrift, frankly, one paragraph given to the  
21 overflight that we conducted. The overflight  
22 presents the only actual evidence of potential  
23 impacts to aircraft from internal combustion  
24 engines. And we are talking about internal  
25 combustion engines for this project, we are not

1 talking about gas turbines.

2 We believe that this overflight and the  
3 overflight evidence that we presented initially is  
4 the only information that gives actual, factual  
5 data on the potential impacts to an aircraft going  
6 over an internal combustion engine project. This  
7 is factual data, not modeling. Not guesswork but  
8 actual information.

9 We understand that the Committee  
10 pointed out concerns they had about the modeling,  
11 the overflight that was done initially by  
12 Eastshore since it was done in the winter and  
13 there were other conditions that the Committee  
14 found were lacking in the initial overflight.

15 We believe that it is necessary for  
16 this Committee to have real information about what  
17 the real impacts might be to an aircraft  
18 overflying an internal combustion engine.

19 We stand behind the analysis that was  
20 done at Berrick during the winter. We believe  
21 that that clearly shows that there is not an  
22 impact and will not be an impact to aircraft  
23 overflying an internal combustion engine facility  
24 like is proposed at Eastshore. Nonetheless the  
25 applicant is willing to conduct a second test

1 during the summer to address the questions and  
2 concerns expressed by the Committee regarding the  
3 initial overflight.

4 We believe that this is necessary for  
5 this Committee to truly understand the potential  
6 impacts or lack thereof to aircraft flying over  
7 internal combustion engine projects. Therefore we  
8 feel it is extremely important that this Committee  
9 consider this information.

10 There has been a lot of speculation and  
11 attempts at modeling the impacts from projects  
12 such as these. And we believe that that is  
13 actually inadequate and that you need actual  
14 information to make a good, clear decision on this  
15 project. Thank you.

16 HEARING OFFICER GEFTER: Staff, would  
17 you like to respond to the applicant's motion to  
18 reopen the record?

19 MS. HOLMES: Thank you. Staff opposes  
20 the applicant's motion to reopen the record in  
21 order to perform additional overflight tests. In  
22 the first place, even if the applicant's revised  
23 tests were to alleviate some of the concerns about  
24 the hazards created by the project's thermal  
25 plumes, we note that the PMPD would still need to

1 consider whether or not an override is  
2 appropriate.

3 The PMPD included a finding that the  
4 project is not consistent with the City's general  
5 plan policies for reasons that are unrelated to  
6 the issue of aviation safety. Therefore, a  
7 conclusion based on new evidence that the  
8 project's thermal plumes do not create an  
9 unacceptable hazard or risk doesn't obviate the  
10 need for an override determination.

11 Second and more importantly, the  
12 applicant's proposed test cannot, in fact,  
13 alleviate legitimate concerns about the project's  
14 impacts on aviation safety. Both the PMPD and the  
15 staff testimony based its conclusions on modeling  
16 and the recommendations of three agencies, the  
17 FAA, Caltrans and the Alameda County Airport Land  
18 Use Commission. Unless the test is conducted in  
19 such a manner as to address the concerns of those  
20 agencies the results should not and cannot affect  
21 the conclusions of the PMPD.

22 Staff agrees that empirical data could  
23 ultimately be very valuable in refining the  
24 analysis of thermal plume effects. But to be  
25 useful that data needs to be collected as part of

1 a protocol whose design is carefully considered  
2 and coordinated in conjunction with federal and  
3 state agencies responsible for aviation safety.  
4 The data also needs to be reviewed by those  
5 agencies and those agencies need to be provided  
6 with an opportunity to reach independent  
7 conclusions about what the data show.

8 If the test would be conducted in this  
9 manner its results could, in theory, affect the  
10 conclusions that could be reached for this  
11 project. However, the applicant doesn't propose  
12 to conduct a test that meets these criteria.  
13 Therefore, staff does not believe that the  
14 applicant's test will make any difference in the  
15 Commission's conclusions. We recommend that the  
16 Committee deny the applicant's motion.

17 HEARING OFFICER GEFTER: Thank you,  
18 Ms. Holmes.

19 Does the City have any response to the  
20 motion to reopen?

21 MR. SMITH: Yes, thank you, Hearing  
22 Officer. We first would like to concur with the  
23 staff's argument, we agree on all points.

24 There are two reasons we believe that  
25 the motion should be denied. First of all, as

1 staff said, there are independent grounds to  
2 uphold the decision and to conclude that an  
3 override in this case is inappropriate.

4 The PMPD concludes that even if the  
5 EEC's thermal plumes are unlikely to pose a hazard  
6 to aircraft the mere presence of the power plant  
7 creates a safety hazard related to increasing the  
8 complexity of the air space around the Hayward  
9 Executive Airport.

10 In its October 9, 2007 letter the FAA  
11 concluded that siting the RCEC and EEC in such  
12 close proximity within the confines of a Category  
13 B Visual Flight Rules Airport Traffic Pattern  
14 would make the proposed see-and-avoid mitigation  
15 measure impractical. Quoting:

16 "The pilots would be  
17 required to divert their  
18 attention from the traffic  
19 pattern and safe operation of the  
20 aircraft to acquire visual siting  
21 of both facilities on the ground,  
22 then maneuver the aircraft  
23 around. The mitigation will be  
24 unreasonable and in some cases  
25 unattainable."

1 That's from Exhibit number 204 of this proceeding.

2 Caltrans concurred with that  
3 conclusion, stating in its November 1, 2007 letter  
4 that the location of the EEC would, quote:

5 "Only further restrict a  
6 pilot's ability to maneuver an  
7 aircraft while flying to and from  
8 the airport. Aircraft pilots  
9 should not be subject to avoid  
10 flying in areas while configuring  
11 an aircraft for landing at or  
12 departing the airport."

13 And that's a quote from Exhibit number 203 of this  
14 proceeding.

15 This conclusion wouldn't necessarily be  
16 altered by a new study because air traffic should  
17 still be in compliance with the FAA recommendation  
18 not to fly over vertical plumes of at least 1,000  
19 feet -- without at least 1,000 feet clearance.

20 And as staff noted, that's not achievable at the  
21 Hayward Airport and it would not support an  
22 override decision in this case because of the  
23 separate, cumulative impact identified.

24 The second reason we think the motion  
25 should be denied, the City of Hayward thinks the

1 motion should be denied, is that the Presiding  
2 Member has discretion to weigh evidence in favor  
3 of denial, even if the flaws of the Berrick fly-  
4 over are corrected here.

5 Even if the new fly-over test shows all  
6 of the things the applicant claims it will in its  
7 motion, such a result does not dictate that the  
8 decision be different here. The Committee has  
9 discretion to weigh the evidence.

10 Here you have the staff's modeling,  
11 which has been endorsed by the FAA and Caltrans,  
12 which are the only agencies here with aviation  
13 expertise, as well as the City of Hayward, the  
14 County of Alameda and the Airport Land Use  
15 Commission.

16 It is within the Committee's discretion  
17 to weigh that evidence against any tests submitted  
18 by the applicant, including a new test, and erring  
19 on the side of public safety, accept the staff's  
20 conclusions that the modeling is the appropriate  
21 way here to determine whether there is a public  
22 health and safety impact.

23 With that we would request that the  
24 Commission deny the motion to reopen the  
25 evidentiary record.

1                   HEARING OFFICER GEFTER: Thank you.  
2 Alameda County, do you have a response to the  
3 motion to reopen?

4                   MR. MASSEY: Yes we do. Again,  
5 concurring with the staff's comments as well as  
6 the comments from the City of Hayward. I'll try  
7 not to be too repetitive.

8                   There are basically three reasons why  
9 this motion should be denied. First, it is  
10 untimely and there is no accompanying showing of  
11 good cause.

12                   Second, the proposed evidence is  
13 neither new nor material.

14                   And third, the proposed overflight test  
15 contains the exact, same flaws as the Berrick  
16 test.

17                   As to untimeliness and the no showing  
18 of good cause. If you recall, back in the  
19 December 20, 2007 Notice of the Continued  
20 Evidentiary Dates this Committee set a December 7  
21 cutoff for the submission of written testimony and  
22 indicated that no additional testimony would be  
23 accepted unless ordered by the Committee, absent a  
24 showing of good cause.

25                   Now I will admit that good cause was

1 not defined in that order. But I believe  
2 elsewhere in the Energy Commission's regulations,  
3 in particular Section 1754(b). There is a  
4 definition of good cause as to whether the  
5 proposed evidence is new or material to the  
6 decision.

7 If you recall, back on January 11, 2008  
8 the County complied with that rule when we  
9 submitted the December draft of the Airport Land  
10 Use Commission Plan for the Hayward Airport. We  
11 demonstrated that that evidence was both new and  
12 material because it had just been released and the  
13 new restrictions on power plants in that plan made  
14 it material to the ultimate decision.

15 You will notice that the Eastshore  
16 motion makes no mention of good cause.

17 Eastshore has the burden of proof. The  
18 fact that this proposed decision did not go their  
19 way, and they did not meet their burden of proof,  
20 is not a basis for reopening this record so they  
21 can submit more evidence to try to meet their  
22 burden of proof.

23 Moreover, this material, it's not new.  
24 They have flown a helicopter over the Berrick  
25 plant. Now they want to fly additional fixed wing

1 craft. Potentially over Berrick, potentially over  
2 this power plant in Colorado.

3 They could have done this back in  
4 November when they did the initial test. Maybe  
5 they would not have had this problem if they had  
6 included Energy Commission staff, any of the  
7 intervenors, the FAA, the Airport Land Use  
8 Commission or Caltrans as part of that test.  
9 Maybe some of the flaws in that test could have  
10 been pointed out. But they chose to go it alone.  
11 It is their burden of proof and they have to live  
12 with the consequences.

13 Second of all, this is not material to  
14 the decision. I won't go into great depth on  
15 this. I think staff and the City of Hayward  
16 addressed that.

17 But I think the two big points are that  
18 I believe that the applicant is trying to conflate  
19 the two separate findings related to aviation.  
20 The first was that thermal plumes themselves pose  
21 a threat to aviation. The second was that the  
22 power plant would constrict the Hayward airspace.  
23 There's no way that an additional overflight test  
24 can alleviate the problems with the constriction  
25 to the airspace.

1                   In particular because the FAA indicated  
2                   during the evidentiary hearing that they were not  
3                   going to alter the airspace, no matter what  
4                   anybody else wanted to do. And indeed in their  
5                   motion the applicant concedes that it is not legal  
6                   to fly planes below 500 feet over the power plant.  
7                   And yet the record clearly reflects that planes  
8                   can and do fly below 500 feet over the proposed  
9                   site for the Eastshore plant.

10                   Finally, the proposed fly-over at  
11                   either Berrick or this Colorado plant have many of  
12                   the same problems that made this Committee unable  
13                   to accept the Berrick overflight test as a basis  
14                   for approving the proposed project.

15                   First, there is the problem of  
16                   different geography and different altitude and the  
17                   Colorado plant seems to make this problem worse.  
18                   Ultimately what the applicant is trying to do is  
19                   they are trying to overcome the fact that the  
20                   modeling that was accepted by the Committee as  
21                   being more accurate doesn't -- seems to indicate  
22                   that the thermal plumes pose a threat.

23                   So they want to do practical testing as  
24                   a way of overcoming the problems with that  
25                   modeling. But to do that they really need to have

1 an identical plant. Because when you start going  
2 out to different plants that exist at different  
3 altitudes with different air densities and  
4 different conditions you start to have to  
5 extrapolate out and you start to have to adjust  
6 the numbers that you are getting from these  
7 overflight tests as to what would be present at  
8 Eastshore.

9           And when you start doing that it  
10 becomes theoretical. It is no longer practical.  
11 So then it comes again back to the theoretical  
12 modeling, which is a better way for us to consider  
13 all of the possibilities of impacts from the  
14 thermal plumes, as opposed to a few overflights at  
15 plants that are not necessarily the same stack  
16 configurations or other conditions on the ground.  
17 In fact, we know that they are not.

18           And I would also like to point out, and  
19 I am not sure this was intentional or not, but  
20 there are two mentions in the motion of -- for  
21 instance in the first sentence, that Eastshore  
22 wants to submit supplemental evidence, including  
23 an additional fly-over test. And we weren't sure  
24 that that meant that they were going to be  
25 submitting an additional fly-over test and other

1 kinds of information or multiple fly-over tests.

2 If this motion is ultimately granted,  
3 and we strongly urge the Committee not to do so,  
4 we would ask that the Order specifically restrict  
5 what they are able to submit and not look at this  
6 as an open-ended opportunity to submit all sorts  
7 of evidence. So with that I'd conclude and  
8 strongly urge this Committee to deny this motion.  
9 Thank you.

10 HEARING OFFICER GEFTER: Thank you,  
11 Mr. Massey. Ms. Hargleroad, Group Petitioners.

12 MS. HARGLEROAD: Thank you. Yes, we  
13 completely concur with the earlier observations  
14 and arguments, including staff's, opposing this.  
15 And we certainly agree that this isolated,  
16 practical incident proposed by the applicant does  
17 not address the violation of state and federal  
18 law, which we have briefed already.

19 Additionally we would like to object to  
20 the proposal as vague and ambiguous because it  
21 fails to identify what fixed wing aircraft the  
22 applicant is proposing to use, since we know  
23 there's all different kinds of fixed wing  
24 aircraft. And there's a lot of different types of  
25 aircraft that are parked at the Hayward Airport.

1       Additionally there's a lot of different types of  
2       aircraft that fly and utilize the Hayward Airport,  
3       as exemplified by the evidence establishing  
4       there's something like 147,000 flights a year into  
5       the Hayward Airport.

6                       And we certainly also agree that it is  
7       not material to this decision or the standards  
8       that the Committee has to apply in order to come  
9       to a decision.  And in that regard I understand we  
10      will have the opportunity to submit briefs.

11                      And I do have some of the law, I think.  
12      Although we understand there's more federal law  
13      concerning prohibitions on flying over power  
14      plants, which below 500 feet, as far as submitting  
15      a declaration or anything else.  Because we do  
16      have experts that we'd like to be able to address  
17      if, in fact, the applicant submits those  
18      declarations.  But I haven't seen any declarations  
19      from the applicant, even in support of this  
20      motion.  So in that regard, really, there is no  
21      foundation for it either.

22                      We are reserving our right to present  
23      any evidence.  But we don't have any evidence  
24      before us so that makes it somewhat difficult to  
25      respond.

1                   HEARING OFFICER GEFTER: Thank you,  
2                   Ms. Hargleroad.

3                   MS. HARGLEROAD: Thank you.

4                   HEARING OFFICER GEFTER: Ms. Schulkind  
5                   for the Chabot College District.

6                   MS. SCHULKIND: Thank you, just  
7                   briefly. I support the arguments of both the  
8                   staff and intervenors to oppose this. We strongly  
9                   oppose it.

10                  I would just say that the community  
11                  needs closure and wants closure on this matter.  
12                  And that if good cause was not being happy with  
13                  the result and wanting to add additional evidence,  
14                  this Commission would find it very difficult to  
15                  close any of its hearings.

16                  So for both this matter and for  
17                  judicial economy generally we would strongly urge  
18                  the Commission to deny the motion.

19                  HEARING OFFICER GEFTER: Thank you.

20                  MS. LUCKHARDT: Are you going to take  
21                  comment from the other intervenors as well?

22                  HEARING OFFICER GEFTER: I'm sorry,  
23                  Mr. Haavik. I believe you have a comment you  
24                  mentioned earlier today, thank you.

25                  MR. HAAVIK: I do. I normally have a

1 lot of comments.

2 HEARING OFFICER GEFTER: Yes, go ahead.

3 MR. HAAVIK: But thank you. And thank  
4 you, Ms. Luckhardt, for reminding the Committee.

5 HEARING OFFICER GEFTER: Yes, thank  
6 you.

7 MR. HAAVIK: And I'm sure Mr. Sarvey  
8 may want to say something afterwards.

9 As much as I agree with the staff as  
10 well as the intervenors I certainly would, in my  
11 own mind, being one that visited Berrick and have  
12 gone through and looked at the Colorado facility.  
13 I would just like to see, just in my own mind,  
14 that this would finally put the last bit of  
15 information to rest to where the Committee could  
16 do its due diligence and really take care of a  
17 correct decision.

18 But I am frankly tired of the fact that  
19 we have gone on way too long with this matter.  
20 Unfortunately I believe that the applicant has had  
21 sufficient time to do this. Like one of the  
22 intervenors said, they could have got some of us  
23 involved in going to Berrick and maybe being  
24 involved in that.

25 But I seem to remember over the last

1 several months that we have certainly had  
2 correspondence from the applicant saying, this is  
3 not timely. Please, Mr. Byron, take care of this  
4 decision quickly. We need some conclusion to  
5 this.

6 Well, seeing as I was the first  
7 intervenor involved in this particular matter,  
8 seeing as I live 1100 feet from the proposed site,  
9 and seeing as I live with it every day, I want  
10 this thing to come to a conclusion, Mr. Byron.

11 And I wanted to congratulate both  
12 Mr. Byron, Ms. Gefter, for her due diligence as  
13 well as the very, very accurate report I think you  
14 provided, as well as the decision, the Proposed  
15 Decision that you provided. I believe it was  
16 accurate, well written, and I think we need to  
17 proceed in a very timely manner.

18 Again, I remember those scathing  
19 letters that both Ms. Luckhardt and Mr. Trewitt  
20 put together saying, let's get this over with.  
21 Well, I am also agreeing with them too, let's get  
22 this over with. Thank you.

23 HEARING OFFICER GEFTER: Thank you,  
24 Mr. Haavik. Mr. Sarvey, do you have any response  
25 to the motion to reopen.

1                   MR. SARVEY: Yes, I want to object to  
2                   the motion to reopen. You know, the CEC is pretty  
3                   busy. Hearing and staff time is real precious,  
4                   you know. And there are a lot of projects out  
5                   there awaiting certification that are being  
6                   processed now but they are also being delayed  
7                   because the staff just doesn't have enough time to  
8                   cover all the aspects of all these different  
9                   projects.

10                   So, you know, the CEC needs to  
11                   concentrate on the projects that really have a  
12                   significant chance of being certified and then  
13                   also being built, most importantly. The state  
14                   does need energy.

15                   What made this project viable to me,  
16                   and worth the Commission's time, was that Tierra  
17                   had a PPA with PG&E, they had a power purchase  
18                   agreement. So if this thing was certified this  
19                   project would have been built, I believe.

20                   Well on May 16, 2008 Eastshore Energy  
21                   notified PG&E they were electing to terminate  
22                   their power purchase agreement. Without a power  
23                   purchase agreement this project most likely won't  
24                   be built, whether you turn around and certify it  
25                   or not.

1                   And I've got the testimony here that  
2                   was provided by PG&E to the CPUC on Friday stating  
3                   exactly that, that they no longer have a power  
4                   purchase agreement. So if you would like that for  
5                   the record or anybody would like a copy of it I  
6                   have it right here. Thank you.

7                   HEARING OFFICER GEFTER: Thank you,  
8                   Mr. Sarvey. Ms. Luckhardt, would you like to  
9                   respond to the comments you have heard so far?

10                  MS. LUCKHARDT: Yes, I would like that  
11                  opportunity.

12                  And I do understand, we do understand  
13                  how some folks here would like to have closure.  
14                  The interest that Eastshore has in continuing with  
15                  the project and with additional analysis is to get  
16                  at the truth. To really understand whether there  
17                  is an impact here or not.

18                  In going through the comments that were  
19                  made by some of the parties, starting with staff's  
20                  comment about the general plan policies. I find  
21                  that very interesting since actually the staff  
22                  agreed with applicant's position that the project  
23                  is actually consistent with the general plan but  
24                  for the aviation issue. And so I find it  
25                  interesting that at this point they are saying

1       that the project should not go forward and do a  
2       test, when in fact they found the project to be  
3       consistent with the general plan.

4               And we actually have several comments  
5       on that very issue that we will give you. We can  
6       either give you now or during the comment period  
7       on the PMPD. But we really feel that the reliance  
8       upon the deference, due deference given to a  
9       city's determination when a city has come out and  
10      clearly indicated and advocated a position against  
11      this project is really extremely poor public  
12      policy.

13             For this Commission that is supposed to  
14      be an objective entity viewing power plants. For  
15      it to rely upon a city that has taken a position  
16      against a project and provide it with due  
17      deference on land use decisions simply allows any  
18      city on any power project the opportunity to  
19      create issues, create problems with conformity  
20      with LORS.

21             In this instance we are talking about a  
22      general plan that was adopted five years ago that  
23      talks about a potential business and technology  
24      sector someday in the future will be adopted  
25      somewhere within the industrial sector. Although

1 that has never been adopted or identified in any  
2 specific location. Therefore we believe that the  
3 Committee's finding in this area is clearly in  
4 error and we believe it actually is very poor  
5 public policy.

6 And so we don't believe that that's a  
7 reason that we should not go forward with this  
8 test. And we have arguments in our comments to  
9 the PMPD on this effect. And just because the  
10 Committee has found it in the PMPD does not mean  
11 that the Committee will retain that position in a  
12 Revised PMPD that is provided to the full  
13 Commission for review or acceptance and a vote.

14 The second issue is, the second issue  
15 brought up by staff was a concern that others, it  
16 might not refute the concerns of other agencies.  
17 The whole point of this test is to create a  
18 protocol and send it out for review and comment so  
19 that we can receive the comments of Commission  
20 staff. So that the other parties can provide  
21 their comments.

22 We had insufficient time when we were  
23 conducting the Berrick test to get comments from  
24 other parties. And as you can well imagine, it's  
25 very unwieldy to try and get comments from this

1 many parties in a short period of time. That's  
2 why we have asked for having until September to  
3 conduct the test. Those comments will include,  
4 and we will solicit, the input of FAA and Caltrans  
5 Aeronautics to get their additional comments and  
6 concerns. And that is actually part of what we  
7 propose to do on this project.

8           There were concerns expressed by the  
9 City about maintaining a problem with seeing and  
10 avoiding the power plant. If the power plant  
11 truly does not have an impact on aircraft they  
12 have nothing to worry about. They do not need to  
13 see and avoid this plant. That is the whole  
14 point. This is an internal combustion engine  
15 project, it is not a gas turbine. We believe that  
16 the impacts from this project are so low that it  
17 is not a hazard to aviation and there is no need  
18 to see and avoid this project.

19           There was a comment about, well you  
20 have weighed the evidence and you have decided  
21 that the modeling is better than actual evidence.  
22 That to me is actually kind of confounding,  
23 especially when the evidence that we are talking  
24 about is modeling evidence.

25           You indicated in your Presiding

1 Member's Proposed Decision that applicant did not  
2 conduct any modeling analysis of this project and  
3 that is patently incorrect. That was filed with  
4 our pre-filed testimony. And it bothers us to a  
5 great extent that you did not only not acknowledge  
6 that testimony but said we didn't even file it.  
7 That gives us great concern on a critical issue of  
8 this merit for this case. And so we find that to  
9 be of great concern.

10                   And we also are extremely concerned  
11 that you would rely upon a modeling analysis that  
12 we believe is patently false. But if you even  
13 accept it. If you even accept staff's modeling as  
14 it is, it's only half done. It's not even  
15 complete. If you want to do the complete analysis  
16 you have to do the complete Katestone analysis of  
17 both sides. Not just the calm case but the full  
18 analysis, including the weather data.

19                   We did not conduct that analysis  
20 because our modeling analysis of the calm case  
21 showed the impacts were below the screening  
22 threshold. Therefore we did not need to go on and  
23 continue that modeling analysis. But if you are  
24 going to and intend to rely upon the modeling  
25 analysis conducted by staff you should at least

1       insist that they do a complete modeling analysis  
2       and not just do half of the modeling that is  
3       required.

4                 On that scale I found it very troubling  
5       that within the PMPD you said that FAA had agreed  
6       with staff's modeling analysis and the citations  
7       go back to staff's citations of the Australian  
8       circular that talks about how they address  
9       modeling.

10                And within that circular it  
11       specifically states that you cannot rely on the  
12       calm case alone but you must rely upon the entire  
13       full analysis, including all the weather data,  
14       because the calm case occurs so rarely out in the  
15       field. And so if you are going to cite to FAA's  
16       acceptance of the Australian circular you must  
17       insist upon staff following the full requirements  
18       of the Australian methodology.

