

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification ) Docket No.  
AES Huntington Beach Generating ) 00-AFC-13  
Station Retool Project )  
\_\_\_\_\_ )

HUNTINGTON BEACH CITY HALL  
COUNCIL CHAMBERS  
2000 MAIN STREET  
HUNTINGTON BEACH, CALIFORNIA

FRIDAY, MARCH 16, 2001

10:07 A.M.

Reported by:  
Valorie Phillips  
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Arthur H. Rosenfeld, Presiding Member

Robert Pernell, Associate Member

Garret Shean, Hearing Officer

Ellen Townsend-Smith, Advisor

STAFF PRESENT

Paul Kramer, Staff Counsel

Jack Caswell, Project Manager

Keith Golden

Bob Anderson

Jim Adams

Rick York

Richard Anderson

Mike Ringer

Bob Haussler

William Kanemoto, Consultant

William Walters, Consultant

Jim Buntin, Consultant

Michael Foster, Consultant

PUBLIC ADVISER

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McCutchen, Doyle, Brown & Enersen, LLP

APPLICANT

Ed Blackford, President  
Rick Tripp, Project Coordinator  
Terry Kunz, Team Leader  
AES Huntington Beach, LLC

Mark Woodruff  
AES Pacific Senior Vice President  
AES Southland, President

Mike Medock, Manager of Projects  
MSI

Ed Clark, Vice President  
ELC Electric

Jeffrey Fuller  
John Lague  
URS Corporation

Charles Mitchell, President  
MPC Applied Environmental Sciences

Aaron Thomas

INTERVENORS

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Adams, Broadwell, Joseph & Cardozo  
California Unions for Reliable Energy

Phyllis Fox, Consultant  
Doug Chappel, Consultant, Business Manager  
IBEW Local 441  
California Unions for Reliable Energy

ALSO PRESENT

Malcolm Weiss, Attorney  
Alvin Pak, Attorney  
Jeffer, Mangels, Butler & Marmaro, LLP  
Counsel, City of Huntington Beach

ALSO PRESENT

Matt Lamb, Project Manager, Director of Real  
Estate

William P. Workman, Assistant City Administrator

Ross Cranmer, CBO

Jane James, Associate Planner

Ron Hagan, Director of Community Services

William Hosband, Fire Department

City of Huntington Beach

Donald Lincoln, Consultant

City of Huntington Beach

Moshen Nazemi

South Coast Air Quality Management District

Dallas E. Weaver

Dave Sullivan, President

Huntington Beach Tomorrow

Robert Winchell

Huntington Beach Tomorrow

Tom Mize

Jon Ely, Executive Board Member

Southeast Huntington Beach Neighborhood

Association

Eric Jackson

Arlene Coggi

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

10:07 a.m.

1  
2  
3 HEARING OFFICER SHEAN: Good morning,  
4 ladies and gentlemen. I'm Garret Shean, Hearing  
5 Officer for the California Energy Commission. We  
6 are here this morning for the evidentiary hearing  
7 in the Huntington Beach AFC, having been filed by  
8 AES for the retooling of units 3 and 4.

9 With me this morning are the Presiding  
10 and Associate Members of the Siting Committee. On  
11 my left is Art Rosenfeld, who is the Presiding  
12 Member. On my right, Commissioner Robert Pernel, who is the Associate Member. And to his right,  
13 Ellie Townsend-Smith, who is his Advisor.  
14

15 This hearing was noticed by a Committee  
16 notice of March 2nd that indicated the general  
17 topics we will be covering, and the procedures for  
18 the evidentiary hearing, as well as the means of  
19 making presentation at the evidentiary hearing.

20 Let me just go over a few things,  
21 please. As we discussed yesterday at the  
22 conclusion of the Committee workshop, we will be  
23 going through the uncontested matters initially.  
24 Hopefully this will not take much more than a half  
25 hour to three-quarters of an hour to get through

1 those.

2 We intend to move through those as  
3 quickly as possible since as a result of the  
4 workshop yesterday we were able to determine that  
5 there are a significant number of areas in which  
6 the parties do not disagree, so that we can move  
7 through them fairly quickly.

8 Then we will move on to the contested  
9 areas. We'll take them sort of in their ascending  
10 order of contest.

11 And we also need to include in our  
12 proceeding an opportunity for the public to make  
13 comments. So let me just indicate that since we  
14 are starting at 10:00 or close to 10:00, what  
15 we'll do is begin a public comment period at  
16 approximately 12:30.

17 We'll go for a brief period, and then  
18 we'll break for lunch, and resume after an hour's  
19 lunch. Then there will be an additional public  
20 comment period at the end of the proceeding this  
21 afternoon.

22 This public comment period is for the  
23 taking of unsworn comments from the citizenry of  
24 the City of Huntington Beach and the surrounding  
25 area. This does not include anything that is

1 taken under oath.

2 Let me also indicate that there was a  
3 question this morning about the submittal of  
4 briefs. I think the Committee would have no  
5 problem taking written briefs, but I should advise  
6 you that with respect to having an expedited  
7 transcript in this proceeding, that the  
8 transcribing capability of our contract court  
9 reporter has been totally consumed by the Metcalf  
10 proceedings in San Jose. So we are fundamentally  
11 unable to provide, either to the Committee or the  
12 parties, an expedited transcript.

13 So, I am forewarning you or fore-  
14 advising you at this point that you need to take  
15 notes, either to substitute for the transcript --  
16 we don't plan on having a reference to a specific  
17 transcript page being necessary for any reference  
18 that would be included in a brief from any of the  
19 parties.

20 And I think, subject now to some change,  
21 after we conclude today, that briefs by Wednesday  
22 would be appropriate, close of business Wednesday  
23 at the Commission, and they can be submitted  
24 electronically, given what we anticipate the  
25 schedule for cranking out the Presiding Member's

1 Proposed Decision.

2 With that, let me just see if there are  
3 any housekeeping comments by any of the parties  
4 before we launch into our taking of the  
5 uncontested matters.

6 All right, hearing none, my thought was  
7 we could start off with the working groups in  
8 order, and my understanding basically was that  
9 land use was an uncontested issue.

10 All right, from the staff, the land use  
11 section -- and I think unless there is objection,  
12 we would proceed thusly: That the staff has  
13 submitted declarations by the authoring  
14 contributors to the staff assessment. And that in  
15 the absence of an objection we'll take the staff  
16 assessment section on the declaration.

17 The staff has prepared and given to us  
18 this morning a packet of minor changes that were  
19 made to various sections as a result of  
20 yesterday's meeting. I think for purposes of the  
21 uncontested areas we will assume and take the  
22 modifications that appear in this packet to have  
23 been made and incorporated in any of the testimony  
24 that's taken by declaration.

25 So, with that, why don't we identify

1 from the staff the author of your land use, and  
2 see if that will be submitted without objection.  
3 That would be Mr. Tom Buford, is that correct?  
4 All right.

5 Is there objection to taking the land  
6 use section of Tom Buford's into evidence without  
7 objection? All right, it's admitted.

8 The next section would be, well, let's  
9 see. You know, maybe there's a faster way to do  
10 this, which is if these people are going to  
11 testify anyway, why don't we take the entirety of  
12 the staff's assessment in evidence, and then the  
13 parties can basically present the testimony that  
14 they would, either in rebuttal to any of the  
15 provisions that are in the staff assessment. Is  
16 that all right with the parties?

17 MR. ROTHMAN: Is that taking into  
18 evidence, as amended by the notices that were  
19 handed out this morning?

20 HEARING OFFICER SHEAN: Yes. You may  
21 need to turn on your microphone, Mr. Rothman.  
22 Ours are always on for better or worse.

23 MR. ROTHMAN: I thought I was.

24 HEARING OFFICER SHEAN: Okay. That  
25 would be the staff assessment, as amended by the

1 packet filed this morning.

2 MR. KRAMER: We'd like to be able to  
3 send some of the staff home to do other things if  
4 we can determine before the end of the hearing  
5 that there's no need for them to remain to address  
6 some issues. I don't know if that's possible.

7 HEARING OFFICER SHEAN: Well, I'm  
8 thinking that it's not possible for air quality  
9 and probably the water/biology matters, and visual  
10 and noise. Is there anything else that the other  
11 parties think they're going to want to  
12 specifically hear from the staff on?

13 MR. ROTHMAN: I think that -- you  
14 mentioned biology and water resources and  
15 potentially facility design.

16 HEARING OFFICER SHEAN: Anything from  
17 CURE or the City?

18 MR. WOLFE: Socioeconomics for CURE and  
19 public health.

20 MR. PAK: Nothing from the City.

21 HEARING OFFICER SHEAN: All right. Why  
22 don't we do this, then. In the absence of  
23 objection, we'll take the staff's amended staff  
24 assessment on the declarations that were submitted  
25 in the document, itself. And we will keep for the

1 proceedings this morning and this afternoon staff  
2 witnesses on biology, water, air quality, facility  
3 design, socioeconomics and public health. Does  
4 that --

5 MR. ROTHMAN: With one minor amendment.  
6 There's some general conditions.

7 HEARING OFFICER SHEAN: That would be  
8 the staff's project manager.

9 MR. ROTHMAN: Okay.

10 HEARING OFFICER SHEAN: Is that fine  
11 with everyone? All right, hearing no objection  
12 that's the way we'll do it. So that the staff who  
13 are here on any topic matter not listed are free  
14 to return to Sacramento and get back to work.

15 All right. So, does the applicant wish  
16 to enter portions of the AFC or how would you like  
17 to handle that?

18 MR. ROTHMAN: The applicant would like  
19 to enter the entire AFC and the subsequent  
20 responses to data requests.

21 HEARING OFFICER SHEAN: Okay.  
22 Understanding that --

23 COMMISSIONER PERNELL: Excuse me, when  
24 you're responding can you at least say your name  
25 for the record so that the court reporter -- she's

1 shaking her head over there trying to figure out  
2 who's saying what.

3 MR. ROTHMAN: That would be fine. This  
4 is Rick Rothman on behalf of AES Huntington Beach,  
5 LLC.

6 COMMISSIONER PERNELL: Thank you.

7 HEARING OFFICER SHEAN: All right, is  
8 there objection to taking the applicant's AFC and  
9 its subsequent data responses into evidence,  
10 understanding that the other parties will have an  
11 opportunity to make their case and essentially  
12 we're doing the same as we did with the staff  
13 document? Yes?

14 MR. PAK: Your Honor, Al Pak on behalf  
15 of the City of Huntington Beach. As you know we  
16 have submitted two sets of data requests to the  
17 applicant. We've just recently, notwithstanding  
18 their objection to each and every one of the data  
19 requests that we submitted to them, have received  
20 their responses.

21 And in many respects those responses are  
22 incomplete. I'm concerned about the impact of the  
23 admission of their data responses to our data  
24 requests indicating that it might indicate for  
25 purposes of this record that the City is satisfied

1 with those responses.

2 HEARING OFFICER SHEAN: Why don't we  
3 have your basically objection noted for the  
4 record, and it can be taken, the documents can be  
5 taken with that objection in the record.

6 MR. PAK: Thank you, Your Honor.

7 HEARING OFFICER SHEAN: All right.  
8 Therefore, in the absence of other than that  
9 objection, or let me say subject to that  
10 objection, we'll take the AFC and the data  
11 responses filed by the applicant.

12 All right, well, we did better than we  
13 thought. Now we can move to the contested areas,  
14 and I guess it's going to be fairly hard to  
15 measure exactly what is the ascending order, but I  
16 think it's likely that facility design is going to  
17 be perhaps one of the ones we can move through  
18 more quickly, so why don't we get the Commission  
19 people down here.

20 (Pause.)

21 MR. ANDERSON: Good morning. I'm Bob  
22 Anderson from the California Energy Commission --

23 HEARING OFFICER SHEAN: Let me just  
24 indicate before you start, Mr. Anderson, what we'd  
25 like to do before we do this, we need the

1 witnesses to be sworn in, so let's take the entire  
2 panel of anybody who expects to be called this  
3 morning or this afternoon as a witness, raise your  
4 right hand and you'll be sworn in by the reporter.  
5 So if you expect to testify --

6 Whereupon,

7 POTENTIAL ATTENDANT WITNESSES  
8 were called as witnesses herein, and after first  
9 having been duly sworn, testified as follows:

10 HEARING OFFICER SHEAN: You are all now  
11 citizens of the United States.

12 (Laughter.)

13 HEARING OFFICER SHEAN: All right, and  
14 you're on the clock.

15 Whereupon,

16 BOB ANDERSON  
17 was called as a witness herein, and having been  
18 previously duly sworn, testified as follows:

19 MR. ANDERSON: Good morning, my name is  
20 Bob Anderson. I am from the Engineering Office of  
21 the California Energy Commission. And I was one  
22 of the co-authors of the facility design section  
23 for the staff assessment for the Huntington Beach  
24 Generating Station's Retool Project.

25 This is a slightly unusual case for us

1 inasmuch as that there's no significant grading  
2 that's entailed with this particular project,  
3 although there will be a new foundation installed  
4 at the site for the SCR element.

5 And this is a project where we see that  
6 the applicant can come into compliance with the  
7 laws, ordinances, regulations and standards that  
8 have been identified and are germane to this  
9 particular kind of project, retool project,  
10 instead of a new plant construction project.

11 And inasmuch we have proposed some  
12 conditions of certification of that will assure  
13 the public, the CEC and the City of Huntington  
14 Beach that in fact the applicant would be in  
15 compliance for construction of the retool project.

16 There are some conditions of  
17 certification that have been identified as of  
18 yesterday at our working group meeting that the  
19 City will talk to later. And I'd like to share  
20 that with you through the City of Huntington  
21 Beach.

22 Essentially just leave it up for  
23 questions as to what was -- we looked at is we  
24 will change one or two of the timeline elements in  
25 the conditions of certification, especially under

1 structure 1, protocol number 3. And that will  
2 comply, as will be put into the record later, as  
3 conditions of certification that are proposed by  
4 the City of Huntington Beach that they would  
5 propose. And then ask to look over where they  
6 would fit into under general caption 1.

7 So for all the City of Huntington Beach  
8 proposed conditions of certification as of this  
9 morning, over and above what we have in our  
10 conditions of certification for facility design, I  
11 propose that we renumber the section under general  
12 conditions of certification for conditions of  
13 certification for facility design beginning on  
14 page 290.

15 And with that in mind, all the current  
16 general conditions would be pushed down the  
17 appropriate levels numbers down. For instance,  
18 general 1 right now would be maybe general 5. And  
19 go from there.

20 And it's appropriate to ask questions at  
21 this time?

22 HEARING OFFICER SHEAN: No. Let's just  
23 try to make it clear what the changes are. We're  
24 adding a GEN1 condition, which deals with the  
25 timing of submittal of plans to the CBO, with the

1 City of Huntington Beach CBO acting as the  
2 delegatee of the Energy Commission.

3 And then on structural 1 basically  
4 changes to the timeframes and the protocols, I  
5 think pretty much captures it, if I understand.

6 Now, are there any other parties that  
7 want to make a presentation with respect to the  
8 facility design topic? The City? CURE? Or the  
9 applicant?

10 All right, if not, then, Mr. Anderson --

11 MR. ROTHMAN: We have -- I was waiting  
12 to hear if anyone else --

13 HEARING OFFICER SHEAN: Okay.

14 MR. ROTHMAN: This is Rick Rothman of  
15 AES. We actually have a very short presentation  
16 we'd like to make with respect to structure 1, the  
17 conditions of certification structure 1.

18 And it has to do with what I believe  
19 will be a new subheading structure 1, although  
20 it's hard for me to tell from these notes how it's  
21 going to read.

22 But what we would propose is to have the  
23 concept of a seismic review reduced to a condition  
24 that reads something along the lines of: The  
25 owner shall submit to the CBO for review and

1 approval a steel structural analysis to insure the  
2 retool project meets the standards of the as-built  
3 plans. All new structural components, as part of  
4 the retool project, will be built to the 1998  
5 Uniform Building Code.

6 HEARING OFFICER SHEAN: Okay. If you  
7 have that in a written piece, at some point we'd  
8 like to -- okay, at some point we'd like to get  
9 that from you.

10 MR. ROTHMAN: We'll be happy to have it  
11 typed up and send it in, as opposed to our  
12 handwriting.

13 HEARING OFFICER SHEAN: All right.  
14 Anything you want to respond to with respect to  
15 that from the staff side?

16 MR. ANDERSON: Yes. It's my  
17 understanding that the City of Huntington Beach  
18 has some concerns along this particular venue, and  
19 I was actually looking for a prompt from Dennis as  
20 they might want to mull that over and consider it  
21 and respond.

22 HEARING OFFICER SHEAN: Why don't we let  
23 them, if they want to, say something. Anything  
24 from the City?

25 MR. PAK: May we have a moment, Your

1 Honor?

2 HEARING OFFICER SHEAN: Sure.

3 (Pause.)

4 MR. PAK: Yes, Your Honor, we'd like to  
5 call Mr. Matt Lamb to the stand.

6 HEARING OFFICER SHEAN: Okay. Mr. Lamb.  
7 Whereupon,

8 MATT LAMB

9 was called as a witness herein, and having been  
10 previously duly sworn, testified as follows:

11 MR. LAMB: The City, on our agreements  
12 with STRUC1, instead of saying for steel alone,  
13 the Uniform Building Code requires both structural  
14 and foundational analysis. It is not exclusive.  
15 So the idea of the general language which we  
16 evolved in the workshop yesterday, as proposed by  
17 staff, should stand.

18 The City feels that it is more in  
19 compliance with the CBC and the Uniform Building  
20 Code.

21 HEARING OFFICER SHEAN: Meaning for  
22 major project components and structural, does that  
23 capture --

24 MR. LAMB: Yes. It should be basically,  
25 it should be the entire -- as I see right here it

1 says STRUC1 protocol 5, the owner shall submit to  
2 the CBO for review and approval a seismic analysis  
3 for the major project components and structure.  
4 And that would include a foundational analysis  
5 because the foundations are integral to the  
6 structure at large.

7 HEARING OFFICER SHEAN: And was it the  
8 applicant's position to exclude foundations?

9 MR. ROTHMAN: It was.

10 HEARING OFFICER SHEAN: Okay. I think  
11 we understand the nature of the contest. We'll  
12 take it under submission and go from there.

13 Anything further, Mr. Anderson?

14 MR. ANDERSON: Yes. I'd just like to --  
15 can I ask a question?

16 HEARING OFFICER SHEAN: Sure.

17 MR. ANDERSON: Okay, the City of  
18 Huntington Beach this morning gave me a list of  
19 certain conditions of certification that they'd  
20 like to see included under facility design.

21 It's my understanding that one of their  
22 staff engineers would be coming up to testify  
23 shortly. And if that's the case, I'd like to go  
24 ahead and not discuss it, otherwise if we need to  
25 read their proposed conditions of certification

1 into the record, or some other mechanism to get  
2 them into the record, I'd like to make sure that  
3 they're not dropped right now. I'd like to see  
4 about getting them into the record.

5 HEARING OFFICER SHEAN: All right.  
6 That's their responsibility. If they're going to  
7 propose them, they can do that.

8 MR. ANDERSON: Okay. That's it.

9 HEARING OFFICER SHEAN: Thank you.

10 MR. ANDERSON: Thank you so much.

11 HEARING OFFICER SHEAN: All right.  
12 Anything from any other party on facility design?

13 MR. ROTHMAN: Your Honor, could we call  
14 Mike Medock on this foundation issue just to --

15 HEARING OFFICER SHEAN: Sure.

16 MR. ROTHMAN: -- provide some additional  
17 information into the record?

18 HEARING OFFICER SHEAN: Yes.

19 Whereupon,

20 MICHAEL MEDOCK  
21 was called as a witness herein, and having been  
22 previously duly sworn, testified as follows:

23 MR. ROTHMAN: Mr. Medock, why don't you  
24 identify yourself.

25 MR. MEDOCK: Hello, my name is

1 Michael Medock. I'm the Manager of Projects for  
2 this, for PMSI that's supporting AES.

3 Our understanding is that this is an  
4 existing facility. An existing facility is  
5 somewhat where we're not making changes to those  
6 applications, or to those structures, are not  
7 necessarily covered under the Uniform Building  
8 Code, is our thing. And this is a maintenance  
9 project, as opposed to a rebuild.

10 In addition to that, the foundations are  
11 more of a mass structure that aren't necessarily  
12 even covered by a lot of the Uniform Building  
13 Codes. A lot of the power plants that are built  
14 around the world do not follow under necessary  
15 Uniform Building Codes. Even the nuclear plants,  
16 they have their own definition of what the rigid  
17 mass foundation has to do with the integrity of  
18 the structure.

19 The turbine, itself, is necessarily a  
20 static application, more has to do with vibration.  
21 So it is designed based on vibration. And we feel  
22 that by reanalyzing not so much the foundations,  
23 itself, because we're talking structures that are  
24 six, seven foot thick. And, you know, it's very  
25 inconceivable at this point in time to really

1 figure out that we'd have to put more mass  
2 foundations that are already there, with columns  
3 that are six-by-eight foot, 14 of them generally  
4 per each structure.

5 And that the thing presented by AES is  
6 that we analyze the structures to make sure that  
7 they are sound, and that there is no problem with  
8 the above structures, not the underground  
9 structures.

10 HEARING OFFICER SHEAN: Okay. Let me  
11 just get it clear for the Committee. Is protocol  
12 number 5 intended to cover existing structures or  
13 new construction?

14 MR. ANDERSON: Protocol number 5, as it  
15 was written yesterday, is intended to cover the  
16 structure that is in place right now, and the new  
17 structural elements and components that would be  
18 added for the retool project. Cover the entire  
19 unit, since it's an integrated system here that we  
20 have, the power plant block, itself, with the new  
21 components.

22 HEARING OFFICER SHEAN: Just so we get  
23 it straight, if I understand correctly, in order  
24 to install the new SCR system, you're going to  
25 have to excavate for and pour additional

1 foundations. But that other than that there are  
2 no current plans for any major foundation work, is  
3 that correct?

4 MR. MEDOCK: That's exactly correct.

5 HEARING OFFICER SHEAN: All right.

6 MR. MEDOCK: And those foundations are  
7 located in the area not adjacent to the turbine  
8 pedestal that we're talking about. The turbine  
9 pedestal is basically a separate foundation from  
10 say the boiler structure.

11 HEARING OFFICER SHEAN: Sure. My  
12 understanding from the site visit is that it's  
13 essentially on the opposite side of the structure?

14 MR. MEDOCK: It's on the north side,  
15 correct, away from the ocean.

16 HEARING OFFICER SHEAN: It's away from,  
17 it's on the other side of the boiler from the  
18 turbine pedestals?

19 MR. MEDOCK: That's correct.

20 HEARING OFFICER SHEAN: All right. Now,  
21 did protocol number 5 contemplate a review of the,  
22 or a seismic analysis of the existing foundations,  
23 either for the boiler structure or the turbine  
24 pedestal?

25 MR. ANDERSON: This is for the entire

1 retool project, the center mass of the actual  
2 plant block itself, so that would be for the SCR;  
3 it would be for the turbine pedestal; and it would  
4 be for all major components that are being  
5 upgraded at this point within that block area.

6 HEARING OFFICER SHEAN: And what would  
7 you do with a seismic analysis of the existing  
8 facility?

9 MR. ANDERSON: Essentially what we're  
10 looking for is to follow health and safety  
11 elements of the Uniform Building Code relative to  
12 the performance of the structure and the safety of  
13 the personnel that would be operating that plant.

14 What we're looking at is to come into  
15 modern code. This plant was built well before the  
16 adoption of the current Uniform Building Code or  
17 the California Building Code, which is the  
18 California specific supplement of the Uniform  
19 Building Code.

20 And so what we're doing here is making  
21 sure that it falls in compliance with the seismic  
22 safety regulations that are applied today.

23 HEARING OFFICER SHEAN: And are you  
24 talking about a retrofit of any sort of foundation  
25 or modification of existing foundations if you

1 were to determine that there was a difference  
2 between as-built and the current code?

3 MR. ANDERSON: If it doesn't meet the  
4 current code, the elements, that would have to be  
5 under discussion between the CBO and the owner.  
6 What we're looking for is to make sure it meets  
7 the minimum requirements as they are today.

8 And if that was required then it could  
9 require some retrofit activities to be done. We  
10 feel that this is a good time to do it. A lot of  
11 the plant has been in the areas that are subject  
12 to be refurbished, rebuilt, have had significant  
13 components removed.

14 So if there were to be some retrofit  
15 activities to be done, that these are the times  
16 when these areas are most exposed without  
17 significant incision, surgery onto the plant,  
18 itself, right now.

19 HEARING OFFICER SHEAN: Okay, but as to  
20 the foundations, are you talking about potentially  
21 further excavation around an existing foundation  
22 and the addition of concrete or other foundation  
23 material?

24 MR. ANDERSON: Possibly. It will really  
25 depend upon the outcome of the analysis.

1 HEARING OFFICER SHEAN: Okay. I think  
2 we understand what it is, the difference between  
3 the two positions.

4 COMMISSIONER PERNELL: I have a question  
5 for the applicant. I think, is it Mike? Michael,  
6 your position is because it's not in the Building  
7 Code that it shouldn't be part of the analysis?

8 MR. MEDOCK: Well, again, it's an  
9 existing structure, and how much you have to go  
10 back on existing structures to bring it up to  
11 today's standards.

12 We're physically not doing any work on  
13 it, which it's -- it's a maintenance project, even  
14 though the staff member indicated that it was a  
15 exposed or certain things. The turbine is really  
16 not exposed. I mean it's all -- we've not changed  
17 the foundation of it at all.

18 So that part of the aspect of the job,  
19 all we're doing is removing the cover and doing  
20 maintenance on the turbine.

21 COMMISSIONER PERNELL: Okay. And this  
22 is for, as staff has said, for health and safety  
23 reasons?

24 MR. ANDERSON: Right. One of the  
25 elements that we've asked the City and AES to do

1 is offline, as of yesterday, was to reach an  
2 accord amongst themselves relative to the protocol  
3 number 5 and what that will entail.

4 If, in fact, the City of Huntington  
5 Beach becomes the chief building official, the CBO  
6 for this particular project, they're the ones that  
7 will have to review and approve the dynamic and  
8 lateral force analysis procedures which are the  
9 seismic design analysis procedures for this  
10 project. And for both the components and the  
11 existing facility.

12 What that really means is this: Is that  
13 the CBO and the applicant need to come to a  
14 meeting of minds, or to figure out what level of  
15 detailed analysis is germane to this, so they can  
16 get on with the project.

17 COMMISSIONER PERNELL: Thank you.

18 HEARING OFFICER SHEAN: Okay, now let me  
19 understand. As you have advocated, as the  
20 applicant has advocated, that this apply to  
21 structures. If you determine, as a result of your  
22 seismic analysis that, for example, additional  
23 bracing would be appropriate to bring an above-  
24 ground structure, a nonfoundational structure, up  
25 to current UBC or CBC, that that would -- that

1 such, if you will, above-ground nonfoundational  
2 bracing would be contemplated by the analysis of  
3 5, as you support?

4 MR. ROTHMAN: No. Let me see if I can  
5 clarify. We've got two large structures at this  
6 facility, 1 and 2, and 3 and 4. They're both  
7 built to stringent standards at the time, and  
8 they're existing facilities that would be there.  
9 And I don't think that they're posing -- I think  
10 that the health and safety threat is no different  
11 between the two of them. And it's an existing  
12 structure.

13 What we're saying is that as for the  
14 existing structure we would propose that we would  
15 do an analysis to satisfy the CBO that it is  
16 meeting its structural design standards as built.  
17 The as-built structure. That the existing  
18 structure is still sound as it was originally  
19 intended to be.

20 But that for any new structure we would  
21 then meet, any new structure would meet the  
22 Uniform Building Code. That's what we're  
23 proposing.

24 HEARING OFFICER SHEAN: Okay. We've got  
25 it. Thank you very much.

1 MR. ANDERSON: Thank you.

2 HEARING OFFICER SHEAN: Anything further  
3 from the City? Okay.

4 MR. ANDERSON: Is that it?

5 HEARING OFFICER SHEAN: Thank you, Mr.  
6 Anderson, yes.

7 MR. ANDERSON: Thank you.

8 MR. LAMB: The only thing I'd like to  
9 add with regards to that is there are being --  
10 along with a catalyst system they are adding a  
11 catalyst bed onto the structure, itself, and there  
12 are modifications that do, until we see the  
13 calculations, until you go through the process,  
14 and to eliminate now, because again the concern is  
15 that we don't know what we don't know.

16 We do need the flexibility to be able to  
17 properly secure all systems that are proposed.  
18 And until we see the calculations it is important  
19 to go through any civil engineer, and I'm a  
20 registered civil engineer, you have to look at  
21 both the foundation and the structure. It's an  
22 integral component. You can't separate the two.

23 HEARING OFFICER SHEAN: Okay, I mean we  
24 understand, to some degree, you leave some of the  
25 old, add a new, they're different. All right,

1 thank you.

2 Why don't we go now to socioeconomics --

3 MR. PAK: Your Honor, would it be  
4 appropriate now for the City to present its case  
5 with respect to facility design?

6 HEARING OFFICER SHEAN: You bet.

7 MR. PAK: Then at this time we call Mr.  
8 Ross Cranmer to the stand, please.

9 Whereupon,

10 ROSS CRANMER

11 was called as a witness herein, and having been  
12 previously duly sworn, was examined and testified  
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. PAK:

16 Q Mr. Cranmer, would you tell us by who  
17 and in what capacity you're currently employed?

18 A I'm currently employed by the City of  
19 Huntington Beach. I'm the Building Official here  
20 at Huntington Beach. I have been for a number of  
21 years, actually about 17 years.

22 Q And are you generally familiar with the  
23 responsibilities the City would be assuming in the  
24 role of what's been commonly referred to here as  
25 the chief building official?

1           A     After reading the document and  
2           discussions in the last couple days I understand  
3           the oversight that's necessary to assure that we  
4           have a safe installation at the site, yes.

5           MR. PAK: Your Honor, I'd like to have  
6           marked as the next exhibit in order a document  
7           entitled, conditions under which the City of  
8           Huntington Beach would serve as chief building  
9           official.

10          HEARING OFFICER SHEAN: All right, we'll  
11          not do these by number, but since you've  
12          identified it sufficiently by its title, why don't  
13          you proceed.

14          MR. PAK: Thank you, Your Honor.

15          BY MR. PAK:

16          Q     Mr. Cranmer, have you reviewed the  
17          document that's just been marked as an exhibit in  
18          this proceeding?

19          A     Yes, I have.

20          Q     And would you describe the contents and  
21          intent of that document, please?

22          A     Basically there's four conditions that  
23          we feel are necessary in order to carry out my  
24          task to review the project and assure the project  
25          is constructed in a safe manner.

1           The first one, just in summary, is the  
2           ability to enter the sites and assure that the  
3           construction is proceeding properly and have  
4           access to the site at all times.

5           Two and three, primarily the submittal  
6           of drawings so that we have adequate time to  
7           actually look at the drawings. It's imperative  
8           that typically when you have construction going on  
9           that you're able to review the drawings ahead of  
10          time prior to construction commencing so that you  
11          don't have problems during the construction.

12          Of course, we realize that a lot of this  
13          may not be absolutely complete drawings up front,  
14          and there will be modifications to the drawings,  
15          and we'd have to have staffing. And that's part  
16          of the oversight to have staffing available to  
17          review those modifications during construction.

18          The last but not least is the number 4  
19          item. It's imperative, since we definitely do not  
20          have the staffing, to have this type of oversight.  
21          That we need to hire an outside firm, paid  
22          directly by AES, because to go through the City  
23          right now and get a contractual arrangement, we  
24          simply do not have the time to do that.

25          So we'd have to create some kind of

1 relationship where AES, the outside firm that we  
2 would choose to monitor the aspects on the site.

3 That would include inspection, all the  
4 inspection, and overview of the quality assurance.  
5 That would also be the engineering aspect.

6 In reading the document in the CEC, I  
7 understand you'll have an engineer on site, and I  
8 imagine there will be other engineers on site  
9 doing modifications to the plans, so we need some  
10 oversight in that area, as well. So that's what  
11 number 4 tends to address.

12 Q Mr. Cranmer, in the event the Commission  
13 were not to provide for the conditions that you've  
14 just identified, do you have any opinion as to  
15 whether the City could adequately serve or would  
16 be willing to serve as the chief building  
17 official?

18 A If we don't have something to the effect  
19 with the oversight, and especially number 4 on the  
20 list, and access to the site more specifically,  
21 given the accelerated schedule and the 20 hours,  
22 or whatever hours are identified, certainly the  
23 accelerated schedule, there's no way we could have  
24 proper oversight, and I wouldn't be able to  
25 properly perform my job. And therefore we

1 wouldn't be able to take this on.

2 Q And in the event that the City did not  
3 serve as the chief building official for this  
4 project, do you have any recommendations as to  
5 conditions that the Commission should adopt with  
6 respect to coordination between whoever it might  
7 designate as the chief building official and the  
8 City of Huntington Beach?

9 A Well, my recommendation is that the CEC  
10 would have to hire some similar expertise to  
11 oversee the project. That again would include  
12 inspection of the site and the type of engineering  
13 changes.

14 Given the complexity of this project and  
15 how fast-paced it looks like it's going to be  
16 going, you're going to need someone on the site  
17 that's going to be able to approve changes on an  
18 hourly, maybe hourly basis, certainly within  
19 hours, to keep the project moving ahead. And as  
20 such, the CEC, I would think, would have to hire  
21 that type -- at least that's my viewpoint, would  
22 have to hire that expertise.

23 Q And would you refer to the second page  
24 of the document that's been marked as the next  
25 exhibit. Can you tell us the purpose and intent

1 of the provisions on that second page, please?

2 A What I'm looking at is it has to do with  
3 complaints. Could you be more specific?

4 Q Is this generally the kind of  
5 recommendations the City would be making to the  
6 Commission?

7 A Well, when you're monitoring and you're  
8 in a political environment, I realize the CEC  
9 operates in a political environment just like we  
10 do, you do need the ability to post the site to  
11 communicate with your constituents and that's  
12 certainly part of the number one item, contact  
13 information official, a designated individual for  
14 the media to contact, and for individuals to  
15 contact. And that's an important aspect, so  
16 that's what the number 1's about.

17 And the coordination of all the reviews,  
18 inspections, that would go along with whomever the  
19 outside firm, that would be in connection with my  
20 staff, as well, the coordination of what's going  
21 on at the site so we can communicate with outside  
22 bodies as well as their asking questions.

23 MR. PAK: That concludes the City's  
24 presentation on this, Your Honor. I'd like to  
25 move the admission of the document we submitted as

1 an exhibit in the proceeding.

2 HEARING OFFICER SHEAN: Sure, and it  
3 will be admitted, we'll take it into the  
4 evidentiary record.

5 Do we have anything from staff on this  
6 subject?

7 MR. KRAMER: Staff is happy with the  
8 proposed conditions.

9 HEARING OFFICER SHEAN: All right,  
10 anything from CURE?

11 MR. WOLFE: Not at this time.

12 HEARING OFFICER SHEAN: All right. How  
13 about the applicant?

14 MR. ROTHMAN: Just a couple of things.  
15 And having just received these and had just a  
16 couple of minutes to review them, I'd like to  
17 reserve --

18 HEARING OFFICER SHEAN: Sure.

19 MR. ROTHMAN: -- the opportunity to  
20 object further after further review. But, as far  
21 as the conditions on page 1 of the City serving as  
22 chief building official, I think that conditions  
23 number 2 and conditions number 3 seem to be  
24 acceptable to the applicant.