19                The County claims that this is untimely  
20       and that we have not provided a good cause for  
21       such an analysis. When we conducted this analysis  
22       we conducted it in the winter. The Committee has  
23       indicated that there is a great concern over the  
24       radiator fans. We do not believe the radiator  
25       fans will be of any concern.

1                   Nonetheless, in order to conduct a test  
2                   to have full load on the machines and provide the  
3                   amount of release of the excess temperature from  
4                   the radiator fans we need to have summer  
5                   temperatures, therefore it must be conducted now.  
6                   It is not something that could have been conducted  
7                   during the winter. Even with full load on all the  
8                   turbines we would not have full load on the  
9                   radiator fans on a cold day. So it was impossible  
10                  to conduct this during the winter.

11                  It's just a little frustrating in some  
12                  instances to have comments about the lateness of  
13                  applicant's efforts when in fact when we started  
14                  this proceeding this issue was not identified in  
15                  staff's Issues Identification Report. It was not  
16                  raised by staff for months after the application  
17                  was deemed complete.

18                  Okay. There were comments about we  
19                  must have an identical plant. And the modeling is  
20                  actually a better way of determining the potential  
21                  impacts from this project. We find this extremely  
22                  difficult to understand and difficult to truly  
23                  grasp. That one would say that a modeling impact,  
24                  a theoretical model, would be a better way of  
25                  determining impacts than actually going out and

1 seeing what the real impacts are.

2 This is just astounding to us. And in  
3 fact it was one of the big concerns that was  
4 expressed by FAA about their own report. It was  
5 that well, this is all just theoretical. This is  
6 just based on pilot reports. It is not based on  
7 any actual evidence. In this case we are talking  
8 about getting the actual evidence.

9 And I think what we are really talking  
10 about is whether you really want to know the  
11 truth. Do you really want to know whether this  
12 project will impact aircraft or not? Or is it  
13 just simply a hand waving, a model, an  
14 approximation sufficient for you? A model that in  
15 fact is only half done.

16 There were some concerns expressed by  
17 Ms. Hargleroad about what plane are you going to  
18 use. There are actually specially equipped planes  
19 that have instruments in them that are very, very  
20 sensitive instruments that can measure this type  
21 of impact. It is not going to be what Gary  
22 Cathey, I believe, had to do when he overflew  
23 Sutter, which I would like to remind you is a gas  
24 turbine plant. But where they had to put a pencil  
25 on a desk to determine what the impact or whether

1       they hit any turbulence. This would be measured  
2       by instruments.

3                   And then there was a comment about,  
4       well, if somebody is not happy with the result  
5       then they can come back and attempt to reopen the  
6       record. We are not talking about whether we are  
7       happy or not happy with the result. We are  
8       talking about whether you want to know whether  
9       there really are impacts here or not and whether  
10      there really are impacts over an IC engine. We  
11      believe there are not and we believe that we can  
12      prove that to you.

13                   And then the last issue that was raised  
14      by Mr. Sarvey about the power purchase agreement.  
15      That's right. We begged and pleaded to get a  
16      decision out of you before those decisions had to  
17      be made. Before millions of dollars were at stake  
18      in agreeing to a power purchase agreement with  
19      PG&E.

20                   And we find it extremely troubling that  
21      PG&E, who would never stand up in this proceeding  
22      and say that this project was needed or necessary  
23      to support the load, has now turned around and  
24      filed an application to purchase the Tesla power  
25      plant because there is such a need for energy in

1 the PG&E system by 2012.

2 We find that to be incredibly, you  
3 know, double-sided on behalf of PG&E to say those  
4 things. To make that claim in its filing with the  
5 PUC that the power is absolutely necessary, it's  
6 needed. That they are not going to make their  
7 planning reserve margins or their planning reserve  
8 margins are insufficient. Therefore they must  
9 immediately receive approval to purchase and build  
10 the Tesla power plant. When in this proceeding  
11 they would never stand up, not once, and say that  
12 this power was necessary. We find that incredibly  
13 frustrating.

14 But just because the PPA is no longer  
15 valid does not mean that this project is not still  
16 an important or could be an important asset to the  
17 PG&E system.

18 The project has been re-bid. Since  
19 PG&E picked it once there is definitely an  
20 opportunity that they might select it again. And  
21 just like the Tesla power plant, which your  
22 Commission spent many hours siting and permitting,  
23 has now become an incredibly valuable asset to  
24 PG&E.

25 Just because a project is permitted and

1 not built immediately does not make it an asset  
2 that is not important to California and the  
3 electric system in the future. The fact that that  
4 project is sitting out there with an Energy  
5 Commission license is giving PG&E an opportunity  
6 to get energy on-line at a much faster rate than  
7 it would otherwise come on-line.

8 So that I don't believe is a reason to  
9 deny this project or deny this project an  
10 opportunity to present additional evidence to you.

11 PRESIDING MEMBER BYRON: Thank you all  
12 for these arguments. I think I have a couple of  
13 questions for the applicant with regard to the  
14 motion. You indicate in the motion that the  
15 second fly-over test will address all of the  
16 Committee's concerns and you go on to list eight  
17 concerns associated with the Committee. So I  
18 guess my question to the applicant is, will indeed  
19 this test address all eight of these concerns and  
20 are these all of the Committee's concerns?

21 MS. LUCKHARDT: We believe that it  
22 will. We believe that it will address all the  
23 concerns that have been expressed by the  
24 Committee.

25 PRESIDING MEMBER BYRON: And it is your

1 understanding --

2 MS. LUCKHARDT: But the purpose of the  
3 protocol is to get the comments from other  
4 entities to make sure that we do. To make sure if  
5 there are additional concerns from Commission  
6 staff, from FAA, from the other parties, that  
7 those concerns be taken into consideration. And  
8 that as much as possible that we address as many  
9 concerns as we can.

10 PRESIDING MEMBER BYRON: And I think,  
11 Ms. Luckhardt, you have already addressed some of  
12 my, some aspects of the second question about  
13 conducting the test earlier. Was there anything  
14 prohibiting you from going ahead and conducting  
15 these tests at any time?

16 MS. LUCKHARDT: Well one of the  
17 specific concerns that was stated in the PMPD was  
18 that the radiator fans were not operating at a  
19 very high level. And that is based on the fact  
20 that it was cold that day. So what we need is a  
21 hot day in order to conduct the test. So it is  
22 not possible to conduct that test in the winter,  
23 which is when we were focusing on it last time.  
24 We were coming into the hearings. We need hot  
25 summer days. That's why we are looking at it now.

1                   And we also did not have the Staff  
2                   Assessment until late in the summer which  
3                   identified these issues. The PSA actually  
4                   identified slightly different issues and the FSA  
5                   identified still different issues. They changed  
6                   from the PSA to the FSA. We were trying to  
7                   respond to staff as their concerns on the project  
8                   changed.

9                   PRESIDING MEMBER BYRON: The motion  
10                  also indicates that you plan to submit  
11                  supplemental evidence including an additional fly-  
12                  over test. So I take it from that that we are  
13                  just not looking at test results here. You will  
14                  be using this as an opportunity to introduce a lot  
15                  of additional evidence?

16                 MS. LUCKHARDT: What we are talking  
17                 about is introducing the -- we would introduce the  
18                 protocol, the test results, the comments of other  
19                 parties and any response to that and any agency  
20                 response to the test itself is what we were  
21                 looking at. We are not talking about a general  
22                 reopening of the whole issue.

23                 PRESIDING MEMBER BYRON: And Mr. Sarvey  
24                 had indicated in the filing that he brought up  
25                 just a moment ago, which I was not aware of, that

1 the power purchase agreement had been terminated  
2 on May 18. Is that correct?

3 MS. LUCKHARDT: That is correct. And  
4 that's why we appeared and tried to get the PMPD  
5 out earlier.

6 PRESIDING MEMBER BYRON: And were you  
7 given a reason for why it was terminated?

8 MS. LUCKHARDT: There are certain  
9 payments that are due or commitments that become a  
10 responsibility of the developer if they do not go  
11 forward as of certain dates. They had to  
12 identify, they had to tell PG&E whether they were  
13 going forward on that day or not.

14 If they did not -- If they indicated  
15 that they were going forward and this Committee  
16 denied the application, which you have proposed to  
17 do in the PMPD, they would be out millions of  
18 dollars in potential damages to PG&E to purchase  
19 replacement power.

20 They had to make a hard decision  
21 without knowing which way this Committee was going  
22 to come down and ultimately the Commission. Given  
23 the way the PMPD came down I can't say that their  
24 decision was in error in that instance. There are  
25 hard dates and hard decisions that have to be made

1 by applicants with projects with PPAs. Yes, that  
2 was 18 months into siting of this project.

3 PRESIDING MEMBER BYRON: I'm sorry,  
4 please repeat that.

5 MS. LUCKHARDT: That was 18 months  
6 after the project was deemed data adequate.

7 PRESIDING MEMBER BYRON: I think that's  
8 all the questions I have, thank you.

9 HEARING OFFICER GEFTER: I have a  
10 question for the applicant regarding the project  
11 objectives. Because when there was a PPA with  
12 PG&E the project objective was to interconnect at  
13 the Eastshore substation. And now that there is  
14 no longer a PPA, which was the reason for that  
15 insistence on interconnecting at the Eastshore  
16 substation, my question is, whether that objective  
17 is no longer in effect and that the project can  
18 interconnect at other substations.

19 MS. LUCKHARDT: It would still be a  
20 project objective from the Eastshore standpoint.  
21 The reason is that the Eastshore substation is in  
22 such a location that there aren't a lot of system  
23 upgrades that are required.

24 And although you mentioned in your  
25 Proposed Decision that those upgrades are the

1 responsibility of the applicant, actually that is  
2 incorrect. They are ultimately repaid by  
3 ratepayers. So the fact that it does not have  
4 large upgrades is a significant benefit to the  
5 project location.

6 It also points to the value of the  
7 certificate from the Commission. If we have to  
8 move this project then there is no value to the  
9 existing effort.

10 HEARING OFFICER GEFTER: In the  
11 Alternatives analysis there was discussion of  
12 interconnecting at the Newark substation. Is the  
13 applicant aware of whether or not upgrades would  
14 be required at that point for interconnection?

15 MS. LUCKHARDT: In order to determine  
16 that we would need to conduct a system impact  
17 study. Our other general sense on this is if  
18 there aren't any significant environmental impacts  
19 there is no need to evaluate an alternative.

20 And the queue position alone at this  
21 point in time with the problems, which is also  
22 highlighted in PG&E's filing on Tesla. But the  
23 ISO queue is currently undergoing significant  
24 change. Based upon that, applying for a new queue  
25 position puts a project two, three, four, five,

1 six years out just in order to get an  
2 interconnection queue.

3 HEARING OFFICER GEFTER: All right.  
4 Ms. Schulkind, you have a comment?

5 MS. SCHULKIND: Could I just make one  
6 brief comment, if I may. Just procedurally. I  
7 mentioned a comment that Ms. Luckhardt responded  
8 to on the issues of closure and process. And I am  
9 concerned with the representation that this is  
10 simply about seeking the truth, rather than a  
11 process where parties have clear interests that  
12 they are advocating for.

13 I am quite sure that had the Proposed  
14 Decision decided otherwise to grant this plant,  
15 applicant would not be here today questioning the  
16 sufficiency of the modeling and asking that we  
17 revisit this with a fly-over to make sure that the  
18 Commission was right.

19 HEARING OFFICER GEFTER: Thank you for  
20 that.

21 PRESIDING MEMBER BYRON: However, I  
22 just would like to point out that the Proposed  
23 Decision is just that, it is my recommendation to  
24 the full Commission. So the applicant is  
25 certainly entitled to make, put forth motions like

1 this and arguments in order to get additional  
2 information and evidence into the record.

3 MS. SCHULKIND: And I believe  
4 Mr. Massey pointed to the good cause standard that  
5 should apply in this context.

6 MS. HARGLEROAD: And just to also point  
7 out for record-keeping, on page 11 of the Proposed  
8 Member's Decision (sic), the applicant made this  
9 application on September 22, 2006 and the data  
10 deemed adequate on November 8, 2006. So there was  
11 certainly the summer of 2007 to investigate and  
12 review these issues.

13 HEARING OFFICER GEFTER: Okay. At this  
14 point -- We indicated that the parties may respond  
15 to the motion by July 28 and we are going to keep  
16 to that date because we want to move along and get  
17 a revised PMPD out in a timely fashion. So we  
18 would welcome the parties' comments and responses  
19 to the motion to reopen the record. We will  
20 expect to see your written briefs or your  
21 responses at the end of business, five p.m., on  
22 July 28.

23 MR. MASSEY: As a point of  
24 clarification. Did you take administrative notice  
25 of the document related to the PPA that Mr. Sarvey

1 mentioned during his comments on the motion?

2 HEARING OFFICER GEFTER: Yes, we will  
3 take administrative notice of that. Well actually  
4 that's a PG&E document so we are not going to take  
5 -- You are going to have to, we're going to have  
6 to look at that.

7 What I can do, Mr. Massey, is I can  
8 accept the applicant's representation that in fact  
9 that is true. Because it's counsel making the  
10 representation. So we will accept counsel's  
11 representation that it is true that PG&E has  
12 withdrawn the PPA. Because that is a document  
13 between two private parties. It's between PG&E  
14 and the applicant.

15 MR. MASSEY: I was just going to say, I  
16 would only ask that you take notice of that  
17 specific representation that the PPA is no longer  
18 in effect and not any other of Ms. Luckhardt's  
19 representations concerning the PPA.

20 HEARING OFFICER GEFTER: Such as?

21 MR. MASSEY: She made, she made several  
22 comments about why the PPA, why that agreement  
23 fell apart. She made comments about the  
24 interconnection.

25 HEARING OFFICER GEFTER: Okay. Those

1 are argument.

2 MR. MASSEY: Okay.

3 HEARING OFFICER GEFTER: We're looking  
4 at her representation that this is true that the  
5 PPA is no longer in effect.

6 Mr. Hindus, on behalf of the City of  
7 Hayward, counsel for the City of Hayward.

8 MR. HINDUS: I'm sorry. Thank you. I  
9 just had one clarification. The testimony in  
10 PG&E's application, which was verified by its  
11 officer for electric supply, said that the  
12 applicant, that Eastshore elected to terminate the  
13 PPA. And it wasn't entirely clear to me when I  
14 heard Ms. Luckhardt's discussion, much of which  
15 was in the passive, to say the PPA was terminated.  
16 It wasn't entirely clear to me that she agreed  
17 with that representation. So the one  
18 clarification I would want to have is was it  
19 Eastshore that terminated the PPA for all the  
20 reasons that she stated.

21 HEARING OFFICER GEFTER: Ms. Luckhardt?

22 MS. LUCKHARDT: I can clarify that.  
23 Eastshore terminated the application, otherwise  
24 they would have been subject to extensive  
25 penalties. I think Mr. Hindus knows that, I think

1 that's why he asked.

2 I would also indicate and clarify that  
3 Eastshore did attempt, as did RCEC, to negotiate a  
4 project extension to that agreement, just like  
5 Russell City did. The filing refers to Russell  
6 City getting a potential extension on that based  
7 on PG&E. PG&E did not offer the same to  
8 Eastshore, although Eastshore attempted that at  
9 that time.

10 HEARING OFFICER GEFTER: I wanted to go  
11 over the potential delay in the schedule if this  
12 motion were granted.

13 MR. HAAVIK: Ms. Gefter.

14 HEARING OFFICER GEFTER: I'm sorry.  
15 Mr. Haavik.

16 MR. HAAVIK: Might I ask a question of  
17 Ms. Luckhardt in regards to a comment she made in  
18 regards to the PPA?

19 HEARING OFFICER GEFTER: Yes.

20 MR. HAAVIK: Ms. Luckhardt, you  
21 indicated the PPA is now terminated, correct?

22 MS. LUCKHARDT: Right.

23 MR. HAAVIK: And then you said  
24 something about the queue and I am not familiar.  
25 Do you still maintain a queue?

1                   MS. LUCKHARDT: At this point they have  
2 not released, Eastshore has not released their  
3 queue position. And that is up to the project  
4 proponent to do, it is not done automatically.

5                   MR. HAAVIK: Thank you.

6                   HEARING OFFICER GEFTER: And the queue  
7 refers to the Cal-ISO.

8                   MR. SARVEY: Would you like a copy of  
9 this document for the administrative record?

10                  HEARING OFFICER GEFTER: You could  
11 submit it but you would need to make sure all the  
12 parties see it.

13                  MR. SARVEY: I've got copies for  
14 everybody.

15                  HEARING OFFICER GEFTER: You have  
16 copies for everyone?

17                  MR. SARVEY: Yes.

18                  HEARING OFFICER GEFTER: All right.  
19 Thank you, Mr. Sarvey.

20                  I wanted to go over the potential delay  
21 in the schedule if this motion were granted. And  
22 one of the -- If we start with applicant's  
23 proposal to have the -- have all the parties agree  
24 to the protocol and to conduct the test in the  
25 summer. I think that that's unrealistic to start

1 with because I can't imagine everyone agreeing to  
2 the protocol in five minutes, you know, or five  
3 days. Especially if you need to get the FAA and  
4 the Caltrans Aeronautics folks plus all of the  
5 parties and their advisers involved.

6 But say you were able to prepare the  
7 protocol and conduct the test by the end of  
8 September '08. We would have to have a prehearing  
9 conference on it, on the proposed testimony and  
10 the evidence filed by all the parties. So we  
11 would end up with a prehearing conference probably  
12 in October.

13 And then we would have testimony  
14 submitted during the November period. Then we're  
15 back to where we were at the beginning of our  
16 evidentiary hearings, we're at Thanksgiving.

17 And then, you know, the applicant would  
18 submit direct testimony, the parties would submit  
19 rebuttal testimony no doubt. We may have -- We  
20 could have our evidentiary hearing either at the  
21 end of November or early December.

22 Then we would have to revise the PMPD.  
23 That could not probably be available until  
24 February of '09 because we would need about two  
25 months after the evidentiary hearing closed.

1                   Then we would need a minimum 30 day  
2                   comment period on the Revised PMPD, which would be  
3                   probably March or April of 2009.

4                   We would have a PMPD conference similar  
5                   to what we are doing right now perhaps in April of  
6                   2009, perhaps later than that. Then you might  
7                   need another Revised PMPD based on what was  
8                   discussed at the PMPD Conference and so then you  
9                   have another 15 to 30 day comment period on that.

10                  And so if we go forward with this  
11                  proposal we could end up with a Commission  
12                  Business Meeting in June of 2009. That's almost a  
13                  year from now. And so that means extending the  
14                  project, this proceeding out another year almost.

15                  I wanted to put that out there. Let  
16                  the parties consider that also as another issue  
17                  that we have to look at. Which would also mean  
18                  that the environmental review that has been  
19                  ongoing since '06 would be three years old by the  
20                  time we actually got to a Business Meeting in the  
21                  summer of '09. So I wanted everyone to be aware  
22                  of that.

23                  All right, at this point we need to  
24                  move on. Everyone has heard the applicant's  
25                  argument in favor of the motion. We have heard

1 the parties' arguments against the motion. We are  
2 looking forward to your written comments on July  
3 28.

4 And we will move on now to the PMPD  
5 comments. And I will ask, I am going to ask the  
6 staff in this case to start first because the  
7 staff had very specific comments, mostly on the  
8 Air Quality section. And I just wanted to find  
9 out if there were any objections to the staff's  
10 Air Quality section revisions? Is Mr. Birdsall  
11 still here if there are any questions for him?

12 MS. HOLMES: I don't believe so.

13 HEARING OFFICER GEFTER: Mr. Pfanner,  
14 you could probably answer any questions if there  
15 are any. The reason I want to start with staff is  
16 that staff's comments are pretty much specific to  
17 clarifying the record based on the testimony and  
18 not necessarily controversial. So I wanted to go  
19 through staff's comments first and find out if  
20 there are any objections to any of staff's  
21 revisions on Air Quality at this point.

22 MS. HARGLEROAD: Is that under the  
23 Introduction section?

24 PRESIDING MEMBER BYRON: Microphone.

25 MS. HARGLEROAD: Is that under the

1 Introduction section? Because the staff starts  
2 out on page five of the Introduction.

3 HEARING OFFICER GEFTER: Right, I see  
4 that. But it is dealing with Air Quality.

5 MS. HARGLEROAD: I understand but I was  
6 just trying to refer to the page and chapter.

7 HEARING OFFICER GEFTER: Right, right.  
8 So let me ask the parties if there are any  
9 objections. And I will start with the applicant  
10 because the applicant had a lot of revisions to  
11 the air quality section. And I wanted to find out  
12 first whether you have any objection to the  
13 staff's proposed revisions on air quality.

14 MS. LUCKHARDT: We have no objections  
15 to the staff's proposed revisions.

16 HEARING OFFICER GEFTER: Thank you.  
17 And let me before we go around the room. What we  
18 typically do with comments like these that staff  
19 has proposed is that if there are no objections  
20 and we agree with the revisions we will just  
21 incorporate that into the Revised PMPD. Because  
22 typically this just refers to corrections in  
23 reviewing the testimony. So do any of the other  
24 parties have any questions on the staff's air  
25 quality revisions? Mr. Massey.

1                   MR. MASSEY: Just one minor one and it  
2                   kind of relates back to my objection to  
3                   Mr. Birdsall's testimony.

4                   HEARING OFFICER GEFTER: Okay.

5                   MR. MASSEY: Taking a step back,  
6                   overall we were very happy with the Presiding  
7                   Member's Proposed Decision and so we don't intend  
8                   to make a great issue of this.

9                   But in terms of the legal conclusion  
10                  that the Bay Area Air Quality Management District  
11                  rule should apply and under that rule that only  
12                  the standards adopted at the time the application  
13                  was filed should be operative ones. We don't  
14                  believe that that's the correct legal standard  
15                  under CEQA.

16                  It was my understanding based on  
17                  Mr. Birdsall's testimony during the evidentiary  
18                  hearing back in, I suppose that was December. He  
19                  explained that the Air District does its own  
20                  regulatory process. Then as a second step the  
21                  Energy Commission looks at -- or the staff rather  
22                  looks at it from a CEQA perspective.

23                  Doing that we don't believe it is  
24                  appropriate to apply an Air District rule to limit  
25                  the CEQA analysis on the new NO2 standard. But

1 beyond that we don't have any objection to the  
2 staff comments.

3 HEARING OFFICER GEFTER: Ms. Holmes, do  
4 you want to respond to that at all?

5 MS. HOLMES: I'm not sure. It is true  
6 that staff relies on compliance with District  
7 rules in order to determine whether there are  
8 significant air quality impacts. There are  
9 instances where there are no district rules and  
10 then staff conducts an analysis that is obviously  
11 independent of rules since none exist.

12 The staff position typically is that  
13 when staff is relying on compliance with District  
14 rules in order to ensure that there is no  
15 significant environmental impact, we take those  
16 District rules as a package.

17 In other words, since we believe that  
18 the law requires the District to assess compliance  
19 with its rules as they exist at the time that the  
20 application is deemed complete, we follow the same  
21 process in making our CEQA determination. We  
22 don't separate them out and say that when the  
23 standard changes in the middle of a case that we  
24 are going to address CEQA compliance and rule  
25 compliance separately. I hope that makes sense.

1 HEARING OFFICER GEFTER: In other  
2 words, you don't use a different standard for your  
3 CEQA analysis than you would --

4 MS. HOLMES: Correct.

5 HEARING OFFICER GEFTER: Okay.  
6 Ms. Hargleroad.

7 MS. HARGLEROAD: I think my one comment  
8 on staff is on their page one where they inserted  
9 new language. "The project owner shall provide  
10 evidence of appropriate emission reduction  
11 credits." And that word appropriate one could  
12 argue is the negative pregnant, what does  
13 appropriate mean.

14 And that ties to the legal conclusion  
15 that we have been discussing throughout as far as  
16 timing or identifying a date. Something specific.  
17 Or such as we know that the applicant has a  
18 substantial number of years to commence  
19 construction so that's the qualification there.  
20 What is appropriate?