25 Condition number 1, for the most part,

1 is something that there should be little or no  
2 objection to, however, I do think that the right  
3 to enter the property without notice at anytime is  
4 overbroad and unnecessary, and could create safety  
5 concerns.

6 And finally, with respect to number 4, I  
7 think we simply have some questions about how this  
8 would be implemented and paid for. It is my  
9 understanding that the applicant pays significant  
10 permitting fees associated with this project that  
11 are supposed to go for these kinds of review. And  
12 it looks to me like we're being asked to pay for  
13 something on top of those permitting fees.

14 Moreover, if they're going to be hiring  
15 an outside consultant using our contracting --  
16 using the contracting party, I would think that it  
17 would be something that you would have some input  
18 into as a mutually acceptable contractor, not  
19 simply a contractor at the selection of the City.

20 HEARING OFFICER SHEAN: All right. Mr.  
21 Cranmer, in terms of the current ordinary ability  
22 of a chief building official to enter into the  
23 property where work is ongoing and is subject to  
24 the jurisdiction of the CBO, is the entry with or  
25 without notice at any and all times already

1 authorized, or is that something new and different  
2 from what you understand the current breadth of  
3 your authority to be?

4 MR. CRANMER: Typically any project  
5 that's under construction we can enter at anytime.  
6 So that would be only during the construction  
7 periods of time, typically. So it is within our  
8 powers at this point for any other construction  
9 project.

10 HEARING OFFICER SHEAN: And is it your  
11 expectation, or maybe this is to Mr. Pak, that the  
12 amount that would be contracted for under number 4  
13 would be over and above anything that is paid by  
14 way of permit fees or that if permit fees were  
15 insufficient to cover this contract, that they  
16 would be additive only for that purpose?

17 MR. PAK: It would be the latter  
18 situation that you just described. This would be  
19 for costs over and above those covered by any  
20 permit fees that would be paid by the applicant.

21 To the best of my knowledge there  
22 haven't been any fees yet assessed.

23 HEARING OFFICER SHEAN: Does that help  
24 you, Mr. Rothman?

25 MR. ROTHMAN: Yeah, first of all, I

1 believe that there have been permit fees that have  
2 already been assessed, and that we contemplate  
3 significant additional permit fees being assessed.

4 But if the condition were modified to  
5 reflect that this would be above or beyond any  
6 fees that are already contemplated or have been  
7 assessed, that would be preferable.

8 HEARING OFFICER SHEAN: Okay.

9 MR. ROTHMAN: It still doesn't resolve  
10 the selection process of the consultant.

11 HEARING OFFICER SHEAN: I guess --  
12 what's the role you want in the selection?

13 MR. ROTHMAN: We just think it ought to  
14 be, you know, a mutually acceptable consultant.

15 HEARING OFFICER SHEAN: You'll let the  
16 CPM make the choice if you can't agree?

17 MR. ROTHMAN: We would agree to that.

18 HEARING OFFICER SHEAN: Okay, does the  
19 City agree to that?

20 MR. LAMB: Due to the timeframe normally  
21 I would agree with that, but the problem here is  
22 that we're talking 60-plus days in construction.  
23 We're talking that by the time this gets approved  
24 they want to start construction within two days.

25 In order for us to do that we need to

1 basically start this process, this engaging of a  
2 consultant next week. Unfortunately for us, the  
3 City's perspective is that we need to choose it as  
4 the CBO, we really can't go through a consensus  
5 process on this.

6 The Governor is driving this process.  
7 This process has been driven all along. We need  
8 to have the authority and the ability to move as  
9 we deem fit on this issue. I'm sorry, that's  
10 really important to us.

11 HEARING OFFICER SHEAN: All right.  
12 Well, it may be that you're going to be going  
13 through -- you ought to be going through this even  
14 while the proceeding at the Commission is pending.  
15 So why don't you guys figure out who you think you  
16 want to use, talk to the applicant. If you cannot  
17 resolve a dispute as to who this might be, let the  
18 Commission know.

19 Okay, anything further on design?

20 MR. PAK: No.

21 HEARING OFFICER SHEAN: Anything further  
22 from you?

23 MR. ROTHMAN: Nothing from us.

24 HEARING OFFICER SHEAN: All right.

25 Thank you very much.

1                   MR. WOLFE:  Officer Shean, Mark Wolfe  
2                   for CURE.  If there's no objection we would  
3                   request that general conditions be taken before  
4                   socioeconomics.  We see that the degree of  
5                   difference in agreement is not that different.  
6                   And our presentation was prepared assuming that  
7                   general would be taken first.

8                   HEARING OFFICER SHEAN:  All right, we  
9                   can do that.

10                  MR. WOLFE:  Thank you.

11                  HEARING OFFICER SHEAN:  We'll start with  
12                  the staff, run through the other parties, and then  
13                  go to the applicant.

14                  MR. KRAMER:  Your Honor, we really have  
15                  no changes there, so we could submit the staff  
16                  assessment and then we'll wait and see what the  
17                  complaints are, and then respond.

18                  HEARING OFFICER SHEAN:  Okay, and I  
19                  assume what we're talking about in the way of  
20                  general conditions is essentially the  
21                  recommendations appearing in the executive  
22                  summary, is that right?

23                  MR. KRAMER:  There is a general  
24                  condition section and it contains, among other  
25                  things, the condition about the duration of the

1 certification, which I'm pretty sure is going to  
2 be one of the issues.

3 HEARING OFFICER SHEAN: I'm just trying  
4 to ascertain that we're not talking about the  
5 compliance monitoring general condition section.  
6 Is that --

7 MR. KRAMER: I think we are because in  
8 there in the first page, there are three  
9 conditions, the first of which says that the  
10 certification will last no -- will be for the life  
11 of the DWR contract, but in no event longer than  
12 September 30th of 2006.

13 HEARING OFFICER SHEAN: Why don't you  
14 give me a page reference for that.

15 MR. KRAMER: It will take me a second.  
16 339.

17 HEARING OFFICER SHEAN: Okay. Now, let  
18 me just indicate for the record that as of the  
19 Commission Business Meeting on March 21st the  
20 Mountainview Committee will be recommending that  
21 we adopt the compliance monitoring conditions as a  
22 precedential decision, so that that boilerplate  
23 can be used in all future proceedings.

24 And if owners of projects that were  
25 previously certified wish to use the updated

1 compliance monitoring boilerplate that that would  
2 be available to them.

3 For the purposes of the Presiding  
4 Member's Proposed Decision just know we will pull  
5 these what we're calling general conditions out of  
6 here if they are adopted, and they will appear  
7 elsewhere, since it would not be appropriate for a  
8 boilerplate section.

9 Okay, just so everyone knows.

10 MR. KRAMER: And what I mean by the  
11 unique conditions are the last paragraph on 339,  
12 and the first two full paragraphs on 340.

13 HEARING OFFICER SHEAN: All right.

14 What I thought we would do then is to  
15 take any supporting testimony from either CURE or  
16 the City of Huntington Beach, since we already  
17 know in advance here that the applicant is opposed  
18 to this condition. Does CURE have anything you  
19 want to add at this point?

20 MR. WOLFE: Yes.

21 HEARING OFFICER SHEAN: All right, why  
22 don't you go ahead, please.

23 MR. WOLFE: Is now the time?

24 HEARING OFFICER SHEAN: Yes.

25 MR. WOLFE: So, I guess first I would

1           like to mark as an exhibit CURE's proposed  
2           conditions of certification in air quality, public  
3           health, water and biological resources and  
4           socioeconomics, which was docketed on March 7th.

5                       I have some copies here, but --

6                       HEARING OFFICER SHEAN: All right, since  
7           it's already in the record we will not identify it  
8           with a separate exhibit number.

9                       MR. WOLFE: First I'd like to say that  
10          we're not opposed to staff's proposed conditions  
11          regarding duration. But I would direct everyone's  
12          attention to our proposed conditions which begin  
13          on page 3 of the document we just marked.

14                      Very briefly, our rationale for doing  
15          this really stems from the language in the  
16          Governor's Executive Orders. For all intents and  
17          purposes what we have is a gubernatorially  
18          declared emergency, which says we need to do  
19          everything we can to get these megawatts on line  
20          by this summer, consistent with the substantive  
21          goals of environmental protection and protection  
22          of the public health.

23                      That is something we fully support, as  
24          we made clear in the introduction to our proposed  
25          conditions.

1                   Nevertheless, we believe firmly that  
2                   this entire process must be as narrowly tailored  
3                   as possible to achieve that goal. And we see  
4                   three aspects to narrowly tailoring the process.

5                   First, is that the state must get all of  
6                   the output from this project. There is absolutely  
7                   no reason to adopt this process that we seem to  
8                   have adopted of throwing by the wayside all of the  
9                   normal procedural protections, if the people of  
10                  California are not going to get all of the  
11                  benefit.

12                  So we are proposing as a firm condition  
13                  that every last megawatt of output from this plant  
14                  be sold instate, either to DWR pursuant to a  
15                  contract, or to a grid serving California utility  
16                  at least until staff's proposed deadline, 2006.

17                  The second aspect, and we'll get to this  
18                  later, is that, you know, any feasible  
19                  environmental mitigation measures that can be  
20                  imposed must be imposed. We think we're 95  
21                  percent there, but we'll talk about that later in  
22                  the hearings.

23                  And finally, there need to be conditions  
24                  that the project will be built and online by this  
25                  summer. If the Committee does not have sufficient

1       guarantees that the project will, in fact, be  
2       completed and ready to go online by this summer  
3       peak period, again we see no point in throwing all  
4       of the normal procedural protections by the  
5       wayside in the manner we're proposing to do.

6                So, with that said, we would just draw  
7       the Committee's and everyone's attention to the  
8       conditions that we presented on pages 3 and 4 of  
9       our filing.

10               Thank you.

11               HEARING OFFICER SHEAN: Anything from  
12       Huntington Beach on this?

13               MR. PAK: Yes.

14               HEARING OFFICER SHEAN: Go ahead.

15               MR. PAK: Yes, Your Honor, we'd like to  
16       call Mr. Donald Lincoln to the stand. Your Honor,  
17       Mr. Lincoln will be sponsoring three documents.  
18       The first is a three-page document which is the  
19       r sum of Mr. Donald F. Lincoln. The second is a  
20       three-page document entitled, financial evaluation  
21       of the Huntington Beach Generating Station Retool  
22       Project, and the third is a one-page document  
23       entitled the Huntington Beach 3 and 4 Retool  
24       Project.

25               I'd ask that those be marked as exhibits

1 in this proceeding.

2 HEARING OFFICER SHEAN: Well, since  
3 you've identified it, we'll take it under the  
4 title of financial evaluation of the Huntington  
5 Beach Generating Station Retool Project dated  
6 March 14th, with the accompanying spreadsheet and  
7 his r sum or statement of qualifications.

8 MR. PAK: Thank you, Your Honor.  
9 Whereupon,

10 DONALD LINCOLN  
11 was called as a witness herein, and having been  
12 previously duly sworn, was examined and testified  
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. PAK:

16 Q Mr. Lincoln, first would you take a look  
17 at the r sum that's been entered into the record.  
18 Does this correctly state your qualifications as  
19 an energy professional?

20 A Yes, it does.

21 Q Would you explain the purpose and intent  
22 of the documents which are the financial  
23 evaluation of the retool project, as well as the  
24 accompanying spreadsheet, and the information  
25 that's contained in those documents?

1           A     Yes.  Generally the assignment was to  
2           ascertain what the economic value was to the owner  
3           for the investment that they're putting into the  
4           project.

5           Q     And would you describe the analysis that  
6           you undertook in response to that assignment?

7           A     Well, in order to do that evaluation we  
8           had to look at a number of factors that had  
9           variances associated with them, but we evaluated  
10          gas prices; we looked at the market price of  
11          electricity, historically and projecting,  
12          attempting to project into the future.

13                   We evaluated the amount of generation  
14          that would or could come out of the station, and  
15          we had to determine some sort of an estimate of  
16          operations and maintenance expenses.

17                   We ran a series of scenarios, in fact  
18          you see them there on the spreadsheet.  We looked  
19          at a number of gas prices.  And in general, if you  
20          review spot market gas prices in the southern  
21          California area over the last 12 months, they've  
22          ranged from approximately \$3 a mBtu, very  
23          gradually rose through the year to around \$5 or \$6  
24          a mBtu.  And then in the November timeframe they  
25          spiked up over \$36 mBtu.  They appear to be

1 settling now, and I only say appear to be because  
2 the numbers are still pretty bouncy, but somewhere  
3 in the 9 to 11 range.

4 We used that to establish the range of  
5 number we thought we should take a look at in the  
6 evaluation.

7 As to the market price of electricity,  
8 we've seen that moving as high this summer as \$300  
9 to \$400 and higher a megawatt hour.

10 We also looked at the last few weeks on  
11 what the market clearing prices for energy are,  
12 and we found that for nonfirm offpeak energy,  
13 prices are still in excess of \$200 a megawatt  
14 hour.

15 We decided to use that range of numbers.  
16 We had also seen that there were some long-term  
17 contracts under negotiation here in California in  
18 roughly the \$70 range. We used that as our  
19 minimum number and we used the number 280, which  
20 is the number I mentioned before, as our high  
21 range.

22 We then took the numbers that the  
23 applicant stated they planned to operate the plant  
24 a year, which was about 2500 hours. And generally  
25 used that for our evaluation, but we also took a

1 look at one scenario that would assume the plant  
2 would run at about an 85 percent capacity factor,  
3 or about 7500 manhours.

4 And lastly, we had to estimate the O&M  
5 costs. We didn't have specific numbers. I used  
6 some estimates based on gas plants of a similar  
7 size, and they're laid out there. You can see, we  
8 kept the operations and maintenance costs fairly  
9 flat. In fact, exactly flat across all the  
10 various scenarios.

11 To look more specifically, and I'll only  
12 talk about a couple of these, you can see I  
13 mentioned four in the report on page 2.

14 Scenario number 1 takes the \$11 per mBtu  
15 gas rate, which is where we think it seems to be  
16 settling in now. It also took the higher capacity  
17 factor, the 85 percent, or the roughly 7500 hours  
18 per year. And then it took the higher of the  
19 market prices, the \$280 a megawatt hour. Ran out  
20 an estimate of the earnings before taxes,  
21 interest, depreciation and amortization, that's  
22 that bold line just below the middle.

23 We then took and added up the earnings  
24 brought back to present value by that discount  
25 rate, and added them up over five years and eight

1 years, and based on those assumptions came up with  
2 a value of the project in today's dollars of  
3 somewhere between \$2.5 billion in five years, and  
4 around \$3.8 billion in eight years.

5 To look at a scenario that's perhaps a  
6 bit more conservative, and perhaps even more  
7 realistic, scenario six, if I could jump out  
8 there. We looked at, again, the \$11 gas price; we  
9 used \$150 a megawatt hour as the energy rate. And  
10 we used 2500 hours as the operating period, or the  
11 operating time for the year. That gives you the  
12 28.5 percent capacity factor.

13 That developed an annual earnings  
14 estimate about \$45 million, and if you present  
15 value five years of that back you come up with a  
16 value of about \$205 million for the five-year  
17 period, or about \$305 million for the eight-year  
18 period. If I didn't say so, that's scenario  
19 number 6.

20 After evaluating all these various  
21 scenarios we decided that scenario number 6 was  
22 probably the one that, at least from a  
23 conservative perspective, was most realistic of  
24 the value of the project.

25 Q Mr. Lincoln, insofar as you determine it

1 to be conservative, are there any variables that  
2 you looked at that might improve the financial  
3 returns of this project that might also be  
4 realistic?

5 A Well, it certainly seems realistic that  
6 the plant would run more than 2500 hours a year.  
7 The energy rate, as I mentioned before, obviously  
8 as the value of the electricity goes up in the  
9 open market, the rate of return of the plant is  
10 going to go up, assuming that gas prices stay  
11 flat.

12 Q Mr. Lincoln, as an expert in the energy  
13 industry, do you have any opinion as to whether  
14 the Huntington Beach retool project is a  
15 financially attractive investment for the  
16 applicant?

17 A Oh, I think it's a very reasonably  
18 financially attractive investment for the  
19 applicant. What we think is a fairly conservative  
20 estimate on what the rate of return will be  
21 significantly exceeds the cost of investment that  
22 they're looking at, assuming it's the \$140  
23 million.

24 And there's a fairly large upside  
25 possibility in the event the plant will either

1 operate at a higher energy rate or, in fact, more  
2 hours.

3 Q Now, Mr. Lincoln, have you generally  
4 reviewed the City's proposed conditions in this  
5 proceeding?

6 A Yes, I have.

7 Q And if the Commission were to adopt any  
8 or all of the City's proposed conditions would  
9 that fact change your opinion regarding the  
10 financial attractiveness of this project?

11 A There's only one, I heard some  
12 discussion this morning, I didn't see it so  
13 clearly when I read the preceding, but there's an  
14 issue around the seismic evaluation of the  
15 foundation. That one could have a significant  
16 impact, but the others I don't think would.

17 Q Now, are you generally familiar with the  
18 processes that jurisdictions use that are related  
19 to site approval of power plant facilities?

20 A Yes, I am.

21 Q And can you tell me what your sense of  
22 the general duration of those processes would be?

23 A Well, typically you'll spend between six  
24 months and a year, some have taken considerably  
25 longer than that, just going through the siting

1 process, itself.

2 The costs are usually a significant  
3 percentage of the cost of the total project. I've  
4 heard numbers in the 25 to 40 percent range.

5 Q Would it be your opinion as an expert in  
6 the energy industry that there's a financial  
7 benefit to the project proponent from a reduction  
8 in the duration and risks associated with the  
9 siting process, by reducing that process to a two-  
10 month period?

11 MR. ROTHMAN: I'm going to object to his  
12 qualifications on this matter.

13 HEARING OFFICER SHEAN: I think the  
14 Committee knows where they're going, I mean it's  
15 apparent where they're going with this. And I  
16 think we'll note the objection and just understand  
17 that it'll go --

18 MR. PAK: Thank you, Your Honor.

19 BY MR. PAK:

20 Q Mr. Lincoln, do you have the question in  
21 mind?

22 A Yes, I do. I think that the economic  
23 impact on the value of the project is significant  
24 in the positive direction.

25 Q And finally, do you have an opinion as

1 to the reasonableness of the City's conditions  
2 regarding the dedication of the power from this  
3 facility for sale to the state in light of the  
4 financial benefits you've just described, and  
5 under the circumstances present in this case as  
6 you know them?

7 MR. ROTHMAN: I'm going to renew my  
8 objection as to that.

9 HEARING OFFICER SHEAN: Okay. Same  
10 order.

11 MR. LINCOLN: Well, it seems reasonable  
12 that those who carry the risk, the citizens of  
13 California, should glean the benefits, so it  
14 doesn't seem unreasonable to me.

15 MR. PAK: Your Honor, with that we  
16 conclude our presentation with respect to the  
17 general conditions area of the report. I would  
18 join with CURE that in pressing conditions related  
19 to the sequestration of the output from this  
20 plant, and as you know, the City has also proposed  
21 conditions to insure that that condition is  
22 enforceable by attaching conditions on the sale of  
23 power related to other AES affiliated plants.

24 And with that I think the City can rest  
25 on this issue. Thank you.

1 HEARING OFFICER SHEAN: Thank you. And  
2 the Committee is aware both of the CURE-proposed  
3 conditions and the City-proposed conditions with  
4 respect to both the duration, as well as the  
5 affiliate company and general affiliates sales  
6 that were raised in the workshop yesterday.

7 Okay.

8 MR. PAK: I'd provide Mr. Lincoln for  
9 any questions for clarification the panel might  
10 have.

11 HEARING OFFICER SHEAN: Mr. Lincoln,  
12 just so I understand it and can put it in  
13 perspective, if there's a significant economic  
14 benefit to the applicant by virtue of the  
15 expedited review period, would it also be your  
16 opinion that there's a significant financial and  
17 social benefit to the State of California from  
18 having this electricity online in the summer of  
19 2001?

20 MR. LINCOLN: Oh, absolutely.

21 HEARING OFFICER SHEAN: And that  
22 actually the public gain on that is extremely  
23 significant?

24 MR. LINCOLN: Yes, it appears to be.

25 HEARING OFFICER SHEAN: Okay. I don't

1 have anything more.

2 Now, it's the applicant's opportunity to  
3 basically rebut anything that you heard on the  
4 topic of duration of certification.

5 MR. PAK: Your Honor, if I didn't do so,  
6 I'd like to move the admission of the three  
7 documents into the record.

8 HEARING OFFICER SHEAN: All right.  
9 Objection?

10 MR. ROTHMAN: No objection.

11 HEARING OFFICER SHEAN: All right. They  
12 will be admitted.

13 MR. ROTHMAN: Your Honor, I'd like to  
14 call a couple of witnesses in rebuttal on this  
15 issue, but I'd like to start by stating our  
16 objection to the characterization that we are  
17 throwing away all the normal processes and  
18 procedures.

19 I think that while we all understand  
20 that this is a somewhat unusual proceeding, I  
21 think that the CEC ought to be commended in its  
22 efforts to maintain all of the substantive  
23 requirements of its siting and certification  
24 process.

25 And there seems to be this misperception

1 that this expedited process is somehow something  
2 that AES requested, and therefore ought to be  
3 penalized for, pay a price for. And we would  
4 object to that characterization, as well.

5 I'd like to start by calling Ed  
6 Blackford. If you prefer to have him sit up  
7 there, that's fine, but since there's a microphone  
8 right here --

9 HEARING OFFICER SHEAN: It doesn't  
10 matter. Let me, just before you go forward, Mr.  
11 Rothman, in terms of the purpose of your  
12 testimony.

13 Mr. Pak, just so I can set in the  
14 context for the Committee, perhaps you could  
15 describe that, and what you anticipate arguing  
16 from that beyond the obvious, which is that  
17 they're going to make money at the project and, I  
18 mean, let me say, I'm assuming two things:

19 They'll make money at the project and  
20 they'll make enough money at the project that they  
21 can pay for either the studies that are in the  
22 conditions, the mitigation set-aside, if you will,  
23 that is proposed by the City, and other things  
24 such as that.

25 That there's enough money coming out of

1 this project that they can pay for the other  
2 conditions that are recommended by the City and by  
3 CURE?

4 MR. PAK: That's correct, Your Honor.  
5 That's the purpose of the testimony.

6 HEARING OFFICER SHEAN: All right.  
7 Whereupon,

8 ED BLACKFORD  
9 was called as a witness herein, and having been  
10 previously duly sworn, was examined and testified  
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. ROTHMAN:

14 Q Mr. Blackford, could you actually state  
15 your name and your position for the record.

16 A My name's Ed Blackford. I'm the Site  
17 Manager at AES Huntington Beach; also, from a more  
18 legal standpoint, I'm the President of that LLC.  
19 As regards the 3 and 4 project, I'm acting as the  
20 Project Manager for the retool project.

21 Q And could you just provide a bit of  
22 context for the origin of the 3 and 4 project?

23 A When AES originally bought these  
24 facilities in 1998 the intent was that we were  
25 going to be a long-term player in the energy

1 market in California with a long-term presence in  
2 Huntington Beach through the Huntington Beach  
3 site.

4 Our intent was that over time this site  
5 would be expanded, modernized. The original  
6 intent with units 3 and 4 was to replace them, as  
7 opposed to dismantling or doing nothing.

8 Situations have changed drastically  
9 within the last year. And as a result of the  
10 energy crisis that we're now currently in, we  
11 began looking, as others have, in identifying  
12 areas where generation could be brought on line  
13 quickly.

14 We took a look at 3 and 4 in that  
15 context. And following doing studies of records  
16 from past operation, we determined at that point  
17 that it did appear to be viable to bring these  
18 units back in a very expedited fashion.

19 We proceeded from that point to do an  
20 assessment which has been ongoing since the  
21 beginning of this past summer, June of 2000. And  
22 we have made a major commitment in time and  
23 expense to get to this point once we determined,  
24 and continue to verify, that bringing these units  
25 online made sense.

1                   We have been and continue to be making a  
2                   major financial commitment to continue to preserve  
3                   these assets as an option for the solution of the  
4                   crisis this summer, partial solution to the  
5                   crisis.

6                   Q     And could you provide the CEC and  
7                   members of everyone gathered here sort of your  
8                   review of the duration of certification, the five-  
9                   year duration of certification, any problems that  
10                  would pose for AES?

11                  A     Again, in part of our financial analysis  
12                  the moneys that we've expended to date, we need to  
13                  have the assurance and the viability of recouping  
14                  the cost that's been expended so far. We fully  
15                  realize that as a result of this expedited process  
16                  the uncertainties that that would, in fact, incur  
17                  some incremental costs.

18                  The conditions are extensive and  
19                  continue to become more extensive, all of them  
20                  with cost implication factors.

21                  We throw into that mix the limitation of  
22                  certification which greatly hampers our ability to  
23                  recoup the investment, as well as make a  
24                  reasonable return on the expense. This currently  
25                  really limits and affects the viability of the

1 whole project.

2 MR. ROTHMAN: I'd now like to call Mr.  
3 Mark Woodruff as a witness.

4 Whereupon,

5 MARK WOODRUFF

6 was called as a witness herein, and having been  
7 previously duly sworn, was examined and testified  
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. ROTHMAN:

11 Q Mr. Woodruff, could you state your name  
12 and your position for the record?

13 A Good morning, thank you for the  
14 opportunity to address the Committee. My name is  
15 Mark Woodruff. I am Senior Vice President of AES  
16 Pacific, which is the AES Corporation's Group in  
17 the Western United States.

18 In addition, I'm President of AES  
19 Southland regarding all of our generation  
20 businesses in southern California.

21 Q Mr. Woodruff, could you provide some of  
22 your background in financial analysis of power  
23 generation facilities?

24 A Yes. I have 20 years experience in the  
25 energy industry. I hold a bachelor of science

1 degree in mechanical and aerospace engineering  
2 from University of Delaware. In addition, hold  
3 certificates in aerospace engineering from the Von  
4 Karmann Institute in Brussels, as well as advanced  
5 executive program from Stanford Business School.

6 Q And have you had an opportunity to sort  
7 of quickly review the financial evaluation of the  
8 Huntington Beach Generation Station Retool project  
9 prepared by Mr. Lincoln?

10 A Well, I've just received this a few  
11 minute ago. Just from a cursory analysis of the  
12 spreadsheet, as well as Mr. Lincoln's  
13 qualifications, I would note -- I'm also a  
14 registered professional engineer in Delaware in  
15 mechanical engineering.

16 Notwithstanding a brethren's fellow  
17 registered engineer's obviously impressive  
18 engineering qualifications, I note that he has no  
19 experience in the independent power business,  
20 project finance, or any analysis related to  
21 wholesale market transactions or other financial  
22 analyses that are used in today's energy industry  
23 in terms of marketing electricity or hedging risk,  
24 including value at risk analysis, or other  
25 techniques that are common in our industry for

1 developing financial analysis.

2 I'd note that there is a wide range of  
3 potential outcomes during this short period of  
4 time, and Mr. Lincoln acknowledges in his  
5 testimony that the current market conditions today  
6 are exceptionally volatile, and that none of this  
7 spreadsheet addresses any of the sort of  
8 techniques that are commonly used in our business  
9 today for analyzing or managing or hedging any of  
10 that market volatility.

11 And that given the wide range of  
12 outcomes, and including potential wide range of  
13 outcomes of the extreme and very material costs  
14 associated with some of the mitigations that are  
15 being proposed by the staff and others, you know,  
16 we would find the current financial scenario not  
17 viable.

18 Q Do you have any other comments on the  
19 scenarios presented by Mr. Lincoln?

20 A I'd note that Mr. Lincoln commented  
21 that, I would have to comment that Mr. Lincoln  
22 asserts that permitting costs could range up to, I  
23 believe he mentioned 40 percent of a total project  
24 cost. I believe that he has overstated, under a  
25 normal process. I believe that he has overstated

1 that cost by at least an order of magnitude, even  
2 with the full 12-month process.

3 And I would further add that from our  
4 perspective and from an investor's perspective,  
5 that we would, notwithstanding our desire to help  
6 the electricity supply situation in California  
7 this summer, we would far prefer to go through the  
8 full process than to face investment with a wide  
9 range of uncertainty in economic outcomes  
10 associated with some, or collectively, a number of  
11 the proposed conditions of certification.

12 Q Speaking of those proposed conditions of  
13 certification, Mr. Lincoln mentioned only one that  
14 he hadn't considered. Does it appear to you that  
15 he's considered other proposed mitigation  
16 measures, such as mitigation measures for unit 5  
17 in his analysis?

18 A No, it does not appear so.

19 MR. ROTHMAN: I have nothing further.

20 HEARING OFFICER SHEAN: Let me just ask  
21 a couple of questions. Am I correct that AES is  
22 not going to finance this project internally, and  
23 so you're going to have to get your financing  
24 outside?

25 MR. WOODRUFF: The project would be

1 funded with a combination of investor equity as  
2 well as debt financing.

3 HEARING OFFICER SHEAN: Okay. And, I  
4 guess I have two lines of questioning. One will  
5 be along the lines of to Mr. Blackford in terms of  
6 your original intentions with regard to units 3  
7 and 4 were to replace them. And it will be along  
8 the idea of what is it going to take to begin to  
9 return to your original scenario.

10 And probably to get to that is to  
11 understand what you have estimated internally or  
12 for your lenders would be the payback period for  
13 the unit 3 and 4 retool? Have you a period of  
14 years or months in mind in terms of having  
15 developed the project to know when --

16 MR. WOODRUFF: I can address that right  
17 now there are many variables up in the air, and  
18 there would be a wide range of potential outcomes.

19 But further than that, we do not invest  
20 just simply to get our money back. We invest to  
21 earn an appropriate return for our shareholders  
22 which we think is fair, reasonable and  
23 appropriate. And don't apologize for the fact  
24 that we do seek to make such a return.

25 So, seeking a payback simply on that

1 investment would not be, in and of itself, an  
2 acceptable criteria.

3 HEARING OFFICER SHEAN: All right, well,  
4 then let's go to the topic I had in mind raised by  
5 Mr. Blackford's original testimony, which was that  
6 the original plans for unit 3 and 4 were to  
7 replace them, and presumably it would be with  
8 something along the lines of a combined cycle  
9 unit, or something like that.

10 Do you have in mind now what  
11 circumstances will have to occur for you to begin  
12 to return to that original scenario for unit 3 and  
13 4?

14 MR. WOODRUFF: I think our plan now,  
15 given this investment, would be to abandon those  
16 plans and to operate this business for the next  
17 several decades, as is.

18 HEARING OFFICER SHEAN: As is? I'm  
19 sorry, is that what you said?

20 MR. WOODRUFF: As proposed.

21 HEARING OFFICER SHEAN: As proposed. So  
22 this project, if you had the choice, would operate  
23 for several decades I take to mean in excess of  
24 ten years, in excess of 20, if you could do it --

25 MR. WOODRUFF: The investments that will

1 be needed to make, to operate reliably over the  
2 next summer or two will render the facility  
3 technically capable of running for at least 20  
4 years.

5 HEARING OFFICER SHEAN: And are there  
6 any developments, even though this isn't project  
7 related, with respect to units 1 and 2, would you  
8 operate them essentially in tandem in a similar  
9 configuration or would your plans for unit 1 and 2  
10 be to go a different way?

11 MR. WOODRUFF: As of right now the plans  
12 would be to continue to operate them with the SCR  
13 controls that we are preparing to install for the  
14 foreseeable future.

15 MR. BLACKFORD: I would like to  
16 interject one thing there, if I may. As we move  
17 forward with 3 and 4, they bring a different  
18 option to the table.

19 As we look at the units at Huntington  
20 Beach, units 1 and 2, although they are similar  
21 technology, are very much amenable to load  
22 following. They can shift with load up and down  
23 on an hourly basis. A service known with the  
24 independent system operator as automatic  
25 generation control, they track subtle changes over

1 the course of the hour. So they provide one piece  
2 of the picture.

3 The peaking unit, unit 5, which has been  
4 drawn into the focus of this project, is a very  
5 short-term, in the nature of the startup of the  
6 unit, a ten-minute start that provides very quick  
7 response to an emergency, emergency in an  
8 electrical sense, of a rapid generation  
9 requirement shift of the system because of a unit  
10 potentially dropping offline.

11 Units 3 and 4, because of their slightly  
12 different technology in the boiler, are very much  
13 suited to baseload, and that dovetails very well  
14 into the short-term need of California, in that  
15 they are not amenable to rapid shifting or load  
16 following, but in fact, will provide steady  
17 baseload.

18 So in the context of looking at all  
19 three of those entities within the site, that  
20 gives us good variability to meet all situations.

21 MR. WOODRUFF: I would like to interject  
22 for the Committee, and pardon me, I've only had  
23 five or ten minutes to look at this spreadsheet,  
24 but as I was glancing down looking, there's two  
25 other, you know, large, very material

1       discrepancies between Mr. Lincoln's analysis, and  
2       an analysis that a competitive supplier of  
3       electricity in the industry today would use.

4                 One is the discount rate that he's  
5       employing is far far far below what would normally  
6       be common in the industry. The practical effect  
7       of this is that it overstates the present value of  
8       pre-tax earnings, and overstates the level of  
9       profitability on a net present value basis.

10                The second discrepancy is he's using a  
11       pre-tax analysis and there is no impact for taxes  
12       that would -- from cash flow that would flow to  
13       investors.

14                So the cumulative effect of those two  
15       discrepancies is to dramatically overstate  
16       revenue. Net present value of revenue to an  
17       investor.

18                HEARING OFFICER SHEAN: Is AES entering  
19       into a contract with DWR for the output of this  
20       particular unit?

21                MR. WOODRUFF: We have been in  
22       discussions with CDWR to sell electricity from  
23       these units.

24                HEARING OFFICER SHEAN: But right now  
25       there is no commitment or agreement?

1                   MR. WOODRUFF: There is no binding  
2 contract.

3                   HEARING OFFICER SHEAN: All right.

4                   COMMISSIONER PERNELL: I have a couple  
5 of questions for anyone at AES who chooses to  
6 answer, I guess.

7                   One of them deals with CURE's  
8 presentation in that it is a concern whether the  
9 plant will be up and running this summer. Is it  
10 your understanding that it will, or is there any  
11 comment on that, by July 1, I think is the date?

12                   MR. BLACKFORD: We have always presented  
13 this project in its optionality that we could have  
14 the project on line with a 90-day construction  
15 period.

16                   If we assume that we would get permits  
17 sometime in the middle of April, that would  
18 translate to the middle of July.

19                   Another basic premise in that 90-day  
20 construction period is a 20-hour workday, seven  
21 days a week. Under current conditions that is  
22 limited to a 13-hour day, six days a week.

23                   Barring any change in that condition, if  
24 you apply it in the very literal strictest sense,  
25 as it is written, that would take the construction

1 schedule instead of July 17th out to the first  
2 week of September.

3 COMMISSIONER PERNELL: And why is the  
4 construction schedule changing?

5 MR. BLACKFORD: Because of basically a  
6 City ordinance that in permitting the project you  
7 are getting a window from 7:00 a.m. to 8:00 p.m.,  
8 but a literal interpretation of that ordinance is  
9 that there would be no activity in the other  
10 hours. Or as a bare minimum, very restricted  
11 activity, plus no work at all on Sundays or  
12 federal holidays.