21 MS. HOLMES: May I respond to that?  
22 That is language from the PMPD, that's not staff's  
23 language.

24 HEARING OFFICER GEFTER: I'm sorry, say  
25 that again.

1 MS. HOLMES: That's language from the  
2 PMPD, that's not staff's language.

3 HEARING OFFICER GEFTER: That's  
4 correct.

5 MS. HARGLEROAD: Well it's under  
6 staff's comments and so I just made that --

7 MS. HOLMES: If you look at the way we  
8 described our comments --

9 MS. HARGLEROAD: Okay, I'm sorry,  
10 excuse me. I certainly didn't intend to agitate.  
11 Okay, thank you. That was my -- I was looking at  
12 that sentence.

13 HEARING OFFICER GEFTER: Okay. All  
14 right, so that's it on staff's air quality.

15 MR. SARVEY: I had, I had one comment  
16 on staff's air quality.

17 HEARING OFFICER GEFTER: Mr. Sarvey, go  
18 ahead, please.

19 MR. SARVEY: I agree with Mr. Massey  
20 that this is more a CEQA issue than it is Air  
21 District rules and regulations. Because should  
22 the NO2 standard be exceeded there's health  
23 consequences related to that.

24 And the Commission's main  
25 responsibility is to ensure that there are no

1 environmental impacts that would harm the public.  
2 So I think that's an overriding issue way over Bay  
3 Area Regulation 21409. Thank you.

4 HEARING OFFICER GEFTER: Actually I  
5 would like you to explain that even further  
6 because what you are suggesting is if the Air  
7 District and/or staff find that the project  
8 exceeds the NO2 standard then you are in a CEQA  
9 mitigation situation. Is that what you are  
10 proposing?

11 MR. SARVEY: That is what I am saying,  
12 yes. I don't think the Air District's regulation  
13 21409 is going to be more important than the CEQA  
14 interpretation for the Energy Commission. I mean,  
15 that's what I would say.

16 Yeah, if you decide to accept the  
17 applicant's new modeling and what have you then,  
18 you know, maybe you could make an argument that it  
19 doesn't violate the NO2 standard. But what we  
20 have that has been peer-reviewed and certified by  
21 all the parties shows that the NO2 standard was  
22 violated and there are health consequences related  
23 to that. So I think that's the overriding issue.  
24 Thank you.

25 HEARING OFFICER GEFTER: Mr. Sarvey,

1 you said that the NO2 standard was violated.

2 Where do we find that?

3 MR. SARVEY: If you take the modeling  
4 that is in the PMPD and in the staff analysis and  
5 also the AFC. It shows that when you take the  
6 project's NO2 impact and combine it with  
7 background it exceeds the new state NO2 standard.

8 MS. HOLMES: May I respond to that? I  
9 think that if you read Mr. Birdsall's testimony  
10 carefully you will see that what staff did was in  
11 essence a screening level analysis that indicated  
12 that there was no problem.

13 It is true that if you add the two  
14 numbers together you reach an exceedance but that  
15 doesn't mean that there would necessarily be an  
16 exceedance. Typically what would happen in those  
17 situations, if the lower standard were to apply to  
18 the project is you would do the refined modeling  
19 analysis as described by Mr. Birdsall and by  
20 Mr. Darwin.

21 HEARING OFFICER GEFTER: But as the  
22 expert witnesses testified, it wasn't necessary to  
23 do the refined modeling.

24 MS. HOLMES: That's correct.

25 HEARING OFFICER GEFTER: All right,

1 thank you. All right.

2 PRESIDING MEMBER BYRON: I would just  
3 like to comment on the staff's comments. I found  
4 them very thorough and helpful and wanted to thank  
5 you. I appreciate them. I think they are very  
6 good improvements to the PMPD, thank you.

7 HEARING OFFICER GEFTER: In fact, while  
8 we are on staff's comments. The other ones are  
9 related to issues that the parties haven't really  
10 contested so a lot of them are just editorial,  
11 right?

12 MS. HOLMES: Cleanup.

13 HEARING OFFICER GEFTER: Cleanup.  
14 Right, good point. So let's just finish up with  
15 staff's comments and then we won't have to go back  
16 through this later.

17 On the Cultural it is cleanup and it is  
18 just -- I don't think there are any concerns about  
19 that particular topic, right? I don't see  
20 anything.

21 And then on Noise. I am going to ask  
22 the applicant because there was a controversy on  
23 the noise mitigation. Do you have any concerns  
24 with staff's language on that? Page four of  
25 staff's comments.

1 MS. LUCKHARDT: The applicant is fine  
2 with staff's language on Noise.

3 HEARING OFFICER GEFTER: Okay, thank  
4 you. And on Socioeconomics are there any concerns  
5 with staff's comments on Socioeconomics? Just the  
6 comments themselves. Just the language that staff  
7 is proposing. I don't want to reargue the  
8 Socioeconomics testimony. Okay.

9 And on Soil and Water is there  
10 anything? It's just cleanup.

11 So on the override where staff notes  
12 there is no discussion on the socioeconomic  
13 benefits. That was accurate in terms of what  
14 staff has here is an accurate rendition of the  
15 testimony so we could also include that in the  
16 override section. Yes?

17 MS. HARGLEROAD: We had disputed and  
18 disagreed so I just want to clarify. For  
19 instance, under Socioeconomics.

20 HEARING OFFICER GEFTER: I know, but I  
21 said we are not going to reiterate the testimony  
22 on socio. We have made findings on that already.  
23 So what we are doing now is just talking about  
24 what the testimony tells us and whether the PMPD  
25 is consistent with the testimony.

1                   MS. HARGLEROAD: I understand. I just  
2                   didn't want to be construed as agreeing. Thank  
3                   you.

4                   HEARING OFFICER GEFTER: I know that  
5                   you contested the socioeconomics section.

6                   All right, let's go on to applicant's  
7                   comments. And again, applicant had quite a few  
8                   comments on air quality. You know, I read all of  
9                   applicant's comments. It seems that you are  
10                  conforming quite a bit of the -- your comments are  
11                  sort of conforming comments to be consistent with  
12                  your view of the way we should come down in the  
13                  case.

14                  And so we can just go on to more of the  
15                  technical stuff because where you go on, where you  
16                  have comments on Land Use and Traffic and  
17                  Override, it's all to be consistent with your  
18                  position that there are no significant impacts, it  
19                  is not necessary to override, and that we should  
20                  recommend certification.

21                  So notwithstanding that let's move on  
22                  to the more technical issues on air quality.

23                  MS. LUCKHARDT: Actually, with all due  
24                  respect, you asked us to do our comments in that  
25                  format.

1 HEARING OFFICER GEFTER: No, I  
2 understand that.

3 MS. LUCKHARDT: We actually found it  
4 quite ironic that we were rewriting your decision  
5 from a denial to an approval.

6 HEARING OFFICER GEFTER: Right.

7 MS. LUCKHARDT: Since that is what you  
8 asked for we went through the effort to do that.

9 HEARING OFFICER GEFTER: I understand  
10 that, Ms. Luckhardt. I am just saying that, you  
11 know, it says what it says and we will look at it.  
12 If we decide to grant your motion and if we decide  
13 to revise the PMPD we have your comments -- revise  
14 the PMPD consistent with your position.

15 But what I wanted to do at this point  
16 is get to the clarifications on air quality and  
17 some of the other more technical areas. So if  
18 there are any questions on the applicant's  
19 corrections to air quality.

20 MS. LUCKHARDT: And those primarily  
21 relate to the new NO2 standard and the additional  
22 modeling that you requested.

23 HEARING OFFICER GEFTER: Right, thank  
24 you. And given that it is trying to deal with the  
25 NO2 standard I will ask Mr. Sarvey if you have

1 questions on the applicant's comments.

2 MR. SARVEY: The only comments I had  
3 were the same comments I had before. I would  
4 object to the admission of any evidence that  
5 hasn't been reviewed by the Energy Commission  
6 staff, CARB or any of the intervenors. That would  
7 be my only objection.

8 HEARING OFFICER GEFTER: I know that  
9 the staff looked at the applicant's testimony and  
10 apparently was not in disagreement with that.

11 MS. HOLMES: I think it's fair to say  
12 that Mr. Birdsall testified this morning and said  
13 that he was not in disagreement with the approach  
14 that the applicant used. I don't know whether or  
15 not he looked at the modeling file.

16 Certainly as we have testified, if a  
17 lower standard applies one goes from a screening  
18 analysis to a more refined analysis, which is what  
19 the applicant's testimony does do. Staff just  
20 doesn't believe that step is necessary.

21 HEARING OFFICER GEFTER: Thank you.

22 MR. SARVEY: And the point I am trying  
23 to make is if we are going to accept this as  
24 testimony staff needs to review the modeling  
25 itself since they are the ones that are

1 responsible to protect the public.

2 HEARING OFFICER GEFTER: Thank you,  
3 Mr. Sarvey.

4 In the applicant's comments we are  
5 going through. Public Health we already  
6 discussed.

7 Worker Safety we discussed.

8 Land Use, page 314. There was some  
9 clarification from the applicant just with respect  
10 to the actual testimony that we had in the record.  
11 And I want to find out if there is any objection  
12 to the applicant's proposed clarifications? It's  
13 Land Use, page 314, in their comments. City of  
14 Hayward, do you have any concern about that  
15 language change?

16 MR. SMITH: I would concur with the  
17 Hearing Officer's statement earlier that most of  
18 these rewrites simply have to do with the  
19 applicant attempting to redraft the Proposed  
20 Decision to conform to the conclusion that they  
21 believe should be done. Specific substantive  
22 comments, the City of Hayward doesn't have any.

23 HEARING OFFICER GEFTER: Okay. So --

24 MS. LUCKHARDT: We actually believe  
25 that the corrections to page 314 are simply

1 clarifications to the record to make the record  
2 clear and correct.

3 HEARING OFFICER GEFTER: Right, that's  
4 what I was asking about. I am not talking about  
5 the conforming language to the applicant's  
6 position but I wanted to know specifically. At  
7 page 314 they make some changes to the PMPD to  
8 conform with the evidence or to make it more  
9 accurate and I am wondering if the City has any  
10 concerns about that language.

11 MR. SMITH: Not with the language on  
12 314, no.

13 HEARING OFFICER GEFTER: And what about  
14 page 320? The applicant has some corrections  
15 there.

16 MR. SMITH: The language that has been  
17 added to page 320.

18 HEARING OFFICER GEFTER: Right.

19 MR. SMITH: The underscore, however, we  
20 do not find these arguments persuasive. That's  
21 legal argument. That's argument. They are  
22 attempting to, again, rewrite the proposed  
23 decision to reach the conclusion they want. So we  
24 disagree. The City disagrees with that and thinks  
25 it should be stricken.

1 HEARING OFFICER GEFTER: Thank you.  
2 Ms. Hargleroad. It's passing by. Okay,  
3 Mr. Massey has the microphone. Mr. Massey for  
4 Alameda County.

5 MR. MASSEY: We concur with the City of  
6 Hayward. We don't think any of these comments on  
7 Land Use are really based, are technical  
8 corrections. Comments like, provides a buffer of  
9 approximately, as opposed to approximately.

10 HEARING OFFICER GEFTER: Okay.

11 MR. MASSEY: That's their own  
12 interpretation. Whether it is the center of the  
13 eastern industrial corridor. I don't know that  
14 that's based on evidence. The comments on 320 are  
15 legal argument. I don't think these are technical  
16 changes.

17 HEARING OFFICER GEFTER: Okay, thank  
18 you.

19 MR. MASSEY: Thank you.

20 MS. LUCKHARDT: We would be happy to  
21 quote the exhibit for the change on 314. Some of  
22 the other ones we agree are changes to the actual  
23 decision. But we believe the changes on 314 are  
24 correctly out of the exhibit.

25 HEARING OFFICER GEFTER: Ms.

1 Hargleroad.

2 MS. HARGLEROAD: We would object  
3 because I would like to see what the evidence is  
4 that the applicant is relying on.

5 HEARING OFFICER GEFTER: Well she cites  
6 to different exhibits in the comments. There are  
7 citations to the exhibits.

8 MS. HARGLEROAD: Well we had some  
9 disagreements with the Preliminary -- the Final  
10 Staff Assessment also so we disputed that and  
11 introduced evidence. And in fact one of the  
12 substantial exercises we went through was  
13 locations and measuring things and where things  
14 were located.

15 So I think that there's substantial  
16 evidence that even though it might not be, there  
17 might not be young, schoolage children within  
18 1,000 feet, at 1,100 feet you have those children.

19 HEARING OFFICER GEFTER: Okay, let me  
20 interrupt you.

21 MS. HARGLEROAD: So I think that's  
22 misleading.

23 HEARING OFFICER GEFTER: Ms.  
24 Hargleroad, what I am trying to do is find out if  
25 there's agreement. If there's disagreement we

1 will consider whether or not to accept these  
2 clarifications. So I understand there's  
3 disagreement.

4 Also the parties all had an opportunity  
5 to participate in the distance, in the list of  
6 distances.

7 MS. HARGLEROAD: Right.

8 HEARING OFFICER GEFTER: And what I  
9 ended up getting from the parties was the City and  
10 the applicant agreed and nobody else agreed with  
11 them.

12 MS. HARGLEROAD: Well the staff, the  
13 County and group intervenors all agreed with each  
14 other. The staff, County and group intervenors  
15 agreed with each other. So that is one of the  
16 reasons why I don't believe that there's adequate  
17 evidence to make these statements.

18 HEARING OFFICER GEFTER: All right,  
19 thank you. Ms. Schulkind.

20 MS. SCHULKIND: I agree with my  
21 colleagues.

22 HEARING OFFICER GEFTER: So all of you  
23 would disagree with the applicant's proposed  
24 modifications. And is that the case for each one  
25 of them? For Land Use? I will just assume that

1 basically you are in disagreement with the  
2 applicant on every comment. Is that accurate,  
3 that you all disagree with the applicant on  
4 everything they are saying?

5 MS. HARGLEROAD: Without going word for  
6 word.

7 HEARING OFFICER GEFTER: I'm just  
8 playing around, you guys. This has been a very  
9 long proceeding. You know, it just seems like --  
10 What we will do here, unless there is some kind of  
11 really blatant misinformation that the applicant  
12 has put into their comments, we will exercise our  
13 discretion as to whether or not to make those  
14 clarifications. But I will just take it as an  
15 assumption that all of the parties disagree with  
16 the applicant's comments.

17 MS. SCHULKIND: And I do think  
18 Mr. Massey's point is that these edits may be  
19 subtle but they are result oriented and they are  
20 not clarifications.

21 HEARING OFFICER GEFTER: I understand  
22 that.

23 MS. HARGLEROAD: And they result in  
24 misleading and there was evidence otherwise.

25 HEARING OFFICER GEFTER: Right, okay.

1 I get it, thank you very much.

2 Let's move on to Alameda County.

3 Alameda County had Air Quality questions regarding  
4 the mitigation plan. So Mr. Massey, maybe you  
5 could address that for us.

6 MR. MASSEY: We did. Again, we are  
7 very happy with the overall decision. We made  
8 these comments for the record because we didn't  
9 agree with some of the findings. But I think you  
10 know our position on these issues. I am not going  
11 to go into great detail on them. They are not  
12 terribly technical. But we felt we wanted to  
13 assert them for the record.

14 We didn't go entirely line by line but  
15 give you an example of the kind of changes we  
16 would make if you decided that you ultimately  
17 agree with our position, argued in our Air Quality  
18 section of our briefing.

19 HEARING OFFICER GEFTER: Okay, thank  
20 you. Do any of the intervenors have any comments  
21 on the County's proposed revisions on Air Quality.  
22 Mr. Sarvey, do you have anything to say on this?

23 MR. SARVEY: No.

24 HEARING OFFICER GEFTER: All right, so  
25 we will just take that under submission as well.

1                   The next topic that I received a lot of  
2                   comments on, of course, is Environmental Justice.  
3                   And both the County and Chabot-Las Positas College  
4                   District have a lot of comments on Environmental  
5                   Justice. Since, Mr. Massey, you still have the  
6                   microphone, or you had it at one point there,  
7                   perhaps you can also address the Environmental  
8                   Justice revisions that you are proposing.

9                   MR. MASSEY: Again, we really liked the  
10                  Presiding Member's Proposed Decision and we hope  
11                  that remains the ultimate decision when the  
12                  Revised Decision comes out.

13                  Our feeling on the Environmental  
14                  Justice. I think this was really a legal  
15                  argument, it was not a factual argument. We  
16                  didn't feel that the staff and ultimately the  
17                  Presiding Member's Proposed Decision followed the  
18                  applicable law and guidance that they indicated  
19                  they were following when they were performing the  
20                  Environmental Justice analysis.

21                  In the Decision, in the Presiding  
22                  Member's Proposed Decision, it is stated that the  
23                  intervenors who argued the Environmental Justice  
24                  issue were trying to change the standard. Our  
25                  contention is that that's not what we were trying

1 to do. Our argument is that we don't believe that  
2 the standard, which we -- that the staff claims to  
3 follow is what they actually followed.

4 They said they did one thing and they  
5 did another. They looked at the federal guidance  
6 and they excerpted one paragraph from it. From an  
7 eighty-plus page document and said, this is  
8 environmental justice analysis. There's a lot  
9 more there. So to say that we want to propose a  
10 new standard is inaccurate. We believe that they  
11 are not following the standard. That's the  
12 primary bone of contention that we have.

13 So we hope that at least that will be  
14 changed to say what our legal position was. Our  
15 position was that they weren't following the  
16 guidelines as written. If that change could be  
17 made. If you don't agree with us that's the  
18 Presiding Member's discretion. But we would like  
19 our position accurately reflected. Thank you.

20 HEARING OFFICER GEFTER: All right,  
21 thank you. Ms. Schulkind.

22 MS. SCHULKIND: Thank you. Again we  
23 also are, of course, very happy with the ultimate  
24 decision and don't want to take a lot of time here  
25 talking about the Environmental Justice analysis.

1 I had a couple of comments and one request on a  
2 revision.

3 I will address now, although it is not  
4 technically part of the Environmental Justice, a  
5 component -- but it was the other area that we  
6 addressed in our comments. Whether or not the  
7 Chabot-Las Positas Community College District was  
8 properly recognized as an interested governmental  
9 agency. And the Proposed Decision noted that  
10 there was one public meeting that was held at the  
11 Chabot campus and that that provided adequate  
12 notice.

13 What I would request is that the  
14 Commission reconsider communicating a message that  
15 in the future that might be an adequate way to  
16 notice a community college district. And by  
17 formulating the response in that way it sends that  
18 message.

19 I think that we are an interested  
20 governmental agency and were therefore entitled to  
21 a different treatment and different type of  
22 notice. We are subject to something called the  
23 Civic Center Act. We are required to make our  
24 facilities open to the public and hundreds,  
25 thousands of people come onto our campuses for

1 meetings on a daily basis. So to assume that that  
2 created the type of formal notice to us as a  
3 governmental entity I think is misguided. As well  
4 as the fact that that didn't trigger the  
5 solicitation of input requirement.

6           What I would suggest is a minor  
7 revision that does not reference that as  
8 indicating adequate notice. But to note that if  
9 to the extent the Chabot -- I can't say that name  
10 today. That the District was not given adequate  
11 notice as a governmental entity it was clearly  
12 harmless in this instance because we did intervene  
13 and actively participated. But that in the future  
14 that districts that are within proximity of power  
15 plants should be treated as potentially interested  
16 entities and given due notice. I would suggest  
17 that as a friendly amendment to the Proposed  
18 Decision.

19           On the Environmental Justice I agree  
20 with Mr. Massey. Our primary point is that the  
21 five step process outlined in the staff's own  
22 materials was not followed and resulted in a  
23 fundamental flaw, which is that it doesn't get at  
24 the most profound type of adverse impact that a,  
25 that a protected group could suffer.

1                   And that is a situation where there did  
2                   not appear to be impact as a whole, even factoring  
3                   in generally vulnerable groups like asthmatics.  
4                   But in fact could still significantly impact an  
5                   environmental justice population because of their  
6                   lack of access to health care and other things.  
7                   And that that most profound, potential adverse  
8                   impact was simply masked by the approach that was  
9                   taken. And our assertion was that did not follow  
10                  the stated process in the staff's own procedures.

11                  HEARING OFFICER GEFTER: Thank you,  
12                  Ms. Schulkind. I think that your friendly  
13                  amendment with respect to notice to community  
14                  college districts is well taken and I appreciate  
15                  the guidance on language that you are proposing.

16                  And with respect to the EJ issue. I  
17                  understand that both the County and the College  
18                  District feel that their positions weren't  
19                  accurately reflected in the PMPD and we can  
20                  correct that as well. Thank you.

21                  MS. SCHULKIND: Thank you very much.

22                  HEARING OFFICER GEFTER: I did want to  
23                  say though one thing. Well, we can talk about  
24                  this later because we would like to get done by  
25                  five at this point. And there is one more issue

1 that we need to discuss, which is that Alameda  
2 County submitted a letter from your public health  
3 director, Dr. Iton. Is that how you pronounce his  
4 name?

5 MR. MASSEY: Correct.

6 HEARING OFFICER GEFTER: It is a letter  
7 along with two attachments. One was the  
8 methodology for estimating premature deaths  
9 associated with long-term exposure to fine  
10 airborne particulate matter, actually referring to  
11 PM 2.5. That's a new study that is coming out  
12 from the Air Board. And then there is also  
13 another attachment to Dr. Iton's letter which is  
14 called Life and Death from Unnatural Causes. And  
15 that looks like an executive summary of a report  
16 that Alameda County is proposing to publish.

17 I'd ask you about those documents and  
18 what you would like to see the Committee do with  
19 these documents, since they were filed very late  
20 last week and were not proposed as comments or as  
21 testimony under the Public Health section.

22 MR. MASSEY: Those are comments that  
23 the public health director wanted to bring to the  
24 Energy Commission's attention. They had reviewed  
25 that report and they have been working closely

1 with the Air Resources Board. As a result of that  
2 report they felt also that their work on  
3 mortality, the second attachment you referenced,  
4 was also relevant for the Committee and the  
5 Commission's attention.

6 It's unclear whether this is the end of  
7 the road for Eastshore or whether if we are  
8 reopening the evidentiary record how long this is  
9 going to go on. So they thought it best to bring  
10 it to the Committee's attention as a comment.

11 If this proceeding goes forward perhaps  
12 that is something that the Committee will want to  
13 consider. Certainly there were the three issues  
14 that have brought up sua sponte and that could be  
15 another such report that they will want to have  
16 the staff or applicant or other parties to weigh  
17 in on. But at this stage they thought it best to  
18 bring that forward as a comment. They have been  
19 working with CARB. They will continue to work  
20 with CARB as a result of that report.

21 PRESIDING MEMBER BYRON: Mr. Massey,  
22 will you be providing a motion to reopen the  
23 evidentiary record in this proceeding?

24 MR. MASSEY: Not at this time.

25 (Laughter)

1 PRESIDING MEMBER BYRON: Good.

2 HEARING OFFICER GEFTER: Well thank you  
3 for that, okay. So at this point do any of the  
4 other parties have any comments on the PMPD just  
5 with respect to clarification or editorial  
6 revisions, other than position changing? Other  
7 than, as the applicant proposes, to completely  
8 revise our recommendation.

9 MS. LUCKHARDT: At some point I would  
10 like an opportunity to make some additional  
11 comments. But they are in the theme of our  
12 comments on the Traffic and Transportation and  
13 Land Use sections.

14 HEARING OFFICER GEFTER: Do you wish to  
15 add more comments at this point.

16 MS. LUCKHARDT: Yes.

17 HEARING OFFICER GEFTER: Okay.

18 MS. LUCKHARDT: At some point during  
19 this hearing I would like to make a few comments  
20 in relation to those two sections in the Override.  
21 But they are not things that I expect other  
22 parties to agree to and they are not individual  
23 technical changes of the type that you are  
24 discussing.