13 COMMISSIONER PERNELL: Okay. Also, on  
14 the spreadsheet, and I understand that AES has  
15 experience in this area, we were shown scenario 6,  
16 and at the bottom there, under the five-year  
17 scenario in terms of time, they have a 204.8  
18 number. And obviously you disagree with that, I  
19 would assume. Are you following me there?

20 MR. WOODRUFF: As I previously  
21 testified, the net impact of using a 5 percent  
22 discount rate as opposed to a more conventional  
23 competitive expectation from investors, which  
24 would be something in the teens, plus using pre-  
25 tax analysis as opposed to after-tax analysis, the

1 combined impact of those is to dramatically  
2 overstate the net present value of cash flow to an  
3 investor.

4 So I would disagree with all of the  
5 numbers at the bottom on the basis of those two  
6 factors. And different scenarios have different  
7 assumptions, which are stated, as well.

8 COMMISSIONER PERNELL: Right. And I  
9 guess my question goes to what would be your, if  
10 you were to plug a number in there, what would it  
11 be approximately? I realize that you can't just  
12 give me an accurate number, but an estimate?

13 MR. WOODRUFF: As I previously  
14 testified, it's a very wide range of estimates  
15 right now, given the uncertainty related to cost  
16 of the project, and in particular, most materially  
17 the differences in costs associated with a number  
18 of the conditions.

19 Further, our internal economic  
20 projections are confidential information. Suffice  
21 it to say that AES seeks to make a competitive  
22 return consistent with our publicly stated  
23 investment goals.

24 COMMISSIONER PERNELL: Okay. But you  
25 disagree with these because of the assumptions you

1 stated?

2 MR. WOODRUFF: I disagree with many of  
3 the scenarios and the assumptions that are in  
4 there, although I will highlight that the  
5 variability in the assumptions that Mr. Lincoln  
6 has used highlights the very volatility that is  
7 present, both in the electricity and the gas  
8 markets today.

9 And additionally assuming a great deal  
10 of operating risk, construction risk as well as  
11 operating risk, in returning these units to  
12 service. We're comfortable in managing that risk,  
13 and that's what we do for a living, and we think  
14 we do it well. But those are additionally risks  
15 that need to be brought into any sort of financial  
16 analysis.

17 COMMISSIONER PERNELL: Okay.

18 HEARING OFFICER SHEAN: Thank you, Mr.  
19 Woodruff and Mr. Blackford. Anything further then  
20 from the applicant?

21 MR. ROTHMAN: Nothing further.

22 HEARING OFFICER SHEAN: All right, we'll  
23 do our rebuttal round, so if -- it's either  
24 between CURE or the City as to who wants to lead  
25 that off.

1                   MR. WOLFE: Okay, very quickly. There's  
2                   been a lot of discussion about the cost of the  
3                   mitigation measures that staff is proposing, and  
4                   that the City and we are concurring with. But  
5                   there's been no mention of the economic benefit to  
6                   this applicant simply from being able to complete  
7                   a 12-month process in 60 days.

8                   I mean we have participated in enough of  
9                   these proceedings to see very clearly that full  
10                  12-month AFC processes cost applicants a lot of  
11                  money. There are a wide range of topics on which  
12                  data requests can be served. Applicants have to  
13                  respond to those data requests. There are motions  
14                  regarding those data requests that have to be  
15                  litigated. And extensive hearings.

16                  And as you know, many applicants don't  
17                  even finish the 12-month process in 12 months.  
18                  And some proceedings have been up there for almost  
19                  two years now.

20                  So what is the economic value to the  
21                  applicant and its investors from being able to  
22                  proceed with this process in 60 days? Now, we  
23                  don't object to the general notion that we need to  
24                  do what we can to get the megawatts online by this  
25                  summer. We concur with the Governor's executive

1 orders, and in general, with the approach that we  
2 will suspend the normal operating procedures, and  
3 let's be clear, they have been suspended, while  
4 maintaining as best we can all of the substantive  
5 safeguards.

6 But AES, as opposed to other applicants,  
7 I don't think should receive all of the economic  
8 benefit of that without, particularly in the  
9 context of the uncertainty regarding environmental  
10 harm, being required to pay a fair share of the  
11 mitigation costs. So I think that needs to be  
12 kept in mind.

13 And second, on the question of whether  
14 the project can actually be built to come on line  
15 this summer within the spirit of the Executive  
16 Orders, clearly there's an issue that may need to  
17 be worked out between the applicant and the City  
18 regarding the construction ordinance, number of  
19 hours of the day.

20 But if that can't be worked out, we  
21 would recommend, and we'll put it forward in our  
22 briefs, that a condition be added that if this  
23 project is not on line by some date in the summer,  
24 July 15th, August 1st, this process stops, and we  
25 revert to the normal six-month emergency process.

1 Because there's no reason to proceed under this  
2 current highly irregular process if the project's  
3 not going to be on line by this summer.

4 Thank you.

5 HEARING OFFICER SHEAN: The City?

6 MR. PAK: Thank you, Your Honor. I  
7 don't think we'll present rebuttal testimony, but  
8 let me just note two items for the record.

9 First of all, I think the spreadsheet  
10 that you have pretty much, it's fairly easy to  
11 ascertain what Mr. Lincoln used as a methodology.  
12 We can take all of Mr. Woodruff's comments into  
13 mind, and I think the Commission and its expert  
14 staff is fully capable of running the numbers on  
15 its own to determine what it thinks a fair return,  
16 or a likely return to the applicant would be.

17 The second item, and I find this a  
18 little more problematic. The staff's report,  
19 which is essentially the basis, the evidentiary  
20 basis for the proceeding and the conclusions I  
21 think the Commission will be drawing, is based on  
22 an integrated assumption that there's going to  
23 be -- the plant run will be for a period of  
24 between five and eight years. That's taken from  
25 the applicant's filing.

1           The sense that this plant will run for,  
2           as Mr. Woodruff just indicated, a period of  
3           several decades, or at least 20 years, might  
4           change some of the conclusions and analysis that  
5           the staff had done if that had been provided  
6           initially.

7           And I think there may be some  
8           inconsistencies between the staff analysis and  
9           that time period. And we may note some of those  
10          in our brief filed next Wednesday.

11          So I don't think we need rebuttal  
12          testimony, but I'd just note those two points  
13          based on the testimony we've just elicited in this  
14          general conditions discussion.

15          HEARING OFFICER SHEAN: All right.  
16          Anything back from the applicant?

17          MR. ROTHMAN: Just briefly. Obviously  
18          there's two sides to every coin. And while we've  
19          heard the statement that there is cost benefits  
20          that ought to be analyzed to an abbreviated  
21          timeframe, I think that if you were able -- if we  
22          were able to present evidence in this subsequent  
23          filing that you're contemplating, I think we could  
24          present evidence that, in fact, the costs from  
25          AES' standpoint have not been significantly

1 reduced versus a 12-month timeframe.

2 In fact, all it's done is compress them,  
3 require us to spend additional fees for such a  
4 compressed effort. And compress the timeframe  
5 within which we had to make significant  
6 investments and significant decisions, increasing  
7 the risk.

8 HEARING OFFICER SHEAN: All right, since  
9 we are doing this in a public setting, I think  
10 it's appropriate to say this. That the California  
11 Environmental Quality Act and the Energy  
12 Commission, in its 25-year-plus tradition, has not  
13 determined whether mitigation in the form of  
14 conditions of certification should or should not  
15 be imposed, nor the degree of mitigation that  
16 should be in the conditions is based upon either  
17 the financial viability of the applicant, nor any  
18 estimate of the return that the applicant is going  
19 to make from their investment.

20 That did not occur with the utilities.  
21 It has not occurred with the QFs. And it is not  
22 occurring with the current batch of applications.

23 And that it is important to understand  
24 that all necessary and feasible, and feasible does  
25 include economics, mitigation will be applied when

1 the Commission identifies a potential significant  
2 impact unless there are certain overriding  
3 circumstances that are specifically identified  
4 under the California Environmental Quality Act.

5 So that the parties who are present  
6 here, as well as those who are reviewing this and  
7 want to see their government at work, should know  
8 that any conditions that are imposed by the  
9 Commission are there because they are necessary  
10 and they have been designed to meet the potential  
11 impact. And that is the essential criterion for  
12 the Commission.

13 Okay. We have completed then this area.  
14 And let's pick another one. We were thinking of  
15 going on to socioeconomics, and that might be the  
16 next best one to go to.

17 Now, my notes from yesterday suggest  
18 that basically what we had was agreement with  
19 respect to the staff's conditions, but that there  
20 were three potential conditions to be added at the  
21 request of CURE.

22 The conditions 1 and 2 had been accepted  
23 in concept by the applicant, but condition number  
24 3, which went to an apprenticeship program was in  
25 contest. Is that -- am I generally correct on

1 that?

2 MS. POOLE: That's correct, Your Honor.  
3 Kate Poole for CURE.

4 MR. ROTHMAN: I would concur.

5 HEARING OFFICER SHEAN: Okay, so why  
6 don't we focus then on condition number 3, which  
7 is the apprenticeship matter. And not spend a lot  
8 of time on any of the other stuff. All right.

9 If this is a CURE matter, then I think  
10 what we'd prefer to have is to have CURE advance  
11 your position on offered condition number 3. And  
12 we'll allow the staff and others that might concur  
13 in it, or have a view on it, to come after you.  
14 And then we'll go to the applicant.

15 MS. POOLE: We're happy to do that.

16 HEARING OFFICER SHEAN: That will be  
17 fine.

18 MS. POOLE: Let me first direct the  
19 Committee's attention to the language we're  
20 talking about. Mr. Wolfe previously passed out  
21 our submittal dated March 7th. And on page 17 of  
22 that submittal you'll see our three proposed  
23 conditions which are marked SOCIO1, '2, and '3.

24 And what we'll be focusing on is SOCIO3.

25 Would you like to swear the witnesses?

1 HEARING OFFICER SHEAN: Was he sworn in  
2 the panel?

3 MR. CHAPPEL: Yes, I was.

4 HEARING OFFICER SHEAN: Okay.

5 Whereupon,

6 DOUG CHAPPEL  
7 was called as a witness herein, and having been  
8 previously duly sworn, was examined and testified  
9 as follows:

10 DIRECT EXAMINATION

11 BY MS. POOLE:

12 Q Could you please state your name and  
13 business address for the record?

14 A My name is Doug Chappel. My business  
15 address is 309 North Rampart in Orange.

16 Q And you are the Business Manager for  
17 IBEW Local 441, is that correct?

18 A Yes, it is.

19 Q And is there any other experience that  
20 you would like to tell us about that's relevant to  
21 your testimony today?

22 A Well, because of current legislation  
23 that has just been introduced, the Department of  
24 Labor and the Department of Apprenticeship  
25 Standards have decided to put together an advisory

1 board for the certification of electrical workers.

2 And I currently serve on that advisory  
3 board, and I am also the Chairman of the  
4 Subcommittee on Qualifications.

5 Q Thank you. And IBEW Local 441 would  
6 supply electrical workers for this project if AES  
7 hired union workers, correct?

8 A Yes.

9 Q And could you give us a general  
10 description of the type of work that the  
11 electricians would do on this type of project?

12 A Well, this type of project, and I,  
13 believe me, have not been able to get on the  
14 project to physically look at it, although my  
15 grandfather and father both worked on this project  
16 at the beginning of this, when it first was built,  
17 but it is an extensive project, and it is highly  
18 technical. There's very much need in that project  
19 for instrumentation techs and journey level people  
20 on that project to insure that that thing is put  
21 in in a safe workmanlike manner.

22 Q And could you tell us generally the  
23 risks that might be run if an unskilled person  
24 does the work?

25 A Of course, on every construction project

1 there are risks. That's one of the reasons that  
2 we introduced the legislation that we did to have  
3 electrical workers certified in the State of  
4 California.

5 And we are very concerned about it on  
6 this project because of the high voltages and the  
7 different types of electrical systems involved.

8 We just recently lost a worker, 29-year-  
9 old worker here in Santa Ana that was working on  
10 an electrical system that he was not qualified to  
11 be on. And he is no longer with us, 29 years old.  
12 On a little TI job in Santa Ana.

13 So, we're very concerned about this.

14 Q And how does Local 441 insure that it  
15 has skilled electricians?

16 A Our electrical workers go through a  
17 five-year apprenticeship program that is monitored  
18 by the State of California, Division of  
19 Apprenticeship Standards.

20 And every one of our electrical workers  
21 are tested thoroughly. We have a journeyman exam  
22 that we give, and we've been giving for probably  
23 50 years. And before they're allowed to be put on  
24 the out-of-work book, they must supply that  
25 criteria, that they've passed that and/or went

1 through an apprenticeship program.

2 Q And that five-year apprenticeship  
3 program includes both classroom and on-the-job  
4 training, correct?

5 A Yes, they have to have at least 200  
6 hours of classroom time and 1500 to 2000 hours of  
7 on-the-job training under the supervision of a  
8 qualified electrical journeyman.

9 Q And those hours are per year for each of  
10 the five years?

11 A Those are per year.

12 Q And have you seen CURE's proposed  
13 condition SOCIO3?

14 A Yes, I have.

15 Q And in your opinion does that  
16 requirement insure that highly skilled people  
17 would be available to construct this project?

18 A Yes, I do.

19 Q And do you believe that having highly  
20 skilled people do the construction work is  
21 critical to insuring that AES can bring this  
22 project on line within their proposed 90-day  
23 construction schedule?

24 A Yes. We've demonstrated on very many  
25 projects that the electrical union and all the

1 building trades are able to put these types of  
2 projects together on time without any problems.

3 Q And if SOCIO3 were adopted by the  
4 Commission, would Local 441 be able to dispatch  
5 enough people to AES that meet the condition's  
6 training requirements within 48 hours?

7 A Absolutely. We just had a contractor  
8 the other day that called me for 50 men, and we  
9 had them out to him the next day.

10 Q And do you believe the other local  
11 trades representing apprenticeable occupations  
12 would be able to do the same?

13 A Absolutely, positively sure.

14 Q So, in your view this condition should  
15 not cause any delay in starting or completing  
16 construction in a timely manner?

17 A It should not delay, and it should -- in  
18 the inverse, it should enhance the ability for  
19 this project to become completed on time.

20 Q And could you just give us a general  
21 description of what the California Apprenticeship  
22 Council is that's mentioned in our proposed  
23 SOCIO3?

24 A The California Apprenticeship Council is  
25 a state entity that has the duty of insuring that

1 current apprenticeship programs within the State  
2 of California are properly administered, and the  
3 trustees are in place properly to insure the  
4 competent training of apprenticeable crafts.

5 Q And that entity approves both union and  
6 nonunion training programs, correct?

7 A Absolutely.

8 Q Is there anything else you'd like to add  
9 to your testimony?

10 A I'd just like to say that we, as  
11 electrical workers in this community, feel like  
12 this project is very important to not only the  
13 economy of Orange County, and the needs of Orange  
14 County for the shortages in the power that we  
15 have, but that we have qualified people working on  
16 this project.

17 And we can insure that completely by  
18 proving that our people are qualified with  
19 certifications. And I am concerned that the  
20 contractors that employ people that are not signed  
21 onto a joint training program are not going to be  
22 able to provide that proof. And I think that  
23 someone needs to be able to do that prior to the  
24 state coming up with a certification requirement.

25 MS. POOLE: Thank you, Mr. Chappel.

1 MR. CHAPPEL: Thank you.

2 HEARING OFFICER SHEAN: Thank you, Ms.  
3 Poole.

4 Let's just go with the other two parties  
5 before we come to the applicant.

6 Anything from the City on this?

7 MR. PAK: No, Your Honor.

8 HEARING OFFICER SHEAN: Anything from  
9 the staff?

10 MR. KRAMER: We'd just like to have Mr.  
11 Adams comment briefly on staff's position  
12 regarding this condition.

13 HEARING OFFICER SHEAN: Okay. And maybe  
14 before he comments on it he can tell us what it  
15 is.

16 Whereupon,

17 JIM ADAMS

18 was called as a witness herein, and having been  
19 previously duly sworn, testified as follows:

20 MR. ADAMS: My name is Jim Adams. I'm  
21 the Commission Staff that supervised the  
22 socioeconomic testimony of which part of which  
23 we're discussing.

24 As we discussed yesterday, staff does  
25 not have a position on this SOCIO3 simply because

1 we do not historically, at least in the cases that  
2 I've been involved with, or aware of, get to this  
3 level of detail about the relation between  
4 contractors and applicants and whatnot.

5 We don't prescribe training procedures.  
6 We assume, of course, the people that are working  
7 on the project are qualified, they have the  
8 appropriate experience and background. But we do  
9 not include this type of condition normally in our  
10 socioeconomic analyses.

11 So, for us, we don't have a position.  
12 We certainly are sympathetic to what is being  
13 proposed from the sense of insuring safe work.

14 But we don't think it's our role to  
15 require that. That seems, in my opinion, to be  
16 something that should be handled between the  
17 contractor and the applicant, for them to work out  
18 training procedures and the qualifications of  
19 people involved.

20 And so we believe that's where the  
21 decision lies, not with a condition that we would  
22 mandate on this project.

23 HEARING OFFICER SHEAN: Okay. Thank  
24 you.

25 MR. KRAMER: In your analysis of the

1       socioeconomic effects or any other effects of this  
2       project did you find any justification for making  
3       such a requirement?

4               MR. ADAMS:  No, I did not, in our view  
5       whether or not if this condition was not there we  
6       don't think it would adversely affect the project  
7       or the quality of worker or whatever goes on.  So  
8       we didn't really see the need for proposing it or  
9       for agreeing to it.

10              MR. KRAMER:  Thank you.

11              HEARING OFFICER SHEAN:  Okay.  AES.

12              MR. ROTHMAN:  Despite our concerns  
13       regarding the constitutionality of these kinds of  
14       provisions in the first place, regarding  
15       interstate commerce, but we've agreed to two of  
16       the three of these.

17              And so with respect to the third I'd  
18       like to call Mr. Rick Tripp.  
19       Whereupon,

20                              RICK TRIPP  
21       was called as a witness herein, and having been  
22       previously duly sworn, was examined and testified  
23       as follows:

24       //

25       //

1 DIRECT EXAMINATION

2 BY MR. ROTHMAN:

3 Q Mr. Tripp, would you state your name and  
4 your position for the record?

5 A Good morning.

6 HEARING OFFICER SHEAN: Good morning.

7 MR. TRIPP: My name is Rick Tripp. I  
8 work at AES Huntington Beach. I am the Project  
9 Coordinator for the retooling project of 3 and 4.

10 HEARING OFFICER SHEAN: And our guide, I  
11 will recall, and a good one. Thank you.

12 BY MR. ROTHMAN:

13 Q And, Mr. Tripp, are you responsible for  
14 hiring the labor force for the project 3 and 4?

15 A No, I'm not.

16 Q Who is?

17 A ELC and PMSI, the two subcontractors  
18 that I enlisted.

19 Q And are you supervising those two  
20 subcontractors?

21 A Yes, I am.

22 Q And are you familiar with the skill  
23 level of the labor that they employ, or that they  
24 intend to employ for projects 3 and 4?

25 A Yes, I am.

1 Q Can you explain to the Commission?

2 A I reviewed all the welding procedures,  
3 all the safety manuals, all the qualifications for  
4 both subcontractors. And in the opinion of AES I  
5 think we have a very competent and very qualified  
6 work staff.

7 Q And have you reviewed CURE's SSE-3  
8 condition?

9 A Yes, I have.

10 Q And based on your activity in  
11 supervising the contractors who are going to  
12 perform the project, are we able to conform with  
13 that condition?

14 A No, we're not.

15 Q Can you explain why?

16 A Due to when we -- the project started to  
17 move forward, due to the energy crisis in the  
18 State of California, all the staff has been put in  
19 place and we looked for a very qualified staff in  
20 the event if the permitting process does occur.

21 Due to the scheduling, if we had to  
22 adjust the staffing it could jeopardize the  
23 schedule and move it out well into September.

24 MR. ROTHMAN: Nothing further.

25 HEARING OFFICER SHEAN: Okay, back to

1 CURE.

2 MS. POOLE: Thank you.

3 DIRECT EXAMINATION - Resumed

4 BY MS. POOLE:

5 Q Mr. Chappel, staff explain that they  
6 didn't believe CURE's proposed SOCIO3 was  
7 necessary because they're assuming that people are  
8 qualified for this -- to work on this project.

9 Do you have any response to that?

10 A Yes, I do. That is the exact reason  
11 that we petitioned the State of California and we  
12 did get legislation passed, AB-931, that requires  
13 the certification of electrical workers.

14 At this point there is no requirement.  
15 You can hire your electrical workers off the  
16 street corner or through advertising. And  
17 basically the consumer is reliant upon that  
18 contractor and not the electrical workers that are  
19 working on that job.

20 So, that is why we are concerned on this  
21 project at some point someone has to step up to  
22 the plate and make sure that these people are  
23 certified and qualified to do this work. And that  
24 is our concern.

25 Q And the intent of SOCIO3 is simply to

1 make sure that qualified people will, in fact, be  
2 employed on the project, correct?

3 A Yes, that's our concern.

4 Q And the gentleman from the applicant  
5 said that they would have trouble complying with  
6 SOCIO3 because they were concerned that it would  
7 delay construction.

8 Do you believe that's a valid concern?

9 A No, I do not believe that's a valid  
10 concern. Mr. Rick Tripp is very familiar with the  
11 IBEW. He's an ex-IBEW member. It's a concern of  
12 mine that he does not agree that we need to  
13 continue on this project with people that are  
14 trained and qualified and hold certifications  
15 versus people that are hired on through the  
16 newspaper.

17 Q And you believe that people could be  
18 available to begin construction within 48 hours  
19 that meet the requirements of SOCIO3, correct?

20 A Yes.

21 MS. POOLE: Thank you.

22 HEARING OFFICER SHEAN: Okay. Mr.  
23 Chappel, Mr. Tripp indicated in his testimony that  
24 they have currently staff in place. Are there any  
25 IBEW members that you're aware of who are staff in

1 place for this project?

2 MR. CHAPPEL: I do not know.

3 HEARING OFFICER SHEAN: Okay. Mr.

4 Tripp, do you know?

5 MR. TRIPP: No, there is not. Currently

6 I have the electrical contractor is from Local 9.

7 HEARING OFFICER SHEAN: Okay, anything

8 further from the applicant?

9 MR. ROTHMAN: Nothing further.

10 PRESIDING MEMBER ROSENFELD: I have a

11 question on timing. Apparently there's a law, I

12 guess you said AB-931, which is going to require

13 this training. When does that take effect?

14 MR. CHAPPEL: AB-931 has a deadline of

15 July 1 to start implementing the regulations on

16 this task force advisory committee that I was on

17 has already submitted all the recommendations for

18 the implementation of that.

19 PRESIDING MEMBER ROSENFELD: See, my

20 puzzle on this, if it's required then I would

21 think that AES would comply as of the date that

22 it's required. So I'm confused about the timing

23 issue here.

24 MR. CHAPPEL: The actual implementation

25 of the law occurs once the Department of



1 California Edison Company and started a company up  
2 that caters to personnel who have either been --  
3 no longer work for the utility, either through  
4 downsizing or early retirement.

5 The level of personnel on this project  
6 that are being currently utilized probably contain  
7 20 to 30 years of experience in the utility  
8 business. The type of people I need in order to  
9 substantiate this fast track of a project with a  
10 magnitude of work that has to be accomplished  
11 requires people who are already trained. I don't  
12 have time on this project to train people.

13 The level of personnel that we have out  
14 here are all have a proven track record working in  
15 plants throughout the United States, nuclear  
16 generating stations as well.

17 The level of personnel that's being  
18 asked by the Local 441, that section of IBEW is  
19 for residential and commercial electricians, not  
20 utility-trained employees. I need utility-trained  
21 employees.

22 Those employees currently come out of  
23 Local 47, who do not offer their efforts to the  
24 private sector. The union that we are currently  
25 signatory to allows us to hire those people

1 directly.

2           So, in terms of qualifications I have  
3 currently probably the strongest technical staff  
4 in the country on this particular project due to  
5 the amount of work, the technical competence  
6 that's required, as well as the sheer volume of  
7 work.

8           HEARING OFFICER SHEAN: Okay. Since  
9 this witness came on, I'll give you another shot  
10 at it, Ms. Poole.

11           MS. POOLE: Thank you.

12           HEARING OFFICER SHEAN: Briefly.

13           DIRECT EXAMINATION - Resumed

14 BY MS. POOLE:

15           Q     Mr. Chappel, would you like to respond  
16 to anything the representative from the contractor  
17 has said?

18           A     Yes, I would. Number one, he mentioned  
19 another union, the machinists union that he has  
20 signed an agreement with on this project, does not  
21 provide any type of training whatsoever.

22                     And I am not aware of ELC Electric being  
23 involved jointly in any training program in the  
24 state that justifies or allows him to be able to  
25 be a competent judge of qualifications of

1 electrical workers.

2 Thirdly, the utility workers that he  
3 says that he is employing, if they are utility  
4 workers, are just that, they are utility workers.  
5 This is a construction project. Those members of  
6 Local 47 that come to work out of our local union  
7 at times, sign the lower book under our referral  
8 procedure.

9 Book one is for top journeymen  
10 electricians in the local. Book two is for top  
11 journeymen electricians that are from the  
12 surrounding areas. And book 3 is for people out  
13 of classifications such as these utility workers.

14 Our Local is a construction union, and  
15 we are very capable and qualified to provide  
16 people for this project. The utility workers are  
17 there for maintaining plants.

18 Q One other item. I believe the gentleman  
19 suggested that he didn't have time to train  
20 people. Are we asking them, or is any training  
21 required under SOCIO3?

22 A We are not asking for anyone to train  
23 anybody here. If they want to utilize apprentices  
24 that can be trained, we'll be glad to provide  
25 them.

1 MS. POOLE: Thank you.

2 HEARING OFFICER SHEAN: Anything? Okay.

3 We're done with socioeconomics -- I'm sorry, go  
4 ahead.

5 COMMISSIONER PERNELL: I have a couple  
6 of questions, and I understand staff response in  
7 terms of the relationship between an employer and  
8 the employee.

9 I have a question for Mr. Tripp. Do you  
10 have an estimate of the number of employees that's  
11 going to be employed?

12 MR. TRIPP: At the peak point of  
13 construction, sir, there will be 538.

14 COMMISSIONER PERNELL: And I'm assuming  
15 that there will be different classifications?

16 MR. TRIPP: Yes, there will be.

17 COMMISSIONER PERNELL: And I understand  
18 that you represent Local 9?

19 MR. CLARK: I'm affiliated with Local 9,  
20 yes.

21 COMMISSIONER PERNELL: And that's  
22 utility employees or construction employees?

23 MR. CLARK: Combination of both. Local  
24 9 is throughout California and across the United  
25 States, and they have affiliations with all types

1 of classifications.

2 COMMISSIONER PERNELL: Okay, and for  
3 CURE, Mr. Chappel?

4 MR. CHAPPEL: Chappel.

5 COMMISSIONER PERNELL: Chappel, sorry.  
6 You represent the electrical workers?

7 MR. CHAPPEL: Yes, I do.

8 COMMISSIONER PERNELL: And on the  
9 California Apprenticeship Council?

10 MR. CHAPPEL: Yes.

11 COMMISSIONER PERNELL: Are you  
12 representing the building trades in this?

13 MR. CHAPPEL: Yes.

14 COMMISSIONER PERNELL: And are you aware  
15 that the building trades have affiliates that are  
16 not apprenticeable crafts, and your SOCIO3 would  
17 eliminate those?

18 MR. CHAPPEL: Our SOCIO3 is to provide  
19 workers from the building trades. And this S-9  
20 machinists local is not a member of any building  
21 trades.

22 MS. POOLE: Commissioner, if I might  
23 address your question. I don't believe that our  
24 SOCIO3 would eliminate anybody. We're just  
25 focusing on the apprenticeable occupations as

1 those are defined in the California Labor Code,  
2 and there's quite an extensive number of  
3 occupations that are included under that rubric.

4 COMMISSIONER PERNELL: Basically what I  
5 want to do is bring to your attention when you do  
6 these types of things, and represent the building  
7 trades, that there are trades that are affiliated  
8 that are not apprenticeable crafts, and that  
9 should have an opportunity to work on the project,  
10 as well.

11 MS. POOLE: Certainly. And we're not  
12 trying to preclude anybody's opportunity to do  
13 that.

14 COMMISSIONER PERNELL: Thank you.

15 HEARING OFFICER SHEAN: Anything further  
16 on this SOCIO? All right, hearing none, we'll  
17 move to another topic.

18 If it's possible, I understand that the  
19 issues related to noise generally deal with the  
20 question of the number of hours and the days on  
21 which construction may -- or let's call it noisy  
22 construction may proceed. Is the understanding of  
23 the parties any different from that? Isn't that  
24 the focus of what we're talking about in noise?

25 MR. ROTHMAN: I think so, but give me a

1 minute.

2 MR. KRAMER: I believe so.

3 (Pause.)

4 MR. PAK: Your Honor, from the City's  
5 perspective the issue has to do with Sunday and  
6 federal holiday construction. And I think we used  
7 the term the opposite direction, it's quiet  
8 construction during those hours which would  
9 ordinarily be outside what the City normally  
10 permits.

11 So it's not confining noisy  
12 construction, it's permitting the quiet  
13 construction in those off-hours.

14 HEARING OFFICER SHEAN: Okay, so the  
15 spin is we're looking at it more affirmatively,  
16 the quiet construction that would be allowed past  
17 8:00 p.m. I don't know if you contemplate prior  
18 to 6:00 a.m., but that's -- is that what we're  
19 talking about?

20 MR. PAK: And it's also Sunday and  
21 federal holiday construction.

22 HEARING OFFICER SHEAN: Right.

23 MR. ROTHMAN: I agree, I think that's  
24 the issue.

25 HEARING OFFICER SHEAN: Okay, why don't

1 we focus on this because my further understanding  
2 is that the City has variance provisions which  
3 will allow construction outside those hours. And  
4 part of the discussion that occurred in the  
5 working group was how do you contemplate and deal  
6 with a variance which you're anticipating that  
7 you'd need, and how can we take account of that in  
8 the CEC certification process.

9 MR. PAK: That's right, and we have Ms.  
10 Jane James here to discuss that.

11 HEARING OFFICER SHEAN: Well, let's ask  
12 the applicant, what do you contemplate in terms of  
13 quiet or noisy construction, and how do you think  
14 that impacts the current requirement of the City  
15 and the proposed condition in the staff  
16 assessment?

17 MR. BLACKFORD: I think we're overall  
18 fine with the concept but we need some further  
19 clarification on noisy versus quiet.

20 Clearly we would anticipate that welding  
21 type operations, which would potentially create  
22 some light type issues which could be adequately  
23 shielded from the neighborhood, would certainly  
24 fall into the quiet type construction.

25 We don't know that there is enough of

1 those activities during the entire period, so  
2 beyond that, other construction which may involve  
3 mitigation with air hammers, that sort of thing,  
4 we need a better definition of threshold of the  
5 quiet so that we can adequately schedule around  
6 those type things.

7 But we honestly, at this point, have not  
8 looked into it far enough to know that those types  
9 of mitigations can hold the 90-day schedule.

10 HEARING OFFICER SHEAN: Okay. When you  
11 were talking about 20 hours a day, seven days a  
12 week, what four hours were you anticipating? Is  
13 that a fairly constant four hours, such as 2:00  
14 a.m. to 6:00 a.m.? Or would that move through the  
15 day?

16 MR. BLACKFORD: It should be relatively  
17 constant.

18 HEARING OFFICER SHEAN: At the 2:00 a.m.  
19 to 6:00 a.m., is that correct?

20 MR. BLACKFORD: I'm not sure of that  
21 exact timeframe. Yes, that's correct.

22 HEARING OFFICER SHEAN: Okay. Just so  
23 we can begin to get our arms around the concept  
24 here. Because I think it must be obvious that if  
25 you're doing a construction activity that involves

1 hammering, percussion, this, that and the other,  
2 and you're doing it between 11:00 and 2:00 in the  
3 morning, and keeping people awake, there's just  
4 going to be a hue and cry that the City cannot  
5 ignore.

6 So how do we attempt to accommodate  
7 construction that can be moving forward without  
8 disturbing the neighborhood? and that's what  
9 we're trying to do, I guess.

10 So, let's go back to the City here and  
11 see how -- do you have some formulation of the  
12 distinction between quiet and not-quiet, and how  
13 to address this?

14 MR. PAK: I'd like to have our expert,  
15 Ms. James --

16 HEARING OFFICER SHEAN: Sure.

17 MR. PAK: -- discuss the difference  
18 between noisy and quiet.

19 HEARING OFFICER SHEAN: She's being very  
20 quiet right now.

21 (Laughter.)

22 Whereupon,

23 JANE JAMES

24 was called as a witness herein, and having been  
25 previously duly sworn, testified as follows:

1 MS. JAMES: Good afternoon, my name is  
2 Jane James. I'm an Associate Planner with the  
3 City of Huntington Beach Planning Department.

4 Our normal construction hours, as  
5 established in our municipal code, is for all  
6 construction to take place between the hours of  
7 8:00 a.m. and 7:00 p.m.

8 There are provisions in our municipal  
9 code to allow an applicant to apply for a variance  
10 to those conditions. It's a very rare procedure,  
11 in fact I can't remember having gone through that  
12 procedure in the ten years that I've worked for  
13 the City. All construction has normally taken  
14 place between the hours established.

15 The applicant presents a situation in  
16 which they are offering or proposing to work  
17 during nighttime hours with quiet construction  
18 activities. We don't also have a very good  
19 feeling for what that is at this point. And it  
20 hasn't been defined to the City. And we haven't  
21 had a chance to analyze what quiet construction  
22 would be.

23 If the City had the power and the  
24 jurisdiction over this project we would take it  
25 before our City Council for a variance request

1 with a public hearing and an analysis of a noise  
2 study, and information from the applicant about  
3 what they propose to do during the nighttime  
4 construction.

5 HEARING OFFICER SHEAN: Okay, so in the  
6 absence of experience here we're kind of winging  
7 it again.

8 MR. PAK: I wasn't in the noise group  
9 yesterday, but it was my understanding that quiet  
10 construction was a compromise offered by the  
11 applicant. So we're still trying to deal with  
12 what that might be, as well.

13 One of the things that I was made aware  
14 of is that this project is in a residential area.  
15 There will be residential areas affected. So the  
16 issue that you pointed out of late night  
17 construction, disturbing the peace in that area,  
18 will become a very real one for the City.

19 And I think we've talked internally  
20 about what that variance procedure might look  
21 like, but insofar as it would go before the City  
22 Council it would be a public one.

23 HEARING OFFICER SHEAN: All right, let  
24 me just set the physical setting. If I  
25 understand, across the street from the power plant

1 starts a mobile home park?

2 MS. JAMES: That's correct.

3 HEARING OFFICER SHEAN: And if you go  
4 behind further up Newland, isn't it, and you pass,  
5 I think there's a nursery, a wrecking yard and a  
6 few other things, then you get into the  
7 subdivision that may be, I don't know, somewhere  
8 between an eighth and three-eighths of a mile  
9 northeast of the facility, right?

10 MS. JAMES: That's correct.

11 HEARING OFFICER SHEAN: And as far as  
12 south of it, and that sort of thing, it's  
13 unpopulated, there's no residential population?

14 MS. JAMES: Immediately to the south is  
15 a wetland area.

16 HEARING OFFICER SHEAN: Right. Okay.  
17 Has the staff given this some thought as to how we  
18 might approach this?

19 MR. KRAMER: The primary noise person  
20 left in the initial rush this morning.

21 HEARING OFFICER SHEAN: Okay. The, oh,  
22 my god, we're left to the lawyers doing this.  
23 This is terrible.

24 All right, does the applicant have  
25 something that you can help us with in terms of

1       what you think you're offering in terms of  
2       beginning to define what would be quiet type  
3       construction and what you would do to mitigate any  
4       sound coming out of your evening construction, and  
5       what steps might be taken to -- because I assume  
6       we're going to have to then have a noise complaint  
7       process where if things essentially cross a  
8       boundary of public acceptability we're going to be  
9       in for having to address that.

10               And, of course, we do have a noise  
11       complaint process. It's built into the  
12       proceedings, as well.

13               MR. ROTHMAN: I was just going to say,  
14       we have conditions of approval that include a  
15       noise complaint process.

16               But in terms of helping hopefully define  
17       what quiet construction is, we have Mr. Jeff  
18       Fuller, who is prepared to provide whatever little  
19       guidance we can today.

20               HEARING OFFICER SHEAN: Okay. Yes, sir.  
21       Whereupon,

22                       JEFF FULLER  
23       was called as a witness herein, and having been  
24       previously duly sworn, was examined and testified  
25       as follows:

## 1 DIRECT EXAMINATION

2 BY MR. ROTHMAN:

3 Q Can you state your name and your  
4 position?5 A My name is Jeffrey Fuller; I'm with URS  
6 Corporation, the San Diego office.7 Q And can you just provide a brief  
8 overview of your background?9 A Yes, I have 18 years experience in the  
10 area of environmental acoustics. Prior to  
11 consulting in noise I was sitting Noise Abatement  
12 Officer for the City of San Diego. And I also sat  
13 on the City of San Diego's Noise Abatement Control  
14 Board, which has the responsibility to review  
15 variances for the City of San Diego noise.16 Q And are you familiar with the proposed  
17 condition regarding quote, "quiet construction"  
18 close quote?

19 A Yes.

20 Q And what is your concept of what quiet  
21 construction is?22 A Well, the provisions in the noise  
23 ordinance essentially requires construction  
24 limited to certain hours. And the reason those  
25 hours are limited is to control noise levels that

1 exceed what is permitted in a particular zone from  
2 occurring, you know, outside those hours.

3 In the case of this power plant, it's  
4 located in an industrial zone, and according to  
5 the noise ordinance for the City of Huntington  
6 Beach, it's permitted to emit a sound level of 70  
7 decibels at their property line anytime day or  
8 night.

9 And it would be my belief that quiet  
10 noise would be construction activity that  
11 essentially complies with the permitted sound  
12 level limits of that zone, which would be 70  
13 decibels.

14 HEARING OFFICER SHEAN: Okay.

15 COMMISSIONER PERNELL: Just in terms of  
16 giving at least me an idea of what 70 decibels is.  
17 If you're driving piles, for example, where you've  
18 got, you're driving pilings into the ground and  
19 you get this boom, boom. Is that 70 decibels or  
20 higher? I'm just trying to get a relationship of  
21 what activity would constitute 70 decibels.

22 MR. FULLER: If they were driving piles  
23 during the nighttime hours, you would exceed 70  
24 decibels at the closest residence, in my opinion.

25 COMMISSIONER PERNELL: And what about

1       having a concrete truck, which is a diesel truck,  
2       pumping concrete out?

3               MR. FULLER: A concrete truck generates  
4       roughly 85 decibels at a distance of 50 feet from  
5       the source. And the closest residence we have is  
6       the mobile home park, which is located roughly 255  
7       feet away. At the mobile home the sound level  
8       would be -- let me do a quick calculation in my  
9       mind -- it would probably be closer to 60  
10      decibels.

11             COMMISSIONER PERNELL: Okay, and then  
12      final, which is an overhead crane which is that  
13      lifts heavy load up a couple storeys or whatever  
14      it is, so you got a crane running, which is, I  
15      don't know, 50, 70 feet in the air. What would be  
16      the decibel level for that type of activity?

17             MR. FULLER: In my opinion it would be  
18      substantially less than 70 decibels at the  
19      property line.

20             COMMISSIONER PERNELL: Okay. And what  
21      about a jackhammer?

22             MR. FULLER: A jackhammer is quite  
23      noisy, and jackhammers would probably exceed the  
24      70 decibel threshold at the property line.

25             COMMISSIONER PERNELL: Thank you.

1 HEARING OFFICER SHEAN: How about an  
2 air-powered grinder, if you're doing welding and  
3 you're cleaning up welds and slag and stuff like  
4 that?

5 MR. FULLER: In close proximity to --  
6 you're talking about a pneumatic tool?

7 HEARING OFFICER SHEAN: Yes.

8 MR. FULLER: In close proximity to  
9 pneumatic tools, the sound levels are quite high.  
10 It's roughly I would say 100 decibels. But that's  
11 impact noise, and the sound from impact noise  
12 drops off very rapidly. So there is the  
13 possibility that they would be able to comply with  
14 the sound level. When it's at the property line  
15 it would probably be less than 70.

16 HEARING OFFICER SHEAN: Thank you. Now,  
17 let's assume for the moment, so that we can move  
18 forward and we don't have extraneous procedure  
19 outside of the Commission's certifying procedure  
20 that we're in today, that we were to have  
21 complaints from the mobile home park people.  
22 Could the applicant understand and accept that the  
23 CPM, and perhaps in conjunction with the City,  
24 might be in a position to suggest that there be  
25 some mitigation directed toward the southernmost

1 occupants of the mobile home park that may need  
2 some particular mitigation applied to them, and  
3 that it's not something more currently  
4 complicated, but might be sort of a Rube Goldberg  
5 deal, to help them out?

6 MR. FULLER: If verification of the  
7 complaint shows that it would exceed the 70  
8 decibel level we would either mitigate or not do  
9 that activity anymore.

10 HEARING OFFICER SHEAN: Okay. Is that  
11 acceptable to the City?

12 MS. JAMES: Nighttime construction would  
13 be in violation of our noise code at any decibel  
14 level. Right now the construction is limited to  
15 the daytime hours, period.

16 HEARING OFFICER SHEAN: Right.

17 MS. JAMES: So it would not comply with  
18 our local ordinance standards to allow  
19 construction during the nighttime hours without  
20 going through the variance procedures.

21 HEARING OFFICER SHEAN: And those  
22 procedures until what?

23 MS. JAMES: A public hearing before our  
24 City Council.

25 HEARING OFFICER SHEAN: And are there

1 substantive criteria for the granting or denial of  
2 the variance?

3 MS. JAMES: There are findings in our  
4 municipal code that would need to be made.  
5 Without having them in front of me, it's --

6 HEARING OFFICER SHEAN: Okay. Well, let  
7 me just ask Mr. Pak to provide those at some point  
8 to the Committee so that we understand what your  
9 criteria are, and whether or not -- I guess let me  
10 ask it this way: Is it your contemplation that  
11 you could run such a variance hearing in a timely  
12 manner to address the construction of this project  
13 should the Commission certify it?

14 MS. JAMES: If the construction is  
15 intended to begin immediately after certification  
16 we would probably need to be doing that variance  
17 procedure prior to certification, which would be  
18 possible to do.

19 HEARING OFFICER SHEAN: Okay. All  
20 right.

21 COMMISSIONER PERNELL: Would the  
22 applicant have to request that, or is that  
23 something that you would do on your own?

24 MS. JAMES: It would be a simple thing  
25 to work out, whether they requested it or we just

1 processed it. We would have them do some kind of  
2 request, whether it just be a letter. That might  
3 be sufficient.

4 HEARING OFFICER SHEAN: But I guess the  
5 applicant's concern with that might be that it's  
6 discretionary, so if they say no, the  
7 certification of the Energy Commission is  
8 anticipating the early online date would  
9 essentially be nullified, is that correct?

10 MR. ROTHMAN: Yes, and I think that the  
11 Energy Commission can take into account their  
12 substantive requirements as part of the LORS.

13 HEARING OFFICER SHEAN: Okay, well,  
14 we'll get Mr. Pak to send us the criteria that are  
15 in the municipal code, and the Committee will  
16 contemplate what to do with that. All right.

17 Anything further on -- I'm sorry, go  
18 ahead.

19 COMMISSIONER PERNELL: Just one more for  
20 my clarification. If, in fact, this issue of  
21 noise can be worked out, that would then put you  
22 back on the 20-hour, seven-day schedule to be done  
23 by July 1 --

24 MR. ROTHMAN: More like mid July.

25 COMMISSIONER PERNELL: I'm sorry?

1 MR. ROTHMAN: Probably more like mid  
2 July, but that is --

3 COMMISSIONER PERNELL: July 17th.

4 MR. ROTHMAN: Mid July, and that is one  
5 of the critical factors that would impede our  
6 ability to meet that date, that is correct.

7 COMMISSIONER PERNELL: Okay. And I  
8 raise that because that's one of the concerns of  
9 some other testimony that we've heard.

10 MR. ROTHMAN: That is correct.

11 HEARING OFFICER SHEAN: We're back to  
12 the City if you have anything further?

13 MR. PAK: Yes, Your Honor.

14 DIRECT EXAMINATION - Resumed

15 BY MR. PAK:

16 Q Miss James, would you -- do you have any  
17 opinion with respect to the use of the 70 decibel  
18 limit at the property line as being the  
19 appropriate definition of what might describe  
20 quiet construction during the hours that would be  
21 outside the City's normal permitted construction  
22 hours?

23 A It actually is appropriate to use the 70  
24 decibel limit at the industrial property line, but  
25 more telling to review a noise ordinance

1 compliance issue is that it drops to 50 decibels  
2 at the residential property line immediately  
3 across the street at the mobile home park, across  
4 Newland.

5 So, that's actually the standard that  
6 would need to be met for the residential property  
7 is that nighttime hours the decibel levels drop to  
8 50 decibels maximum.

9 HEARING OFFICER SHEAN: So, if I  
10 understand what you're saying, 70 at theirs, at  
11 AES'; across the street in the mobile home park,  
12 50, is that right?

13 MS. JAMES: Correct.

14 HEARING OFFICER SHEAN: Okay. Let's go  
15 to you guys, do you think --

16 DIRECT EXAMINATION - Resumed

17 BY MR. ROTHMAN:

18 Q Mr. Fuller, do you have an opinion about  
19 the 50 decibel level residential limit as being  
20 appropriate for a condition for certification?

21 A The only comment I have to that would be  
22 that we did, as part of the process, conduct sound  
23 level measurements, 25-hour measurement at the  
24 closest receptor And the nighttime sound levels  
25 at that receptor, at that mobile home park, ranged

1 actually between 59 and 63 decibels already.  
2 That's the existing condition, as a primary result  
3 of vehicular traffic on that road.

4 HEARING OFFICER SHEAN: That road being  
5 PCH or Newland or both?

6 MR. FULLER: Well, PCH may have some  
7 contribution, but it's Newland Street.

8 So the existing ambient nighttime noise  
9 environment is currently substantially higher than  
10 50.

11 HEARING OFFICER SHEAN: And 59 to 63 was  
12 the peak in that 25-hour period, is that?

13 MR. FULLER: Those were nighttime hourly  
14 averages. Actually, the peak, when you're talking  
15 about a peak, maximum sound levels in the  
16 nighttime ranged anywhere from 71 to 75 decibels  
17 currently. And that's as a result, again, of  
18 vehicular traffic on the roadway.

19 HEARING OFFICER SHEAN: Noisy place.  
20 All right. We'll do the best we can with this.  
21 Thank you, Ms. James, appreciate it.

22 All right, we're at 12:35. IF there are  
23 members of the public who are her who would like  
24 to speak before we take a lunch break, we'll be  
25 happy to hear from them.

1                   We have a Mr. Weaver who has given us a  
2                   blue card. If you're here, Mr. Weaver, why don't  
3                   you come on down.

4                   DR. WEAVER: Thank you. My name's  
5                   Dallas Weaver. I'm a resident of Huntington  
6                   Beach. And I'm also a small business owner in  
7                   Huntington Beach. And I have a business that has  
8                   24/7 power requirements.

9                   We happen to raise aquatic animals, and  
10                  they're very high intensity recycled conditions,  
11                  and so we have like 7 million animals at any given  
12                  time.

13                 And we run out of power we have a  
14                 problem. So, this is my concern regarding the  
15                 getting this power plant back on line. And my  
16                 staff has an equal concern, because without power  
17                 we're literally out of business.

18                 Though I might like to point out that  
19                 some of my testimony may be viewed as favorable to  
20                 AES, that I have no contact with AES. I've never  
21                 had any contact with them. I have no relationship  
22                 with them, and I definitely realize that any money  
23                 they save will not affect the maximum price that  
24                 they will charge for electricity.

25                 However, it may affect the minimum price

1 that they would charge if the market turns around  
2 by decreasing their costs, because they obviously  
3 must cover their costs or they will no longer  
4 supply it.

5 And so that brings me to the issues that  
6 I can speak on with some authority, the aquatic  
7 biology issues. The first issue is this BIO4  
8 requirement, which requires the applicant to look  
9 at the entrainment issue. This is to look at the  
10 larvae and eggs of the aquatic organisms that are  
11 out there.

12 However, it should be pointed out that  
13 what they're really trying to do is figure out  
14 what happens in this ocean ecology out here. And  
15 as the staff has aptly pointed out, we have to  
16 look at it as a whole. But we should also point  
17 out that what we're dealing with here is really an  
18 invariable problem where we really only understand  
19 n-x of the variables, can't even define most of  
20 them. And we can only measure n-y variables.

21 Which to some people doesn't make sense,  
22 but some it will. What it basically means is you  
23 cannot make a clean prediction about anything.  
24 What little we know about the system dynamic  
25 equations that apply to these aquatic systems,

1       there's very strong chaotic components in the  
2       behavior of these systems.

3               And so that means we will not be able to  
4       make accurate predictions, even if we do have the  
5       data. And so what I would like to question is the  
6       whole concept of measuring something and not  
7       getting much value for those measurements.

8               It's nice to have that data. I would  
9       love to have that data, but I'm not sure I'm  
10      willing to spend \$1.5 million of money on it. And  
11      if it was my money, I definitely wouldn't. I  
12      think we could get a lot more bang for our buck to  
13      give that type of money to Bodega Research Labs or  
14      Scripps or general oceanography research, we'd  
15      learn a lot more about these systems than we will  
16      with this little study that will go no place, it  
17      will not get published in the referee literature,  
18      and it will just disappear.

19              So, then that gets me on then to the  
20      BIO5 question, which is basically a request that  
21      the applicant put \$1.5 million into a money market  
22      trust account at the Center for Natural Lands  
23      Management.

24              I understand from the discussions  
25      yesterday that the Center for Natural Lands

1 Management collects the 2 percent annual fee on  
2 this money in a money market account.

3 And when I looked up the staff at the  
4 CNLM, I noted that they practically all have ties  
5 to the various government agencies that are  
6 funneling the money to them. They're either  
7 retired from the agencies, and so forth.

8 And I would just like -- it does appear  
9 that 2 percent is well above the normal management  
10 fees for a money market trust account. And so I  
11 think this whole arrangement of having the staffs  
12 testify, somebody that's going to get this big pot  
13 of money, and get this 2 percent rakeoff on that  
14 money, and specifying who it is smacks of a  
15 possible concern regarding conflict of interest.

16 And so I think that should either be  
17 broadened or just eliminated because if the credit  
18 of AES is no good, looking at it from a  
19 businessman's standpoint, we're in deep trouble.

20 And the third issue that I'd like to  
21 look at is the required BIO7, which requires a  
22 study regarding the kills on the heat treatment.

23 I have a concern that the staff is making a  
24 mountain out of a molehill in this situation.

25 The staff report didn't include the

1 actual numbers, weight or dollar value of the fish  
2 killed in the intake structure as a result of heat  
3 treatments and normal impingement.

4 When you actually look at the real  
5 numbers you find out that we're dealing with a  
6 couple thousand dollars worth of fish a year. If  
7 you look at the actual value of the product, that  
8 these are all commercial fish that are sold  
9 commercially. So that's not a very big molehill  
10 as dollars go in this game.

11 And in terms of the amounts, we might  
12 point out that the amount is less on a yearly  
13 basis than a typical commercial boat will take in  
14 one day. So that puts it in perspective there.  
15 So we're not really talking about a big issue.

16 And so from one perspective you can say  
17 that the whole effort to satisfy BIO7 will  
18 probably do more environmental damage by  
19 destroying the trees than the value of the results  
20 of those studies. You know, because you're going  
21 to have to cut down a lot of trees to do a lot of  
22 the studies. Just for the paper.

23 And the last issue that I'd like to  
24 address is I consider the behavior of our City  
25 here in Huntington Beach, and the details that

1 they're going into in some of the issues that  
2 they've been bringing up look more like an  
3 extortion game than they look like a serious  
4 concern about issues.

5           And I find that the behavior of our City  
6 regarding this issue is virtually unethical. And  
7 I would like to see them quit trying to slow this  
8 project down. Because from what I read in the  
9 papers, they've been trying to slow, delay,  
10 threaten suit, et cetera. And we need the power.  
11 Thank you very much.

12           HEARING OFFICER SHEAN: Thank you, Mr.  
13 Weaver. Okay, we have a couple other cards here.  
14 Eileen Murphy, do you wish to speak now?

15           MS. KRAPCEVICH: Excuse me, Eileen is  
16 not here, but she requested that I present her  
17 letter that she wrote. So I can do that at the  
18 end of the public comment.

19           HEARING OFFICER SHEAN: All right. How  
20 about Mr. Dave Sullivan.

21           DR. SULLIVAN: My name's Dave Sullivan.  
22 I'm a past Mayor of the City of Huntington Beach.  
23 But today I'm speaking to you in the capacity of  
24 President of Huntington Beach Tomorrow.

25           This is a community-wide organization, a

1 large organization with members throughout the  
2 community and it's basically concerned with the  
3 quality of life in the City.

4 Let me first compliment the Commission,  
5 all the citizens that I have spoken to through  
6 this process feel that you and your staff have  
7 been very attentive to us, and we most appreciate  
8 that.

9 Everybody in this room knows that a 60-  
10 day review process is totally inadequate and is,  
11 in fact, a joke. Unfortunately the joke is on the  
12 people and the economy of Huntington Beach.

13 Even though this inadequate rush job  
14 review is being thrust on Huntington Beach because  
15 of a failed energy deregulation policy, I pose the  
16 question: Why are you not addressing the eventual  
17 dismantling of this outmoded plant?

18 We would like, as a condition of  
19 approval, that there be a date certain for  
20 dismantling of this plant, and then consideration  
21 of a new plant such as the one in, I believe,  
22 Morro Bay.

23 A second question: What if the  
24 scientific theories are proven correct when this  
25 summer's ocean tests are done? As you know, one

1 test was done on a day when the plant was on very  
2 low capacity, and the bacteria from the outfall  
3 theory is -- and the measurement was, came in to a  
4 mile and a half from our shore.

5 With this expansion, probably in a  
6 tenfold amount, since that day it was going very  
7 slightly, what are the effects going to be?

8 Therefore, I feel that this needs to be  
9 delayed until those tests are completed and we  
10 know the impact of this.

11 If this is the case, and our beaches are  
12 closed, the effects will be devastating. It will  
13 have an immediate fiscal impact on our beach  
14 economy, but also future affect on the reputation  
15 of our beaches.

16 These immediate losses are measurable.  
17 For example, the closure of the beach in  
18 Huntington in the American Trader oil spill  
19 resulted in a judgment of millions of dollars to  
20 the City and other entities.

21 So, again, we would request that we wait  
22 until these summer's tests are done to know what  
23 kind of a problem we have.

24 As I heard today, AES is requesting a  
25 20-hour construction process. We would ask that

1           you follow the -- allow the City, I mean we  
2           understand the process that we wouldn't be here if  
3           it wasn't for the energy crisis. But this is  
4           being forced on us. And, please, at least, for  
5           the citizens of Huntington Beach, allow our laws,  
6           our ordinance for noise to be followed.

7                         And as Ms. James pointed out, there's a  
8           process that an appeal can be launched by AES, and  
9           that can be brought before our City Council.

10                        But the problem is this sound at the  
11           beach, I live fairly near the beach, travels  
12           inland. And, you know, it's just unacceptable if  
13           hundreds of our residents are going to be  
14           condemned to only four hours sleep a night. And I  
15           haven't heard anything in the discussions today  
16           that there's going to be any kind of appeal  
17           process if that, indeed, happens to be the case,  
18           to protect our citizens.

19                        Finally, as a condition of approval, we  
20           would like you to insist that AES put up a \$14  
21           million guarantee to remedy any environmental  
22           problems that we may encounter.

23                        Thank you very much for your attention.

24                        HEARING OFFICER SHEAN: Thank you.

25           Well, there's no first name here, but I guess

1 Mr. Winchell.

2 DR. WINCHELL: Good afternoon. My name  
3 is Dr. Robert Winchell. I'm Professor Emeritus  
4 Cal State Long Beach, Department of Geological  
5 Sciences, a registered geologist in the State of  
6 California. I'm a resident of Huntington Beach.  
7 I'm a member of HBT. You just heard from our  
8 President in that particular regard.

9 I'd like to speak on issues which  
10 involve all of these considerations, and since I  
11 don't want to take any more of your time than  
12 necessary, number one, I won't repeat what Dr.  
13 Sullivan has indicated to you. And I'll simply  
14 say that as a resident of this City I support  
15 that.

16 I'll therefore confine my remarks to  
17 those things which I would like to bring out  
18 beyond what he has brought out.

19 First of all, I'd like to thank the  
20 Commission, as Dr. Sullivan did. I think that's  
21 worth reiterating, probably time and again. I'd  
22 like to thank the Commission and its  
23 representatives for coming to Huntington Beach.

24 We did not understand this was going to  
25 happen in the beginning. Our understanding from

1 the project proponent was that they were going to  
2 have this project, and they were going to have it  
3 whether Huntington Beach liked it or not. And  
4 whatever Huntington Beach could do about it, they  
5 could do, but they were going to have this project  
6 and they were going to run over us.

7 The Commission apparently has taken a  
8 position that that's not going to happen. And, in  
9 point of fact, that's the basis for thanking you  
10 for coming to Huntington Beach.

11 I'd like to thank, in addition, your  
12 staff. I've only had a few opportunities to deal  
13 with that staff. One of them yesterday was in a  
14 workshop on facilities and geology. That staff  
15 member, Mr. Bob Anderson, did an excellent job. I  
16 would commend him. From what I've seen of the  
17 rest of your staff, they are doing a similar job,  
18 an excellent job for this City.

19 This City, however, has asked, in  
20 addition, certain conditions and certain  
21 protections which go beyond what perhaps the  
22 Commission and some of the staff is willing to do.  
23 I'm asking you, as a resident, and in part as a  
24 professional, to adopt those standards.

25 This period, the biggest public enemy of

1 this project, as far as I see it, is the time  
2 constraints to which Dr. Sullivan has alluded, and  
3 which is probably one of the greatest concerns  
4 hopefully of all of us who are acting in the  
5 public's interest.

6 Therefore, I would like to ask you in  
7 general when conditions and constraints and so  
8 forth are asked of you, that you adopt the most  
9 conservative approach that you can to applying  
10 those sorts of things so that this City is,  
11 indeed, protected.

12 What we're trying to do here is to rush  
13 into a perhaps 60-, 90-day period what would take  
14 over a year normally. You are acting in place of  
15 and in lieu of a full environmental quality act,  
16 CEQA requirements in this state. Those have been  
17 suspended to a certain extent, if not literally,  
18 certainly in terms of the time constraints.

19 And you therefore must be sure if there  
20 is an error to be made, that that error is made in  
21 the direction of a conservative approach to the  
22 protection of the people in this City, and the  
23 people in the state, and as a matter of fact, to a  
24 certain degree, whether they subscribe to this or  
25 not, the project proponent.

1           The project proponent stands to lose  
2 monetary value, and while you've said just  
3 recently you can't consider that, they stand to  
4 lose monetary value if this is not a good project.

5           That basically is what all of us are  
6 asking, and I think even the project proponent  
7 would agree. They want a good project. We want a  
8 good project that protects us; they want a good  
9 project that yields them an appropriate return.

10           If this project that they are proposing  
11 does not do that, I presume from their standpoint  
12 they'll withdraw it. I presume from your  
13 standpoint if this project does not do that, you  
14 will not permit certain things to occur which  
15 would not be in the best public interest.

16           Let me move to those things with which  
17 I'm more familiar, and that's more from a  
18 professional standpoint. And I'll speak,  
19 therefore, to the geological and facilities  
20 considerations that are here.

21           In a full CEQA treatment, with which I'm  
22 familiar, I would see in the information that you  
23 have before you illustrations, as well as  
24 verbiage. Those illustrations would, I think,  
25 convince you that, for instance, from a

1 symptomatic standpoint when the proponent proposes  
2 to shortcut or possibly shortcut, or avoid, for  
3 instance, those things which would be involved in  
4 facilitating and being sure that the Uniform  
5 Building Code and the California Building Code are  
6 subscribed to, when, if, indeed, an engineer in  
7 the City is appointed as the CBO, or chief  
8 building official, that chief building official  
9 should have the opportunity to look at the  
10 facilities and the setting for that facilities,  
11 which is a geological setting, and which in  
12 general, in this area, is a hazardous geological  
13 setting, and require whatever is necessary to  
14 determine that the structure to be built and the  
15 existing structures will survive, or have the  
16 greatest likelihood of surviving the geological  
17 hazards, or geotechnical hazards, as they  
18 sometimes refer to, will have the greatest  
19 possibility of doing that, then that should be  
20 done, regardless of the time constraints that  
21 might be involved.

22           There are two major considerations that  
23 I'm concerned with personally. One of them is the  
24 faulting. In a full CEQA exposition you would  
25 have diagrams which would show you where that

1        faulting is.

2                There's some disagreement perhaps, and  
3 I'm not willing to go that far because we haven't  
4 had a full discussion with Mr. Anderson and so  
5 forth. We've talked some, but in retrospect I  
6 have some other considerations, and yet the time  
7 constraints here do not allow for that.

8                So, for instance, with regard to the  
9 faulting. Where is that fault? It runs through  
10 the property. Does it run trough the project part  
11 of that property? That's a question which remains  
12 to be determined.

13               We look at some of the data, perhaps it  
14 does. Or perhaps within a few hundred feet of the  
15 construction will occur there.

16               Staff, because of time constraints, does  
17 not present this material to you. They do not  
18 further in second consideration present the  
19 information which is associated with liquefaction.  
20 There are pictures of that particular area which  
21 show you the effects of liquefaction.

22               We can expect, for instance, those soils  
23 will liquify, and the problem will be  
24 considerable. The main consequence of this is  
25 that the staff has had to refer to relying on the

1 Uniform Building Code and the California Building  
2 Code to set requirements, which I trust, as a  
3 minimum this Commission will adopt.

4 And where the City has made  
5 recommendations, for instance, that the existing  
6 structure be examined for its ability to withstand  
7 destruction during a project earthquake. That  
8 that be done, that there be no question about  
9 that.

10 Yet I saw yesterday that the applicant  
11 has some real question, real concerns about what's  
12 involved there. If, indeed, they want a good  
13 project, they will look at the possible necessity  
14 for retrofitting that structure.

15 These things all come under, in my  
16 consideration, under the safety and health codes  
17 of CEQA. Which indeed, therefore, would require  
18 that this be done regardless of whether it is in  
19 the Uniform Building Code, California Building  
20 Code or other codes in this date. That's simple,  
21 reasonable protection and approach for the public  
22 in this particular situation.

23 So, again, this is symptomatic, as far  
24 as I'm concerned, of the problems which I've heard  
25 this morning, again reiterated in other venues

1 where indeed, in order to justify a project, which  
2 they want to do, the applicant may well attempt to  
3 avoid all, not all of, but many of the  
4 restrictions, requirements, et cetera, that staff  
5 and this City are asking the Commission to adopt.

6 Again, I don't want to, you know, I've  
7 taken enough of your time, but I will simply  
8 finish by saying that without a full CEQA  
9 exposition, without the time period that's  
10 involved for the give and take and reflection of  
11 what's going to go on here, that you, by  
12 necessity, must adopt the most conservative  
13 approach that you can, that you believe will  
14 protect at least the people in this City, the  
15 people in this state, and the people that rely on  
16 that facility in some fashion or another, whether  
17 it's noise, whether it's truck transportation,  
18 whatever it is, you must do that if you are going  
19 to provide a good project which, in my estimation,  
20 meets the requirements of CEQA.

21 Thank you very much for the opportunity  
22 to speak to you.

23 HEARING OFFICER SHEAN: Thank you. All  
24 right, we're at 1:00 now.

25 MR. MIZE: -- 1:00, and I was watching

1 tv, and you may have called my name. My name's  
2 Tom Mize, M-i-z-e, -- the card yesterday.

3 HEARING OFFICER SHEAN: I do have  
4 your --

5 MR. MIZE: Take about four minutes.

6 HEARING OFFICER SHEAN: Pardon me?

7 MR. MIZE: Take about four minute.

8 HEARING OFFICER SHEAN: All right, go  
9 ahead, then, sir.

10 MR. MIZE: Thank you.

11 HEARING OFFICER SHEAN: We are going to  
12 break for lunch after this.

13 MR. MIZE: My name is Tom Mize, and I  
14 live in Fountain Valley. I live about three miles  
15 north of the plant. And I'm here more to speak in  
16 support of the power plant, the need for power,  
17 you know, in this state.

18 Seems like there's an awful lot of  
19 people that's allied bringing up everything they  
20 can. I was at the workshop yesterday and there  
21 were some people -- this is not my words, saying  
22 they're trying to make a mountain out of a  
23 molehill. You know, I think that's quite true.

24 I just prepared a statement, and I'll  
25 try to give it to you instead of doing it

1       extemporaneously. Anyway, the CEC and staff have  
2       done an exceptional job in addressing this issue  
3       in such a short time.

4                You've taken input from all sides and  
5       come up with reasonable conclusions. It is  
6       imperative that this project come on line as soon  
7       as possible to minimize the economic impact in  
8       this state.

9                I believe units 3 and 4 should be  
10      allowed to operate as needed, and not be limited  
11      to 2500 hours per year, or possibly additional 500  
12      hours beyond that, depending on the NOx emissions.

13              Anyway, if they're going to spend the  
14      money to do this, they should be allowed to  
15      produce the power as needed by the state.

16              The economic impact of insufficient  
17      electricity has not been discussed very much  
18      during this hearing, but many workers have  
19      suffered because their employers have closed the  
20      doors, and also farms and things in the central  
21      valley have had to close down.

22              So, you know, these considerations have  
23      to be considered. I think they should be balanced  
24      against the local opposition down here. Anyway,  
25      like I say, this condition must be corrected.

1           It is a known fact that our living  
2 standards are based on the availability of  
3 plentiful electricity. And we want everything to  
4 be wonderful, but nobody wants to do anything to  
5 increase electricity. And, you know, that has to  
6 change some day.

7           I strongly support the conditions that  
8 all electricity generated in this state be used in  
9 this state. And some other people have mentioned  
10 your organization is to be commended. I think you  
11 have done a very balanced job of trying to take  
12 inputs and, you know, go down the road in a short  
13 time.

14           This was based on my impressions  
15 yesterday, maybe some of the local people around  
16 here disagree with this, but I believe the  
17 concerns of the local residents, this is  
18 immediately around the site. You know, I believe  
19 their concerns are reasonable and I believe they  
20 are addressed. And if they aren't addressed, then  
21 I think, you know, you should address that.

22           Those people are the ones that, you  
23 know, have the noise from steam blows or potential  
24 emissions from ammonia. I'm not saying there's a  
25 problem with ammonia, but the local fire marshal

1 has looked at that, and I don't really think  
2 that's a problem.

3 I'm only saying this about the local  
4 residents because I believe other groups are  
5 making suggested conditions that are unreasonable  
6 and really have no proven basis. These comments  
7 relate to the plant.

8 It's been reported in The L.A. Times  
9 that this is a 50-year-old plant. Why they want  
10 to say it's 50, I don't know, but reality, this  
11 plant's about 40 years old. I guess the older it  
12 is, then, you know, we should get rid of it or  
13 something, I don't know. But in any event, it's  
14 not as old as The L.A. Times indicates.

15 Also, one of the Huntington Beach City  
16 Councilpersons has written to The L.A. Times  
17 stating that this plant is a dinosaur. I strongly  
18 disagree with that characterization.

19 The boilers are being rebuilt and state  
20 of the art -- are being installed, and NOx and CO  
21 control devices are being installed. Also, it's  
22 state of the art plant control system will be  
23 installed. The resultant rebuilt units 3 and 4  
24 certainly will not be dinosaurs.

25 In fact, it will be one of the cleanest

1 power plants relative to air emissions in this  
2 state.

3 I support the CEC requirements for the  
4 \$1 million -- \$1.5 million for studies concerning  
5 the bacteria in the ocean near the beach and the  
6 fish and marine life impact. And if it is shown  
7 that the applicant contributes to these ocean  
8 bacteria problems, there are legal remedies to  
9 obtain money for mitigation. So I believe it's  
10 unreasonable for the Huntington Beach City to  
11 require the applicant to set aside \$14 million.

12 I think everyone agrees that legally  
13 you'll go after AES and, you know, have them take  
14 care of a problem if it's proven that they  
15 contributed to that bacteria.

16 This is concerning my impression of  
17 Huntington Beach, the City. I'm disappointed in  
18 the way the City of Huntington Beach has  
19 participated in this process. It's evident that  
20 the City Council is opposed to having a power  
21 plant in their city, and they would like to have  
22 it torn down.

23 But the City has contributed to this  
24 problem by permitting the building of thousands of  
25 new very expensive homes north of Sea Cliff and

1 along Garfield and Edwards. They've also  
2 permitted a large new hotel on Pacific Coast  
3 Highway, and more new homes in that area. Where  
4 does the City think this additional electricity is  
5 going to come from?

6 I sat in several workshops yesterday and  
7 I got the impression that the City of Huntington  
8 Beach wanted to oversee the operation of the power  
9 plant relative to operation, duration, fuel  
10 quality and air emissions. The City does not need  
11 this oversight. The California Energy Commission  
12 and Air Quality Management District have the  
13 responsibility to insure the plant meets all  
14 requirements and regulations.

15 I have full confidence that the CEC and  
16 the South Coast Air Quality Management District  
17 will require compliance with the applicant, but  
18 apparently the City of Huntington Beach does not.

19 In closing I would like to say again the  
20 CEC is doing a great job, and more power to you in  
21 the coming years to provide more power to us. And  
22 I would plead with you not to let this opportunity  
23 slip by to upgrade this power plant. If we cannot  
24 get this power plant on, there's no way the  
25 state's going to meet the shortage.

1 Thank you.

2 HEARING OFFICER SHEAN: Thank you. All  
3 right, --

4 MS. KRAPCEVICH: Excuse me, but Ed  
5 Kiernens has requested that he be allowed to speak  
6 now since he cannot come back after lunch. This  
7 will be the last one.

8 HEARING OFFICER SHEAN: I'm sorry,  
9 unfortunately there's no way to accommodate you  
10 and keep our schedule.

11 What we'd like to do is to return now at  
12 2:05. We will take up the subject of visual  
13 resources, then biology and water, and then air  
14 quality and public health.

15 I'm sorry, Mr. Kiernens, if there were  
16 another way we could do it, we would do it.

17 We will see you in one hour. We will  
18 gavel this to a beginning at 2:05.

19 (Whereupon, at 1:05 p.m., the hearing  
20 was adjourned, to reconvene at 2:05  
21 p.m., this same day.)