25 HEARING OFFICER GEFTER: Okay, well

1 let's talk about just language, individual  
2 language corrections or changes. If no one has  
3 anything else we can ask Ms. Luckhardt to talk  
4 about the Land Use and Transportation findings.  
5 If you have no more --

6 MS. HARGLEROAD: Are we talking about  
7 just the applicant's?

8 HEARING OFFICER GEFTER: I'm sorry?

9 MS. HARGLEROAD: Are we discussing just  
10 the applicant's proposals at this point in time?  
11 Because we did -- we had some suggestions  
12 concerning Alternatives, which I think are highly  
13 appropriate given the additional information that  
14 has been brought to light.

15 HEARING OFFICER GEFTER: I'm sorry,  
16 Ms. Hargleroad, you are correct. Let's ask about  
17 your comments first.

18 MS. HARGLEROAD: On Alternatives.

19 HEARING OFFICER GEFTER: Yes, on  
20 Alternatives. And then I will ask Ms. Luckhardt  
21 to go forward with her comments. Yes, go ahead.

22 MS. HARGLEROAD: Basically our  
23 suggestions are clarifications for the record to  
24 identify who our witness was. And we believe that  
25 he provided substantive testimony and refer to

1 that.

2 And also concerning the purchase power  
3 agreement and our objections. And what you might  
4 want to note under findings and conclusions, which  
5 we in addition to what we had written there was to  
6 insert under number nine was interconnecting the  
7 EEC at the Newark substation would fail to meet a  
8 basic project objective of the applicant but would  
9 satisfy the objective of the RFO. So I would  
10 suggest that that revision is certainly consistent  
11 with the discussion before you today.

12 HEARING OFFICER GEFTER: That raises a  
13 question, as a matter of fact. Which is that we  
14 are bound by the record. And the record indicates  
15 that there is a PPA and that the project objective  
16 was to interconnect at the Eastshore substation as  
17 a result of that PPA. And that's what the record  
18 tells us.

19 And then today we understand, based on  
20 Ms. Luckhardt's representation, that in fact there  
21 is no longer a PPA in effect. And that the  
22 project may still have an objective of  
23 interconnecting at the Eastshore substation but it  
24 is not clear where that objective comes from. And  
25 all this is outside of the evidentiary record so

1 we have a bit of a dilemma here.

2 MS. HARGLEROAD: Well we had objected  
3 to any reference or reliance on the PPA in the  
4 first place. That had been our objection because  
5 the applicant did not produce it --

6 HEARING OFFICER GEFTER: I understand  
7 that, Ms. Hargleroad.

8 MS. HARGLEROAD: -- so we never saw it.  
9 It's not before this Committee at this point in  
10 time. It is not before this Committee. You have  
11 no document before you at all.

12 HEARING OFFICER GEFTER: I understand,  
13 you already made that argument.

14 MS. HARGLEROAD: Well that is a correct  
15 statement, you do not have that. And so that's  
16 why we had objected to any reliance on that and we  
17 made the submissions we did. And now you do have,  
18 Mr. Sarvey has presented evidence, administrative  
19 notice evidence, that it has been terminated. The  
20 applicant has agreed it has been terminated. So  
21 there is no PPA and there is no objective there.  
22 So I would say our comments are pretty consistent  
23 with what the record does show before you.

24 MS. LUCKHARDT: We actually object to  
25 that. We believe it is still an objective of the

1 project. We still have a queue position for  
2 connection at that location that we would lose if  
3 we went to a different location. We still have  
4 significant resources expended towards this  
5 particular project and it is an objective of this  
6 project. It is not simply driven by the PPA.

7 HEARING OFFICER GEFTER: Thank you for  
8 that clarification, Ms. Luckhardt.

9 Ms. Schulkind, did you have a question?

10 MS. SCHULKIND: No.

11 HEARING OFFICER GEFTER: It looked like  
12 you did. Okay, thank you, Ms. Hargleroad.

13 MS. HARGLEROAD: All right.

14 HEARING OFFICER GEFTER: Okay,  
15 Ms. Luckhardt, if you want to address the other  
16 issues in your comments regarding Traffic and  
17 Transportation and also Land Use.

18 MS. LUCKHARDT: Yes. If I could have  
19 an opportunity to do that since this is a hearing  
20 to take comments on the PMPD.

21 HEARING OFFICER GEFTER: Sure.

22 MS. LUCKHARDT: And since our comments  
23 were created in such a way to be redline strikeout  
24 of the PMPD we believe that some of the major  
25 points that we wanted to make were somewhat lost

1 in the numerous pages that we submitted.

2 And at this point I would also like to  
3 reference the earlier comments that I made in  
4 support of the motion to reopen the record so that  
5 I do not need to repeat those now to you, since I  
6 have said some of these things once already.

7 And I think one of our major concerns  
8 is that the PMPD relies to a great extent in some  
9 of these areas on conjecture and speculation  
10 regarding the potential impacts to aircraft from  
11 Eastshore.

12 We note that not one person provided  
13 testimony to refute the evidence presented in the  
14 overflight case. And yet all of the comments and  
15 the references that are used to support  
16 discounting the overflight comes simply from  
17 argument that was included in various parties'  
18 briefs. So the only testimony regarding the  
19 overflight is in support of that from  
20 Dr. Blumenthal. There is no testimony from any  
21 other party to refute that. And yet the Committee  
22 relied upon simply argument in briefs to refute  
23 that test.

24 We also have grave concerns that I  
25 mentioned earlier about the fact that the

1 Committee claimed that we had not performed, that  
2 Eastshore had not performed any plume modeling at  
3 all. Whereas that testimony was prefiled and  
4 included in the document. And the reference  
5 occurs at the PMPD at page 356.

6 This Commission has a policy of  
7 prefiling testimony. If the Committee is not  
8 going to review that testimony, is simply going to  
9 rely upon what is provided orally in the hearings,  
10 we have concerns that that will greatly extend the  
11 hearing time. And just because it wasn't  
12 presented during the hearing does not mean that  
13 the testimony does not exist. And again, we find  
14 this of great concern in an area of such critical  
15 importance to the final resolution of this case  
16 and this decision.

17 In addition, we have just grave  
18 concerns about the Committee relying upon staff's  
19 untested and incomplete modeling. I did mention  
20 some of this earlier so I won't go into extensive  
21 detail excepting that we believe that not only was  
22 it incorrect as done and what was performed but it  
23 was only done halfway. They did not do the full  
24 Katestone analysis.

25 Furthermore there was no documentation

1 presented by staff of their calculations to  
2 support the analysis that they provided, even  
3 though we had asked for that earlier in the  
4 proceeding.

5 We want to specifically point out that  
6 at page 356 of the PMPD there is a comment that  
7 FAA has accepted staff's modeling as a valid  
8 representation. This is a quote: "As a valid  
9 representation of hazardous exhaust velocities"  
10 end quote. The citation for that is to the FAA  
11 report on safety risk analysis for aircraft  
12 overflight and then it cites to the entire CASA,  
13 which is the Australian advisory circular.

14 If you look at the Australian advisory  
15 circular it requires a complete modeling analysis  
16 and again does not recommend simply relying upon  
17 the calm case. Therefore we believe it is  
18 inaccurate to claim that the FAA has accepted  
19 staff's modeling as a valid representation of  
20 hazardous exhaust velocities. We believe this is  
21 inaccurate.

22 We would like to remind the Committee  
23 that FAA's own witness said that they did not  
24 perform any modeling nor did they check staff's  
25 analysis. They simply took it as it was provided

1 to them.

2 We would like to further note that the  
3 significance criteria identified in the PMPD, that  
4 there are three standards of significance that  
5 were used in this case that have not been used  
6 before. These standards of significance cannot  
7 simply be created for each and every individual  
8 case. They need to be adopted within a rulemaking  
9 procedure.

10 These three standards of significance  
11 for which we have concern are the one that reads,  
12 endangerment to the takeoff, landing or  
13 maneuvering of aircraft within an airport approach  
14 zone, airport turning zone or airport transition  
15 zone. The second is production of a high-velocity  
16 thermal plume within an airport approach zone,  
17 airport turning zone or airport transition zone.  
18 And the third is production of a thermal plume in  
19 an area where flight paths are expected to occur  
20 below 1,000 feet from the ground.

21 These significance criteria do not  
22 appear in CEQA nor do they appear in the  
23 Commission's own regulations. So we have grave  
24 concerns about creating significance criteria  
25 without a formal rulemaking. And if the

1 Commission would like to adopt such significance  
2 criteria we recommend that it conduct a rulemaking  
3 to do so and make it clear to developers what it  
4 is that the Commission would like to see.

5 Shifting to Land Use. Again we find --  
6 We believe it is just an absurd position to defer,  
7 of this Committee to defer to the determination of  
8 the City of Hayward when the City has taken a  
9 position against the project. They are an  
10 official party in this proceeding and have  
11 advocated very strenuously that this project not  
12 receive a permit.

13 In this obviously contested environment  
14 how can this Committee simply defer to the  
15 determination of the City? It is completely  
16 obvious that the City is against the project and  
17 yet this Committee is giving absolute deference to  
18 the City. As stated earlier, we believe that this  
19 creates an environment that is going to be very  
20 poor public policy for this Commission going  
21 forward.

22 As we stated earlier, we have concerns  
23 about the City's claim that the Clawiter corridor  
24 is slated to become a high-tech corridor. That is  
25 cited within the PMPD as a reason why the project

1 on its own, even without aviation impacts, is  
2 inconsistent with the general plan. This has not  
3 been expressed within any separate planning area  
4 by the City.

5 The general plan indicates that the  
6 City is going to undertake an additional analysis  
7 and identify business and technology corridors,  
8 and yet it has not done so in the five years since  
9 the general plan has been adopted.

10 A city cannot just simply conveniently  
11 call an area a business and technology corridor if  
12 it convenient to them at this time. In order for  
13 the Commission to rely upon it, it needs to be  
14 adopted in general plans, in specific plans or  
15 some formal action by the City other than simply a  
16 case-by-case determination.

17 What is of even graver concern to us is  
18 the difference in treatment that the City has  
19 provided between Russell City and Eastshore. If  
20 you look at the difference in size of the  
21 facilities, when Eastshore is a 600 megawatt  
22 project -- Russell City is a 600 megawatt project  
23 and Eastshore is 115, the differences are stark.  
24 The zoning district is exactly the same for both  
25 projects and no action has been taken by the City

1 to designate any corridor as a corridor for  
2 increasing the tax base or a corridor for business  
3 and technology.

4 We are very concerned about some of the  
5 findings in the Override section. The Override  
6 section is completely devoid of any discussion of  
7 the determination of need for this project through  
8 the RFO process that began at the Public Utilities  
9 Commission. There have been several public  
10 hearings and decisions by the PUC regarding the  
11 need for this project, leading up to the 2004 RFO  
12 and beyond.

13 We cited many of these documents in our  
14 briefs and there is no mention whatsoever of this  
15 within the Committee's Override section. It is  
16 just -- It goes beyond logic that an entity that  
17 used to make need determinations, when determining  
18 the need for an override, would not even evaluate  
19 previous decisions made by the PUC in this  
20 instance.

21 We also find it astounding that this  
22 Committee would not recognize the decisions of its  
23 own Commission and the IEPR in setting a need for  
24 dispatchable generation to support the increase in  
25 renewables, intermittent renewables of solar and

1 wind and to support the addition of that  
2 generation.

3 The California Air Resources Board has  
4 recently adopted the scoping plan for the  
5 greenhouse gas regulations. That scoping plan  
6 includes a 33 percent renewables standard. In  
7 order to support that 33 percent renewable  
8 standard, with solar and wind being the primary  
9 drivers of that additional renewable generation,  
10 there is going to be an even greater need for  
11 dispatchable, intermittent resources. And that is  
12 recognized in your own IEPR and yet that is not  
13 mentioned at all in the override discussion.

14 We are very concerned about the logic  
15 that was used to determine the benefits in the  
16 PMPD for this project. Under the logic that you  
17 have used, by comparing it simply to Metcalf, no  
18 small, targeted peaking generation could ever  
19 obtain an override. The smaller facilities by  
20 their very nature have smaller benefits.

21 And the logic that you have used to  
22 spread the benefits of this project over all of  
23 PG&E's service territory would make on-site and  
24 distributed generation and small target peaking  
25 generation impossible to site in any instance

1 where an override would be necessary.

2 We point to the Commission's  
3 determinations in the Los Esteros facility  
4 override as one example of a similarly sized  
5 facility where the benefits are very similar. And  
6 in fact in that decision there are many very  
7 similar findings that were made by the Committee  
8 that are completely -- that are not even mentioned  
9 in this instance.

10 They talk about it. They talk about  
11 Los Esteros as providing environmental benefits by  
12 displacing or encouraging retirement of older  
13 plants, which do not meet current environmental  
14 performance standards. That same argument applies  
15 to Eastshore and was argued within our briefs.

16 They talk about generating more power  
17 to meet, in its instance, San Jose's loads. In  
18 this instance Eastshore would be supplying Hayward  
19 and the surrounding area loads. That was clearly  
20 indicated in the local system effects analysis  
21 that was done and completed by staff and supported  
22 by Eastshore. The amount of transmission losses  
23 that are missing are very similar.

24 They talk about Los Esteros as meeting  
25 the goals and policies of the Warren-Alquist Act

1 by generating electrical energy and having that  
2 energy consumed in the local area. That also  
3 applies to Eastshore.

4 They talk about Los Esteros as  
5 providing a portion of the electrical energy  
6 supply essential to the well-being of the state's  
7 citizens and its economy. That is exactly what  
8 Eastshore would provide.

9 They talk about many of the same things  
10 that Eastshore will provide. And yet they were  
11 enough to allow an override of San Jose for Los  
12 Esteros but they are dismissed as being completely  
13 insufficient for an override at Eastshore.

14 We also are very concerned -- We also  
15 are very concerned about the conduct of the  
16 hearing. There was no less than 15 exhibits  
17 presented actually during the hearing. Witnesses  
18 were not limited to their direct testimony but  
19 were allowed to testify well beyond the direct  
20 testimony.

21 This made it very, very difficult for  
22 Eastshore to conduct appropriate cross examination  
23 and to have sufficient time to analyze exhibits.  
24 Many things were presented not only the day of the  
25 hearing but right before the witness went on. In

1 many instances we did not even have the courtesy  
2 of seeing it first thing in the morning. That  
3 gives us great concern about our ability to defend  
4 this project and defend the evidence upon which  
5 this decision is based.

6 In some instances the decision is based  
7 upon evidence that was brought in that was beyond  
8 the direct testimony of individuals who came to  
9 testify. And over Eastshore's objection they were  
10 allowed to come in. That made it very difficult  
11 for Eastshore to completely conduct a thorough and  
12 complete cross examination of the individuals who  
13 testified. And we are very concerned about that  
14 in light of the fact that a lot of that evidence  
15 is the basis for the determination. Thank you.

16 HEARING OFFICER GEFTER: Ms. Luckhardt,  
17 could you please, could you identify the evidence  
18 that came in late that you didn't have a chance to  
19 cross examine on and on which we relied.

20 MS. LUCKHARDT: One of the specific  
21 things that I can remember was Gary Cathey's  
22 testimony, which was well beyond the letter that  
23 had been sent in. And we objected to him going  
24 beyond the scope of his document and yet he was  
25 allowed to continue.

1                   HEARING OFFICER GEFTER: Ms. Luckhardt,  
2                   thank you very much for your comments. At this  
3                   point we are going to ask if there are any more  
4                   comments before we close. And I think City of  
5                   Hayward, if you have a comment please go ahead,  
6                   Mr. Smith.

7                   MR. SMITH: We will provide more  
8                   comprehensive written responses to the various  
9                   arguments that Ms. Luckhardt has made in our  
10                  submission on the 28th.

11                  There are two primary issues that we  
12                  want to address here on the record relating to the  
13                  alleged arbitrary and capricious treatment of the  
14                  Russell City Energy Center as opposed to the  
15                  Eastshore Center. And also this idea that simply  
16                  because the City has made an interpretation of its  
17                  local ordinances that finds that the Eastshore  
18                  Energy Center is inconsistent with those that  
19                  somehow its opinion on that needs to be dismissed  
20                  because it has come down on the project.

21                  Starting first with this arbitrary and  
22                  capricious idea. Local land use law, and by  
23                  incorporation the Committee's requirement to  
24                  consider LORS, specifically allows cities to judge  
25                  projects on an ad hoc basis.

1                   Now there are constitutional  
2           limitations on that but there's a big difference  
3           between the Russell City project and this project.  
4           This project has direct conflicts with the air  
5           traffic pattern around the airport, that project  
6           did not. That is why the City has looked at this  
7           project and treated it the way it has.

8                   Moving on to the next point. This idea  
9           that simply because a city, as it is required to  
10          do, has made a determination this proposed project  
11          is inconsistent with its zoning, that that  
12          determination now means it has come down on this  
13          project and its conclusion must be ignored, is  
14          absurd.

15                  The Commission specifically requires,  
16          through the LORS process, that you consider the  
17          viewpoint of local agencies, the City and the  
18          County in this case, the community college  
19          district. Those local agencies must be able to  
20          interpret their local laws, their ordinances, and  
21          make a determination.

22                  And simply because they conclude that a  
23          project isn't consistent with it, that  
24          determination should not be dismissed out of hand  
25          as being somehow prejudging the project or

1 unconstitutional. In fact the regulations of the  
2 Energy Commission dictate precisely the contrary  
3 of that. They dictate what this Committee rightly  
4 did. Namely that due deference be given to those  
5 determinations.

6 The City of Hayward believes that the  
7 decision here is well-reasoned, it is well-  
8 supported. There is substantial evidence in the  
9 record to affirm the decision, to make a  
10 recommendation to the full Commission to affirm  
11 the decision, and we would request that you do so.

12 HEARING OFFICER GEFTER: Thank you.

13 Mr. Massey for Alameda County.

14 MR. MASSEY: The County was very happy  
15 with the Presiding Member's Proposed Decision.  
16 Obviously there were elements we didn't like. But  
17 we felt overall that the County's concerns were  
18 heard. All the parties' concerns were heard.  
19 That the Presiding Member fairly weighed the  
20 evidence and considered all arguments and came to  
21 a reasoned conclusion.

22 We will respond in full to  
23 Ms. Luckhardt's comments in our June 28 filing.

24 HEARING OFFICER GEFTER: July.

25 MR. MASSEY: July. Time flies when

1       you're having fun. I would agree strongly with  
2       the comments of the City of Hayward concerning  
3       deference to local agencies.

4               And Ms. Luckhardt's comment that that  
5       somehow constitutes poor public policy if the  
6       local agency doesn't agree with the applicant.  
7       It's an essential part of the Energy Commission  
8       process that deference be given to the  
9       interpretations of local agencies.

10              Because the Energy Commission has the  
11       ultimate authority to site power plants. And that  
12       that power was taken away from local agencies in  
13       the 1970s with the passage of the Warren-Alquist  
14       Act. It is essential that local agencies'  
15       concerns and discretionary decisions are given the  
16       appropriate deference they are due in the process.

17              Otherwise the local population and the  
18       local governments will be completely overridden  
19       and you will end up with poor decisions and poor  
20       power plants because they will be put someplace  
21       that the Energy Commission does not know about.  
22       Because local agencies know the local area and the  
23       local people know the local area.

24              So I would strongly echo the City of  
25       Hayward's comments. I really don't think that's

1 something they should be -- That the applicant's  
2 comments really don't understand that important  
3 tension. And we will --

4 As to the other comments. In terms of  
5 the late entry of evidence. I know we filed one  
6 piece of evidence, that was the Airport Land Use  
7 Plan. And we made a showing of good cause to do  
8 it. We weren't the only party to submit late  
9 evidence, I know that the applicant did so too.  
10 So to complain that the other parties have done so  
11 when they did this. They submitted several  
12 documents from the EPA and the Air District.

13 Ultimately if they are concerned with a  
14 search for the truth with respect to their motion  
15 to reopen the evidentiary record, then how could  
16 they complain about that search for the truth in  
17 the evidentiary hearings that have already  
18 occurred. So with that I pass the microphone.

19 HEARING OFFICER GEFTER: Thank you.  
20 Ms. Hargleroad.

21 MS. HARGLEROAD: Well I would generally  
22 agree with the exception of Russell City. I would  
23 just note that we complimented the Proposed  
24 Member's Decision -- the Presiding Member's  
25 Proposed Decision. We think it is very well-

1 written and it is reasoned. And our revisions are  
2 done with the thought of supporting it, defending  
3 it, to address just these issues. And that is why  
4 we made the suggested modifications we made.

5 So we would simply urge the Committee  
6 to make any modifications with those in mind,  
7 given the applicant's arguments. That we are  
8 trying to defend this decision. And we compliment  
9 the Committee on its job.

10 HEARING OFFICER GEFTER: Thank you.

11 Ms. Schulkind.

12 MS. SCHULKIND: I second and third and  
13 don't need to take time here. This has been a  
14 very robust process. I just don't think there is  
15 any question of that. It has been highly  
16 inclusive. There has been an opportunity to air  
17 the evidence from many different angles and  
18 examine it. I think it is time to close the  
19 record and issue a decision consistent with the  
20 Proposed Decision.

21 HEARING OFFICER GEFTER: Thank you.

22 PRESIDING MEMBER BYRON: I would like  
23 to thank everyone for their comments. There's  
24 more. We keep forgetting there's more comments.

25 HEARING OFFICER GEFTER: I do, I keep -

1 -

2 PRESIDING MEMBER BYRON: I'm sorry. I  
3 think it's the location. It's the physical --

4 MR. HAAVIK: It must be the location.

5 HEARING OFFICER GEFTER: I'm sorry,  
6 Mr. Haavik.

7 PRESIDING MEMBER BYRON: I noticed you  
8 haven't changed seats though, Mr. Haavik.

9 MR. HAAVIK: No, it's comfortable.  
10 It's a nice seat, it fits me well, you know, even  
11 with my bad shoulder and all of that.

12 Again I wanted to reiterate the  
13 diligence as well as the courtesy and the  
14 professionalism that this Committee has given the  
15 City of Hayward as well as all the intervenors in  
16 regards to not only this application but the other  
17 application, Russell City.

18 But again I would like to comment just  
19 very briefly on Ms. Gefter's analysis of a  
20 continuing schedule. I think it is absolutely  
21 ludicrous if not downright embarrassing to say  
22 that if we allow a test of this magnitude for a  
23 fly-over that it is going to take almost another  
24 year before we can put this to rest.

25 I know that many of my colleagues, many

1 of my neighbors, many of my friends in the public  
2 keep asking me, when is this going to be over  
3 with? When is this going to be over with? And I  
4 am sure the public with 1,500 to 2,000 letters, as  
5 well as several legislative bodies, would also  
6 respond the same that I am doing. That this  
7 continued avenue we are going down must be  
8 settled. Another year is completely out of the  
9 question. But again, thank you very much.

10 HEARING OFFICER GEFTER: Mr. Sarvey.

11 MR. SARVEY: I'd just like to say I  
12 support the decision but for reasons that probably  
13 aren't the same as everybody else in the room.  
14 When I first looked at this project the applicant  
15 had projected a 50 microgram per cubic meter PM2.5  
16 impact. And that went down to 30 in another  
17 analysis and then finally down to 17 micrograms  
18 per cubic meter. That is an enormous, enormous  
19 impact and the PMPD doesn't say a word about it.

20 I support the PMPD's decision but I  
21 think that my main reason for opposing it is I  
22 have never seen an impact like that from any power  
23 plant. And I don't think that this technology is  
24 appropriate to be used in an urban area like is  
25 being proposed. I just would like to say I

1 support the decision but for much different  
2 reasons. Thank you.

3 PRESIDING MEMBER BYRON: Did we get  
4 everybody? I would like to thank you all for your  
5 comments. I am particularly heartened by the  
6 comments on the process and the fact that it is an  
7 open process. Everything that we have based the  
8 decision upon was discussed on the record here and  
9 the evidence is the basis for my Proposed  
10 Decision.

11 I will remind you again that it is only  
12 a Presiding Member's Proposed Decision. The full  
13 Commission will be making the decision on that.  
14 I'll probably be saying that at least one more  
15 time this evening.

16 And I would also like to acknowledge  
17 that Mayor Sweeney is here. I assume, Mr. Mayor,  
18 that you will probably be making comments later  
19 unless you wanted to make some now.

20 MAYOR SWEENEY: No.

21 PRESIDING MEMBER BYRON: Okay, thank  
22 you. And thank you again for allowing us to have  
23 access to this fine facility. I believe we are  
24 going to return for public comment at six. Did  
25 you want to close the proceeding?

1                   HEARING OFFICER GEFTER: We are going  
2                   to recess until six p.m., at which time we will  
3                   take public comment. Thank you all very much.  
4                   Off the record.

5                   (Whereupon, the dinner  
6                   recess was taken.)

7   --oOo--

8  
9  
10  
11



1 this before our full Commission by about mid-  
2 October or so. But the schedule has not been  
3 determined for that.

4 I just wanted to say a couple of  
5 things. Of course we are interested in hearing  
6 from members of the public. We have been here, as  
7 I said, a number of times before. We will ask you  
8 to come forward. If you wouldn't mind please  
9 filling out one of the blue cards that our Public  
10 Adviser has outside, that would be great. And our  
11 Hearing Officer, Ms. Gefter, will go ahead and  
12 call upon you in the order that they have been  
13 received.

14 You know, I also wanted to say that I  
15 apologize that this has taken as long as it has.  
16 This has been a very complex proceeding. We have  
17 a number of parties involved in this case. And I  
18 will just briefly explain the process for those of  
19 you that aren't familiar with it.

20 Under law the Energy Commission has the  
21 authority to site power plants based upon  
22 applications that are put before us. Our staff  
23 does an analysis of a number of key criteria on  
24 behalf of the public. We have an ex parte rule  
25 that applies. We do not communicate with the

1 staff. They do that completely independent of my  
2 office and other commissioners. They have done a  
3 very thorough analysis.

4 The applicant, of course, responds to  
5 all data requests. And in this case I believe we  
6 have five intervenors who have also been involved  
7 in this process from the beginning.

8 So it has been very complicated, it has  
9 taken a long time to review all the documents and  
10 get everybody's briefs and comments. And I  
11 apologize that it has taken as long as it has.

12 But everything that we have done has  
13 been done in the public. And the decision that --  
14 I should say the recommendation that I have made  
15 and put forward to my fellow commissioners in its  
16 draft form is based solely upon the evidence that  
17 we have taken in the public record. And that  
18 would be all the documents and then all the  
19 testimony that was collected during the  
20 evidentiary hearings.

21 Having said all that I would like to  
22 thank you all for being here. We are going to  
23 proceed in an orderly fashion. Everybody will  
24 have an opportunity to speak that wishes to speak.

25 But I guess I would also like to ask if

1 you would be considerate of others. If you have  
2 something new to say, of course we are very  
3 interested in that. But if it is really a repeat  
4 of comments that you may have given before, that  
5 is really not necessary. However, having said  
6 that, we will of course not cut anyone off. I am  
7 just asking you to be considerate of the others  
8 that are here this evening.

9 I would like to turn the hearing over  
10 to our Hearing Officer, Ms. Gefter, and ask if you  
11 would introduce all the parties and the elected  
12 officials that we have here today.

13 HEARING OFFICER GEFTER: As many of you  
14 know I am Susan Gefter. I am the Hearing Officer  
15 who has been assisting Commissioner Byron in this  
16 process. And also Gabe Taylor who is Commissioner  
17 Byron's advisor who is coming up to the front in a  
18 minute. I am going to ask the applicant to  
19 introduce yourself and the other members of your  
20 group who are sitting with you.

21 MS. LUCKHARDT: My name is Jane  
22 Luckhardt. I am from the law firm of Downey Brand  
23 and I represent Eastshore Energy in this  
24 proceeding. To my left is Greg Trewitt for  
25 Eastshore Energy. And behind me is David Stein

1 and Jennifer Scholl from CH2MHILL, the  
2 environmental consultant.

3 HEARING OFFICER GEFTER: And the staff,  
4 please.

5 MS. HOLMES: My name is Caryn Holmes, I  
6 am staff counsel. To my left is Bill Pfanner who  
7 is for one more day, the CEC's project manager for  
8 this project.

9 HEARING OFFICER GEFTER: Thank you.

10 PRESIDING MEMBER BYRON: And then what?

11 MR. PFANNER: I am taking a position  
12 with the Land Use Planning Division in Special  
13 Projects at the Energy Commission.

14 PRESIDING MEMBER BYRON: Good, good.  
15 Congratulations.

16 HEARING OFFICER GEFTER: Okay. And  
17 Mr. Haavik.

18 MR. HAAVIK: Paul Haavik, intervenor  
19 and resident of Hayward.

20 HEARING OFFICER GEFTER: Okay. And  
21 then the City of Hayward.

22 PRESIDING MEMBER BYRON: We'd put  
23 everyone up at the dais but we just didn't have  
24 enough room. So we have asked folks if they would  
25 sit along the table here. Please go ahead.

1                   MR. SMITH: Todd Smith of the law firm  
2 Pillsbury Winthrop Shaw Pittman representing  
3 Intervenor City of Hayward.

4                   DR. BAUMAN: And I am Bob Bauman,  
5 Public Works Director for the City of Hayward.

6                   MS. STERN: Lindsey Stern for  
7 Intervenor County of Alameda.

8                   HEARING OFFICER GEFTER: And for  
9 Alameda County.

10                  MR. MASSEY: Yes. Andrew Massey with  
11 the Office of the County Counsel for Intervenor  
12 County of Alameda. Also with us tonight is Gail  
13 Steele who is a member of the Board of  
14 Supervisors.

15                  MS. HARGLEROAD: My name is Jewell  
16 Hargleroad and I am the attorney for the Group  
17 Intervenors, the California Pilots Association and  
18 San Lorenzo Village Homes Association as well as  
19 Hayward Area Planning Association.

20                  MS. SCHULKIND: Laura Schulkind,  
21 Liebert Cassidy Whitmore, here representing the  
22 Chabot Intervenors, which are the Chabot Community  
23 College District and the Chabot Faculty  
24 Association. And I am here tonight with Dr. Joel  
25 Kinnamon, the Chancellor of the District.

1 PRESIDING MEMBER BYRON: Welcome.

2 HEARING OFFICER GEFTER: Thank you.

3 Now I understand we have a number of public  
4 officials who would like to address us. I know  
5 Mayor Sweeney was here earlier today. I don't  
6 know whether you would like to address us at this  
7 point in time.

8 And also I know Assembly Member Mary  
9 Hayashi. Is she actually here? Yes you are here,  
10 great. Do you want to go before the -- You and  
11 the Mayor can figure out who is going to go first.  
12 Why don't you come first.

13 ASSEMBLY MEMBER HAYASHI: It's his  
14 chamber.

15 HEARING OFFICER GEFTER: All right.  
16 It's good to see you. And then also after  
17 Assembly Member Hayashi, Dr. Kinnamon, if you  
18 would go after that. And then I understand Gail  
19 Steele is here also for the County. So we will  
20 have the four public officials go first and then  
21 we will see who else.

22 MR. SMITH: Hearing Officer Gefter, if  
23 I could also add that Councilwoman Barbara  
24 Halliday is also here from the City and she would  
25 like to speak as well.

1                   HEARING OFFICER GEFTER:  Okay, well I  
2                   need a blue card from her and I don't have that.  
3                   Thank you very much.

4                   PRESIDING MEMBER BYRON:  Welcome,  
5                   Mayor.

6                   HEARING OFFICER GEFTER:  Go ahead,  
7                   please.

8                   MAYOR SWEENEY:  Welcome.  Thank you.  
9                   And welcome to the great city of Hayward.  My name  
10                  is Mike Sweeney and I have the great honor and  
11                  distinct pleasure of serving the citizens of  
12                  Hayward as their mayor.

13                  I would like to begin by thanking the  
14                  Commission Committee and the staff for their  
15                  diligent efforts in shepherding this proceeding  
16                  towards a conclusion.  And most of all for issuing  
17                  a very well-reasoned and fair Presiding Member's  
18                  preliminary decision to deny the Eastshore power  
19                  plant proposal.  A decision that is solidly based  
20                  on the evidentiary record.

21                  Before commenting on the preliminary  
22                  decision, however, I would like to bring something  
23                  to the Committee's attention that I think has a  
24                  direct bearing on this proceeding, and which I am  
25                  frankly surprised the applicant had not previously

1 informed the Committee of. As we learned earlier  
2 today, Eastshore has elected to terminate its  
3 power purchase, which is typically called a PPA,  
4 with PG&E.

5           Considering the emphasis that Eastshore  
6 has placed on the existence of this power purchase  
7 agreement throughout this proceeding I find it  
8 surprising that Eastshore did not bring its  
9 election to terminate the PPA to the Committee's  
10 attention. And I suggest that Eastshore's  
11 termination of its agreement with PG&E speaks  
12 volumes about the continued validity of this  
13 project.

14           Turning now to the decision itself.  
15 The preliminary decision correctly concludes that  
16 the thermal plumes from the facility would present  
17 a significant public safety risk to low-flying  
18 aircraft during landing and takeoff maneuvers as a  
19 result of the close proximity to the Hayward  
20 Executive Airport.

21           The decision also correctly recognizes  
22 that separate and apart from the safety impact  
23 from those thermal plumes, locating the facility  
24 at its proposed location would cause a significant  
25 cumulative impact on the operations of all Hayward

1 Airport operations by further reducing already  
2 constrained airspace and increasing pilot cockpit  
3 workload to the detriment of air safety.

4           These public safety issues are of  
5 paramount concern to the people of Hayward and we  
6 appreciate the Committee's recognition of these  
7 issues. Not only in terms of their impacts but  
8 also in relation to its decision to recommend  
9 against an override of these impacts for the  
10 project.

11           As the preliminary decision notes, the  
12 purported public health and convenience benefits  
13 of the Eastshore project are moderate at best.  
14 Especially when compared to the significant public  
15 safety risks that have been identified. As the  
16 evidence suggests, Eastshore is not needed to meet  
17 local energy demand in the City of Hayward.

18           We also thank the Committee for  
19 recognizing and respecting Hayward's adopted  
20 general plan policy seeking to transition the area  
21 in the vicinity of the proposed project site,  
22 which is near homes, apartments, condominiums, the  
23 Eden Gardens Elementary School, Ochoa Middle  
24 School and Chabot College.

25           The general plan envisions

1       transitioning from the existing industrial uses to  
2       a business and technology corridor which would be  
3       more harmonious with the surrounding homes and  
4       schools. Hayward has a vision for our future and  
5       we appreciate the Committee's respecting that  
6       vision.

7                   In conclusion, the preliminary decision  
8       to deny the Eastshore power plant is well-reasoned  
9       and well-supported based on the proposed project's  
10      risk to aviation safety and inconsistencies with  
11      the City's land use policies. We recommend the  
12      Committee finalize the preliminary decision and  
13      send it to the full Commission for adoption.

14      Thank you.

15                   HEARING OFFICER GEFTER: Thank you.

16                   PRESIDING MEMBER BYRON: Thank you,  
17      Mr. Mayor.

18                   HEARING OFFICER GEFTER: Assembly  
19      Member Hayashi, it is good to see you here in  
20      person.

21                   ASSEMBLY MEMBER HAYASHI: Yes, thank  
22      you. Thank you for coming to Hayward. I actually  
23      came to see Commissioner Byron, welcome.

24                   I am Mary Hayashi, Assembly  
25      Representative for this great city, also the 18th

1 Assembly District. I am here because I wanted to  
2 thank you for giving the Hayward community yet  
3 another opportunity to come before you and provide  
4 further testimony on the proposed Eastshore Energy  
5 Center. And I also wanted to personally come  
6 before you tonight to thank Commissioner Byron for  
7 his recommendation to deny its application for  
8 certification.

9 As Commissioner Byron clearly noted in  
10 his decision, the location of the Eastshore power  
11 plant will negatively impact the operations of the  
12 Hayward Executive Airport and the lives of those  
13 who reside, learn and work at nearby homes,  
14 schools and retail centers.

15 The CEC's own Final Staff Assessment,  
16 the Federal Aviation Authority and the California  
17 Transportation Department have all stated that the  
18 Eastshore power plant will negatively impact the  
19 Hayward Executive Airport. And these experts have  
20 noted that air traffic safety will be severely  
21 compromised because of the emissions from having  
22 two power plants nearby.

23 And as you know, this is no small  
24 matter for the airport that runs over 64,000  
25 flights a year. And the Eastshore power plant

1 will impact the 8,000 residents who live within a  
2 mile, one mile of the proposed site. The 16,000  
3 college students and 540 elementary school  
4 children who attend school within that mile.

5 The Eastshore power plant has far  
6 greater environmental implications as well and  
7 poses a threat to the health and safety of the  
8 Hayward residents. And certainly increased  
9 emissions will affect the region's air quality.  
10 And we have already seen the results of poor air  
11 quality as rates of respiratory problems such as  
12 asthma rise among seniors and our children.

13 In this regard, as you know, I have  
14 introduced Assembly Bill 1909 that would provide  
15 the City of Hayward with greater authority in the  
16 approval process of the Eastshore power plant.  
17 This bill will be heard in the Assembly Utilities  
18 and Commerce Committee on August 11.

19 I have encouraged the residents here  
20 tonight and in the past to continue to write to  
21 you, Commissioner Byron, and others, asking that  
22 they accept your decision and deny the Eastshore  
23 power plant certification.

24 By working with the CEC and by passing  
25 my legislation, AB 1909, I am convinced that the

1 Hayward community will not allow the Eastshore  
2 power plant to come to fruition and harm the  
3 health of our children and families.

4           Once again I want to thank you for  
5 coming to Hayward, your decision and all your hard  
6 work here. I also want to thank the City of  
7 Hayward, the County, Chabot-Las Positas Community  
8 College and all the other intervenors who have  
9 worked very hard on this proposed application.  
10 And I am confident that we will prevail. Thank  
11 you again.

12           HEARING OFFICER GEFTER: Thank you,  
13 Assembly Member Hayashi. And of course you are  
14 welcome to stay and listen to some of the other  
15 people speaking in your community.

16           Next would be Dr. Joel Kinnamon who is  
17 the Chancellor. Please come up. Thank you.  
18 Welcome tonight.

19           DR. KINNAMON: Thank you. And thank  
20 you, Assembly Member Hayashi for your words.

21           Commissioner Byron, I just want to say  
22 thank you for your recommendation. And thank you  
23 from our district that's over 23,000 students  
24 district-wide, 16,000 at Chabot, over 1,000  
25 employees, faculty and staff and administrators

1 that live in this community, for the opportunity  
2 to intervene on behalf of this power plant.

3 And also for us to have a better  
4 understanding about the process used by the  
5 California Energy Commission. It has been an  
6 educational process. It has been a transparent  
7 process. And we appreciate you giving us the  
8 opportunity to provide input for your  
9 recommendation.

10 Again, I -- Also before I say this I  
11 would like to thank staff for all of your work  
12 because I know these aren't easy issues when you  
13 go into communities and when you have different  
14 constituent groups come forward and express their  
15 concerns. It puts all of us in very, very  
16 difficult situations and stressful situations I'm  
17 sure. And I thank you for all your work as you  
18 went through this process.

19 And I also hope that as you work with  
20 other jurisdictions and other communities that you  
21 will think of the community colleges. They have a  
22 vital mission in their community. A lot of their  
23 students come from outside of the jurisdiction but  
24 then they are exposed to whatever might be within  
25 that community.

1                   So if you will think of the community  
2 colleges and make sure that they are notified and  
3 included in the process that would be helpful.  
4 And I am going to work with my colleagues based on  
5 this experience for us to have some development  
6 opportunities in California community colleges so  
7 they understand their role in the process.

8                   I understand the desire of the  
9 applicant to reopen. We have been going through  
10 this process for some time and there is a lot of  
11 information that has been provided. I feel that  
12 you are confident, Commissioner Byron, in your  
13 report.

14                   And to reopen at this point I think  
15 really does not do any value for any of us. We  
16 need closure on this matter. Our faculty, our  
17 students, they have had this as a distraction.  
18 And also our Board of Trustees as well as a  
19 distraction.

20                   We feel, again, very positive about  
21 your recommendation in the process but would hope  
22 that we could come to closure on this and move  
23 forward. And that's all I have, thank you.

24                   HEARING OFFICER GEFTER: Thank you very  
25 much. Supervisor Steele. Supervisor Gail Steele

1 for Alameda County. There you are.

2 While the supervisor walks forward. I  
3 appreciate that everyone wants to applaud their  
4 public official but it takes a lot of time. So  
5 after our public officials finish speaking, as  
6 members of the audience speak, let's cut out the  
7 applause and just -- you can smile because we can  
8 see your smiles and it will take less time.

9 Supervisor Steele, thank you for being  
10 here tonight.

11 SUPERVISOR STEELE: I just came down  
12 also to thank you for your recommendation. From  
13 the County, our Board has totally agreed with our  
14 opposition to this plant.

15 I thought today -- I wanted to say  
16 something too to you. I have lived here now, in  
17 Hayward, next month, 46 years. I can't remember a  
18 political issue where all the institutions, the  
19 City, the County, Chabot, community groups have  
20 come together on one side. Usually we are more  
21 split.

22 And I thought the only thing -- I know  
23 this letter was sent to you but I thought I would  
24 like to read two paragraphs of Dr. Iton's letter,  
25 which is a little complicated. But I think what

1 is happening is on the health front, as time goes  
2 by we learn more and more things that are  
3 endangering our health.

4 And it is very hard to see particles in  
5 the air. You don't. And it is very hard  
6 sometimes to see what is ailing people. So  
7 science is coming along. And I thought this was  
8 quite an impressive letter that he wrote. Because  
9 there is so much that is not documented yet.

10 "The Air Board study  
11 employed a panel of experts  
12 reviewing many epidemiological  
13 cohort studies conducted  
14 worldwide in recent years. The  
15 CARB report issued two important  
16 findings. The first was that  
17 PM2.5 exposure increased the risk  
18 of death in a population by ten  
19 percent for every ten microgram  
20 per cubic meter increase in  
21 concentration. The previous  
22 estimate was six percent.  
23 Therefore the estimated effect  
24 was increased by 66.7 percent,  
25 which translates into a doubling

1 or tripling of the number of  
2 deaths due to PM2.5 exposures  
3 depending on the level of  
4 certainty employed. CARB  
5 estimated that 8,200 premature  
6 deaths occurred annually in  
7 California because of PM2.5 in  
8 '99 and 2000. Based on current  
9 pollution levels, which are much  
10 improved since then, and the new  
11 effect estimate, the number of  
12 deaths due to this exposure is  
13 estimated between 14,000 to  
14 24,000 per year. A 70 percent to  
15 292 percent increase.

16 "The second important  
17 finding in the new report was  
18 that there is no evidence in the  
19 literature for a threshold below  
20 which exposure is safe. While  
21 the science to date has not  
22 documented effects below seven  
23 micrograms per cubic meter, the  
24 consensus of the scientific panel  
25 was that there is no reason to

1           assume safe levels exist above  
2           the background level of 2.5  
3           micrograms per cubic meter. Thus  
4           the new threshold recommended is  
5           a range between 2.5 and 7  
6           micrograms per cubic meter of  
7           fine particle concentration. In  
8           contrast, the prior standard  
9           employed by CARB was the  
10          established state standard of 12.  
11          This new threshold represents a  
12          huge reduction in what exposure  
13          is considered safe, a reduction  
14          of 40 percent to 80 percent."

15                 I think, you know, the pollution issues  
16          are just not that well-known today. You have all  
17          kinds of illnesses that sometimes people can't  
18          even document where they come from.

19                         And the other thing I have to say to  
20          you that's sort of sociologically speaking.  
21          Sometimes I feel that everybody wants in Hayward  
22          what they wouldn't put in Piedmont. They want in  
23          Hayward what they wouldn't put in a more affluent  
24          community. And a lot of us have been fighting for  
25          Hayward for a lot of years.

1                   And we really are happy with what you  
2                   have recommended and we just really hope, as the  
3                   Chabot person said, that we can put this to bed  
4                   and move on because we don't want it. And thank  
5                   you very much for your time. Thank you.

6                   HEARING OFFICER GEFTER: Thank you.  
7                   Council Member Barbara Halliday. There she is.

8                   COUNCIL MEMBER HALLIDAY: Hi, I'll be  
9                   brief.

10                  HEARING OFFICER GEFTER: Thank you.

11                  COUNCIL MEMBER HALLIDAY: I appreciate  
12                  your once again being here. I feel like I am  
13                  getting to know all of you having been here so  
14                  many times before you. You have done a very good  
15                  job, Ms. Gefter, of running these hearings, I  
16                  think.

17                  And Commissioner Byron, I just want to  
18                  say to you I very much appreciate the preliminary  
19                  decision that you made. When people would ask me  
20                  through this process, well how is it going, what  
21                  do you think they are going to do. I would say, I  
22                  don't know but I do think that the Commissioner  
23                  who has been attending these hearings has been  
24                  listening very carefully.

25                  I thought you were making great eye

1 contact. You really have shown that you were  
2 paying attention. I didn't know if it was an act.  
3 But I think, based on your decision I don't think  
4 it was an act. I think you really were listening  
5 to us and I appreciate that you have done that.

6 PRESIDING MEMBER BYRON: If that's all  
7 I had to do was listen. There was a great deal of  
8 material to go through in this case.

9 COUNCIL MEMBER HALLIDAY: Yes, and I  
10 appreciate that too, just the time.

11 And of course I very much support this  
12 decision and I hope that the full CEC abides by  
13 your recommendation.

14 I am very proud of what our community  
15 has done in standing up for itself and I hope that  
16 you who have come here for these many months to  
17 hear our community have that impression too, that  
18 we care about the place. And I think our citizens  
19 are also very educated about issues like health  
20 and pollution. And I'm sure you are hearing this,  
21 you know, throughout the state.

22 In addition to just thanking you for  
23 this decision and saying that I hope that we don't  
24 reopen the process and that we do get soon to a  
25 final decision upholding your preliminary

1 recommendation at the CEC I just wanted to say  
2 that what I have learned about the process going  
3 through, you know, these two plants that have come  
4 before us in Hayward in the last few years. I  
5 have more faith now in the CEC and I hope that  
6 that's sustained when this decision comes through.

7 But I also think that local governments  
8 do need to have more of a role in the process.  
9 And I understand that perhaps the final decision  
10 in matters like these needs to be taken out of the  
11 their hands. But I do think that local government  
12 should play more of a formal role throughout the  
13 process.

14 We were asked to make decisions on  
15 these power plants at a point where very little of  
16 the environmental work had been done at that  
17 point. And we weren't really well-informed about  
18 the environmental impacts. And certainly then not  
19 about any mitigations that would be proposed to  
20 respond to those impacts.

21 And I think it would be better if there  
22 were more formal, if there was a more formal role  
23 for a local government to play at a later point in  
24 the process than they play now. So that's a  
25 suggestion I have.

1                   And finally just as a citizen of  
2                   California. And California is one of the best  
3                   states in the Union as far as energy conservation  
4                   goes. But we all know that we need to do more.  
5                   And in my opinion to even consider building a new  
6                   peaker plant, which by definition is going to give  
7                   us power during the times we are using it, we are  
8                   using the most and we just need more than the  
9                   regular power plant can provide.

10                   We as people of the world need to  
11                   understand that at those times we need to  
12                   conserve. We need to cut back. We need to take  
13                   measures not to use the power, or we need to get  
14                   it from alternative sources that don't pollute the  
15                   air.

16                   So I hope that the CEC -- I applaud the  
17                   CEC for the efforts it has taken already to  
18                   promote renewable energy sources and also  
19                   conservation. And would just encourage you to  
20                   continue in that vein and let's forget about  
21                   peaker plants until we have really taken all the  
22                   measures that we can to conserve and use renewable  
23                   sources. Thank you.

24                   HEARING OFFICER GEFTER: Thank you very  
25                   much. Are there any other elected officials that

1 wish to address us tonight? Because if not then  
2 we are going to go on to the people who live here,  
3 the residents of Hayward.

4 I am going to ask groups of people to  
5 come up who seem to have sort of common interests.  
6 And that would be Don Campbell, who is the  
7 executive director for National Electrical  
8 Contractors. Don. And also Barry Luboviski, who  
9 has addressed us before. If Barry is here perhaps  
10 you can line up behind Don. And then we can kind  
11 of move our line along.