22 --o0o--

23

24

25

## 1 AFTERNOON SESSION

2 2:13 p.m.

3 HEARING OFFICER SHEAN: All right, we're  
4 ready to get underway. We were going to do  
5 visual, but I guess not all the cast of characters  
6 is not here at the moment.

7 So let's move forward. We know that in  
8 the work groups we were doing biology and water  
9 together, but we'll do this in order, biology, and  
10 then water.

11 So, let me see if I can recap this. I  
12 guess with respect to biology, okay, somebody else  
13 who gets paid for talking, maybe they can -- all  
14 right.

15 Let's do biology. I guess the key areas  
16 of contention related to provisions in biology 4,  
17 5 and 6 and 7. And let me just indicate that my  
18 understanding was that as to biology 2, which  
19 dealt with noise as it relates to the wetlands and  
20 marsh, south of the project, that we were going to  
21 attempt to move provisions of that into the noise  
22 conditions.

23 All right. And that as to the others it  
24 was issues both of necessity for the conduct of  
25 the studies, as well as issues of upfront payment

1 and to whom. And with that, we'll start with the  
2 Commission Staff.

3 Whereupon,

4 RICK YORK

5 was called as a witness herein, and having been  
6 previously duly sworn, testified as follows:

7 MR. YORK: Staff is concerned that the  
8 project specific and cumulative effects from  
9 impingement/entrainment could be significant, and  
10 that staff is recommending that the applicant  
11 prepare a monitoring and study plan, and conduct  
12 one year of monitoring to determine the actual  
13 impingement and entrainment losses resulting from  
14 the operation of the cooling water system for  
15 units 1 through 4.

16 Staff wants the applicant to sample the  
17 intake and source water to determine species  
18 fractional losses relative to their abundance in  
19 the source water. This is found in BIO4.

20 We consulted the Fish and Wildlife  
21 Service, Department of Fish and Game, National  
22 Marine Fishery Service and Coastal Commission  
23 Staff and they support our recommendation that  
24 these current studies be done, so we have current  
25 information to base our conclusions as to whether

1 or not the project's having significant impacts.

2 Staff is also recommending as a fallback  
3 that the applicant provide \$1.5 million to the  
4 Center for Natural Lands Management to establish a  
5 trust account to cover the cost of the study plan  
6 development and the source water sampling, in the  
7 event that the applicant does not comply with  
8 conditions of certification BIO4.

9 The condition will need to be amended as  
10 currently written. We need to add the comment  
11 that any unspent portion of the funds, plus  
12 interest, will be returned to the applicant upon  
13 completion of the study.

14 Mr. Weaver brought up the concern that 2  
15 percent annually would be charged by the Center  
16 for this service. It's 2 percent, one time, to  
17 establish the account.

18 The Center is also not involved in  
19 deciding how the money is spent. They just manage  
20 the funds.

21 Once the study is completed, if it's  
22 determined that the project is having a  
23 significant effect, then staff will work with the  
24 applicant and state and federal agencies to  
25 determine what sort of mitigation is recommended.

1 And that is outlined in condition BIO6.

2 BIO7, which I believe the applicant's  
3 not concerned about, wants the applicant to  
4 research various cooling water intake designs, and  
5 ultimately implement best available technology to  
6 lessen their impacts from fish being impinged by  
7 the cooling water intake facility.

8 And we would prefer that these  
9 improvements be made by the time of the renewal of  
10 the current NPDES permit that will need to be  
11 renewed by June of 2005.

12 We believe that if these conditions are  
13 implemented that we feel that the project will be  
14 able to operate and be in compliance with the  
15 laws, ordinances, regulations and standards.

16 HEARING OFFICER SHEAN: Do we have  
17 anything from either the City or CURE with regard  
18 to this?

19 MR. PAK: Nothing from the City.

20 MR. WOLFE: A couple things just very  
21 briefly.

22 We concur with all of staff's conditions  
23 3 through 7 with one minor exception. In BIO7,  
24 the way the condition is written, the applicant  
25 conducts the study to determine the feasibility of

1 alternative methodologies to reduce the number of  
2 fishes trapped in the intake forebay.

3 And if such an alternative feasible  
4 methodology is identified, the applicant is  
5 required to implement it by June 30, 2005. And we  
6 are advocating that that condition remain more or  
7 less the same, but that added to it is that if a  
8 feasible alternative methodology is identified, it  
9 be implemented immediately.

10 And with that, I would like to request  
11 that the Committee take official notice of the  
12 transcript from the workshop and site visit that  
13 occurred at El Segundo on March 14th. Now, that  
14 transcript is not available now so we can't  
15 introduce it into the record.

16 I'm hoping, in light of the constraints  
17 regarding transcriptions that we heard about  
18 earlier, that the transcript of that workshop will  
19 be available before the PMPD comes out. In which  
20 case we will docket and serve it.

21 But that transcript shows that the  
22 applicant in the El Segundo proceeding, who also  
23 uses once-through cooling, and whose impacts are  
24 similar with regard to entrainment, has, itself,  
25 proposed a measure to reduce the number of fish

1 that are killed during the four- to six-week  
2 periodic heat treatment process that staff has  
3 identified in this staff assessment here.

4 And basically my understanding is they  
5 take the fish that have been entrained, that are  
6 still alive, and release them before they pulse  
7 through the very hot water that ordinarily would  
8 kill all those fish. It seems like a fairly  
9 obvious and low tech solution.

10 That may or may not be the solution that  
11 proves feasible at this plant. But if that or  
12 another one is proven feasible, within a year,  
13 next week, in two years, we'd like to see the  
14 applicant implement it then as opposed to waiting  
15 until five years from now.

16 HEARING OFFICER SHEAN: All right, let's  
17 go to the applicant then.

18 MR. ROTHMAN: I'd like to start by  
19 objecting to the introduction of a transcript that  
20 we have never seen, don't know what is stated  
21 therein, and to the extent it's part of a  
22 workshop, may have not been on the record or under  
23 oath. So we'll just start by that objection.

24 And then in lieu of our time limits and  
25 in consideration of everybody's time here, a lot

1 of what was presented over the last day at the  
2 workshops, we have asked our expert to prepare in  
3 terms of a written testimony that we'll pass out  
4 now.

5 In addition, we also have some comments  
6 on the individual conditions that are part of a  
7 larger package of comments on some of the more  
8 contested conditions, and we'll hand that out now,  
9 as well.

10 And we'd like to introduce both of these  
11 documents into evidence after I've had the witness  
12 verify that this is his opinion.

13 (Pause.)

14 Whereupon,

15 CHARLES MITCHELL

16 was called as a witness herein, and having been  
17 previously duly sworn, was examined and testified  
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. ROTHMAN:

21 Q Mr. Mitchell, could you state your name  
22 and your occupation for the record?

23 A Yes, my name is Charles Mitchell. I'm  
24 the Founder and President of MPC Applied  
25 Environmental Sciences. And I'm also Senior

1 Scientist at that facility.

2 Q And, Mr. Mitchell, is the document  
3 entitled, testimony of Charles T. Mitchell  
4 regarding biological resources, is that your sworn  
5 testimony in this matter?

6 A It is.

7 Q In addition to the testimony are you  
8 familiar with the El Segundo project that was  
9 recently referenced by CURE?

10 A No, I'm not. Have no knowledge of it.

11 Q In terms of an evaluation or the  
12 timeframe of an evaluation for biological  
13 resources condition number 7, what is your opinion  
14 regarding a reasonable timeframe just for the  
15 study?

16 A My guess is it would probably take  
17 somewhere in the order of six to nine months.

18 Q And then as a result of that study do  
19 you have any opinion, as we sit here today, as to  
20 how long it would take to begin implementing any  
21 feasible measure that might be identified by that  
22 study?

23 A No, because I can't identify the degree  
24 of modification to the system that might be  
25 required or whatever, but it would be in terms of

1 many months, I'm sure.

2 MR. ROTHMAN: I have nothing further.

3 HEARING OFFICER SHEAN: Okay, I guess,  
4 I'm trying to find out where the applicant really  
5 wants to go. Because having read this, --

6 MR. ROTHMAN: I can probably clarify  
7 where we'd like to go.

8 HEARING OFFICER SHEAN: Sure.

9 MR. ROTHMAN: We'd like to not have  
10 these conditions.

11 HEARING OFFICER SHEAN: Okay.

12 MR. ROTHMAN: We don't -- the  
13 applicant's expert does not believe that the  
14 impingement/entrainment studies are necessary.  
15 That the impacts have been adequately evaluated,  
16 and that the fund that is established in  
17 inappropriate for that reason, in addition to  
18 being inappropriate for the reason that if we are  
19 going to undertake such a study, we'd be willing  
20 to pay for it, but we do not believe that it ought  
21 to be paid for up front to a third party.

22 HEARING OFFICER SHEAN: Okay, so sort of  
23 cascading problems with this, right? And the  
24 first being that, if I understand correctly, is it  
25 Mr. Mitchell or Dr. Mitchell?

1 MR. MITCHELL: Mr. Mitchell --

2 HEARING OFFICER SHEAN: All right. Is  
3 it generally your testimony that since these units  
4 have been in operation in the past that data that  
5 would have been studied, based upon the past  
6 performance, is likely to be sufficient for a  
7 current analysis?

8 MR. MITCHELL: That's correct.

9 HEARING OFFICER SHEAN: Okay. And that  
10 no significant difference would be expected  
11 between the study results now versus the study  
12 results from the past?

13 MR. MITCHELL: I believe so.

14 HEARING OFFICER SHEAN: Okay. And did I  
15 further understand your testimony to be that you  
16 do not, as you testify here now, know of some  
17 either other technology or methodology with  
18 respect to the intake that would reduce the let's  
19 call it fish kill or the entrapment or impingement  
20 from the intake of the current unit?

21 MR. MITCHELL: At this moment I do not  
22 think that there's anything that's feasible. You  
23 know, I'm not -- well, that's feasible to do to  
24 the intake that would reduce the number of fish  
25 lost in the system without incredibly major

1 modifications or impairing the flow of water into  
2 the generating station.

3 HEARING OFFICER SHEAN: Okay, to the  
4 extent that feasible, at least is a term of art as  
5 far as California Environmental Quality Act is  
6 concerned, and not only includes technological  
7 feasibility, but financial feasibility, when you  
8 use this term, which one are you referring to, or  
9 are you referring to both?

10 MR. MITCHELL: I'm referring to both.

11 HEARING OFFICER SHEAN: Okay. Now just  
12 so we can cover this in this cascading approach,  
13 the objection to the upfront payment and I guess  
14 that's one, and would it also be the payee, in  
15 particular? And if I understand your objection to  
16 the upfront payment it is that should the studies  
17 be called for, you are otherwise capable of  
18 funding them either sort of a pay-as-you-go  
19 approach, is that right?

20 MR. MITCHELL: That's correct.

21 HEARING OFFICER SHEAN: Okay. Now, even  
22 independent of that, if the Commission were to  
23 determine that it should be paid for up front, is  
24 there an objection to this particular recipient?

25 MR. ROTHMAN: This is not intended to be

1 an objection to the Center or the particular  
2 participant, no.

3 HEARING OFFICER SHEAN: Okay, I have  
4 nothing. Let's go back to the staff, then.

5 MR. KRAMER: Dr. Foster wanted to  
6 comment on a couple of the points that were  
7 raised.

8 HEARING OFFICER SHEAN: Sure.  
9 Whereupon,

10 MICHAEL FOSTER

11 was called as a witness herein, and having been  
12 previously duly sworn, testified as follows:

13 DR. FOSTER: I'm Michael Foster. I've  
14 been consulting with the CEC on marine biological  
15 issues related to the Huntington power plant.

16 There's, in fact, never been an  
17 entrainment study done at this plant. We now  
18 recognize that entrainment which affects the  
19 larvae of fishes, the babies, if you will, not the  
20 adults, can have important consequences for adult  
21 populations. And it's impossible to properly  
22 evaluate the environmental impact of a power plant  
23 without doing a proper entrainment study.

24 And Fish and Wildlife, Fish and Game,  
25 Coastal Commission, and National Marine Fishery

1 Service all concur with that.

2 MR. KRAMER: Thank you.

3 HEARING OFFICER SHEAN: Let me ask you  
4 with respect to BIO4, the second paragraph  
5 indicates, this analysis shall consider the  
6 cumulative effect of all southern California  
7 coastal power plants on nearshore fish  
8 populations.

9 So do I understand correctly that the  
10 study which you want to have undertaken by the  
11 applicant, or at least at the expense of the  
12 applicant, would include not only the Huntington  
13 Beach facility, but all southern California  
14 coastal power plants? And can you tell me what  
15 the reach is from, I would think the California  
16 border with Mexico to how far north?

17 DR. FOSTER: By Point Concepcion.

18 HEARING OFFICER SHEAN: Okay.

19 DR. FOSTER: But certainly at least to  
20 Point Doom. And I think that the implication  
21 there is not that they would do entrainment  
22 studies at all those power plants. It would be  
23 that they would just put their findings in the  
24 context of what is known about the entrainment  
25 effects of those other power plants to get a

1 larger perspective on the overall effects of such  
2 facilities on larval and adult fish populations.

3 So for that section they would use  
4 available data, they would not have to collect new  
5 data.

6 HEARING OFFICER SHEAN: So if I  
7 understand correctly, it is not that the  
8 particular fish population that may be affected by  
9 the Huntington Beach project would also be  
10 affected by, for example, either San Onofre or El  
11 Segundo or any other facility up or down the  
12 coast, it is that what you want to examine is once  
13 you have some numbers how do they, in the  
14 aggregate, affect California coastal fish  
15 populations?

16 DR. FOSTER: That's true. Modern  
17 entrainment studies examine both the effects on  
18 local populations, and that would have to be  
19 defined as part of the study, in terms of deciding  
20 what the source water is. And also try to put  
21 those findings into the context of the entire  
22 population in the region.

23 HEARING OFFICER SHEAN: Going back to  
24 you, Mr. Mitchell, and to the applicant, would it  
25 be your expectation that in order for you to renew

1 your NPDES permit in 2005 that such an entrainment  
2 study is likely to be required? Is this a pay me  
3 now or pay me later kind of deal that either you  
4 do it now or you're likely to have to do it later?

5 MR. MITCHELL: I'm sorry, I don't quite  
6 understand the question. Could you restate it?

7 HEARING OFFICER SHEAN: My question  
8 basically is this: Do you anticipate that for the  
9 renewal of the permit at Huntington Beach AES will  
10 otherwise have to conduct an impingement and  
11 entrainment study such as proposed in BIO4 to  
12 satisfy the regulatory agencies involved in  
13 renewing your NPDES permit?

14 MR. MITCHELL: We're not aware of any  
15 such requirement. If that's correct, we're not  
16 aware of any such requirement.

17 The generating station operates right  
18 now under an NPDES monitoring program and instead  
19 of requirements, and they have already accepted  
20 the 316B study and signed it off, it's an  
21 acceptable document. It's in the present permit.

22 Now, as to whether they want to do  
23 something with that in 2005 I suspect that that's  
24 a possibility. But we're not aware of any  
25 indication of that.

1 HEARING OFFICER SHEAN: All right.  
2 Anything further from the staff?

3 MR. YORK: Yes, I wanted to add  
4 something to that. The reason why we're asking  
5 them to do the study is so we have current  
6 information, so we can assess what their impacts  
7 are, so we can do our CEQA analysis.

8 We feel the old data, the other data  
9 that's being provided to us is inadequate for us  
10 to do our analysis. That's why we're asking for  
11 the study.

12 HEARING OFFICER SHEAN: Okay, and what  
13 is it about that information, if, at the time it  
14 was taken, represented typical fish -- is it that  
15 the fish populations that were measured at the  
16 time are atypical? And therefore, the information  
17 about the fish that were impinged is lower than it  
18 ought to be? Or that there's some -- what is the  
19 change that has occurred between then and now that  
20 would make that study and the data from it stale?

21 DR. FOSTER: As I said, an actual  
22 entrainment study, first of all, was never done at  
23 Huntington Beach. The original studies that were  
24 done in the early '80s actually tried to intuit  
25 what was happening at Huntington Beach from

1 surveys done at San Onofre to the south, power  
2 plant, and Ormond Beach to the north.

3 The assumptions underlying those studies  
4 in terms of the distribution of fish populations  
5 certainly can be challenged these days.

6 And so I would think that a reasonable  
7 scientist would say that well, you really can't  
8 predict. At the time, however, that data was  
9 convincing enough to the Water Board for them to  
10 grant a permit.

11 HEARING OFFICER SHEAN: Can you tell  
12 anything from the information about the fish that  
13 are actually killed in the forebay and in the  
14 system to tell whether or not, based upon what the  
15 results of the pumping are, are similar, let's  
16 say, from Huntington Beach to any other facility?

17 Now, I understand that San Onofre pumps  
18 hugely more water, so we're not talking about them  
19 as a possible comparison. But is the information  
20 in terms of the results of the fish take, if you  
21 will, and I know they're not subject to a take  
22 type permit, but if the fish kill is indicative of  
23 whether or not information that already exists  
24 remains reasonably accurate notwithstanding the  
25 passage of time?

1 DR. FOSTER: First, it was not clear to  
2 myself or other biologists who looked at the  
3 applicant's information on that topic that we were  
4 getting full information on what the complete  
5 impingement in this case is at Huntington.

6 If you look at the sample sizes from  
7 year to year they're high variable. So I'm not  
8 sure how well their estimates of what's impinged  
9 actually are what's impinged. And impingement  
10 studies have certain now requirements to do it in  
11 a particular way so that you can accurately  
12 determine that.

13 I would say however, that the data they  
14 have presented shows that the composition of  
15 fishes that they impinge, the composition, roughly  
16 pretty much matches the composition out in the  
17 ocean. So they don't appear to be impinging  
18 anything that one wouldn't expect to be impinged.

19 HEARING OFFICER SHEAN: Okay.

20 DR. FOSTER: But the problem is with the  
21 magnitude of that. And also, without the  
22 impingement data, the entrainment data combined  
23 with the impingement data is used to estimate  
24 effects on total populations. And the more  
25 accurate estimates you have of impingement and

1       entrainment, the better you can judge the impacts  
2       on the populations.

3                   HEARING OFFICER SHEAN: All right.

4       Anything further from the staff?

5                   MR. KRAMER: No.

6                   HEARING OFFICER SHEAN: The City of  
7       Huntington Beach?

8                   MR. PAK: No testimony, Your Honor.

9       However, I'm reminded that the City does support  
10      the CURE proposal for BIO7 for remediation as  
11      opposed to delay till 2005. I'm sorry about the  
12      omission.

13                  HEARING OFFICER SHEAN: Anything more  
14      from CURE?

15                  MR. WOLFE: Very quickly, Officer Shean.  
16      I just think we should remind ourselves that under  
17      CEQA one of the maxims is you do not defer  
18      mitigation to future studies. You do not approve  
19      a project, then order a study, and then mitigate.  
20      So we're already on very very slippery ground  
21      here.

22                  And, you know, we think exigent  
23      circumstances, i.e., the power crisis, warrants  
24      the type of departure that we're envisioning here,  
25      but given the slipperiness of the slope that we're

1 on, to eliminate the need for any study would be  
2 not only supremely short-sighted from an  
3 environmental protection standpoint, but we think  
4 patently unlawful under CEQA.

5 So we just reiterate our support for  
6 staff's conditions, with the one augmenting  
7 subcondition in BIO7.

8 But before I proceed I was just handed  
9 this document, written testimony of AES Huntington  
10 Beach evidentiary hearing. Was this introduced  
11 already? Did I miss that?

12 Okay, I need to give a post hoc  
13 objection to the introduction of this document to  
14 the extent that it contains testimony on topics  
15 that were covered this morning.

16 Obviously no party has had an  
17 opportunity to rebut any of that testimony. And  
18 if this goes in, then frankly, we need to reopen  
19 all of those topics so that we, staff and  
20 Huntington Beach have an opportunity to rebut  
21 them.

22 So I would --

23 HEARING OFFICER SHEAN: Which one are  
24 you talking about? Are you talking about that of  
25 Mr. Mitchell?

1 MR. WOLFE: It's a document that  
2 contains AES's testimony on all topics.

3 HEARING OFFICER SHEAN: We're not there  
4 yet, or at least I'm not focused on that now.

5 MR. WOLFE: Has it been introduced?  
6 Okay, for the record we object to the introduction  
7 of this document.

8 HEARING OFFICER SHEAN: Okay.

9 MR. WOLFE: Thank you.

10 MR. KRAMER: I thought it was just  
11 handed out.

12 HEARING OFFICER SHEAN: Right. We're  
13 not quite there yet, but we understand you object.

14 I guess we do have Mr. Mitchell's  
15 testimony, and I assume you want it admitted. And  
16 let's determine now if there's an objection to  
17 that. All right, hearing none, it is admitted.

18 Anything further from the applicant?

19 MR. ROTHMAN: Nothing further.

20 HEARING OFFICER SHEAN: All right. We  
21 think we have biology in hand. We do have a  
22 question from the Commissioner.

23 COMMISSIONER PERNELL: My question is to  
24 Mr. Mitchell. The existing studies, what date  
25 were they compiled, if you know?

1                   MR. MITCHELL: Yes, I do know. The 316B  
2 document that I think you're addressing was done  
3 in 1980. But the studies were actually done, I  
4 think, over '78 and '79. But the document, which  
5 I believe has been supplied to staff, was done in  
6 1980.

7                   COMMISSIONER PERNELL: Thank you.

8                   HEARING OFFICER SHEAN: Okay, that takes  
9 care of biology.

10                   Why don't we deal with this, the larger  
11 document entitled, written testimony of AES  
12 Huntington Beach, evidentiary hearings March 16,  
13 2001 would be the proper date.

14                   Let's see.

15                   MR. ROTHMAN: And I'll represent there  
16 is one modification to that. There is a comment  
17 in there regarding the master plan, but apparently  
18 yesterday that got resolved in sort of the general  
19 orders and conditions proposed by the City of  
20 Huntington Beach. So that comment is no longer  
21 relevant.

22                   COMMISSIONER PERNELL: What page is  
23 that?

24                   MR. ROTHMAN: That would be on page 26.

25                   HEARING OFFICER SHEAN: All right.

1 Well, some of this obviously is in our future;  
2 some of it is in our past. I guess with respect  
3 to, and I've looked quickly through it, in our  
4 immediate past is this biology matter, we've just  
5 gone over this.

6 Some of the rest of it dealt with  
7 essentially the duration of permit matter.

8 Since fundamentally this is not -- there  
9 may be facts that support positions with respect  
10 to this, but it's, I think, largely has become a  
11 matter of argument based upon the record that's  
12 already been established. I don't think the  
13 Committee has a problem with the fact that that's  
14 included.

15 Air quality, as a topic, is in our  
16 future at this hearing. The biology, to the  
17 extent it's going to cover bacterial contamination  
18 in the surf zone, causing beach closures, is also  
19 in our future.

20 The impingement, entraining and  
21 biological issues we just dealt with. And soil  
22 and water is in our future. The facility design,  
23 that doesn't appear to be a big deal.

24 And visual resources is in our future.  
25 Traffic and transportation is not a big deal, and

1 we may get to that anyway.

2 Socioeconomics, --

3 MR. ROTHMAN: We're not introducing any  
4 facts on socioeconomics.

5 HEARING OFFICER SHEAN: I'm sorry?

6 MR. ROTHMAN: Most of these are comments  
7 on individual conditions to the extent they are  
8 conditions. The only factual evidence, or most of  
9 the factual evidence that we intended to put into  
10 this document are on the issues that are in front  
11 of us, which is why we were making sure to get it  
12 in before biological resources.

13 HEARING OFFICER SHEAN: All right.

14 MR. WOLFE: Well, I'm a little unclear  
15 on -- the second sentence of the document says  
16 that the testimony contains both factual evidence  
17 and persuasive argument. I thought that  
18 persuasive argument would come in the briefs that  
19 the parties are going to file by Wednesday.

20 I mean if they want to submit this as a  
21 brief on Wednesday, I don't think we would have  
22 any objection at all. Our objection is that this  
23 is being presented as testimony a) on issues that  
24 have already been covered, and b) as persuasive  
25 argument that we don't have an opportunity to

1 respond to here.

2 HEARING OFFICER SHEAN: Well, I think  
3 the Committee can, you know, divide that up. And  
4 I just expected you to object to the fact that  
5 it's called persuasive. It may not be persuasive  
6 necessarily.

7 (Laughter.)

8 HEARING OFFICER SHEAN: So, all right.

9 MR. WOLFE: I do object to that. But I  
10 would ask then if the Committee would allow us, to  
11 the extent that, in our brief, there's additional  
12 testimony that we need to append, that we be  
13 allowed to do so, to respond to the new things  
14 that are brought up in this document, to the  
15 extent they are new.

16 HEARING OFFICER SHEAN: If you think  
17 there's something new.

18 MR. WOLFE: Okay.

19 HEARING OFFICER SHEAN: All right.  
20 Let's move now to the water resource/water quality  
21 issue related to beach closures.

22 All right. The matter we're dealing  
23 with here has to go to the studies of -- I guess  
24 this would capture it, sort of the oceanographic  
25 conditions which between the outfall of the

1 sanitation district of sewage and the outfall of  
2 the AES Huntington Beach plant, which comes out at  
3 a higher temperature than the receiving waters,  
4 there has been discussion both at the  
5 informational hearing in our workshops and seen it  
6 on your local access channel with respect to a  
7 connection.

8           And there is proposed that there be a  
9 study to delve into that. So why don't we -- and  
10 I guess, it's not clear to me exactly what the  
11 applicant's view of this is, and whether or not  
12 you have objection to the undertaking of the  
13 study.

14           So can you clarify that for me?

15           MR. ROTHMAN: I can try. The  
16 applicant's view is that there's already a task  
17 force in place that is studying exactly what is  
18 described in these conditions in terms of the  
19 impacts of the sewage outfall, and  
20 interrelationships that are in the ocean on beach  
21 closures on bacteriological impacts.

22           What AES does not want to have happen is  
23 for AES to be under a condition of certification  
24 that is duplicative or puts AES in the position of  
25 undertaking the costs of those studies to the

1 exclusion of a number of other parties who are  
2 voluntarily participating, along with AES, in the  
3 current ongoing study.

4           There is no proof, only hypothesis. It  
5 doesn't appear to us that this needs to be a  
6 significant mitigation factor. But we are  
7 voluntarily participating and we are not objecting  
8 to participating above and beyond that voluntary  
9 participation in the current ongoing studies as to  
10 some specific additional investigation of the  
11 impacts of our intake and outfall, AES' intake and  
12 outfall.

13           HEARING OFFICER SHEAN: Okay, just so I  
14 understand this. Not duplicative of ongoing  
15 studies, and that you not bear all the cost of  
16 such studies, and that your participation  
17 essentially remain as a voluntary participant in  
18 the studies?

19           MR. ROTHMAN: And I said that that would  
20 be the starting position, and I said, or that the  
21 condition be limited to a very narrow amount of  
22 additional study that is based exclusively on the  
23 impacts and import of the project 3 and 4 intake  
24 and outfall, as it relates to those studies.

25           That's what appropriate and proportional

1 mitigation would be.

2 HEARING OFFICER SHEAN: Okay, now is  
3 that because you view some of these other studies  
4 as significantly broader than that?

5 MR. ROTHMAN: Absolutely.

6 HEARING OFFICER SHEAN: Okay, so that if  
7 your voluntary participation would be perhaps in  
8 something broader, that your compulsory  
9 participation be in nothing broader than the  
10 impacts of the outfall of units 3 and 4. Do I  
11 have that kind of captured now?

12 MR. ROTHMAN: I think you have that kind  
13 of captured.

14 HEARING OFFICER SHEAN: Okay. Why don't  
15 we go to the Commission Staff, since they are your  
16 conditions. And we'll hear from you.

17 MR. KRAMER: What I'm wondering is if we  
18 should pose a question to the applicant and maybe  
19 to cut this short.

20 Reading the new soil and water 3 it  
21 appears to achieve most, if not all, of what they  
22 requested. And I don't know if they're happy with  
23 the revised version or if they're requesting  
24 additional changes or what.

25 HEARING OFFICER SHEAN: Okay, you're

1 talking about the revision that was handed out  
2 this morning?

3 MR. KRAMER: Right, it's the last page  
4 of the one that has the cover letter from Mr.  
5 Caswell.

6 HEARING OFFICER SHEAN: Which page do  
7 you think that is, again?

8 MR. KRAMER: It would be the last page.

9 HEARING OFFICER SHEAN: My last is  
10 visual.

11 MR. KRAMER: Okay, then you need to go  
12 to the first stapled group, and the last page in  
13 that.

14 HEARING OFFICER SHEAN: Okay.

15 MR. KRAMER: Soil and water 3 and 4 are  
16 on there.

17 (Pause.)

18 MR. ROTHMAN: With the exception of our  
19 ongoing objection to the concept of CEC  
20 recertification, this condition, I think,  
21 adequately addresses the discussion that we had  
22 yesterday and would be acceptable.

23 HEARING OFFICER SHEAN: Okay, and I  
24 believe that recertification talk is in the  
25 verification so that doesn't make it a condition.

1 And perhaps in the Committee's mind, when we  
2 deliberate the concept of the duration of the  
3 certification, it will be addressed at that point,  
4 in terms of the verification language.

5 So that other than that we're happy  
6 with --

7 MR. ROTHMAN: With soil and water number  
8 3.

9 HEARING OFFICER SHEAN: -- soil and  
10 water number 3. And I assume the same type of  
11 problem with soil and water 4, about the up front  
12 payment? Is that a yes?

13 MR. ROTHMAN: That's correct. As well  
14 as the size of the dollar figure. But, --

15 HEARING OFFICER SHEAN: I'm sorry, I'm  
16 not hearing you.

17 MR. ROTHMAN: Yes, basically the same  
18 objections as before, with respect to paying up  
19 front to a third party to administer something  
20 that we're agreeing to do and agreeing to pay for.

21 HEARING OFFICER SHEAN: Okay.

22 MR. ROTHMAN: We do have also written  
23 testimony with respect to these conditions  
24 prepared for Ms. Zielinski that we'd like to  
25 submit for the record.

1 HEARING OFFICER SHEAN: All right, well,  
2 we don't want anybody who has come all this way  
3 and sat through all of this to not have her shot  
4 at it.

5 MR. KRAMER: To be clear, is this  
6 testimony directed at the revised condition, or  
7 the previous?

8 MR. ROTHMAN: I believe it addresses  
9 something awfully close to the revised condition.  
10 It says that we're okay with it.

11 MR. KRAMER: Thank you.

12 MR. ROTHMAN: It may not be word-for-  
13 word, because we took different sets of notes.

14 HEARING OFFICER SHEAN: All right, I  
15 don't see any significant differences in the  
16 testimony of Ms. Zielinski with regard to soil and  
17 water 3 that the Committee can't deal with.

18 And with that, are there any other  
19 comments with regard to this water issue?  
20 Anything from CURE or the City based upon the  
21 Committee dealing with the revision to soil and  
22 water 3?

23 Okay, let's be all done with that, then.  
24 We will use the revision as the basis for our  
25 action on that matter.

1 Thank you.

2 Are you happy with that?

3 Whereupon,

4 RICHARD ANDERSON

5 was called as a witness herein, and having been  
6 previously duly sworn, testified as follows:

7 MR. ANDERSON: Well, my name's Richard  
8 Anderson. I have a hard time reading this quickly  
9 in front of a bunch of people and making decisions  
10 on it.

11 I'm happy with the revised soil and  
12 water 3 and 4 that I wrote and is included in that  
13 package. I tried to -- I listened to the  
14 applicant and I listened to the City of Huntington  
15 Beach yesterday and I tried to incorporate most of  
16 their concerns, with the exception of the money  
17 upfront. And I don't know that you want to hear  
18 about that. I think you maybe understand the idea  
19 involved and what's going on.

20 But we feel strongly, as staff, that the  
21 money should be upfront. We'd like to see a very  
22 independent, objective group of technical  
23 specialists working on what is exactly the  
24 problem, as it relates to the power plant.

25 We realize there are some ongoing work,

1           there has been over \$2 million spent so far  
2           studying this problem. I think some of the work  
3           has been good, some of it's been a little small  
4           pieces of the puzzle instead of taking a larger  
5           perspective.

6                         We are not doing something in addition  
7           to that group. We hope to coordinate closely and  
8           have this work complementary.

9                         But the idea is to focus on the power  
10          plant discharge. And if that is contributing. If  
11          it is, then it would make sense that there would  
12          be involvement in mitigation. If it's not, we'd  
13          like to know that, too, so that the project owner  
14          is not drawn into an effort of paying for things  
15          that possibly aren't their fault, or found not to  
16          be their fault.

17                        So, we think this is a good way to go.  
18          It isolates the scientific body and establishes a  
19          public stakeholders group to help make decisions  
20          based upon recommendations from that technical  
21          advisory group. And the funds are also isolated  
22          then from the project owner, and are paid to the  
23          technical group to provide their recommendations  
24          protocols.

25                        And then based upon their

1 recommendations and the public group, there would  
2 be a contractor involved or hired to do the study.  
3 And we think that this kind of hands-off, third-  
4 party independent group is important because this  
5 is a very important issue to the City of  
6 Huntington Beach.

7 And in here we also have that any  
8 unspent money would be returned, or that there may  
9 be a need for more money. But this will be based  
10 upon decisions of these two groups that are  
11 formed, of which the applicant, of course, would  
12 be a participant in the stakeholder group.

13 HEARING OFFICER SHEAN: Okay. Well, we  
14 think that the revision that you came up with, I  
15 think, addresses their concerns. It basically  
16 means that the process we had in place yesterday  
17 worked. And they're sufficiently satisfied. I  
18 think the Committee believes that this will  
19 address the public interests and we're quite happy  
20 with it.

21 MR. ANDERSON: Thank you.

22 HEARING OFFICER SHEAN: Thank you.

23 MR. LAMB: Matt Lamb for the City of  
24 Huntington Beach. Just briefly to say that we  
25 concur with staff's revision. Again, as you've

1 reiterated, that the City, working in the  
2 workshop, worked in good faith on that.

3 The proposal in the testimony, as an  
4 amenable language, we feel that staff's work out  
5 with the AES yesterday was the best resolution to  
6 that. And it is, allows for the public process.  
7 And we were very sensitive to AES' issue of  
8 duplicative efforts. And I think we've tried to  
9 address that.

10 So, we concur that staff's proposal of  
11 soil 3 is appropriate, and soil 4, as well.

12 HEARING OFFICER SHEAN: Okay. Then we  
13 can move on.

14 MR. PAK: Your Honor, the City has a  
15 witness we'd like to have testify with respect to  
16 soils and water 4.

17 HEARING OFFICER SHEAN: You mean as to  
18 whether we pay upfront?

19 MR. PAK: It goes to the general issue  
20 of how important this issue is to the City, and  
21 because soil and water 4 provides us with greater  
22 assurance, we support that condition over the  
23 objection of AES. It can be very short.

24 HEARING OFFICER SHEAN: Well, what is  
25 your witness going to testify to? What fact can

1 you --

2 MR. PAK: Impacts on the City of  
3 Huntington Beach.

4 HEARING OFFICER SHEAN: Okay, well,  
5 since it's part of your clock, we'll let you do  
6 it.

7 MR. PAK: The City calls Ron Hagan to  
8 the stand.  
9 Whereupon,

10 RON HAGAN

11 was called as a witness herein, and having been  
12 previously duly sworn, was examined and testified  
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. PAK:

16 Q Mr. Hagan, would you describe for the  
17 record by whom you are employed and in what  
18 capacity you are employed?