12 MR. CAMPBELL: Thank you. As mentioned  
13 my name is Don Campbell. I am the executive  
14 director of the Northern California Chapter of the  
15 National Electrical Contractors Association, where  
16 we represent over 200 contractors in the Hayward  
17 area, in Alameda County.

18 And I am grateful for this opportunity  
19 to say a few words and to share a few thoughts on  
20 this very, very important subject. And I  
21 appreciate what I walked into when I parked my car  
22 and drove past the pickets outside and I  
23 appreciate the comments from the public officials,  
24 many of which that we support as an association.

25 However, we differ in the conclusion

1 and we ask for a continued investigation on those  
2 issues of concern so that this very important  
3 plant can be built. Peaker plants serve a  
4 particular need.

5 To give you an idea, our association  
6 just funded a \$600,000 research project to  
7 investigate how our contractors can be involved  
8 with photovoltaic. We have in Southern California  
9 the largest, private photovoltaic system in  
10 California by our joint apprenticeship training  
11 committee from the IBEW and the National  
12 Electrical Contractors Association.

13 This study is to help find alternative  
14 sources. The key word is that it is research. It  
15 is not here today. You cannot build a peaker  
16 plant using the technology that we have other than  
17 the one that's designed for here.

18 Now it is very easy, I think, for a  
19 community to look at the issues and be concerned.  
20 No matter what we talk about, be it a prison, be  
21 it a peaker plant, it is easier to build it  
22 someplace else. And I appreciate how Hayward  
23 feels in its regard to Piedmont. I certainly  
24 appreciate. I also appreciate the ability to  
25 listen to these voices of concern.

1                   All that we would humbly ask is that  
2                   you reconsider and that you look and investigate  
3                   those issues. For instance the issue of the  
4                   thermal plumes. It happens to be a fact that the  
5                   Russell Center Energy Center -- the Russell City  
6                   Energy Center is eight times larger and it is only  
7                   .25 miles further away. This is one-eighth of that.

8                   The main concern, I think here, is the  
9                   need for a peaker plant. They are necessary. The  
10                  technology today, spoken by someone that I feel  
11                  that I know what I am talking about with  
12                  technology and the ability to fill the need, we  
13                  stand in support of this plant. Thank you.

14                  HEARING OFFICER GEFTER: Thank you.  
15                  Hi, welcome tonight. Would you please spell your  
16                  name for the reporters.

17                  MR. LUBOVISKI: Yes. Hi, thank you for  
18                  an opportunity to address you. My name is Barry  
19                  Luboviski. And Ms. Gefter was correct, I have  
20                  spoken here once before so I will try to be brief.  
21                  I am secretary/treasurer for the Building and  
22                  Construction Trades Council. We represent 28  
23                  construction unions in Alameda County.

24                  And first let me associate myself with  
25                  the opening comments of Chancellor Kinnamon in his

1 expressed appreciation. I think everyone in here  
2 appreciates the work that this Commission does and  
3 the due diligence and the hard work that is put  
4 forward in making findings, listening to a lot of  
5 testimony. So I also want to express our  
6 appreciation for that.

7           The real issue here is not whether or  
8 not we need peaker plants because I think that is  
9 an established fact. By the very nature of their  
10 title they come on-line when they are needed,  
11 during peak times. So I would respectfully  
12 disagree with the contention on the need for  
13 peaker plants or on the contention that we don't  
14 need them in Hayward. If in fact that's the case  
15 then this is not a very good business venture on  
16 the part of the business because they will not  
17 come on-line unless they are needed.

18           So the real question here is whether or  
19 not this plant is appropriately placed here. I  
20 agree, I would much rather see it in Piedmont than  
21 here. The placement of this plant is not by  
22 coincidence. It has a lot to do with location in  
23 terms of the proximity to the grid and a number of  
24 other factors that necessitate where plants are  
25 placed to get the most power and economy out of

1 their production of electricity when needed.

2 Also I think that there is the  
3 difficult issue in every community in California  
4 about the placement of power plants. Power plants  
5 by definition bring forward a whole host of fears  
6 and a whole host of conceptions.

7 As was just said earlier, we are  
8 evolving in terms of the production of power and I  
9 think in years to come we will see cleaner plants.  
10 But that should not pre-presume that this is not a  
11 clean plant. And it is much different from the  
12 plant that I worked on over 30 years ago in  
13 Pittsburg, which was a power plant also. So we  
14 are seeing an evolution to a much cleaner plant.

15 We make decisions all the time on  
16 weighting impacts on our communities. Right now  
17 there is the widening of the freeway that connects  
18 580 and 880. Freeways produce additional  
19 pollution. So we make judgments based on their  
20 necessity and based on their viability and  
21 practicality.

22 The Buildings Trades Council feels that  
23 this is not only viable but an important component  
24 in the power grid in California. So the real  
25 question is, are there compelling interests here

1 that outweigh that need and we do not believe so.

2           It was pointed out by the speaker  
3 before me that the plume at Russell City Energy  
4 Center significantly -- it was much greater than  
5 that of this plant. I would also add to that  
6 that, as I think was said and observed in earlier  
7 testimony at other hearings, that this plant is  
8 outside of the immediate safety area of the  
9 airport. It is in an industrial area.

10           And I think that one of the  
11 difficulties in an industrial area -- and our  
12 communities are going through struggles around  
13 these issues. I was at a hearing in Berkeley  
14 where they wanted to close down a foundry that had  
15 not only an important role to play but also jobs.  
16 So this is a continual tug of war between  
17 necessity and viability in terms of air pollution  
18 and other issues.

19           We think that the need for power going  
20 forward in this next period of time, and the  
21 mandate of the Commission for ensuring that we  
22 have protections to our power grid, outweigh the  
23 immediate local concerns.

24           I think I have covered most of the  
25 points. I appreciate the difficulty of this. I

1       certainly respect and understand the concerns of  
2       local residents.  But I would submit to everybody  
3       in the room, really the compelling question is,  
4       where do we put plants?  Both power plants and  
5       peaker plants.  Whose community do we put them in  
6       that is not going to raise these issues?

7                   And I think that when we review these  
8       we have to look at the broader issue.  And that  
9       is, what is really necessary in the region?  What  
10      do we need to sustain ourselves in terms of  
11      electrical integrity in Northern California?

12      Thank you.

13                   HEARING OFFICER GEFTER:  Thank you very  
14      much.  The next group would be -- I have a series  
15      of people who are professors so I am going to ask  
16      Dr. Sherman Lewis to come up and then Professor  
17      Laurie Price and then Professor David Fouquet.  So  
18      the three of you, maybe you can line up starting  
19      with Professor Lewis and then we'll hear from our  
20      faculty.  Welcome Professor Lewis.

21                   DR. LEWIS:  Thank you.  It's  
22      interesting and appreciated to get up here a  
23      little bit earlier because if you had called me  
24      later I would have had even more notes and spoken  
25      even longer.

1 (Laughter)

2 PRESIDING MEMBER BYRON: Professor  
3 Lewis, if I may ask you a question. Were you part  
4 of the evidentiary hearings? Were you a witness  
5 during the evidentiary hearings?

6 DR. LEWIS: Yes.

7 PRESIDING MEMBER BYRON: Do you have  
8 additional public comment? Because there's an  
9 awful lot of members of the public here who would  
10 like to speak this evening.

11 DR. LEWIS: I'd like to make a public  
12 comment more than an intervenor process kind of  
13 comment.

14 PRESIDING MEMBER BYRON: Your comments  
15 are welcome but I hope you will respect that there  
16 are many others here that would like to speak this  
17 evening.

18 DR. LEWIS: Yes, I do.

19 PRESIDING MEMBER BYRON: Thank you.

20 DR. LEWIS: I think what we have in  
21 this process. And I am here to express my  
22 appreciation for Jeffrey Byron's decision in this  
23 matter. Because I know there is some push the  
24 other way on you politically.

25 PRESIDING MEMBER BYRON: There is no

1 push on me. And it is not a decision, it's a  
2 Presiding Member's Proposed Decision. Just so we  
3 are clear on that, okay.

4 DR. SHERMAN: I'm oversimplifying.

5 PRESIDING MEMBER BYRON: Okay.

6 DR. SHERMAN: But I suspect that along  
7 with all of the rational analysis and enormous  
8 amounts of time that there may possibly be some  
9 element of politics involved. I say that partly  
10 because I am a political science professor.

11 PRESIDING MEMBER BYRON: Well, I can  
12 assure you there is not and I am not a political  
13 scientist. We are basing the decision based upon  
14 the evidence that is in the record. Please  
15 proceed.

16 DR. SHERMAN: We are in a process of a  
17 conflict between an old paradigm and a new  
18 paradigm. The old paradigm, the PUC would give  
19 PG&E permission to make arrangements with  
20 corporations for new plants that used fossil  
21 fuels.

22 The new paradigm is being pioneered in  
23 California by the CEC. And you produced an energy  
24 plan which included a fairly strong chapter on  
25 peaking plants, showing that there were some

1 fairly significant ways that we could avoid the  
2 need for those things and move towards a more  
3 sustainable energy future.

4 But there is also a degree of confusion  
5 in which the CEC staff report on this plant  
6 indicated a need for the peaking power. Evidently  
7 ignoring the plan of the CEC from a few months  
8 before that. And more recently a CEC staff  
9 comment that my comments to the CEC were not  
10 substantive. Which was interesting because my  
11 comments largely refer to the CEC's energy plan  
12 for the state. Hopefully the staff does not think  
13 its own plan is not substantive.

14 The arguments that are most prominent  
15 have been aviation hazards, pollution, use of  
16 fossil fuels, contradiction of local plants. But  
17 what concerns me the most is the bigger picture of  
18 meeting our energy needs through alternatives. We  
19 have seen enormous national media coverage on T.  
20 Boone Pickens' plan for expanded wind power, Al  
21 Gore's speech on energy to move us away from  
22 fossil fuels.

23 And Commissioner Byron's decision is  
24 part of that larger process to somehow find a way  
25 to move away from fossil fuels to sustainable

1 systems. You perhaps didn't intend to be a major  
2 player in the history of Hayward but that is  
3 something that is happening to you.

4 And we have the issue of a possible  
5 inconsistency of the preliminary decision with  
6 that that was made for Russell City. Council  
7 Member Halliday referred to the different  
8 conditions under which that decision was made by  
9 an earlier city council and we now have better  
10 information about pollution.

11 And we also have the fact that that  
12 power plant may also not come to fruition because  
13 of Rob Simpson's action before the EPA because it  
14 is seeking a second renewal of its permit to  
15 build, which does not seem to be legal. And  
16 possibly because of new information relating to  
17 the health damage of particulates.

18 It is possible, in fact, that the two  
19 Hayward peaking plants and the Altamont peaking  
20 plant could fail. And looking forward in a larger  
21 policy context it would seem to me worthwhile for  
22 the CEC, and I realize I am not speaking real  
23 specifically to Eastshore, but to revisit the  
24 chapter on peaking plants from your basic state  
25 plan of last year, to see what we do.

1                   Did we, can we survive without these  
2                   peaking plants? Can we have insulation that  
3                   reduces air conditioning needs? Can we have time  
4                   of day pricing that encourages conservation? Can  
5                   we have more ENERGY STAR appliances? Can we have  
6                   more solar, thermal and voltaic and other  
7                   alternatives? So that we can have not a process  
8                   driven by a corporate applicant but a process  
9                   driven by the CEC itself to visit the peaking  
10                  power plant issues in the context of these three  
11                  plants. Hopefully you will consider doing that.

12                  And also please look at the role of the  
13                  PUC in giving permission to PG&E to build more  
14                  fossil plants. Which are not really consistent  
15                  with what the CEC is trying to do.

16                  Again, Commissioner Byron, thank you  
17                  very much for your recommended decision.

18                  HEARING OFFICER GEFTER: Thank you. I  
19                  think -- Laurie Price and then David Fouquet  
20                  please. Thank you.

21                  MS. PRICE: Hi. I am a professor at  
22                  Cal State East Bay and I feel the dangers posed by  
23                  all the testimony about air quality issues with  
24                  this power plant and with other power plants in  
25                  the area. But I want to address a slightly

1 different feature of opposition to the plant in my  
2 testimony.

3           The piece I want to add to this is  
4 about yet another reason to reject the plant. And  
5 that reason is energy security. Just three weeks  
6 ago the Federal Energy Information Agency said  
7 that natural gas will cost 52 percent more next  
8 year than it does this year. Supplies of natural  
9 gas, just as those of oil, are finite and  
10 inventories are declining. The increasing costs  
11 of natural gas as the world competes for dwindling  
12 fossil fuel supplies will just get passed on to  
13 energy consumers, to all of our utility bills.  
14 And to the general inflation in our society as  
15 energy costs increase. The only way to avoid this  
16 is to come up with real, renewable energy sources.

17           In short, the CEC needs to consider  
18 that this Eastshore power plant represents the  
19 same, old energy insecurity. The constantly  
20 expanding monster that sucks our economy dry to  
21 pay for decreasing fossil fuel supplies from  
22 unfriendly places.

23           To summarize: In my view the Eastshore  
24 plant is inappropriate for pilots, for public  
25 health, for the earth's livability in the coming

1 decades. And finally the piece I am adding here.  
2 It is inappropriate for our energy security in the  
3 state of California and in our nation. Thank you.

4 HEARING OFFICER GEFTER: Thank you.

5 PRESIDING MEMBER BYRON: If you could  
6 help confine your remarks to the comments on the  
7 Presiding Member's Proposed Decision that would be  
8 very helpful. I appreciate the concern about  
9 energy security. You only know me in the context  
10 of this hearing. But I can assure you the Energy  
11 Commission, my predecessors at the Commission,  
12 current Commissioners, are quite concerned about  
13 many of these same issues that you are discussing.

14 I know that many members of this  
15 community have gotten very engaged around energy  
16 issues and I think that is fantastic. I encourage  
17 you to do more so. But it would be very helpful  
18 if we could stay on point here with regard to what  
19 is before us this evening. Please go ahead.

20 HEARING OFFICER GEFTER: And also  
21 please state your name and spell it, please.

22 MR. FOUQUET: My name is Dave Fouquet.  
23 That is F-O-U-Q-U-E-T.

24 HEARING OFFICER GEFTER: Thank you.

25 MR. FOUQUET: And I am now set to begin

1 my 17th year as a math professor at Chabot College  
2 where I have held tenure since 1996. I am also a  
3 homeowner in the Eden Gardens neighborhood in West  
4 Hayward and my house is about half a mile from the  
5 proposed Eastshore Energy Center.

6 I would like to applaud the  
7 recommendation to deny the certification of  
8 Eastshore. And I realize that air safety and land  
9 use were the major factors cited, though I do  
10 appreciate your addressing certain air quality  
11 issues in your report, notably acrolein and NO2  
12 emissions.

13 I just wanted to make a couple of  
14 points with regard to air quality, speaking of  
15 those points that were in the report. First, I  
16 did speak to you in January and I would like to  
17 reiterate my opinion that I am believe that the  
18 local Air Quality Management District's standards  
19 are not stringent enough when it comes to keeping  
20 clean the air that we breath.

21 As we point to that it seems it is  
22 their policy -- I am far from an expert on this  
23 but it seems it is their policy that had permitted  
24 the exclusion of acrolein in the emission tests in  
25 the first place. Which is why I am glad that you

1 had it addressed in the report.

2           However, now that the California Air  
3 Resources Board, or CARB, is implementing a new  
4 standard for NO2 it just seems to support my point  
5 that insofar as we license power plants based on  
6 presently lax standards for air quality that we  
7 are only asking for trouble ahead as the standards  
8 become more stringent.

9           The second point I would like to make  
10 is with regard to the push towards renewable  
11 resources. It is that of course I would hope that  
12 in a densely populated area that we would, that  
13 would be precisely the place we want to push for  
14 renewable resources.

15           As I told you in January I do have a PV  
16 system at my house. I back-fill the grid at peak  
17 times. Also Chabot College is planning to install  
18 a megawatt system at the campus this winter and  
19 also at LPC as well. So those PV systems all tend  
20 to have maximum power output during peak times.  
21 So it seems to me that as these become more  
22 standard in the area that it seems to me that we  
23 can gradually fulfill our peaker need just with  
24 photovoltaics. Thank you very much.

25           HEARING OFFICER GEFTER: Thank you.

1 Please, let's not applaud, it takes too much time.  
2 I am going to ask Jesus Armas to come forward.  
3 And also if we could not applaud it will save us  
4 some time as so many people want to speak to us  
5 this evening. Mr. Armas.

6 MR. ARMAS: Thank you very much. Jesus  
7 Armas, Hayward resident. I first, as you know,  
8 got involved with this in my official capacity and  
9 I now continue to be involved as a private  
10 citizen.

11 PRESIDING MEMBER BYRON: So this  
12 project has outlived your career, I take it.

13 MR. ARMAS: It doesn't outlive my  
14 career as a resident who is concerned about the  
15 future of our city and it is in that capacity that  
16 I'd like to just share a couple of remarks.

17 This project seems to have stealth  
18 qualities to it and continues to have stealth  
19 qualities even to this day. I shared with you  
20 before that the City was not apprised of the  
21 application for this effort in the context of  
22 Tierra Energy seeking to get a purchase agreement  
23 with PG&E until after that took place.

24 As you will remember PG&E awarded a  
25 purchase power agreement in April of '06 to some

1       entity unknown and unidentified as to its  
2       location. It wasn't until two months later that  
3       we learned that the applicant at the time was  
4       considering siting it in Hayward. We expressed a  
5       number of concerns when that came to our attention  
6       and continue to have those concerns today.

7               I make reference to the stealth  
8       qualities because as you heard this afternoon, we  
9       heard an important fact this afternoon. And that  
10      is that the power purchase agreement apparently  
11      was terminated by Tierra Energy in May of this  
12      year. Again an important fact that was not  
13      disclosed to anyone but for one of the intervenors  
14      bringing it to the public's attention and to the  
15      Committee's attention this afternoon.

16             I find that ironic because in the  
17      letter submitted on behalf of Eastshore, Mr.  
18      Byron's decision is criticized. The comments  
19      begin by indicating that the author is astonished  
20      and baffled by the basis of that decision. It  
21      goes on to say that it reflects, quote,  
22      incomplete, distorted and inappropriate  
23      distillation of the record. I think the record  
24      actually represents the opposite. It represents a  
25      reasoned, thoughtful deliberation of the facts, a

1 thoughtful deliberation of the record, a  
2 thoughtful deliberation of the local matters.

3           And what I find especially reassuring  
4 is the analysis that is presented with respect to  
5 the request to override the local regulations and  
6 standards. Quite emphatically and quite clearly  
7 the Proposed Decision indicates that the findings  
8 cannot be made. I find it particularly gratifying  
9 because I think some of the same arguments that  
10 are found in the opinion are the same arguments I  
11 expressed to you in January. So I think there is  
12 some validation in terms of the research that we  
13 did back then.

14           I want to commend the Committee, I want  
15 to commend the Hearing Officer and I certainly  
16 want to commend CEC staff for their hard work.  
17 And I urge a favorable consideration when the full  
18 Commission hears your recommendation. Thank you.

19           PRESIDING MEMBER BYRON: Thank you.

20           HEARING OFFICER GEFTER: Thank you very  
21 much. I would like to ask Carol Ford from  
22 California Pilots to come up and then Andy Wilson,  
23 who is a local pilot, to also maybe get in line  
24 behind Ms. Ford. Say your name, please.

25           MS. FORD: Thank you, Ms. Gefter and

1 Commissioner Byron. I do want to speak beyond  
2 what I said when I testified.

3 HEARING OFFICER GEFTER: Please say  
4 your name for the record.

5 MS. FORD: It's Carol Ford.

6 HEARING OFFICER GEFTER: Thank you.

7 MS. FORD: Thank you. And it's F-O-R-  
8 D, like the car. I am the vice president for  
9 Region 3 for the California Pilots Association and  
10 also the president for the San Carlos Airport  
11 Pilots Association. And additionally I have been  
12 asked by the Skywest Homeowners Association to  
13 make comments on their behalf because they  
14 couldn't be here tonight.

15 Dear Commissioner Byron, The California  
16 Pilots Association and the San Carlos Airport  
17 Pilots Association both support and applauds your  
18 PMPD denying the application for Eastshore Energy  
19 Center, a power plant to be built in Hayward  
20 within a half-mile of Hayward Executive Airport.

21 In a separate document by our attorney  
22 we outlined all of that.

23 But I just wanted to thank you for the  
24 part about Hayward Executive Airport is a vital  
25 link in the national transportation system and it

1 is therefore really important to protect the  
2 airspace above and adjacent to the airport as well  
3 as the land around it.

4 As you noted in the PMPD on page 350,  
5 quoting you:

6 "We conclude that EEC is  
7 likely to create a hazard in two  
8 ways: One, turbulence from the  
9 plumes rising to an altitude  
10 where airplanes fly, and two,  
11 pilots needing to take additional  
12 measures while in the cockpit in  
13 order to avoid potential  
14 invisible plumes, and therefore  
15 that project will cause  
16 significant, adverse  
17 environmental impacts. We also  
18 conclude that the impacts cannot  
19 be mitigated."

20 Thank you.

21 Noted on page 350, the proximity of the  
22 EEC site to the Hayward Airport, particularly its  
23 location with the airspace is problematic in an  
24 already congested area. You further delineate on  
25 page 351, available airspace and traffic patterns

1 are a concern not only horizontally but  
2 vertically. These are important and correct  
3 statements for which we thank you.

4 By constructing even one power plant  
5 within a half-mile, or any power plant within one  
6 and a half miles. As you may be aware we remain  
7 adamantly opposed to Russell. Close to the  
8 airport it will limit airspace use, which would  
9 have a dramatic, deleterious affect on the Bay  
10 Area's air traffic management and the utility of  
11 the Hayward Airport, an important reliever to  
12 Oakland.

13 We appreciate your work and attention  
14 to disparate details. Please continue to deny  
15 this application for Eastshore.

16 Then the Skywest Homeowners  
17 Association. This is written by Samantha  
18 Bloodhart, B-L-O-O-D-H-A-R-T. And she says:

19 Dear Sir: Skywest Townhouse Homeowners  
20 Association would like to add its support for the  
21 Eastshore Presiding Member's Proposed Decision.  
22 Skywest Homeowners sought to intervene in the  
23 Russell City proceedings but the CEC unfortunately  
24 refused our offer of evidence. And they strongly  
25 support this decision, your preliminary decision.

1                   I am the president of the directors of  
2                   a 140 unit townhouse homeowners association  
3                   represented by Ms. Hargleroad in opposition to the  
4                   Eastshore and Russell facilities.

5                   We strongly agree with the findings in  
6                   your preliminary decision and support you in  
7                   recommending it for the permanent adoption by the  
8                   California Energy Commission. We thank you for  
9                   your efforts and applaud your group's insight.

10                  Furthermore we respectfully request and  
11                  support that your same preliminary decision be  
12                  recommended to the CEC as a determination for the  
13                  Russell facility.

14                  As the Hayward Executive Airport's  
15                  nearest residential neighbor we are very concerned  
16                  about pilot workload and safe aircraft operations  
17                  near our community.

18                  We apologize that couldn't be here this  
19                  evening but we only -- she only recently heard of  
20                  it and she couldn't get here this evening.

21                  Sincerely, Samantha L. Bloodhart, president,  
22                  Skywest Townhouse Homeowners Association.

23                  Thank you both very much.

24                  HEARING OFFICER GEFTER: Thank you very  
25                  much. Mr. Wilson.

1                   MR. WILSON: Good evening and thank  
2 you. I won't address you to save time.

3                   I would also like to remind everyone  
4 that I am the only resident besides Paul Haavik as  
5 an intervenor that's attended all the meetings.  
6 Alameda County land use meetings, work sessions  
7 and also before the Commission in Sacramento and  
8 also as a witness before Mary Hayashi's bill, AB  
9 1909.

10                  I am the pilot that attended the  
11 meetings and also forcefully brought the attention  
12 to the CEC on the aviation issues. I want to  
13 thank you for bringing those issues to the front.  
14 I want to thank you for your preliminary decision.  
15 And hopefully you will be able to see it through  
16 in Sacramento.