19 A Yes, I'm Ron Hagan, I'm the Director of  
20 Community Services for the City of Huntington  
21 Beach, in charge of all beach operations including  
22 marine safety, beach maintenance, beach  
23 development, beach events, marketing and all  
24 recreation activities associated with the beach.

25 Q And are you generally familiar with the

1 issue related to the public postings regarding the  
2 presence of indicator bacteria in the Huntington  
3 Beach surf zone?

4 A Yes, I am. We work closely with the  
5 Orange County Health Department. The Health  
6 Department checks the water within the surf zone  
7 twice a day. They then notify us of the bacteria  
8 count. When it reaches a ceratin level we're  
9 required to post warnings along the shoreline.

10 If those levels are maintained for a  
11 second reading, then we're required to post  
12 closure notices along the shoreline.

13 Q Would you describe for the record the  
14 impacts those public postings have on the City of  
15 Huntington Beach?

16 A Yes. They have major impacts on the  
17 City of Huntington Beach with regards to  
18 recreation and beach access, and with regards to  
19 economic impact within the coastal zone.

20 As an example, the American Trader oil  
21 spill, which took place in the late 1980s, and  
22 which the City recently received a court judgment  
23 for, valued the recreation day on a per person  
24 basis at \$14. And that was during the winter  
25 months. Obviously it's quite higher during the

1 summer months.

2 The long-term effects of beach closures,  
3 or even beach postings, when they're carried by  
4 the media, obviously do harm to public health and  
5 safety if people continue to go into the beach  
6 when there's risk of bacteria. It's a deterrent  
7 for people visiting the beach.

8 Our beach operations are an enterprise  
9 fund. They're dependent upon parking revenue,  
10 event revenue, concession revenue and so forth, to  
11 provide lifeguards, to maintain beaches, to do all  
12 of the camping and other facilities that are at  
13 the beach.

14 So when there are water closures there  
15 is a direct economic impact on the City. The  
16 enterprise fund, for example, for City beaches  
17 alone, generates about \$4.5 million to cover the  
18 cost of the City providing services to the public.  
19 And not just Huntington Beach residents, but  
20 regional residents, national residents,  
21 international visitors and so forth.

22 The downtown specific plan produces  
23 about one-fourth of the City's sales tax revenue,  
24 and those are impacted also with beach closures.  
25 It has a long-term effect in terms of economic

1 impact.

2 MR. PAK: Nothing further, Your Honor.

3 Thank you.

4 PRESIDING MEMBER ROSENFELD: Could you  
5 just repeat -- you said the American Trader spill  
6 valued the beach closures at how much per day?

7 MR. HAGAN: At \$14 per person per day.

8 PRESIDING MEMBER ROSENFELD: How many  
9 people?

10 MR. HAGAN: Well, it depends on the  
11 attendance. The City generates about 9 million to  
12 11 million visitors a year. And those are --  
13 obviously there's more visitors during the summer  
14 than there are during the off season.

15 The American Oil Trader spill closed the  
16 beaches in February and March. And I don't have  
17 off the top of my head what the total attendance  
18 was during those two months, but it resulted in a  
19 \$17 million award to the state beaches and city  
20 beaches, and City of Newport Beach, of which ours  
21 was -- our portion was about a little over \$4  
22 million for the impact of that beach closure on  
23 recreation and economics to the City.

24 HEARING OFFICER SHEAN: Anything more  
25 from any other party on the matter? All right,

1 thank you, sir.

2 MR. PAK: Thank you.

3 COMMISSIONER PERNELL: Thank you.

4 HEARING OFFICER SHEAN: Are visual

5 people at the ready? Okay, let's do that.

6 Does staff have changes in this?

7 MR. KRAMER: Yes, that was a separate  
8 handout, but I think it's in that package you're  
9 holding.

10 HEARING OFFICER SHEAN: This was your  
11 second stapled group of changes?

12 MR. KRAMER: The second or third, the  
13 smaller one.

14 HEARING OFFICER SHEAN: Okay.

15 MR. KRAMER: I'd just ask our staff, Mr.  
16 Kanemoto, contract staff, to briefly summarize the  
17 changes that resulted from the workshop.

18 HEARING OFFICER SHEAN: Why don't we go  
19 ahead and do that.

20 Whereupon,

21 WILLIAM KANEMOTO

22 was called as a witness herein, and having been  
23 previously duly sworn, testified as follows:

24 MR. KANEMOTO: My name's William  
25 Kanemoto; I'm a consultant with Aspen

1 Environmental in contract to CEC for visual  
2 resources. I was the principal author of that  
3 assessment.

4 I'd first like to apologize to Your  
5 Honor and the Commissioners for the earlier delay.

6 Staff concluded that with recommended  
7 conditions of certification relating to plume  
8 abatement, the proposed project would not result  
9 in significant visual impacts.

10 Also, on the basis of information  
11 incorporated since the staff assessment of March  
12 9th, staff has concluded that with the recommended  
13 conditions of certification as modified, the  
14 project would substantially comply with applicable  
15 local policies and regulations.

16 As a result of the public workshops held  
17 yesterday, staff has modified the proposed visual  
18 conditions of certification. And briefly, the  
19 conditions are now as follows:

20 Condition VIS1 refers to painting of the  
21 structures for units 3 and 4 with a low gloss  
22 finish and this is unchanged; that was  
23 uncontested.

24 Conditions VIS2 and '3, a March 9th  
25 staff assessment have been combined into a single

1 measure, VIS2, as follows: The applicant will  
2 submit their plan for an intensive landscape  
3 screening of the whole plant. If, upon review,  
4 this plan is found to be infeasible or to provide  
5 inadequate screening, the applicant would be  
6 required to submit a revised plan that may include  
7 alternative landscape concepts or a combination of  
8 landscape and architectural screening.

9 Such as light-weight mesh screening of  
10 portions of the power block superstructure, or  
11 other similar measures consistent with structural  
12 ventilation and safety requirements. The  
13 intensified landscape screening, however, would be  
14 the preferred solution.

15 Condition VIS3 refers now to project  
16 closure. If, in AFC for continued operation of  
17 the plant has not been filed 12 months prior to  
18 the end of the term of this certification, the  
19 project owners shall submit a facility closure  
20 plan that includes dismantling of the existing  
21 stack, power block and any outdated technology.

22 Condition VIS4 refers to plumes. The  
23 project owner shall operate units 3 and 4 during  
24 the winter season with an exhaust temperature of  
25 no lower than 230 degrees Fahrenheit to minimize

1 visible plume formation.

2 This temperature guideline may be  
3 adjusted based on operational data to be submitted  
4 by the applicant and additional staff analyses of  
5 these data.

6 Condition VIS5 refer to a variety of  
7 lighting measures that were uncontested and are  
8 unchanged from the staff assessment of March 9th.

9 MR. KRAMER: One question. Is VIS2  
10 similar to the condition that was applied by the  
11 City to their recent permit for the SCR on units 1  
12 and 2?

13 MR. KANEMOTO: Yes, it is.

14 MR. KRAMER: And was it your effort to  
15 try and coordinate the approach with the City's  
16 approach?

17 MR. KANEMOTO: Exactly. That was the  
18 substance of the discussion really.

19 MR. KRAMER: Thank you.

20 HEARING OFFICER SHEAN: Just so we have  
21 this straight. The revision I'm looking at across  
22 the top says, visual resources revised subsequent  
23 to the workshops of 3/15/01, do we have this  
24 correctly?

25 MR. KANEMOTO: Yes.

1 HEARING OFFICER SHEAN: Okay. And then  
2 to that there are just two handwritten changes  
3 dealing with the preference for intensified  
4 landscaping. And I see one on the back here with  
5 respect to lighting, discusses the use of motion  
6 detectors?

7 MR. KANEMOTO: Right. Just to make it  
8 consistent with the applicant's proposed measures.

9 HEARING OFFICER SHEAN: Right. Well, we  
10 have to, at a minimum, make sure we keep it safe  
11 for the workers. All right.

12 Is there anything from the City or from  
13 CURE on this?

14 MR. PAK: Yes, Your Honor. As you know,  
15 the City of Huntington Beach has also submitted  
16 conditions related to the closure of this plant  
17 that are affected by staff-proposed condition  
18 VIS3.

19 And with respect to that issue I'd like  
20 to call Mr. William Workman to the stand. Mr.  
21 Workman is sitting here at the dais and we can do  
22 it from here if that would be all right.

23 HEARING OFFICER SHEAN: That'd be fine.

24 //

25 //

1 Whereupon,

2 WILLIAM WORKMAN

3 was called as a witness herein, and having been  
4 previously duly sworn, was examined and testified  
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. PAK:

8 Q Mr. Workman, would you state for the  
9 record by whom you are employed, and in what  
10 capacity you are currently employed?

11 A My name's William P. Workman; I'm the  
12 Assistant City Administrator for the City of  
13 Huntington Beach.

14 Q And with respect to the general issue  
15 related to the closure of this plant, do you have  
16 any comments for the record?

17 A First, as we've been talking about the  
18 visual aspects of the plant, the City's  
19 appreciative of the opportunity for AES and the  
20 Commission Staff and the City to work through  
21 those issues.

22 Paramount in terms of the visual aspects  
23 of the plant is its eventual elimination and  
24 replacement with a facility that's low profile,  
25 environmentally friendly and neighborhood

1 friendly.

2 We were quite concerned this morning  
3 with Mr. Woodruff's comments that this plant, with  
4 its configuration that they're going through and  
5 proposing at the present time, could lead to the  
6 plant being at that location in a similar state  
7 for another several decades. That's totally  
8 objectionable to the City, both on a visual basis,  
9 as well as a basis of safety and concern for the  
10 environment and those neighborhoods.

11 That plant's been there for 45 years.  
12 We would hope that the Committee and the  
13 Commission would continue to pursue that five-year  
14 period for the permit.

15 Both the City Staff and the CEC Staff  
16 have generated conditions and findings related to  
17 that facility having a very short life, being that  
18 five-year period.

19 If that's not the case we need to know  
20 right now, because we'd have to take a completely  
21 different tack in terms of conditions, approach  
22 and I'm not sure that the City would find itself  
23 in the cooperative mode that it is right now, if,  
24 in fact, the intent was to have this facility  
25 operating for several more decades in its current

1 condition.

2 MR. PAK: Thank you, Your Honor.

3 HEARING OFFICER SHEAN: Okay, I didn't  
4 realize that back door was open, but all right.

5 Anything from the applicant with respect  
6 to the visual conditions?

7 MR. ROTHMAN: Yes, I'd like to introduce  
8 Aaron Thomas on behalf of AES who participated in  
9 the workshops and is going to have a few comments.

10 HEARING OFFICER SHEAN: Sure.

11 Whereupon,

12 AARON THOMAS

13 was called as a witness herein, and having been  
14 previously duly sworn, testified as follows:

15 MR. THOMAS: Just briefly, with respect  
16 to the revised conditions visual 1, visual 2,  
17 visual 3 and visual 5.

18 We feel staff has done an excellent job  
19 of coalescing the positions that were agreed to  
20 yesterday between the City and ourselves.

21 With respect to visual 4, we have some  
22 strong concerns with this condition, and are  
23 recommending that that condition be struck on two  
24 grounds. And we have an associated with us here  
25 today from the plant, Terry Kunz, to my left, who

1 will speak specifically from a plant operation  
2 perspective.

3 Our objections to this are along two  
4 fronts. One that the visual 4 condition here to  
5 have the exhaust temperature be no lower than 230  
6 degrees will have a direct impact on efficiency of  
7 the operating unit. And thus, has the potential  
8 to lower the efficiency and increase emissions.

9 We, as a general matter, do not believe  
10 that for the sake of mitigating a visual vapor  
11 plume that we should be increasing emissions from  
12 the facility. We think that is a wrong-headed  
13 approach.

14 On a second front, in terms of our  
15 rationale for striking this provision, relates to  
16 the potential for this to have significant  
17 operational constraints on the facility, itself,  
18 in the wintertime in an effort to try and achieve  
19 these temperatures.

20 With that being the sort of general  
21 setup, I'd like to turn it to Terry from our  
22 facility to speak more directly to those points.

23 Thank you.

24 HEARING OFFICER SHEAN: Okay.

25 //

1           Whereupon,

2   TERRY KUNZ

3           was called as a witness herein, and having been  
4           previously duly sworn, testified as follows:

5                           MR. KUNZ:  Yeah, I'm Terry Kunz.  I'm a  
6           Team Leader at AES Huntington Beach.

7                           As you know 3 and 4 are being retooled  
8           in kind.  There are no controls for stack exhaust  
9           temperature included in that.

10                          We talked a bit last night about what  
11           could be done to raise temperatures, and we came  
12           up with three theoretical possibilities.  And the  
13           issue with all three of them is it tends to  
14           increase the gas flow at any megawatt output.  
15           Thus with the corresponding gas flow increase you  
16           get a corresponding increase in emissions.

17                          And I can briefly go over those three if  
18           you're interested.  Okay, the first one is  
19           possibly varying the speed of the air preheaters.  
20           In theory, you slow them down, more heat will pass  
21           through and raise the stack temperatures.  But  
22           that also lowers the air temperature to the  
23           boiler, which increases the fuel flow to heat that  
24           air back up to boil the water.

25                          The other one is to add a flue gas

1 bypass around the air preheater. And this would  
2 also increase the flue gas leaving the boiler.  
3 But it would also again reduce the air  
4 temperature.

5 The third possibility is to add a steam  
6 heater. This would again increase the exhaust  
7 temperature, but you have to produce the steam for  
8 the steam heater which will take more fuel.

9 So, the bottomline is, you know, you can  
10 trade off the plume for some emissions.

11 I took some calculations on number 1  
12 unit at Huntington. And at 20 megawatts low load  
13 the exhaust temperature was 185 degrees. To raise  
14 that to 230 degrees is like a 45 degree increase.

15 I had Hon Tan, one of our performance  
16 engineers, and he gave me some numbers. For every  
17 degree you raise your boiler exhaust temperatures  
18 you increase your heat rate by .024 percent. So a  
19 20 or 30 degree increase could be anywhere from a  
20 half a percent increase to a three-quarter percent  
21 increase of fuel.

22 So, then you've got the corresponding  
23 emissions increase.

24 Okay, the last thing is if we had to use  
25 load to increase the temperature of the exhaust,

1 that would reduce our minimum load capability. A  
2 lot of times you bid into the market and they  
3 don't need full load out of the unit.

4 So if we're constrained to a minimum  
5 load the unit won't be able to be on to generate  
6 at the peaks, because this is not a peaker unit.  
7 It takes 12 hours to start up.

8 So, that's about all the information I  
9 have.

10 HEARING OFFICER SHEAN: Okay, why don't  
11 we, just for the moment, go over this a little bit  
12 with staff. If you want to explain for the  
13 benefit of the Commissioners here, the source of  
14 the plume formation in the exhaust stack, and also  
15 the meteorological conditions under which it will  
16 occur, and let's just start with that.

17 MR. WALTERS: I guess I could just give  
18 you a briefing on how the modeling was performed.  
19 I used six years of --

20 HEARING OFFICER SHEAN: Okay, not the  
21 modeling. We just want a generalized discussion  
22 of how the plume forms in the exhaust stack, and  
23 what are the meteorological winter conditions  
24 under which it occurs.

25 MR. WALTERS: Okay. Basically when the

1 moisture content is high enough, and the ambient  
2 temperature and relative humidity are low enough,  
3 you'll get condensation which is the visible  
4 plume.

5 Our modeling results divided it through  
6 three different loads, and we did not get data  
7 from the applicant down to such a low load as 20  
8 megawatts. We were looking at 100 to 75 and a 50  
9 percent load factor.

10 And the conditions at which plume could  
11 form for those three conditions: For 100 percent  
12 load, temperatures would have to be below 57  
13 degrees Fahrenheit, when the relative humidity  
14 was essentially 100. And then as you drop in  
15 temperature, lower relative humidities would allow  
16 condensation.

17 At 75 percent load, temperature  
18 increased to 63 degrees Fahrenheit, and a 50  
19 percent load to approximately 65 degrees  
20 Fahrenheit.

21 HEARING OFFICER SHEAN: And what levels  
22 of humidity?

23 MR. WALTERS: Well, all of these occur  
24 when the humidity is at 100, and like the 100  
25 percent load, as the temperature drops, the

1 relative humidity at which a plume will form goes  
2 down.

3 So, for example, at a 50 percent load,  
4 if it's 50 degrees Fahrenheit, it's considerably  
5 lower relative humidity than at 100 percent.

6 HEARING OFFICER SHEAN: So what time of  
7 day would you expect, obviously for visibility  
8 purposes we're not talking about nighttime, all  
9 right.

10 So, at what point are we talking about  
11 the plume forming and will a change of  
12 meteorological conditions reduce the visibility of  
13 the plume?

14 MR. WALTERS: Plumes generally form in  
15 the morning hours in terms of daylight hours.  
16 There's also some plume formation in the evenings.  
17 On particularly cold days you'll get plume  
18 throughout the day.

19 But the preponderance of the plumes that  
20 are predicted to occur, occur before 10:00 a.m. in  
21 the morning.

22 HEARING OFFICER SHEAN: Have you been  
23 able to predict the frequency with which plumes  
24 will occur on units 3 and 4?

25 MR. WALTERS: Based on the data the

1 applicant has provided, the frequency, which is  
2 provided in the memorandum that is in the record,  
3 again is dependent on the load factor. And can  
4 range, in winter conditions, at 100 percent load  
5 in the about 2 percent range, versus at 50 percent  
6 load over 20 percent.

7           And obviously at lower loads it would  
8 increase even higher. And that needs to be  
9 couched with the fact that these hours that I'm  
10 using the frequency for specifically high  
11 visibility daylight hours. And I had taken out  
12 hours where there was rain, fog and other weather-  
13 related phenomenon that would diminish the  
14 visibility or visual quality of that daylight  
15 hour.

16           HEARING OFFICER SHEAN: Okay. Anything  
17 further from the staff of your witness? From the  
18 City? All right. How about CURE? All right.

19           Anything back again from the applicant?

20           MR. ROTHMAN: No, nothing further.

21           HEARING OFFICER SHEAN: All right, thank  
22 you, gentlemen, we've got it.

23           Well, I think we're getting down to it,  
24 so I'm showing our next topic to be air quality.

25           HEARING OFFICER SHEAN: Mr. Haussler,

1 just before your visual people leave, I do have a  
2 question. And I guess this morning when we were  
3 all driving to breakfast, it appeared to me that  
4 there was a plume in our southern exposure.

5 And I guess I want to ask your witness  
6 whether or not that is the case, and what level of  
7 visibility he would have characterized that.

8 MR. HAUSSLER: Is Bill still here?

9 HEARING OFFICER SHEAN: Are they still  
10 here? Sure.

11 All right, I'll start this from the top.  
12 Just so I have an idea with respect to the  
13 visibility of the plume, am I correct that this  
14 morning at somewhere between 7:30 and 8:00 when we  
15 were observing from basically downtown Huntington  
16 Beach to the south, that the plume that was  
17 visible was from the -- that there was a visible  
18 plume from the AES facility?

19 MR. KANEMOTO: I actually didn't notice,  
20 but I presume so, yes.

21 HEARING OFFICER SHEAN: Okay. So we're  
22 talking about the types of meteorological  
23 conditions that we had this morning, sort of a  
24 cool to cold winter morning with the plume as it  
25 was, sort of mixing with some of the low overcast.

1 Is that --

2 MR. KANEMOTO: Well, Will would probably  
3 be able to address that a little better than I,  
4 but because I'm not clear about what sort of local  
5 conditions would lead to plume formation.

6 HEARING OFFICER SHEAN: Okay.

7 MR. KANEMOTO: But, yes, that's my  
8 understanding, that as he was explaining, it  
9 requires either low temperatures, some combination  
10 of low temperatures and high relative humidity  
11 from the --

12 HEARING OFFICER SHEAN: Was the plume we  
13 saw this morning something that would be fairly  
14 typical of the kind of plume and condition that  
15 you're talking about?

16 MR. WALTERS: I'm not sure that I saw  
17 that plume this morning.

18 HEARING OFFICER SHEAN: Okay.

19 MR. WALTERS: However, morning plumes  
20 are fairly typical, particularly this time of  
21 year.

22 HEARING OFFICER SHEAN: All right. If  
23 you didn't see it, then we're probably not in a  
24 situation to have you say, yeah, that's what it  
25 would be. So.

1                   MR. KANEMOTO: I think it's worthwhile  
2 pointing out also that we're not presuming that  
3 any plume whatsoever constitutes a significant  
4 impact. That's not the case. We only presume  
5 that plumes of a certain magnitude constitute  
6 potential significant impacts.

7                   And based on the type of data that we  
8 were getting from those results, we had to make  
9 very conservative estimates as to what proportion  
10 would fit that category.

11                   HEARING OFFICER SHEAN: Okay, thank you.  
12 All right, now we're going to shift to air  
13 quality.

14                   MR. KRAMER: Mr. Golden is going to  
15 briefly summarize the events of yesterday and the  
16 conditions.

17                   HEARING OFFICER SHEAN: All right.

18                   MR. KRAMER: Or was it going to be Mr.  
19 Walters?

20                   MR. GOLDEN: I'll summarize the events  
21 of yesterday. And then Will's going to do an  
22 overview of our analysis.

23                   HEARING OFFICER SHEAN: Okay. Mr.  
24 Golden, I'm not sure, were you part of the panel  
25 sworn this morning?

1 MR. GOLDEN: No.

2 HEARING OFFICER SHEAN: All right, why  
3 don't we do that.

4 Whereupon,

5 KEITH GOLDEN

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

9 HEARING OFFICER SHEAN: Okay, your  
10 co-witness, he's already testified not under oath,  
11 so why don't we swear him in.

12 (Laughter.)

13 HEARING OFFICER SHEAN: Now you have to  
14 repeat everything you said.

15 Whereupon,

16 WILL WALTERS

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

20 DIRECT TESTIMONY

21 MR. GOLDEN: In our workshop yesterday  
22 we discussed, of course, the conditions of  
23 certification and the staff assessment. And I  
24 believe you do have copies of the revisions to  
25 those conditions. I believe they were passed out

1 this morning, I understand.

2 HEARING OFFICER SHEAN: We do.

3 MR. GOLDEN: Okay, so I don't know if  
4 you want to go over in detail the additional,  
5 shall we say, minor verbiage that was added.

6 HEARING OFFICER SHEAN: No, we can read  
7 that.

8 MR. GOLDEN: Okay. So then the only  
9 issue that, at least between the applicant and the  
10 staff, that remains is the inclusion of, I  
11 believe, conditions AQ3 and conditions AQ4  
12 relating to the unit 5 peaker turbine.

13 I understand, however, that CURE still  
14 may have some other issues that they will lay out,  
15 I'm sure, in their testimony.

16 MR. ROTHMAN: Can you repeat the  
17 numbers? I think that they're off by one.

18 MR. GOLDEN: Pardon me?

19 MR. ROTHMAN: In terms of the --

20 MR. GOLDEN: The numbers? I believe it  
21 was AQ3, the requirement for source testing and  
22 AQ4, --

23 MR. ROTHMAN: That's right.

24 MR. GOLDEN: You still had objections to  
25 those two, I recall.

1                   With that I'd like to turn it over to  
2 Will Walters, our consultant, to give a brief  
3 overview of our air quality analysis.

4                   MR. WALTERS: Okay, we, first in our  
5 analysis, identify conformance with the  
6 appropriate laws, ordinances, regulations and  
7 statutes.

8                   For air quality, the District, South  
9 Coast Air Quality Management District, who will be  
10 entering testimony later, is delegated all PSD and  
11 federal authority, as well as authority over their  
12 local regulations.

13                   The District issued their PDOC for  
14 public notice yesterday, March 15th, and it's out  
15 on a 30-day public comment period currently.

16                   The FDOC will be issued sometime at or  
17 after April 20th due to some other rule change  
18 requirements that are necessary for this  
19 particular project.

20                   The findings for conformance with LORS  
21 was that the project does meet best available  
22 control technology, BACT requirements, and  
23 specifically having the selective catalytic  
24 reduction system and the CO catalyst to reduce  
25 emissions of NOx and carbon monoxide.

1                   In terms of the mitigation requirements  
2                   by the District, the current mitigation package  
3                   includes VOC emission reduction credits that have  
4                   been purchased; CO emission reduction credits that  
5                   have been purchased and/or agreements which are  
6                   known to be made and shall be conducted prior to,  
7                   as far as I know, prior to issuance of the FDOC.

8                   The facility has opted into the reclaim  
9                   program for SO<sub>2</sub>, which was done recently. It is  
10                  not reflected in our staff analysis, as it was  
11                  done after the staff analysis was issued. They  
12                  have, I believe, gotten their SO<sub>2</sub> allotment, so  
13                  that particular issue has also been taken care of,  
14                  and the District will probably identify that in a  
15                  little more detail.

16                  The NO<sub>x</sub> reclaim credits have been  
17                  obtained for the facility. And the PM<sub>10</sub> emission  
18                  reduction credits are going to be obtained under  
19                  the priority reserve which is what requires the  
20                  rulemaking change for South Coast, which will not  
21                  be able to be completed until at least April 20th.  
22                  At which point that rulemaking change, assuming it  
23                  does go through, is done. Then the permit can be  
24                  issued.

25                  In addition to identifying compliance

1 with the LORS, we go through an impact assessment  
2 for the facility. And for most of the issues of  
3 the facility we conducted a separate modeling  
4 analysis, as well as evaluated modeling analysis  
5 that the applicant provided.

6 In looking at the construction impacts  
7 after getting new data through data requests from  
8 the applicant on their construction and  
9 construction schedule, we do not find any new  
10 violations of any of the air quality standards.

11 We did, however, find contributions to  
12 existing PM10, or the potential for contributions  
13 to existing PM10 violations.

14 Due to those violations we did identify  
15 three specific impact reduction methods that are  
16 in the certification conditions. The first being  
17 a general dust mitigation requirement in AQC1.

18 Low sulfur fuel requirement, which is a  
19 readily available low sulfur fuel in the South  
20 Coast Basin, 15 ppm sulfur in AQC2.

21 And a requirement for low NOx equipment,  
22 specifically EPA-certified equipment post 1996 in  
23 AQC3.

24 We feel that putting these particular  
25 mitigation measures in will mitigate the project

1 to a level of insignificance for construction.

2 The initial commissioning for the  
3 facility was also looked at and in determining its  
4 significance we required a limitation on the  
5 commissioning period. And a limitation on the  
6 fuel use during the commissioning period, which  
7 are both reflected in condition AQ6.

8 Those conditions are basically the  
9 requirements for commissioning that the applicant  
10 identified in their AFC.

11 We then evaluated the project impacts  
12 for operation of the project. For units 3 and 4  
13 we did not identify any new violations of any of  
14 the standards, ambient air quality standards.

15 Again, since there are existing  
16 violations of the PM10 standard, any increases,  
17 and of course there are some minor increases from  
18 the existing facility do contribute to the PM10  
19 violations.

20 In terms of the mitigation for project  
21 impacts, we believe that the mitigations required  
22 in the FDOC and the permit limit conditions in the  
23 FDOC will be adequate to mitigate the impacts from  
24 units 3 and 4.

25 We then conducted a site cumulative

1 impact analysis which includes the existing units  
2 1 and 2, and unit 5. We performed this analysis  
3 because the monitoring data that is available  
4 would not accurately identify near-field impacts  
5 from the existing site. It's too far away, and  
6 just wouldn't do a decent job of really  
7 identifying whether or not there would be a  
8 cumulative impact from all the operations at the  
9 facility.

10 In doing the modeling for all of the  
11 units, we identified problems with the NO2 one-  
12 hour standard close to the facility, primarily due  
13 to unit 5. We did not identify any new violations  
14 for carbon monoxide or SO2. Again, there is  
15 additional PM10 concentrations that could increase  
16 existing violations of PM10 standards. Again,  
17 those are primarily due to unit 5.

18 Because of the problems with unit 5 and  
19 the fact that the model concentrations are several  
20 times the California standard for one-hour NO2, we  
21 are proposing both operating limits and emission  
22 controls for unit 5 in AQ4.

23 Specifically with the operating limits  
24 we are asking that that unit only be operated in  
25 dire need, when reserves are at or under 1.5

1 percent or a stage 3 has been called.

2 And to operate that unit past summer of  
3 next year, we're asking that unit be retrofitted  
4 with best available retrofit control technology.  
5 And if the applicant is not willing to do that,  
6 then we're asking them to shut down that unit and  
7 surrender all their permits to operate on that  
8 unit.

9 We also identified the potential for  
10 future cumulative impacts from other projects that  
11 surround the site. After review of the  
12 information available from South Coast Air Quality  
13 Management District, we found several projects  
14 that were within six miles of the site. Most of  
15 those projects were very minor and we do not feel  
16 that any plume overlap of any consequence would  
17 occur due to those other future projects. And we  
18 did not find any significant future cumulative  
19 impacts.

20 Our basic conclusion is that the unit 3  
21 and 4 impacts, with BACT employed, are relatively  
22 minor. But the site cumulative impact for NO2,  
23 one-hour standards, is significant. And we also  
24 believe that the operation of unit 5, as we know  
25 it on page 55 of the staff assessment, is in

1 violation of state law in terms of the health and  
2 safety standards because of the rather extreme  
3 violations of ambient air quality, State of  
4 California ambient air quality standards that that  
5 unit can cause directly.

6 Our general recommendation is we  
7 recommend certification with the inclusion of our  
8 staff conditions and the FDOC conditions that will  
9 be coming out from South Coast Air Quality  
10 Management District.

11 And to illustrate the NOx issue of unit  
12 5, we'd like to enter into the record a NOx  
13 emission rate comparison of five different  
14 proposed facilities, including the Huntington  
15 Beach facility, the existing unit 1 and 2 NOx  
16 level, the unit 5 NOx level, and the controlled  
17 unit 1 and 2 NOx level after SCR has been applied,  
18 to illustrate the situation at unit 5. Which,  
19 right now, in terms of pounds per megawatt hour is  
20 70 times as high as that that is going to be  
21 emitted from the Huntington Beach facility units 3  
22 and 4.

23 HEARING OFFICER SHEAN: Just for  
24 purposes of identification, you've got a lot of  
25 things identified along the bottom. Why don't you

1 go from left to right with the HB450 megawatts,  
2 and I assume that's the unit 3 and 4 proposal, and  
3 identify what you've got here.

4 I mean unit 1 and 2 and unit 5, I can  
5 understand that. But it looks like you've got  
6 some other samples --

7 MR. WALTERS: These are other proposed  
8 projects. So if you don't mind me identifying  
9 them, I don't have a problem with it, either.

10 These are data taken from AFCs or from  
11 staff assessments, just to let you know --

12 HEARING OFFICER SHEAN: Okay. Not only  
13 do I not mind, I think it would be a good idea.

14 MR. WALTERS: Hmm?

15 HEARING OFFICER SHEAN: It would be a  
16 good idea, so --

17 MR. WALTERS: Okay. From the left, this  
18 is the proposed project Huntington Beach 3 and 4.  
19 The next one over, CC530, that's the Contra Costa  
20 project.

21 The CC1056 is the Mountainview project,  
22 Mountainview project, which also does happen to be  
23 in the South Coast Air Quality Management District  
24 area.

25 The CC1200 megawatt is the proposed

1 Morro Bay project. The SC51 megawatt project, the  
2 sc meaning a simple cycle, the cc's all meaning  
3 combined cycle projects, is the United Golden Gate  
4 project at San Francisco Airport.

5 The unit 1 and 2, again, is the current  
6 NOx levels for unit 1 and 2 prior to their  
7 addition of SCR which will occur later this  
8 spring, I believe.

9 The unit 5 is the AP42 factor for four  
10 turbines, uncontrolled turbines, which we have  
11 used for unit 5. We don't actually have source  
12 test data, whether or not that number is high  
13 enough, I personally question, based on the fact  
14 that there is an opacity issue which is probably a  
15 NOx-related opacity issue at that unit.

16 COMMISSIONER PERNELL: What's the  
17 megawatts on unit 5?

18 MR. WALTERS: It's 133, I believe. And  
19 then on the far right the unit 1 and 2 with A in  
20 parentheses is the control numbers for unit 1 and  
21 2 after they have added the SCR system.

22 HEARING OFFICER SHEAN: Okay. Is that  
23 it from the staff?

24 MR. KRAMER: Yes.

25 MR. GOLDEN: And we do have,

1 incidentally, Mr. Shean, we do have the  
2 representatives from the South Coast Air Quality  
3 Management District here to put into evidence the  
4 preliminary determination of compliance.

5 HEARING OFFICER SHEAN: Okay. It is  
6 probably appropriate to separate them because if I  
7 understand, most of what you'll be discussing at  
8 this point are unit 5 issues, and they can come on  
9 with their PDOC. Is that probably correct?

10 MR. KRAMER: That's fine.

11 HEARING OFFICER SHEAN: Okay, let's do  
12 that. Did you want to do something with this?

13 MR. KRAMER: I'd like to enter that into  
14 the record.

15 HEARING OFFICER SHEAN: All right, and  
16 this is the NOx emission rate comparison from the  
17 staff. Is there objection to that?

18 All right, hearing none, it's admitted.  
19 Why don't we go with likely aligned parties.  
20 Anything from the City of Huntington Beach?

21 MR. WEISS: Yes, good afternoon. My  
22 name is Malcolm Weiss; I'm Special Counsel with  
23 Huntington Beach. I have a few points to make, no  
24 witnesses for testimony at this point.

25 This is one of the areas, I think, where

1 the expedited schedule is starting to catch up  
2 with us a little bit.

3 And you heard a little bit of reference  
4 to that in the staff's comments because the permit  
5 to operate issued by the South Coast Air Quality  
6 Management District, which will be open for a 30-  
7 day public comment period, was issued in the last  
8 couple of days. That public comment period will  
9 close prior to the point in time when two very  
10 important decisions are going to be made down at  
11 the South Coast Air Quality Management District by  
12 the governing board.

13 And it puts everybody in a very  
14 difficult position to be able to really  
15 effectively comment on the application when there  
16 are two rules that that application is dependent  
17 upon having to be adopted by the governing board.

18 The two rules are allowing the applicant  
19 access to what is known as the priority reserve.  
20 Credits that have been stored away, if you will,  
21 by the AQMD. Right now applicant does not have  
22 access to those credits is my understanding.  
23 They're particulate matter credits.

24 And unless and until there's a rule  
25 change down at the District, they're not going to

1 have access to those credits.

2 I think it's a little bit presumptive to  
3 say that they've met that requirement when there's  
4 still a political decision that needs to be made  
5 by that board based on the analysis that that  
6 board is going to go through.

7 Similarly, the other issue relates to  
8 changes that we've all heard about regarding the  
9 reclaim program down at the South Coast AQMD. So  
10 far, and it's been a very very contentious  
11 process, AQMD is proposing to pull power plants  
12 out of the NOx reclaim market.

13 Part of the justification is that power  
14 plants were starting to use up so much of the NOx  
15 reclaim trading credits that the prices were  
16 skyrocketing through the roof, worse than that  
17 chart of NOx on unit 5.

18 The thought is, by the South Coast, to  
19 pull power plants out, perhaps prices will  
20 stabilize and come down. Again, that rulemaking,  
21 I'm sorry, I think there was a misstatement in  
22 staff's presentation -- that rulemaking is not  
23 scheduled to occur until May. And so we won't  
24 know about that until some time mid to late May.