17                  I would just like to make a couple of  
18 new comments. One of the things is that if we go  
19 back to what Gail Steele said, our county  
20 supervisor. She is also a former Hayward council  
21 member. And her comment about people targeting  
22 Hayward.

23                  Well Hayward just happens to be the  
24 heart of the Bay. If you take a map and you look  
25 at the east side of the Bay, we are dead center.

1 We have major communications here, both microwave,  
2 radio stations, television stations, telephone  
3 interchanges. We have highways, bridges. And it  
4 would just be normal to just pick a place and put  
5 it in Hayward.

6 Except we have a little problem with  
7 that. The problem is, the State of California  
8 wanted to put a freeway through Hayward up in the  
9 hills. That started 40 years ago. The applicant  
10 is complaining about a year and a half. Eastshore  
11 still hasn't broken ground. That started in 2000.  
12 It is now 2008. They have asked for an extension,  
13 2010. We have --

14 PRESIDING MEMBER BYRON: I think you  
15 are referring to Russell City.

16 MR. WILSON: Russell City, yes. The  
17 point is that you as the California Energy  
18 Commission and the applicant has to understand,  
19 this is a big, complicated place. On one power  
20 plant it was the former city manager that worked  
21 with you. It was the current mayor that's worked  
22 with you to see that through. And the issue is,  
23 one power plant.

24 But no, we have to have two power  
25 plants for all the reasons we can understand.

1 Well what about the third power plant? The fourth  
2 power plant? And now we have what is called a  
3 power park or an energy park. What about on the  
4 Hudson in New York? Fifteen power plants in a  
5 row. I think that's what you are hearing from  
6 these people.

7 Of course the labor unions would love  
8 to see 15 or 20 power plants here, it's the ideal  
9 spot. It's the center to the valley, it's the  
10 center to the peninsula. We should have 50 power  
11 plants here. That's the point, we don't want  
12 them.

13 If you have Russell City that is going  
14 to take the power across the Bay. You have from  
15 San Francisco to San Jose, the East Bay to the  
16 Pacific Ocean, and you had to put it in Hayward.  
17 So there's a lot going on here.

18 Last, roads. Type F. What's a type F?  
19 Traffic doesn't move. A couple of weeks ago, as  
20 discussed in meetings. What happens when there's  
21 a bad accident? Two people were killed, a truck  
22 overturned. When that happens the highway patrol  
23 has to shut the freeway. The PM2.5 goes through  
24 the roof around here. Mission Boulevard, every  
25 street in Hayward is impacted. Can you get an

1 emergency vehicle through? No you can't.

2 So these are the issues that we talked  
3 about. These are the issues that are a problem in  
4 dealing with Hayward. It just takes time. You  
5 are on a 12 month cycle. You should have 24, 48,  
6 up to what, ten years. Forty years for the  
7 freeway. So it is not a small place, it is not a  
8 simple place. It is not a place in the valley  
9 where in 12 months you can site a power plant.  
10 Thank you.

11 HEARING OFFICER GEFTER: Thank you very  
12 much.

13 PRESIDING MEMBER BYRON: Thank you,  
14 Mr. Wilson, for attending all these meetings. And  
15 I would appreciate if you could stay afterwards to  
16 help answer some of the questions from the press.

17 (Laughter)

18 HEARING OFFICER GEFTER: I was going to  
19 ask Michael Toth to come on up. And Mr. Toth,  
20 when you were here previously you spoke to us  
21 about acrolein -- I can't even say it at this  
22 point. We have all your testimony so there is no  
23 need to repeat that. If you have other  
24 information to add --

25 MR. TOTH: Yeah, I won't repeat myself.

1 My name is Michael Toth. I am a resident about a  
2 half a mile from the plant, also in the Eden  
3 Gardens neighborhood.

4 You know, the thing I wanted to comment  
5 on is actually timely. It's the applicant's  
6 request to conduct more scientific inquiry. To  
7 hold the record open to conduct more scientific  
8 inquiry into the particular issue that has come to  
9 the forefront that they are being denied. It  
10 seems like, appears like the primary reason why  
11 this power plant is proposed to be denied.

12 Earlier in the -- You know, I was at  
13 the workshops and I have submitted many comments.  
14 I personally actually was somewhat chided in the  
15 earlier staff reports for requesting that  
16 additional scientific inquiry into PM2.5, non-  
17 diesel PM2.5 and the effect on human health, as  
18 well as the issue of the acrolein emissions of the  
19 plant. You know, testing methods that were  
20 uncertain as far as the Bay Area Air Quality  
21 Management District and CARB was concerned. And  
22 certainly additional EPA data from another agency  
23 that would tend to have a different opinion on the  
24 emissions of plants like this.

25 And the response from the Commission

1 was that their policy was basically to adhere to  
2 existing state regulatory standards. They did not  
3 even want to go to look at EPA test methods or  
4 standards because CARB hadn't given -- preferred  
5 them. So it was important for them to adhere to  
6 existing state standards.

7 And so what I hear from the applicant  
8 here is that the existing state agencies, that  
9 they want to actually conduct more research here  
10 with reference to the thermal plume issue and the  
11 hazard to airports.

12 And I would say that if the Commission  
13 chose to entertain the opening of the evidentiary  
14 record to conduct more scientific inquiry into  
15 this particular issue that the Commission also  
16 entertain opening up the record to conduct more  
17 scientific inquiry into the hazards of PM2.5.  
18 Which recently we have had some research from CARB  
19 concerning that PM2.5 is in fact many times more  
20 dangerous than what has previously been reported.

21 As well as while they are at the  
22 Colorado plant and Berrick testing the aircraft  
23 that they actually do a full air district source  
24 test for all the toxic air contaminants at those  
25 plants as well. Just in order to be consistent.

1                   I think it is unlikely that the record  
2                   would be opened at this point because I understand  
3                   from the CEC that if we just kept the record open  
4                   to do scientific inquiry as long as it takes to  
5                   find the truth then we'd probably never finish.

6                   So I would thank you for your  
7                   recommendation to not approve this project and  
8                   would hope that the evidentiary hearings, that the  
9                   evidence phase will be closed very soon. Thank  
10                  you.

11                  HEARING OFFICER GEFTER: Thank you very  
12                  much. I have blue cards from several homeowners  
13                  associations and CAP, Citizens Against Pollution.  
14                  I would like all of you to come up, line up. And  
15                  that would be Audrey LePell and Joanne Gross. And  
16                  Audrey, we have heard from you many times so we  
17                  hope that this time you could tell us something  
18                  different because we have all your other comments  
19                  on the record. Joanne. And then also Linda  
20                  Ramsey and Croft Jervis. If you could just sort  
21                  of line up. Thank you. Could you tell us your  
22                  name, please.

23                  MS. LePELL: Thank you. My name is  
24                  Audrey LePell. I am the president of an  
25                  organization called CAP, Citizens Against

1 Pollution.

2 Well when we, I and others, stepped  
3 into this menage of meetings beginning a year ago  
4 last spring, little did we realize how complicated  
5 and how interesting our experiences would be. So  
6 I have questions that I feel are appropriate for  
7 this afternoon but were not answered. So I will  
8 confine my remarks to those questions, which you  
9 have not heard that I know of.

10 First of all, we have never been told  
11 or we have not been revealed the terms of the  
12 Tierra contract, Eastshore contract. What it  
13 really says with the City. We understand there  
14 was an original payoff, we call it, of \$5 million.  
15 This has never been verified but we have been told  
16 this was part of the original offer that the  
17 Tierra Eastshore Energy Center made to the city.  
18 So if this is not true -- We always like to know  
19 if it is true or not.

20 PRESIDING MEMBER BYRON: That might  
21 explain Mr. Armas' retirement.

22 (Laughter)

23 MS. LePELL: I think we would all like  
24 to have that in our retirement package.

25 We haven't seen the contract, the

1 actual contract that the Tierra people have agreed  
2 to with the City of Hayward. That would be a very  
3 interesting document to get to or see or read.

4 We are offering -- We were told that  
5 Tierra offered other monies to other agencies, one  
6 of them being East Bay Regional Parks District.  
7 And we are concerned that that was not revealed  
8 today.

9 Now two other items that are off the  
10 subject but on the subject. We have never been  
11 heard -- we have never been told, I mean, who is  
12 the permitting agencies besides yourselves are.  
13 There have been referred to, permitting agencies.  
14 But there's a flood control agency by the County.  
15 There are other agencies that Tierra Eastshore  
16 must get permission from in order to build. But  
17 we have never been nor have I been ever able to  
18 identify who they are. That would be helpful to  
19 the citizens of Hayward because often these  
20 agencies have public meetings on their own that we  
21 might attend.

22 Is there a hearing -- Is this hearing  
23 also a part of the Bay Area Air Quality Management  
24 District. When we went to speak to them they  
25 corrected us severely by telling us that your

1       hearings are their hearings. But we were never  
2       informed by you, the California Energy Commission,  
3       or the Bay Area Air Quality Management District,  
4       until their staff very casually told us, your  
5       hearings are their hearings. And if that is the  
6       case the public deserves to know that.

7               I guess that ends my questions. So I  
8       wanted to say, we are always pleased to see you in  
9       Hayward and welcome. Hope you enjoyed the early  
10      evening restaurants, et cetera, and our  
11      demonstration and we hope you come back soon.  
12      Thank you.

13             PRESIDING MEMBER BYRON: Mr. Armas, I  
14      apologize for my poor humor. But I would like to  
15      give the applicant a chance to respond if they  
16      wish. There is no real need to give that  
17      insinuation any credibility but I think you  
18      deserve the opportunity to respond.

19             MR. TREWITT: Well, just to clarify.  
20      Tierra Energy has no agreement with the City of  
21      Hayward at all on anything. I think what you  
22      might be referring to is another project.

23             PRESIDING MEMBER BYRON: And staff  
24      might be able to help with regard to Ms. LePell's  
25      questions about all the agencies that are

1       involved.  Would you care to name some of the  
2       agencies that are involved in the permitting  
3       process.

4                   MS. HOLMES:  Typically the staff  
5       notifies and did notify in this case all of the  
6       local, regional and state agencies that would  
7       issue permits.  But for the Energy Commission's  
8       exclusive jurisdiction and to the extent that we  
9       received comments, those comments were  
10      incorporated into the staff assessment.

11                   If we didn't receive comments from the  
12      agencies we nonetheless tried to establish what  
13      the governing regulations would be, again absent  
14      the Commission's jurisdiction, and impose  
15      conditions of certification to ensure those  
16      requirements would be met.

17                   PRESIDING MEMBER BYRON:  Thank you.

18                   HEARING OFFICER GEFTER:  Okay.  I  
19      understand that Linda Ramsey is not here but she  
20      sent a blue card with her information.  Are you  
21      Joanne Gross?

22                   MS. GROSS:  Yes.

23                   HEARING OFFICER GEFTER:  Please go  
24      forward.

25                   MS. GROSS:  My name is Joanne Gross, G-

1 R-O-S-S. I am a resident of Fairview, which is an  
2 unincorporated area of Hayward in Alameda County.

3 All I wanted to say to you tonight is  
4 to ask you to please follow through with your  
5 proposed decision to deny the application for the  
6 Eastshore Energy Center. I understand that the  
7 primary reasons are that it does not comply with  
8 Hayward LORS and its high-velocity thermal plumes  
9 will cause hazards to aircraft and neighborhoods.

10 However, I am not convinced that there  
11 are also not significant environmental justice  
12 issues, air quality issues, health hazards, noise,  
13 visual blight and just a negative impact on our  
14 living situation.

15 I am especially concerned that it will  
16 alter the entire character and culture of our  
17 community. I was born and raised in Hayward and  
18 so are my parents who are 87 years old and live in  
19 Castro Valley. And Hayward was a wonderful place  
20 to grow up. You know, we have beautiful hills and  
21 creeks. We had a wonderful downtown. We had a  
22 Joseph Magnin's downtown back in the day.

23 And you might not know this but at the  
24 turn of the century Hayward was a major resort  
25 destination for wealthy families in San Francisco.

1 The town is named after William Hayward who had a  
2 beautiful resort hotel here and there was even an  
3 opera house over where the Starbucks is.

4 I'll be the first to admit that Hayward  
5 hasn't aged very gracefully but we now have a  
6 mayor and city council and planning commission who  
7 are very committed to improving and redeveloping  
8 Hayward. Maybe you have driven through town and  
9 seen the new theater complex going up.

10 We do not want Hayward to become a  
11 heavy industrial corridor. And by approving the  
12 Russell City plant you have opened up the door to  
13 companies like Tierra that would like to piggyback  
14 on that industry. And I am concerned about what  
15 will come next.

16 If you consider the communities of  
17 Richmond and Martinez and Pittsburg. You know,  
18 communities that have heavy industries in them,  
19 those people have really suffered because of those  
20 industries. And you probably know that last week  
21 over 1,000 residents went to a Richmond City  
22 Council meeting to protest Chevron's expansion of  
23 their facility there. The industry runs those  
24 town and we don't want that to happen to Hayward.  
25 So I hope that you will also deny Calpine's

1 request to extend their application. Thank you.

2 HEARING OFFICER GEFTER: Thank you.

3 Mr. Croft Jervis. State your name, please.

4 MR. JERVIS: Good evening, my name is  
5 Croft Jervis. That's J-E-R-V-I-S. Commissioner  
6 Byron and the rest of the staff, thank you for  
7 coming this evening and listening to us and giving  
8 us the opportunity to speak to you. I am a  
9 resident, a long-term resident here of Hayward. I  
10 represent my Hayward association on Prospect  
11 Street.

12 And we are very concerned, mainly with  
13 the health issues and the pollution that's created  
14 in the Bay Area itself as a whole. We know even a  
15 lot of days that we have the spare the air days.  
16 We have hills to the east of us, we have hills to  
17 the west of us. And this creates almost like a  
18 little bit of a bowl. And you can go up on these  
19 hills and you can look down and you can see the  
20 haze down here in the bay.

21 And to add to more of this pollution I  
22 don't feel it's a good part to put in these power  
23 plants with the amount of pollutants that they  
24 might expel into the atmosphere. And I'm talking  
25 about long-term health issues for our children and

1 for a lot of our seniors that have different  
2 medical problems.

3 We have a beautiful shoreline along  
4 Hayward here that penetrates along from San  
5 Lorenzo and San Leandro. We have walkways and  
6 pathways so people can ride their bikes over  
7 towards San Mateo Bridge. And we have another  
8 area, Coyote Hills, that's to the south of us.  
9 And those are all areas we have wildlife preserve  
10 areas where a lot of the birds migrate and come in  
11 here. And to add to the areas more of these  
12 factories and more of these exhaust emissions  
13 going into the air, it's going to create a lot  
14 more hazards to health issues, I feel. And for  
15 the rest of us.

16 And we want to try to clean up the Bay  
17 Area, not add to it. And we already have an issue  
18 with our first power plant that we are trying to  
19 stop from coming in. Now we have this before us,  
20 a second power plant. When we don't even know  
21 what the outcome of the long-term situation would  
22 be, even for the first power plant if it is  
23 adopted and brought into the system. We need to  
24 have a study and see what kind of pollution and  
25 what kind of things that that's going to create

1 before we have another power plant. And that  
2 would just go on to others and others.

3 So we are very concerned about that and  
4 I'm sure you are and I hope that you'll consider  
5 us and deny these approvals for these power  
6 plants. Thank you very much.

7 HEARING OFFICER GEFTER: Thank you.  
8 There are several individuals. Catherine Combs,  
9 are you here? Catherine? Yes. And then I am  
10 going to ask Clarissa Arafiles. Clarissa. And  
11 Juanita McDonald and Juanita Gutierrez to please  
12 line up in line there. And then we can start with  
13 Catherine Combs. Could you say your name, please.

14 MS. COMBS: Okay. My name is Catherine  
15 Combs. I am a Chabot student. I have lived in  
16 Hayward almost my entire life.

17 And I would like to thank you,  
18 Mr. Byron, for your recommendation to deny the  
19 power plant. And I would like to say, you know,  
20 just adding to, you know, picking on poor little  
21 Hayward.

22 One of the things about Hayward, you  
23 know, is actually we have a really good music  
24 program in our school. I don't know if anybody  
25 here has even heard about it but Mount Eden has a

1 phenomenal choir. And part of the reason it is so  
2 awesome is just because it is taken from the  
3 elementary school to the middle school and to the  
4 high school.

5 I know that if a power plant was built,  
6 you know, like dead center like right where all  
7 the schools are because there's Chabot College and  
8 there's Mount Eden and then there's Ochoa and Eden  
9 Gardens all right there. You know, that would  
10 really not just hurt this music program that I  
11 love so much but all the kids who go to school  
12 there. You can't really say that that's right,  
13 can you?

14 It's like if there were two kids who  
15 were smoking cigarettes outside the playground of  
16 this little elementary school. I mean, what's the  
17 right thing to do? Do you go up to them and join  
18 them in smoking right there or do you ask them to  
19 please take their business somewhere else?

20 And I remember there was this one  
21 commercial. I don't know if anybody has seen it  
22 but there's a dam and then these two inspectors  
23 walk by. And there's this little crack in the dam  
24 and one of the guys, you know, they take out their  
25 gum and stick it on the crack. And then as they

1 walk away the whole dam explodes, which is just  
2 horrible.

3 And the reason I told you that is not  
4 because it was a humorous commercial but actually  
5 what they were doing was they were applying a very  
6 temporary solution to a big problem, you know. I  
7 mean, if the dam goes down then what happens to  
8 the city? Come on now.

9 And in a way the power plant, it's  
10 really old technology. It's four-year-old  
11 technology and you're trying to use it to solve a  
12 bigger energy problem. But it's not going to work  
13 for very long. I mean, pretty soon just powering  
14 the power plant, you know, the natural gas is  
15 going to be too expensive in a few years and you  
16 will have to shut it down anyway. Or if not shut  
17 it down it will just be so expensive to maintain.  
18 And in the meantime you will be throwing so many  
19 pollutants on this community it will ruin it.

20 I mean, I know that if I had a choice  
21 to choose a house in one city or another I am  
22 going to choose a city that doesn't have a power  
23 plant in it. And considering that Hayward is the  
24 center of the Bay Area. It's the place where  
25 people -- I mean, the only reason my parents moved

1 here is because it is the center of the Bay Area.  
2 It's a good place. You can go anywhere here in  
3 under an hour, allowing traffic.

4 If a power plant is built here that  
5 will be bad for the entire Bay Area because nobody  
6 is going to want to live in Hayward. I think  
7 that's pretty big, considering.

8 And you know once again I would hope  
9 that you just won't let these power plants be  
10 built here because a lot of people care about  
11 Hayward. And I thank you for your time.

12 PRESIDING MEMBER BYRON: Thank you,  
13 Ms. Combs.

14 HEARING OFFICER GEFTER: Thank you.

15 MS. HARGLEROAD: Commissioner Byron, I  
16 would just like to point out Mount Eden is a  
17 nationally recognized choir. Very, very prominent  
18 in music.

19 PRESIDING MEMBER BYRON: Thank you.

20 HEARING OFFICER GEFTER: Clarissa.  
21 Tell us your name and how we would spell it,  
22 please.

23 MS. ARAFILES: My name is Clarissa,  
24 that's C-L-A-R-I-S-S-A, A-R-A-F-I-L-E-S. I am a  
25 full-time student at Chabot.

1                   I would like to first express my  
2                   gratitude to those who are here tonight and to  
3                   those who have taken part for whatever reason and  
4                   in whatever way in fighting the approval of the  
5                   Eastshore Energy Center. I have witnessed  
6                   incredible opposition to Eastshore for nearly a  
7                   year now and I have been inspired by the strength  
8                   and resolve of this community that participated in  
9                   this opposition.

10                   However, I find myself asking, to what  
11                   extent were Hayward's -- to what extent were the  
12                   concerns of Hayward's citizens involved in  
13                   evaluating the need for and the impact of this  
14                   proposal? How might the quality of our lives be  
15                   assessed economically if profit takes relative  
16                   precedence over environment and well-being?

17                   We can easily calculate the monetary  
18                   benefits of this project but it is difficult to  
19                   accurately ascertain its costs in terms of human  
20                   health and safety. So I suppose we have to ask  
21                   ourselves, which comes at a greater cost and  
22                   according to what values are we to measure this  
23                   cost?

24                   And I can only hope that this  
25                   Commission will, based on your recommendation, act

1 ethically and responsibly. Thank you.

2 HEARING OFFICER GEFTER: Thank you very  
3 much. Juanita McDonald. And I think you have  
4 been here before so if you have something new to  
5 add. Your previous comments --

6 MS. McDONALD: I'll make it very brief.  
7 If it is repetition I'm sorry.

8 My name is Juanita McDonald, J-U-A-N-I-  
9 T-A, McDonald, M-C-D-O-N-A-L-D. I will give you  
10 an individual resident's opinion. Not an  
11 idealistic opinion but a practical one.

12 I have been a resident of Hayward for  
13 50 years, longer than some of our younger members  
14 were alive. I live in the Southgate area, not the  
15 Eden Garden area.

16 I remember Russell City and I remember  
17 the hog farm that was there when I moved in. When  
18 the westerly winds came in the odor was  
19 unbearable. It came to us as far away as Russell  
20 City, the smell of the hog farm. We are going to  
21 get the plumes from Russell City and Tierra is  
22 even closer to us. With the westerly winds that  
23 we have there is no avoiding it.

24 Now I moved here in my twenties. When  
25 I was in my thirties I developed asthma. I

1       couldn't believe it because I am from this area.  
2       I was born and raised in the San Francisco Bay  
3       Area. Why did I have asthma in Hayward? Then I  
4       realized I am only a couple of blocks from 880 and  
5       about three blocks from 92. That probably is the  
6       reason I developed asthma. So did my three sons.

7                 We do not live in a particularly  
8       healthy area and this is just adding to it. We  
9       know that Hayward is now a city of minorities and  
10      minorities have a larger percentage of asthma than  
11      the rest of the population.

12                Our country is stressing green energy.  
13      Neither plant, the Russell City nor the Tierra,  
14      fit this category.

15                I will make one last remark. I love  
16      this area. I love California. I cannot imagine  
17      living anywhere else. My mother's people came  
18      here in the 1700s with Father Serra. We are part  
19      of its history. I understand that we goofed and  
20      that we added to global warming by bringing our  
21      cattle. They say that the droppings from the  
22      cattle have added pollution and global warming.  
23      Please don't add to our mistakes by voting for  
24      this. Thank you.

25                HEARING OFFICER GEFTER: Juanita

1 Gutierrez. And you have also been here before.

2 MS. GUTIERREZ: Yes. My name is  
3 Juanita Gutierrez. I live just a couple of blocks  
4 away from the proposed plant.

5 You say, do not repeat what you said  
6 before, tell us something new. Well what I want  
7 to say is, I feel very happy, very privileged to  
8 live in a democratic society. A democracy that  
9 gives us the right to express our opinion. All of  
10 us are here, officials, professors, lawyers,  
11 neighbors, friends, students, name it.

12 All of us are here expressing our  
13 opinion whether it be in favor or in opposition.  
14 With only one hope. All of us have one hope.  
15 That you, Commissioner Byron, as well as your  
16 colleagues, when the time comes to vote that you  
17 will be fair. Fair. And, of course, that you  
18 will vote against the power plant. Thank you.

19 (Laughter)

20 HEARING OFFICER GEFTER: We have quite  
21 a number of other people who would like to address  
22 us. Rob Simpson. Rob, are you here?

23 MR. SIMPSON: Yes.

24 HEARING OFFICER GEFTER: Okay. And  
25 also Jesse Shijie Liu. Yes Jesse, come on. And

1 Wafaa -- Is that pronounced correctly? Wafaa  
2 Aborashed. Wafaa? Yes, okay. Mr. Simpson,  
3 please go ahead.

4 MR. SIMPSON: Thank you. Good evening,  
5 I am Rob Simpson. I am the guy that proved  
6 Russell City was processed illegally.

7 This project, the EPA approved another  
8 air dispersion model called AERMOD in 2005 to  
9 replace the dispersion model that was used for  
10 modeling this plant. Now your own peer report  
11 references the air model that you use, the ISCST3,  
12 and deemed it inadequate.

13 The study also pointed out that many  
14 rare, threatened and endangered species, both  
15 plants and animals, are found in vernal pools.  
16 This points out the vernal pools can be considered  
17 a sensitive ecosystem. Now this is important  
18 because in the Russell City Energy Center staff  
19 assessment, part one states, there is a vernal  
20 pool on the Eastshore substation that must be  
21 protected.

22 Now Fish and Game section 1930  
23 designates certain areas in California such as  
24 vernal pools as significant wildlife habitat. A  
25 little hard to see on this scale. This is from

1 the original Eastshore application. It shows  
2 within a mile of this site the endangered Salt  
3 Marsh Harvest Mouse preserve. Less than a mile  
4 from this site.

5 Your study that you did on page 256 of  
6 your Proposed Decision does a study for nitrogen  
7 deprivation -- deposition, excuse me -- that  
8 identifies the Salt Marsh Harvest Mouse as four  
9 miles from the site, not a half-mile from the  
10 site. We've got a vernal pool within a mile of  
11 the site. We've got protected species within a  
12 mile of the site. But your report says everything  
13 is okay because nothing is within a mile.

14 All these measurements that were done  
15 -- I've addressed the measurements before. It  
16 started a big process where you remeasured a lot  
17 of things but nobody remeasured to the protected  
18 habitats. We've got federally protected wetlands  
19 and protected habitats within a mile of this site  
20 that have not been addressed.

21 Had the US Fish and Wildlife Service  
22 biological opinion been completed consistent with  
23 your scheduling order they may have addressed  
24 this. But without having the correct information,  
25 if you are telling them it is four miles and it is

1 a half a mile, even if this information was given  
2 to US Fish and Wildlife they can't be expected to  
3 make a correct conclusion.

4 The impacts of this project clearly  
5 affect areas within the jurisdiction of the Bay  
6 Conservation and Development Commission. I  
7 haven't seen a report from them.

8 Now this report that you went over  
9 today about the Port of Oakland and Mr.  
10 Greenberg's testimony that it has no bearing on  
11 this distant community of Hayward. Well we went  
12 back and forth about, is Hayward 10 miles, is  
13 Hayward 15 miles from the Port of Oakland. This  
14 is from that report. It shows the affected area  
15 from port emissions extending well past Hayward.

16 Now the key findings from this report.  
17 This is also from the same report that is  
18 supposedly a distant community.

19 Now when the air modeling was done for  
20 this plant, there's no air modeling in Hayward so  
21 you used Fremont, you used Livermore. Now Fremont  
22 and Livermore stations are both farther away than  
23 the Port of Oakland. They are also farther away  
24 than the Oakland monitoring station. They are  
25 farther away than the San Francisco Bayview/

1 Hunter Point modeling station.

2 If someone wanted an accurate  
3 prediction of air quality in the city of Hayward.  
4 This is from the Air Quality District. It shows  
5 where their modeling stations are. I submitted  
6 this to you in writing already. Now this shows  
7 that the predominant wind comes from Oakland and  
8 it comes from San Francisco. But we didn't do air  
9 modeling, we didn't test from the sites in Oakland  
10 or San Francisco, we tested from unrelated sites  
11 farther away than the study.

12 This whole thing is based on a broken  
13 system. Your supposedly integrated permitting  
14 process. First you have your air quality  
15 determinations that close their public comment  
16 period before you started yours. So you have been  
17 leaning on this air determination from Bay Area  
18 Air Quality Management District that should be  
19 part of this same process.

20 The notices given from the Air District  
21 were improper. They were supposed to show the  
22 effects on air quality. The public notices that  
23 the Air Quality District put out before you even  
24 started this process had nothing, no reference to  
25 the actual report that you processed after the Air

1 Quality District closed their hearings.

2 Now in this disjointed process we have  
3 got your scheduling order that calls for the Fish  
4 and Wildlife report to be in by now. Now your  
5 proposal is to put that off to another time and to  
6 have the Air District before your hearings here.  
7 So I don't see how this is -- as the lead agency,  
8 this is an integrated process.

9 Your 1742.5, Environmental Review,  
10 Staff Responsibility. The staff shall distribute  
11 a notice of availability of the staff report to  
12 all interested persons. Now you referenced that  
13 you had over 1500 commentors on this plan. But  
14 these 1500 commentors didn't get notice of this  
15 meeting. So your public outreach is not  
16 effective.

17 These cards we filled out tonight.  
18 There's no question of our address. There is no  
19 opportunity to be added when we make our public  
20 comments. When we make public comments it shows  
21 that we are interested parties. If we sent you  
22 letters that shows that we are interested parties.  
23 If you don't respond and you don't tell us when  
24 these meetings are then you are precluding the  
25 public from participating.

1                   HEARING OFFICER GEFTER: Which meeting  
2                   are you referring to that you didn't get notice  
3                   of?

4                   MR. SIMPSON: Tonight's meeting.

5                   HEARING OFFICER GEFTER: You didn't get  
6                   the notice of tonight's meeting yourself? But  
7                   you're here.

8                   MR. SIMPSON: Yes, I understand that  
9                   I'm here, thank you.

10                  The 1500 people who you referenced  
11                  commenting on the Eastshore Energy Center, there  
12                  is no evidence that they received notice. And  
13                  many of us have tried to be involved in this  
14                  process. I have been to these hearings. I have  
15                  paid attention to what is going on here. I have  
16                  tried to get on to your e-mail server to be on the  
17                  list server. I have never gotten on the list  
18                  server and plenty of people tell me that same  
19                  thing.

20                  Now another aspect of this licensing is  
21                  that somehow they have been excluded from having  
22                  to use recycled water. Now the contention was,  
23                  well they don't use very much water so they don't  
24                  have to use recycled water. But that is not what  
25                  the law says. And the law doesn't give the CEC

1 the opportunity to make that determination, that's  
2 supposed to be from the Water Quality Control  
3 Board.

4 And we are not consistent with  
5 Executive Order S-06-08 where the Governor  
6 declares this is a drought. This opportunity to  
7 use recycled water goes beyond this plant. It  
8 creates the infrastructure for future recycled  
9 water use in the region.

10 This port study states that on a  
11 regional basis the key findings of this port study  
12 -- several of the key findings start with, on a  
13 regional basis diesel PM emissions from the port  
14 operations impact a very large area, about 550,000  
15 acres. More than three million people live in  
16 this area and the result of PM emissions from the  
17 port have potential elevated cancer risk of more  
18 than ten chances in a million. Port emissions  
19 result in a regional population weighted potential  
20 cancer risk of about 27 in a million. Now that's  
21 this graph from the report that your expert says  
22 has not bearing on these proceedings. Thank you.

23 HEARING OFFICER GEFTER: Thank you very  
24 much, Mr. Simpson. Jesse, could you come up and  
25 tell us how to spell your name, please.

1 MR. LIU: My name is Jesse Shijie Liu.

2 J-E-S-S-E, L-I-U.

3 HEARING OFFICER GEFTER: And your last  
4 name, how do you spell it?

5 MR. LIU: This is my first time.

6 HEARING OFFICER GEFTER: Could you tell  
7 them how to spell your last name.

8 MR. LIU: My last name is L-I-U, L-I-U.

9 HEARING OFFICER GEFTER: Okay, thank  
10 you.

11 MR. LIU: I am a chemist. I work for  
12 Applied Biosystem Incorporation in Pleasanton. I  
13 am also a resident here. My house just a half-  
14 block from here. In the neighborhood. The new  
15 building. The townhomes. I live there.

16 I lived in New York for six years. I  
17 still remember what happened to World Trade Center  
18 9-1-1. I still remember that time. After that I  
19 moved here. Then I lived in Hayward. I bought  
20 house here. Okay.

21 I think our country or our California  
22 state needs the power plant, that's true. But I  
23 hope we consider where to build it and what kind  
24 of power plant we should build. The reason is not  
25 we want to build a power plant in the center of

1 the Bay Area just near the airport. And so many  
2 people live around here.

3 And if something happened. If  
4 terrorists attacked us I think that's the main  
5 target to them. If they attacked there that make  
6 a big disaster for our Bay Area. So consider our  
7 Hayward residents. Consider our children. Our  
8 children are our nation's future, you know. If  
9 something happen who should take responsibility  
10 for that?

11 So consider whether our city  
12 government. Whether everyone here, including the  
13 gentleman from the energy department, whether we  
14 can work together to change our plan. To change  
15 the -- I mean, can we move that to another place  
16 far away from the residents, from away from  
17 airport, far away from schools. So I think if we  
18 do that it is very good for us. I don't want to  
19 mention the pollution as something though many  
20 people mention that. I want to save time for us.

21 Also I moved to USA less than 20 years.  
22 I cannot speak English very frequently. But I am  
23 also a resident in Hayward. I am also a US  
24 citizen. As a citizen of USA I think whether I  
25 can speak English good or not I should express my

1 opinion for myself, for my family, for the  
2 residents of Hayward. Thank you everyone.

3 HEARING OFFICER GEFTER: Wafaa? I am  
4 not pronouncing your name correctly. Are you  
5 here? It's spelled W-A-F-A-A. Yes, here you are.  
6 Could you spell your first and last name for us.

7 MS. ABORASHED: My name is Wafaa, W-A-  
8 F-A-A, Aborashed, A-B-O-R-A-S-H-E-D.

9 HEARING OFFICER GEFTER: Thank you.

10 MS. ABORASHED: Thank you. I represent  
11 a couple of groups, environmental justice groups.  
12 One of them is EAQC, which is Environmental Air  
13 Quality Coalition, and the other, Healthy 880  
14 Communities. And our work is primarily focused on  
15 air quality.

16 I want to thank you for having the  
17 courage to do what you recommended. And I  
18 appreciate the fact that you don't want to have  
19 this power plant really in your heart. I can feel  
20 it from the last hearings that we had that this is  
21 not the right thing to do for this community.  
22 This community is just like the community I live  
23 in and I live in San Leandro.

24 One of the things that we learned about  
25 five or six years ago in San Leandro is that

1 Alameda wanted to have a power plant built in San  
2 Leandro to take care of the energy that's needed  
3 for Alameda. And when we found out what all the  
4 pollution that this power plant was going to bring  
5 to our community, we teamed up with Alameda,  
6 Oakland and San Leandro and we really fought a  
7 battle that is a battle that this community is  
8 dealing with and other communities that are  
9 building these power plants.

10 Air quality is right now the biggest  
11 problem that we are having in the Bay Area. I  
12 belong to another group called the Bay Area Health  
13 Environmental Impact -- I'm sorry, the Bay Area  
14 Health -- Gosh, I lost it. Bay Area Environmental  
15 Health Collaboratives.

16 And what we are focusing on is when a  
17 business comes into our communities they need to  
18 look at the cumulative impact of the air pollution  
19 that is in the area. And we really want to have a  
20 policy so that you are not put in this position  
21 all the time.

22 Bay Area Air Quality Management has put  
23 us in San Leandro as a hot spot right now. So how  
24 far is Hayward from San Leandro? It's a hop, skip  
25 and a jump. We get the pollution from Port of

1 Oakland, from West Oakland all the way down to the  
2 airport. Okay. Where does the wind factor carry?  
3 It carries it to Hayward and it goes over the  
4 hills. So how much more pollution can we get?

5 We are working right now with  
6 respiratory issues. We have five schools in just  
7 a small five miles in San Leandro. Well what  
8 about all the schools that this particular plant  
9 is going to impact. Respiratory issues is our  
10 biggest problems.

11 We did a study last year and it is  
12 called Paying with Our Health. And we looked at  
13 all the goods movement and all the pollution that  
14 goods movement is going to bring to this Bay Area.  
15 And you know what, it is going to impact all the  
16 hospitals that we have here. We don't have the  
17 funding to take care of all the respiratory issues  
18 right now. How about adding all this pollution  
19 into the Bay Area.

20 I don't want to go into this too much  
21 but I would like to echo, on record, Mr. Fouquet,  
22 Ms. Ford, Mr. Rob Simpson and Mike Toth.  
23 Everything that they said is really one of the  
24 reasons that you need to focus exactly on where  
25 this power plant is going to take us.

1                   Air pollution is a big issue here and  
2                   we haven't begun to see what the goods movement is  
3                   going to do to this area. So your decision is  
4                   really, really important right now. We don't need  
5                   to have one more thing to put our kids in coffins.

6                   We need to remember that our kids that  
7                   we have today like the young lady that came up.  
8                   What she said just touches the heart saying, where  
9                   is our future here. How much can we put on our  
10                  youth? On our children, our future lineage? We  
11                  are destroying our families. So we need you to be  
12                  mindful and protect the community in the Bay Area.  
13                  Thank you.

14                  HEARING OFFICER GEFTER: We still have  
15                  several more people to hear from and it is getting  
16                  close to eight o'clock and we would like to wind  
17                  down. So we will ask you not to repeat a lot of  
18                  the comments we have heard this evening but you  
19                  are welcome to come and speak to us. Stephania --  
20                  I'm sorry, I can't read it.

21                  MS. WIDGER: My handwriting, I'm left  
22                  handed.

23                  HEARING OFFICER GEFTER: Okay, come on  
24                  up. Just state your name and spell it. Also  
25                  Mario Torres. Mario? And also after Mario,

1 Monica Schultz.

2 MS. WIDGER: Hi. It's Stephania  
3 Widger, W-I-D-G-E-R.

4 HEARING OFFICER GEFTER: Thank you,  
5 Stephania.

6 MS. WIDGER: I apologize for left-  
7 handed writing.

8 HEARING OFFICER GEFTER: No problem, go  
9 ahead.

10 MS. WIDGER: Mr. Byron, thank you very  
11 much. You don't know what kind of hope for the  
12 future you have given. It has made a big  
13 difference since I heard what you were starting to  
14 consider so thank you for that. As a lifelong  
15 resident of Hayward, as an asthmatic, you can  
16 imagine how this is going to affect me if it's  
17 built.

18 I have been looking at the weather just  
19 since the fires and I have gone through asthma  
20 sprayers one a week, which is just tremendous and  
21 it is because of the smoke from the fires. And if  
22 we add on top of that a constant source of  
23 pollution from this power plant I don't think I  
24 should stay in Hayward. And that would make me  
25 really sad because my family grew up here.

1                   Another issue for me is the  
2                   environmental issue. When I was going to college  
3                   -- I am a biologist by trade. And when I was  
4                   going to college I helped with Dr. Cogswell up at  
5                   Cal State. It was Cal State Hayward at that  
6                   point. And we helped renovate the marsh. This  
7                   power plant is going very close to that marsh that  
8                   we worked so many years to rebuild and renovate  
9                   and bring back.

10                   The marsh is one of the landing places  
11                   for the migratory flight pattern of many shore  
12                   birds. We need to think of these when we start  
13                   putting these 40, 50, 60 foot plumes up into the  
14                   air because this will affect the migration. This  
15                   was not brought up in any of the environmental  
16                   impact reports that I noticed. It talked mainly  
17                   about clapper rails, black rails, it talked about  
18                   the marsh mouse. Which we also have to worry  
19                   about but it's much more invasive.

20                   Another thing that I was thinking  
21                   about. This young girl that was just talking  
22                   about the singing programs in Hayward. My second  
23                   major is music and I have sung with San Francisco  
24                   Opera, Oakland Opera, North Bay Opera. I remember  
25                   going down for a competition to the Southern

1 California part of our state and could not sing  
2 because the pollution was so bad. I don't want to  
3 see that happen to the Bay. So please keep that  
4 in mind and keep going.

5 A last comment I will make is I looked  
6 when the electrician spoke. I come from a family  
7 of electricians. My father had Pay Less Electric,  
8 that was a Hayward business. And I know where  
9 these men are coming from. They are coming from  
10 their need is specifically focused on jobs. The  
11 electricians union, the carpenters union, the  
12 builders union, the are focusing on jobs. We are  
13 focusing on the community and we need to look at  
14 that. So thank you very much and please keep  
15 going.

16 HEARING OFFICER GEFTER: Thank you.  
17 Mr. Torres, Mario Torres. Is Mario Torres here?

18 (No response)

19 HEARING OFFICER GEFTER: Okay, then  
20 Monica Schultz.

21 MS. SCHULTZ: Hi, my name is Monica  
22 Schultz. I moved to Hayward about three years  
23 ago. I grew up in the Peninsula.

24 When I wanted to buy a house  
25 unfortunately I couldn't afford to live in the

1 Peninsula so I started to look into Hayward. I  
2 was a little skeptical when I first moved here  
3 because a lot of people don't have a good  
4 perception of Hayward.

5 After a few months of living here I  
6 fell in love with Hayward. And when I have  
7 barbecues or parties and people come over to my  
8 house they are very shocked on how much Hayward  
9 has improved thanks to our city council and our  
10 mayor. And I know that they are working very hard  
11 to make Hayward improve. And putting a power  
12 plant in Hayward is just going to make us take  
13 several steps backwards.

14 I am also very concerned because like I  
15 said, I did buy a house three years ago so my  
16 house, it is worth about \$200,000 less right now.  
17 Putting a power plant in this neighborhood will  
18 make my market value go down even lower so I am  
19 very concerned.

20 And I would like to say to the  
21 applicant. I understand you are looking at all  
22 the revenue a business would make, but why not  
23 invest those resources in looking for alternative  
24 energy? Thank you.

25 HEARING OFFICER GEFTER: Thank you very

1 much. All right, I have three more blue cards.  
2 Arvin Reddy. Is that correct? Arvin, are you  
3 here? And then Doug Ligibel or Ligibel. I'm  
4 sorry, I can't pronounce your name. But Doug.  
5 And then Mr. McCarthy. So Arvin, could you spell  
6 your last name for us.

7 MR. REDDY: It's Reddy, R-E-D-D-Y.

8 HEARING OFFICER GEFTER: Thank you.

9 Arvin Reddy, thank you.

10 MR. REDDY: Mr. Commissioner, I would  
11 like to address some of the concerns. I have been  
12 living in Hayward for the last nine years. My  
13 biggest concern is I have heard everybody talk  
14 here tonight. What is our contingency plan if  
15 this plant were to go up and we discover there's  
16 major environmental impact? Are we willing to rip  
17 the plant out? Which is not going to happen,  
18 right? Because of the amount of cost that is  
19 associated with putting a plant up.

20 One thing I would request that we focus  
21 on is, if we do decide to go with this plant try  
22 to have a contingency plan in place also and what  
23 would those be. And as far as if there is an  
24 influx in medical cases, will the energy company  
25 itself be held liable for it? So that's all I

1 would like to say and I am not in favor of the  
2 power plant going up in Hayward. Thank you.

3 HEARING OFFICER GEFTER: Well thank  
4 you, Mr. Reddy. Mr. Doug, and I don't know how to  
5 pronounce -- I can't really read the last name.  
6 It starts with an L. L-I-G-I-B-E-L? Doug?

7 (No response)

8 HEARING OFFICER GEFTER: Okay, I guess  
9 they are not here.

10 Mr. McCarthy, are you here? Yes.  
11 Mr. McCarthy, please introduce yourself at the  
12 podium. You have been here many times and spoken  
13 to us. Do you have something new to tell us  
14 today?

15 MR. McCARTHY: I have been here a  
16 couple of times I believe.

17 HEARING OFFICER GEFTER: Would you  
18 state your name first.

19 MR. McCARTHY: I barely made it here  
20 today. I'm glad I made it at least to apologize  
21 to Commissioner Byron for having been perverted  
22 enough to have confused him with Commissioner  
23 Geesman. Whom I would suggest, from what I could  
24 tell Mr. Geesman may not have understood the  
25 difference between toy airplanes and real ones.

1                   Secondly, as an aviation issue, a point  
2                   that was brought up in the Russell City hearings  
3                   that I did not see explicitly with regards to  
4                   Eastshore was the cone area of traffic or the  
5                   cone-shaped area of traffic for -- this is rotor  
6                   craft traffic on the west side of the air  
7                   terminal. Apparently that cone shaped area comes  
8                   to a point just short of the Russell City plant.

9                   Given how that and the implications for  
10                  Eastshore coincide with the final approach area  
11                  for Oakland 2-9 I would have thought there would  
12                  have been a lot more serious consideration about  
13                  this kind of an issue much earlier in the process.

14                  Third, where an issue of  
15                  misrepresentation would be concerned. I think in  
16                  regards to Tierra and CH2MHILL in particular.  
17                  Having recalled how CH2MHILL was kicked off the  
18                  shipyard for the job they did over there, and how  
19                  they seem to enjoy participating in  
20                  misrepresenting the public documentation regarding  
21                  Eastshore hearings, I will be watching CH2MHILL  
22                  for a long time to come.

23                  Finally where aviation is concerned.  
24                  As relating to air traffic where the consequences  
25                  of Russell City are connected with consequences

1 relating to Eastshore concerning air traffic.  
2 That's not over yet. If Russell City thinks that  
3 they are going to waltz along like Tierra thought  
4 they were going to waltz through this, the neglect  
5 of aviation concerns in all of this going back to  
6 Russell City is just totally unacceptable. Thank  
7 you.

8 HEARING OFFICER GEFTER: Thank you.  
9 Mr. Richard Peterson. Mr. Peterson?

10 (No response)

11 HEARING OFFICER GEFTER: All right,  
12 that's it, I don't have any other cards. Does  
13 anyone else have a comment? Otherwise we can  
14 close.

15 (No response)

16 HEARING OFFICER GEFTER: Okay, I think  
17 everyone has spoken to us who intended to speak to  
18 us and we are about to wind down.

19 PRESIDING MEMBER BYRON: I just want to  
20 make sure that everybody has had a chance to  
21 speak. Thank you all very much. Just a couple of  
22 closing remarks.

23 Just to reiterate, this is a proposed  
24 decision. It will still go before the full  
25 Commission. And as I indicated at the beginning

1 of this evening's comments that will likely be in  
2 mid-October, pending the outcome of the  
3 Committee's ruling on the petition that is before  
4 us, the motion that is before us.

5 I would also like to make a remark or  
6 two if I could about the process. We heard some  
7 very negative comments from some members of the  
8 public early on this proceeding about the process  
9 and I hope we have rectified your concerns about  
10 the way the Energy Commission goes through its  
11 evidentiary process and the way the staff conducts  
12 its workshops.

13 I have come to really appreciate the  
14 value of this process. I think it is very good.  
15 In fact, having witnessed the way other states do  
16 it I think you in the state of California have one  
17 of the best processes for siting power plants.  
18 Having said that, there are about 21 different  
19 siting cases that are before the Commission right  
20 now.

21 I would like to thank the City and the  
22 staff of the City for the great accommodations  
23 they provided us here, all of our elected  
24 officials that came and spoke this evening, and  
25 most of all the public. And as I said earlier, I

1 can tell that you have all learned a lot more  
2 about our process as well as about some of these  
3 energy issues.

4 And I encourage you to continue to  
5 learn about the work of the Energy Commission. It  
6 is not just siting power plants. I also chair a  
7 committee on our Integrated Energy Policy Report  
8 and we will be conducting workshops in Sacramento  
9 over the course of the next two years that will  
10 address issues that many of you have brought up  
11 this evening around energy efficiency, demand  
12 response, renewables.

13 I encourage you to continue to learn  
14 more about the energy policies of the state.  
15 California really is a national leader with regard  
16 to limiting pollution. We are now limiting CO2  
17 production having passed the only law -- I'm  
18 sorry, the first state to pass a law to limit CO2.  
19 And we are implementing those recommendations  
20 right now. I should say we are making those  
21 recommendations right now to the Air Resources  
22 Board for their implementation.

23 I would like to thank the applicants  
24 and all the parties and their participation in  
25 this process. I am not certain that we will be

1 back here so just in case we are not I'll say  
2 thank you to all of you. And I believe that will  
3 adjourn this evening's proceeding. Thank you.

4 HEARING OFFICER GEFTER: Off the  
5 record.

6 (Whereupon at 8:09 p.m. the  
7 Supplemental Evidentiary Hearing/  
8 Committee Workshop was  
9 adjourned.)

10 --oOo--

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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 Supplemental Evidentiary Hearing and Committee Workshop; 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 4th day of August, 2008.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345□