25 So, again, the District right now is

1 operating on a presumption of issuing a permit  
2 provided these two rules are adopted in whatever  
3 form they may be adopted. Nobody knows what that  
4 form will be. That's one of the prime concerns.

5 I certainly suggested from the City's  
6 perspective that it would make some sense to keep  
7 open the public comment period on the permit until  
8 after those rules are adopted so that can be  
9 figured into the analysis and the comments. And  
10 we still do forward that position.

11 A lot of headway, I thought, was made  
12 yesterday. Some of the conditions that staff had  
13 proposed were not particularly tight. It kind of  
14 required AES to do something. But if that wasn't  
15 performed in a timely manner, there was no  
16 indication as to what might happen.

17 I think staff has really done a very  
18 good job of rectifying some of those concerns.  
19 And really that's just being consistent with what  
20 staff has been saying all along, that because  
21 there are going to be some impacts that we may not  
22 really be able to analyze, some impacts will  
23 remain unknown, we're going to front-end or back-  
24 end load this application with some conditions to  
25 insure the mitigation occurs.

1           I actually haven't heard much of that  
2           discussion today, but I think at least in the air  
3           quality session staff has done a good job of  
4           adhering to that premise that we've been sort of  
5           following on in the last few weeks.

6           Related to condition -- let me see which  
7           condition it is -- it's related to the sulfur  
8           content of the gas. It's AQ2. Staff has  
9           recommended that there be monitoring of the  
10          quality of the gas for sulfur onsite. We think  
11          that's an appropriate condition. We certainly  
12          offer it up.

13          There's been confusion, uncertainty as  
14          to where the gas is coming from for these units.  
15          There's been some discussion that there is a  
16          pipeline that is an offshore pipeline coming into  
17          the facility that isn't utility controlled.

18          It's not really been clear. Yesterday  
19          we did hear that 2 percent of the gas that's used  
20          at the facility is coming from this offshore  
21          source as opposed to a utility.

22          With the uncertainty of that, we think  
23          it's a very legitimate, appropriate condition that  
24          the quality of the gas be measured at the site, at  
25          the plant, before it's used. I suspect the

1 applicant will argue that that's inappropriate,  
2 that it's up to somebody else to control the  
3 sulfur content of the gas. Nonetheless, they're  
4 the ones that are going to be burning it, and the  
5 impacts will be felt here.

6 So, just as a little certainty, we think  
7 it makes sense to have that onsite monitoring  
8 occur.

9 I'll end for this point by talking for a  
10 minute about the peaker unit, the number 5 unit.  
11 I'm not exactly sure where to begin on this. The  
12 staff report, or I'm sorry, the original  
13 application paid very little attention to this  
14 unit.

15 In the very first workshop in Sacramento  
16 when we were doing the issue identification on air  
17 quality, there were a number of staff people that  
18 were surprised to learn that this unit even  
19 existed.

20 Through public testimony down here we've  
21 heard a number of residents complain about the  
22 yellow cloud, the brown cloud, the noise that's  
23 associated with that unit. There's clearly an  
24 issue related to that unit. There does seem to be  
25 a violation of state law from a nuisance

1 perspective, perhaps from an opacity perspective.

2 By the applicant's own data that was  
3 submitted in response to a data request by the  
4 Commission, the applicant indicated that each one  
5 of the eight turbines that comprise peaker unit  
6 number 5, could have up to 78 pounds an hour of  
7 emissions of NOx. That's 78 pounds an hour times  
8 eight. If it's run for the 1300 hours which it's  
9 currently allowed to run, that is over 400 tons  
10 per year of NOx.

11 If you were to multiply that out, if  
12 there were no operating condition on there, you're  
13 up into, you know, the several thousand tons per  
14 year range. We just think that that's too much  
15 when you look at it all together, the cumulative  
16 impacts are so significant that there needs to be  
17 some control on that unit.

18 The applicant has stated that it cannot  
19 source test the unit. That it refuses to source  
20 test the unit. That it's not feasible to source  
21 test that unit. So what we're relying on are  
22 emissions factors, which in many cases are known  
23 to be off by significant percentages.

24 We don't have any really good data on  
25 it, but based on emissions factors and

1 calculations, the numbers that I gave you are  
2 accurate numbers on what the NOx emissions alone  
3 may be from that unit.

4 I think at this point I'll go ahead and  
5 let CURE make some comments. I think they're  
6 wanting to. And reserve some time for the end, if  
7 I need to. Thank you.

8 HEARING OFFICER SHEAN: Okay. Why don't  
9 we go to CURE, and this is -- or at least I  
10 believe and understand you have some public health  
11 issues, and we're doing air quality at this point.

12 MR. WOLFE: Yes, thank you. Let me just  
13 preface our presentation, we do have a witness, by  
14 saying that under the circumstances we feel that  
15 staff did a tremendous job on all of the topics on  
16 the FSA.

17 To have produced a document of this  
18 magnitude and this depth of substance in two weeks  
19 is truly astounding to us. And we feel that the  
20 Governor owes each and every staff member that  
21 participated in this a debt of gratitude. We  
22 think he should express that in the form of a  
23 bonus, but we're not holding our breath.

24 (Laughter.)

25 MR. WOLFE: We think that on the air

1 quality and public health side staff's proposed  
2 mitigation measures get us 90 to 95 percent of  
3 where we need to be. But, once again, I think  
4 it's worth reiterating the guiding principle that  
5 we think is dictated by the extraordinary  
6 circumstances that we're faced with here, and that  
7 is if there is any potentially significant impact  
8 that can be mitigated without jeopardizing the  
9 project's ability to come on line this summer,  
10 then it must be mitigated.

11 So with that I would like to call our  
12 witness, Dr. Phyllis Fox. I don't believe she's  
13 been sworn in.

14 DR. FOX: Actually I have been.

15 MR. WOLFE: You have been, I apologize.

16 HEARING OFFICER SHEAN: I believe she  
17 was part of the group.

18 Whereupon,

19 J. PHYLLIS FOX

20 was called as a witness herein, and having been  
21 previously duly sworn, was examined and testified  
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. WOLFE:

25 Q Dr. Fox, have you presented your

1           qualifications?  Have you summarized them for the  
2           Committee today?

3           A     I can summarize them.

4           MR. WOLFE:  Okay, while she summarizes,  
5           unfortunately we only have two copies of her CV.  
6           I'll give one to the applicant and one to the  
7           Committee, and I'll docket a copy with our --

8           HEARING OFFICER SHEAN:  I guess it's  
9           fair to state for the record in prior proceedings  
10          at the Commission she has been a witness and  
11          qualified to testify as an expert.

12          DR. FOX:  Just to summarize so you don't  
13          have to read my 23-page r sum , I have a PhD in  
14          environmental engineering from UC Berkeley, and  
15          roughly 30 years of experience.  I've been  
16          involved in the licensing of roughly a dozen power  
17          plants in California in the last five years.  And  
18          nearly that number on the east coast and in the  
19          midwest.

20          BY MR. WOLFE:

21          Q     Thank you.  Dr. Fox, have you reviewed  
22          the air quality and public health sections of the  
23          staff assessment?

24          A     I have.

25          Q     Have you identified any potentially

1 significant impacts that were either not  
2 identified for mitigation in the staff assessment,  
3 or for which the mitigation that was identified is  
4 insufficient to mitigate the impacts to less than  
5 significant levels?

6 A I have.

7 Q Have you identified any feasible  
8 mitigation measures that, in your judgment, could  
9 reduce the impacts you identified to less than  
10 significant levels?

11 A Yes.

12 Q And just to get this out of the way up  
13 front, will any of the measures that you've  
14 identified, in your judgment, jeopardize the  
15 applicant's ability to complete this project in  
16 time to come on line this summer?

17 A No, they will not.

18 Q Can you please summarize for the  
19 Committee your findings, conclusions and  
20 recommendations?

21 A Okay. What I would like to do is focus  
22 on the conditions of certification, and I would  
23 like to say that I agree with staff's conditions  
24 of certification. And what I would like to do is  
25 recommend a few minor changes in them. And then

1 recommend some additional conditions of  
2 certification.

3           And I'd like to start with the  
4 construction mitigation in conditions AQC2 and  
5 AQC3. In the case of AQC2, that is the  
6 conditioning which staff recommends the use of 15  
7 ppm diesel fuel. And I would like to recommend  
8 that that be augmented to require PuriNOx, which  
9 is an alternative diesel fuel that has recently  
10 been certified by CARB to achieve 14 percent NOx  
11 reduction and 65 percent PM10 reduction.

12           In the case of AQC3, which is staff's  
13 condition that requires the use of low emission  
14 construction engines, staff's certification  
15 condition states a condition for quote, "EPA  
16 certified 1996 equipment."

17           And that's actually obsolete. There are  
18 more recent certifications than the 1996  
19 certification, which covers a wider range of  
20 engines. And also requires lower emission limits.

21           And I actually have with me an excerpt  
22 from the Carl Moyer program that lays out what the  
23 various emission limits are for the various types  
24 of offroad engines.

25           And what I would suggest is a simple

1 change of the wording from EPA-certified 1996 to,  
2 quote, "most recent CARB-certified" and maybe you  
3 could hand this out, Mark, so that we're clear on  
4 what I'm talking about.

5 MR. WOLFE: Certainly.

6 DR. FOX: I think I only have five  
7 copies, so.

8 The next condition that I would like to  
9 address is AQ3, which is staff's condition that  
10 requires source testing of unit 5. And I support  
11 that condition, and would additionally like to see  
12 added, in addition to the criteria pollutants that  
13 are now listed in that condition, a short list of  
14 toxic substances: Formaldehyde, acetaldehyde,  
15 acrolein and hexane.

16 HEARING OFFICER SHEAN: One more time.  
17 Formaldehyde --

18 DR. FOX: Formaldehyde, acetaldehyde or  
19 acetaldehyde, acrolein and hexane. The first  
20 three are of interest because they are present in  
21 fairly high concentrations in these old Pratt-  
22 Whitney types of turbines.

23 And the last one, hexane, is of interest  
24 because it's at present -- it's potentially  
25 present in high enough concentrations to exceed

1 the federal max standard.

2 The next condition I would like to  
3 address is staff's condition AQ5, which is the  
4 condition that deals with a continuous emission  
5 monitor or a CEMS, for short, for ammonia. And I  
6 would like to see that condition expanded to  
7 include the use of continuous emission monitors  
8 for certain other parameters.

9 And I have some suggested wording for  
10 that. And on a previously submitted prefiled  
11 proposed conditions of certification, which Mr.  
12 Wolfe introduced this morning, and the condition I  
13 would like to call to your attention is our  
14 proposed conditions AQ4 and AQ5, which deal with  
15 the monitoring issue.

16 And I'd like to back up and briefly  
17 explain why I would like to see additional  
18 monitoring here.

19 In the case of PM10 and VOCs, or  
20 volatile organic compounds, the limits that are  
21 being proposed for this facility are  
22 extraordinarily low. In the case of PM10, for  
23 example, they are, I believe, -- referring to the  
24 AFC, the air quality section, table 10, which are  
25 the hourly emissions, both units at 100 percent

1 load for PM10 are 3.29 pounds per hour.

2 That's extraordinarily low for this kind  
3 of unit. Each one of these boilers burns about 4  
4 million standard cubic feet of gas an hour. That  
5 number is a factor of 10 lower than what you would  
6 calculate if you used EPA's emission factor for  
7 these kinds of boilers.

8 It's substantially lower than the  
9 numbers that I've seen in many source tests that I  
10 have looked at. I understand from remarks that  
11 were made in the workshop yesterday that is based  
12 on a source test that was performed on units 1 and  
13 2.

14 However, the units 1 and 2 have  
15 different burners than units 3 and 4 will have.  
16 And, of course, the only source of emissions on a  
17 boiler are the burners. And so they based the  
18 emissions on a different source with very  
19 different burners.

20 These new units will have lowNOx  
21 burners. And lowNOx burners achieve low NOx by  
22 reducing the combustion temperatures. One of the  
23 ways that you lower NOx is to lower the combustion  
24 temperature because the emissions are a function  
25 of temperature. And that involves a tradeoff.

1 When you lower the combustion temperature to  
2 reduce your NOx, you get increases in other  
3 things.

4 Another main difference between units 1  
5 and 2, and units 3 and 4, is that units 3 and 4  
6 will have a selective catalytic reduction unit, or  
7 SCR, to remove NOx. And an oxidation catalyst to  
8 remove CO and volatile organic compounds.

9 Both of those emission control  
10 technologies produce PM10 by oxidizing SO2 to SO3.  
11 SO3, when combined with water, forms sulfuric acid  
12 and it's measured as PM10.

13 So what we have here is a situation  
14 where the emission limits, and hence the emission  
15 offsets and the controls or mitigation for this  
16 project, are based on a nonrepresentative source.  
17 And I believe they have been substantially under-  
18 estimated.

19 And the compliance condition that is  
20 recommended in here is annual source testing. And  
21 anyone who's been involved in source testing knows  
22 that it's a rigged system.

23 Normally what you do is you go in in  
24 advance of the real test; you do a sample run; you  
25 see whether or not you're going to pass. And then

1 you tweak the knobs and dials to bring the plant  
2 into compliance when you actually do the real  
3 test.

4           So, what I'm advocating in these  
5 conditions that I'm proposing is one of two  
6 things: Either, where feasible, use continuous  
7 emission monitors. And if they're not feasible,  
8 to increase the source testing requirement from  
9 annual to at least quarterly for at least a year.  
10 And additionally, instead of having a source  
11 testing program where it's announced, to have  
12 unannounced source tests, so that the source could  
13 not prepare in advance.

14           And after say, four, unannounced source  
15 tests over a period of one to two years, if the  
16 source demonstrates that it can, indeed, meet  
17 these extraordinarily low limits, and this is a  
18 problem for PM10 and VOCs both, then you could  
19 revert to the normal annual source testing  
20 program.

21           I would like to second the City of  
22 Huntington Beach's support for staff condition  
23 AQ2, which is the monitoring of sulfur in the gas.  
24 And what I would like to add to it is that  
25 conditions to monitor sulfur content in natural

1 gas are not unusual. They are very common in  
2 permits. I have seen hundreds of permits with  
3 similar conditions.

4 And I think given the uncertainty  
5 surrounding the actual sulfur content of the gas  
6 here, I think it's a very reasonable condition,  
7 and I support it.

8 That concludes my remarks on air  
9 quality. My only other remarks are on public  
10 health. And I'm not clear whether or not we're in  
11 the public health section now?

12 HEARING OFFICER SHEAN: Not quite yet.

13 BY MR. WOLFE:

14 Q Does that conclude your testimony on air  
15 quality?

16 A It does.

17 MR. WOLFE: And with the understanding  
18 that we will proceed later to public health, that  
19 concludes our presentation. I would move into  
20 evidence Dr. Fox's CV and the document that was  
21 handed out, the first page of which shows a table,  
22 table 6-1 ARB and USEPA exhaust emission  
23 standards.

24 HEARING OFFICER SHEAN: Any objection?

25 MR. ROTHMAN: Just because we have no

1 cover and don't know where these documents came  
2 from, I'll just object to the documents in terms  
3 of foundation --

4 HEARING OFFICER SHEAN: Can we get some  
5 identification as to the source of the document?

6 DR. FOX: One moment. While I'm  
7 looking, it comes off of the ARB website,  
8 www.arb.ca.gov, and it comes from the section of  
9 the website on the Carl Moyer program. And it's a  
10 Carl Moyer document, and I'll get the title.

11 HEARING OFFICER SHEAN: All right, I'm  
12 just going to ask CURE to provide the applicant  
13 and the Committee a better reference so that we  
14 can go from there.

15 MR. WOLFE: Certainly.

16 DR. FOX: I have it. The title of the  
17 document is the Carl Moyer Memorial Air Quality  
18 Standards Attainment Program, proposed revision  
19 2000, November 16, 2000.

20 MR. ROTHMAN: As a proposed revision,  
21 then, I'm going to have to object that it's not a  
22 final document.

23 DR. FOX: I would comment that it's the  
24 standards are not proposed revisions; this is a  
25 proposed revision to the Carl Moyer program. The

1 standards are final.

2 HEARING OFFICER SHEAN: Okay, we'll take  
3 a look at it through the web apparently and see  
4 what we can see. All right.

5 EXAMINATION

6 BY HEARING OFFICER SHEAN:

7 Q Let me ask you, with respect to PureNOx,  
8 is that a proprietary blend which is available  
9 only from a particular vendor?

10 A PureNOx is a product that was co-  
11 developed by Lubrisol and Caterpillar. It is  
12 produced on site in a unit which is leased from  
13 Lubrisol.

14 Q Is it available only through a single  
15 vendor?

16 A Yes.

17 Q Okay.

18 COMMISSIONER PERNELL: On that topic  
19 there are other diesel blends that have low NOx,  
20 and I would be a little bit reluctant to specify  
21 any one vendor of a particular blend. I don't  
22 think that's the Committee's charge at this time.

23 There are GTL, gas to liquids; there are  
24 water emulsion type diesels, and I'm just a little  
25 cautious as to specify any particular vendor's

1 product.

2 HEARING OFFICER SHEAN: Can you indicate  
3 to us, given that your recommendation is in  
4 association with AQC2 and the staff's 15 ppm  
5 sulfur content requirement, what you think this  
6 PureNOx would achieve in terms of ppm sulfur?

7 DR. FOX: It would depend on what base  
8 diesel fuel was used to make it. The way PureNOx  
9 works is you lease a blending unit from the  
10 vendor. And the blending unit takes diesel which  
11 you get from whatever local source you want. And  
12 you blend it with about 10 percent water and a  
13 proprietary additive package. So you could use 15  
14 ppm diesel in the blend.

15 And I'd like to comment on Commissioner  
16 Pernell's comment. The reason I specified PureNOx  
17 is because that is the only alternative diesel  
18 fuel that CARB has certified at the moment. There  
19 are quite a few others, but there is no CARB  
20 certification, so there's no way to know for sure  
21 what emission reductions you could actually  
22 achieve.

23 COMMISSIONER PERNELL: So is that the  
24 same as Lubrisol?

25 DR. FOX: Lubrisol and Caterpillar.

1 COMMISSIONER PERNELL: We're talking  
2 about the same fuel?

3 DR. FOX: Yes.

4 HEARING OFFICER SHEAN: Okay, let's go  
5 to the applicant now.

6 MR. ROTHMAN: First I'd like to  
7 introduce into evidence and pass around our  
8 expert's reduced statement. While that's being  
9 passed out, there are some comments that were  
10 submitted in the earlier document, one of which  
11 ought to be corrected at this point. I think that  
12 there is no longer any objection to the current  
13 staff-proposed AQC3.

14 So on page 9 of our comments where --  
15 that issue was resolved yesterday, that's AQC3, as  
16 opposed to AQ3.

17 HEARING OFFICER SHEAN: Does Maria have  
18 that? Excuse me, Maria, we have a little  
19 housekeeping matter.

20 COMMISSIONER PERNELL: Can we go off the  
21 record.

22 HEARING OFFICER SHEAN: Sure.

23 (Off the record.)

24 HEARING OFFICER SHEAN: On the record.  
25 And I'm sorry, Mr. Rothman, you may have to back

1 up a little bit. We've just gotten your  
2 additional filing here, and I heard you say as to  
3 AQC3, applicant has no problem with the staff's  
4 version of this?

5 MR. ROTHMAN: That's correct.

6 HEARING OFFICER SHEAN: Okay. Have I  
7 dropped some other stitch, then?

8 MR. ROTHMAN: I don't think so.

9 HEARING OFFICER SHEAN: Okay.

10 MR. ROTHMAN: I was just clarifying it's  
11 AQC3, as opposed to AQ3, because there are -- the  
12 two outstanding issues really are AQ3 and AQ4.

13 HEARING OFFICER SHEAN: Right. We know  
14 you want us to distinguish between those two.

15 MR. ROTHMAN: And I think to keep this  
16 proceeding moving along, since I think a lot of  
17 these issues were discussed rather fully, and the  
18 positions made rather well known at yesterday's  
19 workshops, we've attempted to, both in our  
20 comments and in Mr. Lague's written testimony,  
21 identify the issues that we believe are pertinent  
22 on AQ3 and AQ4.

23 I will note that I think that staff and  
24 others misperceive the idea of cumulative impacts  
25 as being a site-wide concern, as opposed to a

1 project concern.

2 And I applaud the efforts of staff on  
3 the detailed review that they did in this area. I  
4 think, however, the peaker 5 is an issue that was,  
5 I think, misidentified as an ongoing violation of  
6 state law.

7 And although obviously not as efficient,  
8 has its uses for instant electrical needs. And  
9 that because of, you know, a larger emission  
10 source being on the same property and within the  
11 same facility, was targeted somehow for what can  
12 only be called excessive regulation through this  
13 process.

14 And under CEQA, you know, the idea of  
15 cumulative impacts is not to go and look at the  
16 project, and then look at the other sources on the  
17 site. It's to look at the other projects that  
18 have been proposed within the area.

19 Curious that the SCR, which is a  
20 proposed project, was not mentioned in that  
21 review.

22 But we don't think that peaker 5 ought  
23 to be the subject of these conditions to the  
24 extent that there's going to be regulation of  
25 peaker 5 it is properly before the South Coast Air

1 Quality Management District.

2 And that we agree with the staff  
3 conclusion that 3 and 4, the impacts, air quality  
4 impacts of 3 and 4 are properly mitigated. In  
5 fact, we would assert that they've been more than  
6 mitigated.

7 With that I'd like to introduce Mr.  
8 Lague simply to identify his testimony as his  
9 testimony, and put it into the record as our  
10 evidence.

11 Whereupon,

12 JOHN LAGUE

13 was called as a witness herein, and having been  
14 previously duly sworn, was examined and testified  
15 as follows:

16 MR. LAGUE: My name is John Lague and  
17 I'm an air quality scientist with URS Corporation.  
18 And I helped prepare the air quality parts of the  
19 submittal to the Commission.

20 DIRECT EXAMINATION

21 BY MR. ROTHMAN:

22 Q And is the document in front of you  
23 entitled testimony of John S. Lague regarding air  
24 quality your testimony in this matter?

25 A Yes, it is.

1           Q     And I would only add one other little  
2     tidbit based on some earlier comments, and that is  
3     the April 20 date with respect to the South Coast  
4     Air Quality Management District review of upcoming  
5     rules, we believe is the limitation in terms of  
6     our ability to begin construction, because if, at  
7     the April 20 date, there is a determination by the  
8     South Coast Air Quality Management District that  
9     we are entitled to the priority reserve PM10  
10    credits, that would pave the way for them to issue  
11    us the authority to construct and allow us to move  
12    forward on this project.

13           HEARING OFFICER SHEAN:  So, I'm right,  
14    so basically the testimony of your witness is  
15    don't go with either conditions AQ3 or AQ4, is  
16    that right?

17           MR. ROTHMAN:  I think you got that  
18    right.

19           HEARING OFFICER SHEAN:  Well, maybe I'll  
20    ask sort of the same question with respect to that  
21    as developed out of the discussion of what AES had  
22    in mind as it came to Huntington Beach and saw its  
23    future.

24                    What do you have in mind as the future  
25    of unit 5, if anything?

1                   MR. BLACKFORD:  As I mentioned in  
2                   earlier testimony this morning, unit 5 is a very  
3                   quick response unit.  It can be up and running in  
4                   ten minutes to satisfy immediate changes in load.  
5                   As those conditions would continue to exist in  
6                   California, there would continue to be a need for  
7                   unit 5 peaking.

8                   HEARING OFFICER SHEAN:  If I understand  
9                   correctly, on the tour, and I think Mr. Tripp  
10                  might have been the one who described this, and it  
11                  might have been because of his experience there at  
12                  the time, that as the result of the New York  
13                  blackout in the mid '60s, that Edison foresaw the  
14                  possibility that for a large west coast outage,  
15                  that it wanted to have a unit that was capable of  
16                  being brought up quickly to power the feedwater  
17                  pumps at San Onofre.

18                  Is that, do you think, an accurate  
19                  characterization as one of the reasons for the  
20                  creation of unit 5?

21                  MR. BLACKFORD:  When those type units  
22                  were built in the early '70s, the need for those  
23                  units was based on emergency situations to  
24                  maintain grid stability primarily through a unit  
25                  having a forced outage.  In other words, a major

1 unit somewhere dropping offline.

2 HEARING OFFICER SHEAN: Do you think it  
3 continues to serve such a function?

4 MR. BLACKFORD: It serves that function,  
5 and unfortunately it also serves the staged alerts  
6 which are a recent development.

7 HEARING OFFICER SHEAN: Is the grid  
8 stability you just referred to something that  
9 would be a matter currently under the control of  
10 the ISO as opposed to its former control by  
11 Edison?

12 MR. BLACKFORD: That would be correct.

13 HEARING OFFICER SHEAN: All right.

14 MR. ROTHMAN: I actually have one more  
15 thing to add.

16 HEARING OFFICER SHEAN: Sure.

17 MR. ROTHMAN: Running through my notes,  
18 about all the comments that were just made.

19 There was a comment made that the source  
20 testing criteria ought to be expanded. We think  
21 that that's an inappropriate request given that  
22 the source testing that we are performing is in  
23 accordance with the South Coast Air Quality  
24 Management District guidelines and rules.

25 Similarly, with respect to the CEMs for

1 things other than that are already covered by the  
2 CEMs, we think that that's unnecessary and not  
3 sufficiently justified by the evidence.

4 HEARING OFFICER SHEAN: Okay, that sort  
5 of leads me to one more. To the extent that in  
6 the public comment that we had here at the  
7 informational hearing, basically the citizens who  
8 are either directly typically downwind of this  
9 unit, or just more generally reside in the  
10 Huntington Beach area, see what they characterize  
11 as a yellow cloud or yellow plume emanating from  
12 this unit when it was under operation.

13 Is it the applicant's view that  
14 basically whenever you need to operate it for  
15 either commercial or electricity reasons, that  
16 fundamentally it's just a matter that the  
17 consequence of that is that there will be a  
18 receiving population that will have some, or at  
19 least is going to be downwind of this and that's  
20 just sort of the way it goes?

21 Or is there --

22 MR. ROTHMAN: I'm not sure I understand  
23 that question.

24 HEARING OFFICER SHEAN: Well, I mean --

25 MR. ROTHMAN: I think -- I assume you're

1 talking now about peaker 5?

2 HEARING OFFICER SHEAN: Correct.

3 MR. ROTHMAN: Okay. I think that it  
4 operates the way it's operated for a long time,  
5 and it's called for when it's needed, if that's  
6 what you're asking. I'm not sure I understand the  
7 question.

8 HEARING OFFICER SHEAN: Okay, well,  
9 that's good enough for me.

10 PRESIDING MEMBER ROSENTHAL: Could I ask  
11 you a question about peaker 5. I'm sorry I wasn't  
12 here yesterday so I don't know what the staff  
13 proposal was, but I thought it was that it would  
14 be operable this summer whenever the reserve  
15 margin was below 2 percent. Do I remember that  
16 correctly?

17 HEARING OFFICER SHEAN: Or at least some  
18 percent.

19 PRESIDING MEMBER ROSENTHAL: Yes,  
20 something which was sort of a stage 2.9.

21 MR. BLACKFORD: I think it was linked to  
22 a stage 3. Whether that number's 1.5 or 2 --

23 PRESIDING MEMBER ROSENTHAL: All right,  
24 fine. Just when stage 3 is imminent. And you're  
25 objecting to that criterion for it?

1                   MR. BLACKFORD: As was mentioned in the  
2 testimony yesterday, the ISO calls us direct for  
3 that unit in any staged alert. Although it has a  
4 ten-minute response time, when it comes to grid  
5 stability ten minutes can be an eternity.  
6 Flipping from a stage one to two to stage three  
7 alert can be very quick.

8                   PRESIDING MEMBER ROSENTHAL: But could  
9 you just say if you were thinking of it as being  
10 an emergency backup, maybe there's just small  
11 wordings which would allow you to be comfortable  
12 and get around the ten-minute problem, and still  
13 leave the Committee more comfortable about this  
14 big polluter?

15                   MR. ROTHMAN: I don't think we're  
16 reading the condition the same way. The condition  
17 reads that we're going to install control  
18 technologies and allows for, you know, operation  
19 in the interim during certain stage alerts. This  
20 unit's brought on for stage alerts and other grid  
21 need -- for other grid need reasons.

22                   But we're objecting predominately to the  
23 requirement to retrofit this with control  
24 technologies.

25                   HEARING OFFICER SHEAN: That would be

1 through the Commission, right? My understanding,  
2 and perhaps we have some Air District people here,  
3 but did I not hear yesterday at some point that  
4 they're contemplating, I don't know whether they  
5 call it a mitigation plan or some other something,  
6 that anticipates a rule change which would require  
7 best available retrofit control technology? Not  
8 in 2001, but in 2002?

9 MR. BLACKFORD: They are currently  
10 considering including some stipulations on those  
11 type units within the reclaim program. That being  
12 the case we certainly feel that's a better venue  
13 than the CEC process.

14 We feel it's more appropriately done in  
15 that area.

16 HEARING OFFICER SHEAN: Okay, so if you  
17 hear it from them --

18 MR. ROTHMAN: There's a difference  
19 between being regulated by the South Coast Air  
20 Quality Management District and working with them  
21 regarding the regulation of our emission sources,  
22 particularly one that's old and grandfathered,  
23 versus having it be considered a condition of  
24 certification and be justified by mitigation that  
25 we don't think is appropriate.

1                   HEARING OFFICER SHEAN: Okay, now  
2                   presumably the Energy Commission and the Air  
3                   District and AES have at least a mutual, if not a  
4                   common, interest in public health and safety. So  
5                   at least we are all presumably working toward the  
6                   same goal, I guess.

7                   COMMISSIONER PERNELL: I just had a  
8                   question for my own information. As it exists  
9                   today, peaker 5 will only come on -- is it a -- it  
10                  only comes on if the ISO or someone requests it?  
11                  Or can you start it up anytime you feel there's a  
12                  need?

13                  MR. BLACKFORD: Theoretically we can  
14                  start it up anytime there is a need. However,  
15                  because it is an older unit, because it is no  
16                  longer a cost effective unit, we have recently  
17                  limited it only to calls from the ISO.

18                  COMMISSIONER PERNELL: And you don't  
19                  intend to change that in the near future? I mean  
20                  the call from the ISO.

21                  MR. BLACKFORD: We don't --

22                  COMMISSIONER PERNELL: Putting you on  
23                  the spot here, it seems.

24                  MR. BLACKFORD: Yeah, could you rephrase  
25                  that question in a different way? I want to know

1 where you're --

2 COMMISSIONER PERNELL: I'll withdraw the  
3 question.

4 MR. BLACKFORD: Let me answer it one  
5 way, and if this answers your question, fine. And  
6 if it is a different way, ask me another question.

7 But, we would not anticipate expanding  
8 upon that near-term, on the flip side of the coin  
9 there are other agencies preventing us from  
10 retracting from that position.

11 COMMISSIONER PERNELL: Okay, you stated  
12 that, now I need to ask another question, I guess.

13 And you stated that it's not  
14 economically feasible for you to run the unit any  
15 time, simply because of the, I guess the cost of  
16 fuel or whatever. But you did state that it is  
17 not economically feasible for you to run the unit.  
18 And you do it if there's a possibility of grid  
19 crashing, or the state needs the power, and then  
20 you do it.

21 But, economically it's not feasible to  
22 run it. So, my question leads to assuming that  
23 AES is in the business of generating revenue, and  
24 if it's not economically feasible to run it now,  
25 unless you do something to make it economically

1 feasible, I would assume that the practice will  
2 stay the same.

3 MR. BLACKFORD: That's correct.

4 COMMISSIONER PERNELL: Thank you. That  
5 was a long way to get there.

6 MR. ROTHMAN: Yeah, I mean I think part  
7 of the problem is the uncertainties associated  
8 with both the future in terms of market, and what  
9 the energy supply and demand situation is going to  
10 look like.

11 I think that's why you're hearing a lot  
12 of hesitation.

13 COMMISSIONER PERNELL: I would agree  
14 with that.

15 HEARING OFFICER SHEAN: And is it that  
16 that uncertainty might lead to a circumstance in  
17 which the power produced by unit 5 is commercial,  
18 and that it should be run irrespective of a call  
19 from the ISO or support for the grid?

20 MR. BLACKFORD: There's always a  
21 possibility, but there would have to be changes in  
22 the current conditions, dramatic changes. Fuel  
23 costs being one.

24 HEARING OFFICER SHEAN: But if fuel  
25 costs were low enough, the price of electricity

1 sold is high enough, then the operation of this  
2 unit becomes commercial?

3 MR. BLACKFORD: It could become  
4 commercial, but as mentioned earlier, getting back  
5 to the fact that this is a peaking unit, extended  
6 run hours on that unit are just -- that's not what  
7 that unit's built for.

8 HEARING OFFICER SHEAN: Right. Well, it  
9 probably is at peak, that's what makes the price  
10 of electricity sufficient high to make it worth  
11 doing. Right?

12 MR. BLACKFORD: Correct.

13 HEARING OFFICER SHEAN: Okay. So you're  
14 only talking limited operation anyway. Okay.

15 MR. WEISS: Could I just make a couple  
16 of comments? Malcolm Weiss with the City.

17 First I just want to point out that it  
18 seemed to me part of the discussion was portraying  
19 maybe a false dichotomy. We're not talking, I  
20 don't believe the staff's recommendation is shut  
21 it down. It's go ahead and control it, but if you  
22 can't, then it should not operate.

23 So they always have the opportunity to  
24 go ahead and control the emissions. And that's  
25 exactly what the condition says.

1           The other thing I want to point out is  
2           right now it does run on natural gas. But under  
3           the permit that was issued by the South Coast, the  
4           draft permit that was issued by the South Coast  
5           two days ago, there is an opportunity in that  
6           permit to allow that unit to run on fuel oil,  
7           which I don't know what that would do to the  
8           emissions numbers, except make them go up. I  
9           don't know by how much, but I'm sure it would be  
10          dramatic.

11           The last point is, you know, hearing  
12          this discussion about whether or not the unit is  
13          economically, you know, viable or not, I would  
14          think if it's not economically viable they'd love  
15          the staff condition so they can take it out so ISO  
16          won't make them lose money.

17           HEARING OFFICER SHEAN: Okay, anything  
18          more from the staff?

19           MR. KRAMER: No.

20           MR. WALTERS: No, I don't believe so.

21           HEARING OFFICER SHEAN: Is there a  
22          rebuttal round, and then we're out of here on air.

23           MR. GOLDEN: I could just maybe add just  
24          one minor point. Looking into this source testing  
25          issue, we are going to be talking with the -- this

1 is on the unit 5, I think it's AQ3 -- if, in fact,  
2 the Committee does choose to incorporate that in  
3 the decision, then we would investigate with the  
4 South Coast Air District the feasibility of the  
5 source testing independently with them to find  
6 out, whether, in fact, it is feasible to source  
7 test this unit.

8 And whatever the outcome of that, you  
9 know, if it is, then we go with the condition. If  
10 it is not, then we may be looking at some kind of  
11 an amendment at that time.

12 But we would propose to do an  
13 independent research on this issue after the  
14 decision comes out. If the Committee chooses to  
15 include that requirement.

16 HEARING OFFICER SHEAN: Okay, so you're  
17 indicating at the moment, based upon the testimony  
18 submitted here by the applicant, it may be that  
19 this is either not feasible, or in certain aspects  
20 not feasible?

21 MR. GOLDEN: We're just not sure.

22 HEARING OFFICER SHEAN: Okay.

23 MR. GOLDEN: We got this information  
24 just yesterday. They said that it is not  
25 feasible. It's their position. We'd like to get

1 another party to take a look at it. And I think  
2 the best party to check this out would be the  
3 staff at the South Coast Air Quality Management  
4 District.

5 HEARING OFFICER SHEAN: All right.  
6 Anything more from the City?

7 MR. KRAMER: From the staff I want to  
8 make sure that the Air District has a chance to  
9 address the Committee. They've worked long and  
10 hard to try to make --

11 HEARING OFFICER SHEAN: Oh, yes, we were  
12 going to call them just sort of after we get  
13 through this unit 5 matter.

14 MR. KRAMER: Okay.

15 HEARING OFFICER SHEAN: From the City,  
16 then? All right, over to CURE?

17 MR. WOLFE: Actually Dr. Fox has one  
18 very brief --

19 DR. FOX: I think it's more of a  
20 question. It's not clear to me, Keith, whether or  
21 not the followup investigation that the Air  
22 District would do is part of condition AQ3 or not.

23 MR. GOLDEN: No, it isn't. This is  
24 just, we need to verify this. Certainly in the  
25 context of a longer AFC period we could do this

1 and present results at the time of hearing. But  
2 in this kind of a timeframe we don't have any  
3 choice in the matter and we're going to have to  
4 investigate this afterwards.

5 So it's not part of the condition; it's  
6 just, I think, a reasonable approach to be able to  
7 verify what -- the applicant's making a claim; we  
8 aren't sure about it; and we're going to go ahead  
9 and do an independent evaluation of this, with the  
10 help of the South Coast Air District.

11 DR. FOX: So that exercise is not part  
12 of the proposed certification condition?

13 MR. GOLDEN: No.

14 DR. FOX: Okay. I'd like to make a few  
15 comments on the written testimony of Mr. Lague,  
16 much of which goes to the feasibility of source  
17 testing that stack.

18 The point I'd like to make is much of  
19 that testimony is focused on whether or not it's  
20 feasible to source test that stack within the  
21 framework of regulatory requirements.

22 EPA has a number of source test methods  
23 that specify all kinds of things that you have to  
24 satisfy. The purpose of the source test in AQ3  
25 was not to determine compliance with EPA

1 regulations. The purpose of it was to gather data  
2 so that you could design the pollution control  
3 equipment, the BARCT controls, if you will, in the  
4 following condition.

5 But it's certainly feasible to source  
6 test that stack, using some method. I mean I  
7 could figure out how to do it. I'm sure Committee  
8 members could figure out how to do it.

9 I just want to put into the record the  
10 concept that the testing of that stack not be  
11 constrained by regulatory requirements. But that  
12 the measurement simply be sufficiently accurate to  
13 give the data that would be required for design of  
14 pollution control equipment.

15 In other words, there's no need to  
16 comply strictly with methods 1 through 3, for  
17 example, which is what most of this testimony goes  
18 to.

19 HEARING OFFICER SHEAN: Okay, we're back  
20 to the applicant.

21 MR. ROTHMAN: I don't think there's  
22 anything further other than to address that last  
23 issue, which is that if it's not tested in  
24 accordance with regulatory requirements we're not  
25 sure.



1 HEARING OFFICER SHEAN: Do you want to  
2 lead them through this or do you want me to do it?

3 MR. KRAMER: All right.

4 HEARING OFFICER SHEAN: Okay.

5 EXAMINATION

6 HEARING OFFICER SHEAN: Our basic  
7 purpose here in asking you to come down is to  
8 enter into our record the preliminary  
9 determination of compliance which the District has  
10 prepared at record speed, and we want to  
11 congratulate you on that.

12 And perhaps in addition to that you can  
13 just tell us what the process is that the District  
14 will be going through in terms of your public  
15 comment period requirement and so forth.

16 MR. NAZAMI: Okay. My name is Moshen  
17 Nazami; I'm Assistant Deputy Executive Officer for  
18 Engineering Compliance at South Coast Air Quality  
19 Management District.

20 And the District has conducted a  
21 determination of compliance analysis for the AES  
22 Huntington Beach Units 3 and 4. And released a  
23 determination of compliance which indicates that  
24 the project, as proposed, will comply with all  
25 applicable rules and regulations of the South

1 Coast Air Quality Management District.

2 As part of our determination of  
3 compliance, however, we have indicated that the  
4 offset requirements for the project are contingent  
5 upon the governing board of the AQMD adopting an  
6 amendment to our regulation 13, which is presently  
7 scheduled for adoption on April 20th of this year.

8 Which would allow power plants to have  
9 access to a District offset bank that we call  
10 priority reserve for PM10 emissions.

11 And as a result of those amendments, if  
12 our governing board approves them, then the PM10  
13 offset requirements for this project will be  
14 satisfied.

15 The remaining parts of the analysis has  
16 determined that BACT and modeling and offsets for  
17 other pollutants are adequate and also the  
18 analysis of the toxics impacts has determined that  
19 the unit 3 and 4 emissions will comply with our  
20 requirements for toxics rules.

21 HEARING OFFICER SHEAN: So, subject  
22 to -- and did you release the document for public  
23 review yesterday, and did that commence --

24 MR. NAZAMI: Yes, thank you. I forgot  
25 to mention that. The process that we are

1           undergoing at this point is since the South Coast  
2           is the delegated agency under the federal program  
3           for issuance of the Title 5 and PSD permits, that  
4           we, under the federal law, are conducting a 30-day  
5           public notice and comment process, which started  
6           on March 15th, and the comment period will close  
7           on April 15th.

8                         And as part of that we have informed  
9           AES, other parties interested, that the issuance  
10          of the final Title 5 permit, which is separate  
11          from the CEC certification, is also contingent  
12          upon our governing board's adoption of the  
13          amendments to reg 13.

14                        So, even though the comment period  
15          closes on April 15th, we are not in a position to  
16          issue that permit until after our governing board  
17          has adopted the proposed amendments.

18                        HEARING OFFICER SHEAN: Okay. Well, we  
19          look forward to the close of that.

20                        MR. KRAMER: We need to make sure the  
21          DOC is entered into the record.

22                        HEARING OFFICER SHEAN: Yes, was just  
23          going to do that. Is there objection to entering  
24          into the record the South Coast Air Quality  
25          Management District's preliminary determination of

1 compliance?

2 MR. WEISS: None from the City.

3 MR. ROTHMAN: No objection.

4 HEARING OFFICER SHEAN: All right,  
5 hearing none, it is admitted. And thank you very  
6 much. And thank you for your participation  
7 yesterday. I think it was very useful and I know  
8 it was an unusual format, but valuable. Thank  
9 you, again.

10 MR. NAZAMI: Sure.

11 MR. WEISS: The only additional comment  
12 from the City is just to reserve the opportunity  
13 to review that document and provide comments to  
14 the Commission. We have not had that opportunity.

15 HEARING OFFICER SHEAN: Okay. Thanks,  
16 again.

17 COMMISSIONER PERNELL: Thank you.

18 HEARING OFFICER SHEAN: All right, we're  
19 bearing -- there's light at the end of the tunnel.

20 Are there -- do I understand that CURE  
21 has some presentation with regard to public  
22 health? Are there any other matters on public  
23 health other than yours?

24 MR. WOLFE: We do have one. I don't  
25 know if there are others.

1 MR. WEISS: The City does, too.

2 HEARING OFFICER SHEAN: Okay. How about  
3 from the staff's perspective? Everyone's talking  
4 to everybody else here.

5 All right, why don't we go ahead then  
6 with CURE. And it does need to be brief.

7 MR. WOLFE: Thank you. Dr. Fox, please  
8 proceed.

9 DR. FOX: Well, if it needs to be brief,  
10 the issue is the applicant did a health risk  
11 assessment and concluded there were no significant  
12 impacts.

13 The assumptions that went into the  
14 health risk assessment were very unusual, to say  
15 the least. And in particular the emission factors  
16 that were used were extremely low. They're  
17 inconsistent with emission factors that EPA uses.  
18 And they are also inconsistent with a large number  
19 of source tests done on essentially identical  
20 sources as part of the AB-2588 program, which I  
21 happen to have in my files because I participated  
22 in the PUC hearings on the merger of San Diego Gas  
23 and Electric and Southern California Edison in the  
24 early '90s.

25 And if you use the emission factors from

1 those other sources to revise the health risk  
2 assessment, you find that there are, indeed,  
3 significant health impacts from this project.

4 So as not to avoid holding up the  
5 process, and to allow the project to go forward,  
6 rather than belabor the point, what I'm suggesting  
7 is that a certification condition be imposed on  
8 the project that they comply with the emission  
9 rates that were used in that health risk  
10 assessment. And that it be verified by a source  
11 test in which toxic emissions are measured.

12 And if it turns out that the  
13 measurements confirm the risk assessment that was  
14 done, that's the end of the issue. If they don't,  
15 then there would be some followup.

16 And that is written up, and the  
17 justification for it is in our prefiled proposed  
18 conditions of certification. And it is condition  
19 in section 4, -- it's inappropriately labeled as  
20 an air quality condition. It's AQ2 and AQ3.

21 AQ2 is nothing more than a listing of  
22 the assumptions that went into the health risk  
23 assessment that the applicant did.

24 And AQ3 is the condition to do a health  
25 risk assessment based on the source testing in

1 AQ2. And this is not unusual. There is a similar  
2 condition that's been, I think, actually proposed  
3 by the Bay Area Air Quality Management District  
4 which has been rolled into the conditions on the  
5 Metcalf project in the FSA on that project.

6 HEARING OFFICER SHEAN: How do you  
7 relate this to the health risk assessment  
8 performed by the District or by the staff? My  
9 understanding is your references are all to the  
10 applicant-performed and initially filed health  
11 risk assessment.

12 Will the compliance with the conditions  
13 of the determination of compliance by the  
14 District, in your mind, be inadequate to serve the  
15 purposes of your AQ2 and '3?

16 DR. FOX: My understanding is that staff  
17 simply adopted the applicant's risk assessment. I  
18 have not seen the risk assessment that was done as  
19 part of the PDOC and I don't know whether it  
20 conforms with standard Energy Commission  
21 procedures. I know nothing about it because I  
22 haven't had the opportunity to review it.

23 HEARING OFFICER SHEAN: Well, maybe we  
24 can get them to try to provide some information  
25 and that certainly would help illuminate the issue

1 for the Committee. How about it, Mr. Ringer? And  
2 has the District left? It appears so. Oh, are  
3 they here? Okay, I'm sorry.

4 MR. RINGER: I did want to note that  
5 staff's health risk assessment was done in  
6 compliance with accepted procedures for health  
7 risk assessments using emissions factors approved  
8 by the South Coast.

9 And my reading of the PDOC was that the  
10 South Coast came to essentially the same  
11 conclusions as staff. And that is that there were  
12 no significant impacts either for acute or chronic  
13 noncancer health effects, or for cancer health  
14 effects.

15 HEARING OFFICER SHEAN: Okay. And I  
16 heard the District testify earlier, although they  
17 didn't use the exact same words, but I heard it,  
18 as well, that the working group, that the cancer  
19 risk was below the one in a million, and noncancer  
20 risks was below the health hazard index 1.

21 So, at this point, you know, given our  
22 current state of knowledge, what is it that you  
23 want us to do? Or given your current state of  
24 knowledge, what do you want us to do?

25 DR. FOX: Well, my guess is that the

1 South Coast used the same emission factors as the  
2 applicant did, which is a series of emission  
3 factors on the South Coast website for generic  
4 natural gas fired units larger than 100 million  
5 Btus an hour.

6 I don't know what those numbers are  
7 based on, but I can tell you from my experience,  
8 and I have actually done risk assessments on this  
9 facility as part of the 1992 hearings on the  
10 merger, as I told you previously. And I have in  
11 my files a number of source tests done on very  
12 similar units which refute the emission factors on  
13 the South Coast's website.

14 The emissions, for example, of  
15 formaldehyde are substantially higher, an order of  
16 magnitude or more, than the numbers that were used  
17 in the applicant's, and hence the staff's  
18 assessment. And I am assuming that the same set  
19 of emission factors would have been used by the  
20 South Coast.

21 So all that I am asking, so as not to  
22 delay these proceedings at all, is that the  
23 Commission include a condition that the emission  
24 rates that were analyzed in that risk assessment  
25 be included as a certification condition with a

1 requirement that during the source test, which is  
2 required anyway as part of their permit, that they  
3 run one additional test, method 18, which analyzes  
4 toxics.

5           It's a minor amount of money; takes a  
6 very small amount of time. And you can run that  
7 test, do the calculations, compare them with the  
8 numbers that were included in the risk assessment,  
9 and if the analysis supports what they did, that's  
10 the end of the issue.

11           Normally, in a normal Commission  
12 proceeding, this would have been adjudicated in  
13 workshops and through data requests, but we don't  
14 have the luxury of doing that now.

15           MR. RINGER: Mr. Shean.

16           HEARING OFFICER SHEAN: Yes.

17           MR. RINGER: I'd like the Committee to  
18 note that the results of the risk assessment were  
19 that the acute and chronic noncancer, if they were  
20 increased by some 500 times they still would not  
21 be significant.

22           And as far as the cancer risk goes, it  
23 was .3 in a million. And even if that were an  
24 order of magnitude higher, that would still not be  
25 in the significant range.

1                   So, if indeed the emissions factors were  
2 low by an order of magnitude, it would not change  
3 our conclusions.

4                   HEARING OFFICER SHEAN: Just so I have  
5 it clear. It is the emission that are listed in  
6 your AQ2 that you want essentially confirmed  
7 through this method 18 testing?

8                   DR. FOX: Yes. And those are the  
9 emissions that were used in the risk assessment  
10 which is the basis of the applicant and the  
11 staff's position.

12                  HEARING OFFICER SHEAN: Okay, and so  
13 that captures the essence of the public health  
14 thing that you want us to --

15                  DR. FOX: That's the essence of it.

16                  HEARING OFFICER SHEAN: Okay.

17                  DR. FOX: To include those emissions as  
18 a certification condition, and test them.

19                  HEARING OFFICER SHEAN: Okay, we've got  
20 that. Does the District want to comment on your  
21 health risk assessment and how it was conducted  
22 with respect to any of this? If you do, fine. If  
23 not, we'll go to the other parties.

24                  SPEAKER: They've stepped out right now.

25                  HEARING OFFICER SHEAN: Okay, they've

1 stepped out. Why don't we go --

2 SPEAKER: Apparently the representative  
3 is away for a moment.

4 HEARING OFFICER SHEAN: All right.  
5 Let's go to the other parties and hear from them.  
6 Anything from the City on this?

7 MR. WEISS: Not on this issue, but on a  
8 separate issue. We can take it now, or at your --

9 HEARING OFFICER SHEAN: Separate health?

10 MR. WEISS: It's a health issue. We  
11 have a witness from the Fire Department. But it's  
12 a separate issue.

13 HEARING OFFICER SHEAN: And what's the  
14 nature of the issue?

15 MR. WEISS: It's fire protection issues.  
16 And we've got a witness that will take about five  
17 minutes.

18 HEARING OFFICER SHEAN: Okay. Anything  
19 from the applicant on the CURE matter?

20 MR. ROTHMAN: No, I think we concur with  
21 the staff's analysis, though. We'll stick with  
22 that.

23 HEARING OFFICER SHEAN: All right, the  
24 Committee will take it under submission. I think  
25 we have a clear understanding of what you want to

1 do on page 8 and 9, as your AQ2, and you want  
2 those emissions confirmed with testing. Okay.

3 Then let's go to the City's matter.

4 MR. WEISS: Thank you. The City wishes  
5 to call Bill Hosband from the Huntington Beach  
6 Fire Department.

7 And we are handing out a document.

8 Whereupon,

9 WILLIAM HOSBAND

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

13 DIRECT EXAMINATION

14 BY MR. WEISS:

15 Q Mr. Hosband, would you state your name  
16 for the record?

17 A William Thomas Hosband.

18 Q And obviously you've just been sworn,  
19 are you employed by the City of Huntington Beach?

20 A Yes, I am.

21 Q In what capacity?

22 A I'm the Hazardous Materials Specialist  
23 of the Huntington Beach Fire Department.

24 Q Thank you. Are you generally familiar  
25 with the document that was just handed out -- I

1 don't have an exhibit number for it --

2 HEARING OFFICER SHEAN: It's called  
3 Huntington Beach Fire Department Conditions List.

4 BY MR. WEISS:

5 Q Are you familiar with that document?

6 A Yes, I am.

7 Q Thank you. Was that document prepared  
8 by you or under your direction and supervision?

9 A Yes, it was.

10 Q And would you describe the document and  
11 its contents, please.

12 A The document sets forth the general fire  
13 protection and hazardous waste storage management  
14 handling conditions. And the information the City  
15 would require of AES Huntington Beach LLC in  
16 constructing and operating those units.

17 They relate to fire protection standards  
18 and permit the Fire Department to determine  
19 compliance with local codes and regulations. And  
20 otherwise provide information that will assist the  
21 Fire Department personnel in responding to any  
22 emergencies or hazards that may occur or exist at  
23 the site.

24 Q And have these conditions been provided  
25 to AES Huntington Beach?

1           A     Yes, they have. I have informed AES  
2     Huntington Beach LLC and they have accepted  
3     responsibility for meeting those requirements.

4           Q     Do you have a recommendation for the  
5     Commission related to these conditions?

6           A     Yes. I recommend the Commission should  
7     adopt the conditions as part of the certificate  
8     granted to AES Huntington Beach LLC. The adoption  
9     of these conditions provides the Fire Department  
10    with clear authority to require the information  
11    and the ability to enforce them without further  
12    dispute.

13                   As a public official, I believe the  
14    public safety is best served when jurisdictional  
15    issues are settled clearly and in writing.

16           Q     Thank you. Does this conclude your  
17    testimony?

18           A     Yes, it does.

19                   MR. WEISS: Thank you very much.

20                   HEARING OFFICER SHEAN: Anything from  
21    CURE or staff on this? How about from AES, then?

22                   MR. ROTHMAN: I think we had thought  
23    that these were going to be incorporated as a part  
24    of one of the other conditions that included a  
25    fire protection plan, but I'll let Mr. Blackford

1 respond to the list of conditions.

2 MR. BLACKFORD: We had a hallway  
3 conversation yesterday with all these conditions,  
4 and the agreement at the time was they were fine,  
5 so I have no change to that.

6 HEARING OFFICER SHEAN: Okay. Fine with  
7 the applicant, we just had to find a place to put  
8 them, right. Good enough.

9 MR. WEISS: Thank you.

10 HEARING OFFICER SHEAN: Thank you.

11 MR. KRAMER: Your Honor, --

12 HEARING OFFICER SHEAN: Yes.

13 MR. KRAMER: -- I just noticed one thing  
14 in reading this, and maybe you can tell me if it's  
15 not an issue, but it refers to a letter on the top  
16 of page 2, a memo to Matt Lamb that's not attached  
17 to this. I don't know if that's important.

18 HEARING OFFICER SHEAN: Let's read it.  
19 It says, conditions of approval for SCR units 1  
20 and 2 shall apply also to units 3 and 4 to include  
21 all conditions in set number 1 and set number 2,  
22 as included in the attached memo to Matt Lamb  
23 dated March 9, 2001, and all other documents  
24 prepared by the City.

25 MR. WEISS: The City would just go ahead

1 and have those two sentences stricken. We can  
2 just strike those two sentences.

3 HEARING OFFICER SHEAN: You want those  
4 out?

5 MR. WEISS: Yes.

6 HEARING OFFICER SHEAN: Okay. So that  
7 the conditions that are to be incorporated are 1  
8 through 6 on page 1, 2 through 5 on page 2, and 1  
9 through 8 on the third page, is that correct?

10 MR. WEISS: Yes.

11 HEARING OFFICER SHEAN: All right, is  
12 there any other matter to be presented to the  
13 Committee by the staff? Staff, anything more you  
14 want to present to us?

15 MR. KRAMER: Just to make sure that --  
16 okay, South Coast is back if you want to ask more  
17 about toxics.

18 HEARING OFFICER SHEAN: No.

19 MR. KRAMER: Okay, I just wanted to make  
20 sure that we had moved the three separately  
21 stapled staff errata sheets into the record. I'm  
22 not sure we ever did this morning. We've been  
23 talking about them all day.

24 HEARING OFFICER SHEAN: All right, we  
25 have the submittal this morning under cover letter

1 of March 16th. There are essentially three  
2 stapled packets. They are revisions to the  
3 conditions that arose from the workshops  
4 yesterday. They are in essentially rough draft  
5 form.

6 And I think what the staff has indicated  
7 to us they wanted to do was to present these today  
8 so that they could be useful in today's  
9 evidentiary hearing. And they have been. And  
10 that they will reduce the what amount to changes  
11 to the staff's assessment to a cleaner version  
12 which will be distributed to the parties probably  
13 by the close of business on Wednesday, is that  
14 right, Mr. Caswell?

15 MR. CASWELL: Jack Caswell, Project  
16 Manager for the CEC. Yes, that's correct. We'll  
17 submit a final version of this package and a much  
18 better arrangement and easier to follow.

19 HEARING OFFICER SHEAN: Well, this was  
20 very useful as it was, so we're quite thankful to  
21 you, since I know what you were doing last night,  
22 that you did do it.

23 MR. KRAMER: And one final document  
24 would be the letter we just received from the  
25 Coastal Commission.

1 HEARING OFFICER SHEAN: All right, this  
2 ordinarily would go in our administrative record.  
3 We're going to have to deal with this. I don't  
4 know if people want to comment on this before we  
5 leave here today. We'll give you an opportunity  
6 to do that. But just for an evidentiary  
7 presentation, if that concludes from the staff,  
8 we'll ask the City if you have anything further  
9 you'd like to present?

10 MR. WEISS: No, Your Honor.

11 HEARING OFFICER SHEAN: All right, thank  
12 you. How about from CURE?

13 MR. WOLFE: No, thank you.

14 HEARING OFFICER SHEAN: And the  
15 applicant, AES?

16 MR. ROTHMAN: No, Your Honor, assuming  
17 that there's some sort of wrap-up or closing that  
18 each party is going to provide or not.

19 HEARING OFFICER SHEAN: Just so long as  
20 we can get the, you know, I swear type stuff done,  
21 and I think we're done.

22 Do we have members of the public who are  
23 here and who would like to make a statement? I  
24 have a blue card here from Mr. Ely. Is that you?  
25 Sure, why don't you come on down.

1                   What we'll do is hear from the public.  
2                   And then get any closing comments that the parties  
3                   wish to make. And then we're out of here.

4                   Yes, sir, Mr. Ely.

5                   MR. ELY: My name's Jon Ely, and I'm  
6                   Executive Board Member of the Southeast Huntington  
7                   Beach Neighborhood Association.

8                   Unfortunately I wasn't able to  
9                   participate in comments yesterday. But I'm here  
10                  today.

11                  Basically I know that you all know that  
12                  we oppose the fast-tracking of the project. We  
13                  just think there's too many potential impacts at  
14                  stake here for the City and our neighborhood to  
15                  treat it like this.

16                  Yes, we've lived next to this thing for  
17                  a long time, but we think it needs to be looked at  
18                  in great detail, especially in light of things  
19                  that are happening around the City, and its  
20                  impacts on our potential tourist trade, our  
21                  beaches, whatever else.

22                  The water quality issue and the  
23                  interaction with the OCSD outfall is a major  
24                  concern. I also think that it could have a domino  
25                  effect on the way that OCSD handles their EPA

1 permits. It's already causing the EPA to look at  
2 that, and they may have to go to full secondary  
3 treatment, which will cause air pollution of an  
4 odor kind in my neighborhood, actually. So this  
5 has a big domino effect on other things in the  
6 neighborhood, in my neighborhood.

7           It's kind of interesting that, you know,  
8 if you took the AES' potential discharge into the  
9 ocean, which I've read was in terms of 504 million  
10 gallons per day, that would fill six Anaheim  
11 stadiums to the brim, which ironically is called  
12 Edison Field, that's great.

13           But, you know, if you look at that, I  
14 mean you put six Anaheim stadiums filled to the  
15 brim out into the ocean off Newland and you wonder  
16 why, it doesn't take much to wonder why you could  
17 have some interaction with some bacteria out  
18 there. Even if the temperature was just raised a  
19 couple degrees. That's a hell of a lot of water.

20           Also, you know, you guys may be -- I  
21 know you guys are great that you come down here  
22 into our City and meet like this over a couple-day  
23 period. The risk there is that, you know,  
24 sometimes you don't see just how big that plume  
25 coming out of those stacks is.

1                   On windy days and wherever the barometer  
2           is or whatever, you know, that you can see the  
3           plume, it is huge sometimes. And if you get some  
4           wind blowing over our neighborhood it's  
5           horizontal. And you know that it's coming into  
6           the house.

7                   So you could raise those stacks, I mean,  
8           you know, raise them 1000 feet, I don't know, then  
9           it would be really ugly, but there is a plume  
10          that's huge coming out of those stacks. And you  
11          may not see it because it's a sunny bright day.  
12          But there is a bunch of stuff coming out of there.  
13          It's just really unpleasant to think about.

14                   Regarding the unit 5 peaker, I feel that  
15          at the very least that needs to go. I mean you  
16          talk about turning the 3 and 4 on, okay, fine.  
17          Well, not fine, but okay, so you do it.

18                   That 5, that's another thing. When you  
19          come down here a couple days out of the year I'm  
20          sure that thing's not running now with you all  
21          sitting here. But, you know, you go down to Eader  
22          School where my son goes to school, and my  
23          daughter will go next year, and you stand out  
24          there on the soccer field at 3:00 or 4:00 in the  
25          afternoon on a pretty warm day, and you look to

1 the west, because that's where the sun sets, and  
2 you see -- and that thing's running, it looks like  
3 a nuclear winter going on over there.

4 I mean it's like, it's brown, it's hazy,  
5 there's that whine in the air, you know, from the  
6 noise, but even worse is the fact that that yellow  
7 is coming over our neighborhood. It's a nasty  
8 thing. And this needs to be looked at.

9 I've heard the AQMD guys up here talk  
10 about how it complies with regulations and  
11 whatever. We've called AQMD to come out for that.  
12 And they come out and they do, honest to god, I  
13 couldn't believe when I heard it, I mean there's  
14 an opaque test that they do.

15 And they go out there with a film and  
16 they hold it up. And if it's over 20 percent, it  
17 fails. Well, they don't do it with, you know,  
18 through both stacks or anything. They do it  
19 through each side of the stack. And you know, it  
20 comes up to about 13 or 14 and it passes.

21 Well, sorry, you go on Beach Boulevard,  
22 you know, PCH, and look toward our neighborhood  
23 direction and you can see the opacity. It's a big  
24 yellow dome over our neighborhood. And it's not  
25 coming out of 247 feet tall, you know, out of a

1 stack. It's coming out at ground level. And that  
2 sucker comes right over our schools, comes right  
3 into our houses. And that's got to go.

4 And I heard about some source testing  
5 ideas here. Yeah, test them, but don't be  
6 sticking a film up. I mean that's ridiculous. I  
7 don't know what kind of technology source testing  
8 that is, but it may pass California standards, but  
9 that's, you know, that's ridiculous.

10 I just hope that the City looks at this  
11 very close, too. I know there's a couple City  
12 folks in the audience here. And I hope that, you  
13 know, if this thing goes forward on a fast-track  
14 basis, that we seriously consider, you know, suing  
15 under CEQA or whatever we can do, because this  
16 think really needs to be studied. There's too  
17 much at stake for the City and my neighborhood.

18 And I'll close with that. Thank you  
19 very much.

20 HEARING OFFICER SHEAN: Thank you, Mr.  
21 Ely.

22 COMMISSIONER PERNELL: Thank you.

23 HEARING OFFICER SHEAN: Any other member  
24 of the public? Okay. Let's see, we have Mr.  
25 Jackson, is he here?

1                   MR. JACKSON: Good afternoon, ladies and  
2 gentlemen. My name is Eric Jackson, I'm a local  
3 resident of Orange County. I've been a local  
4 resident of Orange County since 1976.

5                   My concern is for a better life for my  
6 family as well as myself. I do not stand alone  
7 for the need of this project to move ahead. My  
8 request is that the workforce come from the cities  
9 and the counties of southern California.

10                   There's no need to bring craftsmen,  
11 other people from other states and communities  
12 when there's local residents of Orange County such  
13 as Buena Park, Anaheim, Garden Grove and many  
14 other cities and communities in Orange County that  
15 are unemployed, that are capable of doing the  
16 craftsmanship of this plant.

17                   I think it would be better said if these  
18 people were supplied from L.A. and Orange County  
19 building trades. We have numerous thousands of  
20 qualified craftsmen that have gone through  
21 California Standards Apprenticeship Program, and  
22 electricians, boilermakers, pipefitters, welders,  
23 and so on.

24                   We are the citizens of southern  
25 California. We pay taxes here. We try to educate

1 our children. We're raising our families. If we  
2 continue to let outside people from other states  
3 take local jobs from our families, from the men of  
4 our families that cannot find employment for our  
5 families, we will not be able to educate our  
6 children; we will not be able to pay our  
7 mortgages; we will not be able to buy the things  
8 that we need.

9           When a man works he has a say in his  
10 house. When a man doesn't work he has little say  
11 in his house. He can't raise his family. His  
12 children are misappropriated. You go on welfare.  
13 And it leads to crime.

14           If a man can work at a craft that he's  
15 been trained in, such as myself and many others,  
16 in the communities of Orange County and L.A.  
17 County, that deserves these jobs for a fair wage.  
18 Not substandard wages.

19           Presently I have friends working down  
20 there. And if they do not live at a 75-mile  
21 radius from the plant, they don't get the per  
22 diem. \$22 an hour is an adequate wage for some  
23 people. But if you're driving 50 or more miles,  
24 you get \$75 a day working ten hours a day, that's  
25 \$7.50. We have qualified craftsmen in this area

1 and I think the qualified craftsmen should be paid  
2 the union scale, or the prevailing wage.

3 I'd like to close in saying AES shall  
4 employ journeymen level workforce in which at  
5 least 50 percent of the workers in each  
6 apprenticeable occupation employed by that  
7 contractor at the stationary source are graduates  
8 of an apprenticeship program that occupation  
9 approved by the State of California's  
10 Apprenticeship Council.

11 Thank you.

12 HEARING OFFICER SHEAN: Thank you, Mr.  
13 Jackson.

14 COMMISSIONER PERNELL: Thank you.

15 HEARING OFFICER SHEAN: We have Arlene  
16 Coggi, is it?

17 MS. COGGI: Ladies and gentlemen, my  
18 name is Arlene Coggi, and I'm not qualified to  
19 speak on the technical issues presented here.

20 I'm a long-time citizen of Huntington  
21 Beach and I have some very serious health problems  
22 involving the necessity of having access to an air  
23 conditioner and heating at all times, even if I  
24 don't use them.

25 So this is concerning me from that

1 angle. And I have a very humble, simple  
2 suggestion for the problem of the power crisis.  
3 It's extremely simple, but not easy to effect.

4 And that is that all unnecessary  
5 businesses and industries be closed one day a  
6 week. And that would give us one-seventh more  
7 wiggle room to, while we find alternatives to this  
8 problem.

9 And in my view and possibly some others,  
10 Sunday would be a good day. And I humbly present  
11 that to all of you as a suggestion.

12 Because if we had something like an  
13 earthquake, let's say like that happened in  
14 Northridge or something, a lot of businesses would  
15 be closed anyway.

16 And also I was in a restaurant yesterday  
17 and it was a sports type bar. And I noticed that  
18 there were a lot of -- there were like 14  
19 television sets on all the time, even though there  
20 weren't many people there. And there's a lot of  
21 wastage of energy, and tv sets use up a lot of  
22 wattage, especially the large ones.

23 So, I mean if we just kind of look  
24 around, we'd probably find ways of conserving  
25 energy until we could find out what we could do

1 about this problem.

2 And that's all I have to say right now.

3 HEARING OFFICER SHEAN: Thank you very  
4 much.

5 COMMISSIONER PERNELL: Thank you.

6 HEARING OFFICER SHEAN: Is there any  
7 other member of the public who would like to  
8 speak? We have some old cards, and I'm not sure  
9 if there are more citizens who are here and who  
10 would like to address us.

11 So, if you would like to, please do not  
12 be bashful, stand up and come down to the mike.

13 All right, at this point why don't we  
14 find out if there are any more remarks from each  
15 of the parties, and we'll go around from staff  
16 through the City and CURE and then the applicant.  
17 And then we'll, I believe, wrap this up.

18 And we will have some -- well, actually  
19 why don't we do that now. Ms. Krapceovich has, I  
20 believe, both some letters, petitions and  
21 miscellany for us.

22 MS. KRAPCEVICH: Right. For the record  
23 my name is Marija Krapceovich. I'm the Associate  
24 Public Adviser at the Energy Commission. And I  
25 would like to share with you three letters,

1 they're very short, that were from constituents  
2 who live here in Huntington Beach that were not  
3 able to attend. As well as I have five letters of  
4 support in favor of the project here in Huntington  
5 Beach.

6           The first one I'll read, and obviously  
7 my name is not Eileen Murphy. "My name is Eileen  
8 Murphy and I live in Huntington Beach. I  
9 feel this whole project is like putting a  
10 bandaid on a wound that needs stitches. In  
11 the first place there is a study that seems  
12 to say that heated water from generators 1  
13 and 2 is bringing the bacteria from the  
14 sanitation department's outfall back to  
15 contaminate our beaches. Now this project is  
16 going to increase the amount of heated water  
17 a hundred percent."

18 "The air quality testimony of Walters,  
19 Behmanesh and Golden says the federal Clean  
20 Air Act requires any new major stationary  
21 sources of air pollution has to have a  
22 construction permit. This is known as the  
23 new source review. Does this project have  
24 one?"

25           And she refers to page 17 in the air

1 quality testimony presented by Walters, Behmanesh  
2 and Golden.

3 "The California State Health and Safety Code  
4 requires that no person shall discharge from  
5 any source whatsoever such quantities of air  
6 contaminants or other material which cause  
7 injury, detriment, nuisance or annoyance to  
8 any considerate number of persons or to the  
9 public or which endanger the comfort, repose,  
10 health or safety of any persons or property."

11 And she refers to page 18.

12 "Air quality figure 2 shows that although  
13 strides have been taken, the County is still  
14 in violation of the state and federal ozone  
15 standards."

16 She refers to page 30.

17 "There are no emission controls on 1, 2 and  
18 5. This project will run for 24 hours a day,  
19 8760 hours a year, instead of the 2500 hours  
20 a year, and if they run over 2500 hours they  
21 have to provide documentation that they hold  
22 reclaimed trading credits. Who supervises  
23 this?"

24 Reference to page 39.

25 "If granted, this certification will be

1           limited to five years.  However, the staff  
2           has concluded that the operation of unit  
3           number 5 can cause a violation of section  
4           41700.  Local people have told about a  
5           brownish cloud of emissions comes from number  
6           5, therefore it endangers the comfort,  
7           repose, and health of persons and public."

8                       Page 55.

9           "Huntington Beach, who is taking all the  
10          risks, with our air, water and noise quality  
11          being harmed is not guaranteed any of the  
12          electricity generated by this project.  I  
13          feel there's something dreadfully wrong with  
14          this project.  Thank you for allowing me to  
15          speak."

16                      And it's signed by Eileen Murphy.

17                      The next comment comes from Ed Kiernens.

18          And this was docketed.

19                      HEARING OFFICER SHEAN:  Okay, if it's  
20          docketed, why don't you omit reading it.

21                      MS. KRAPCEVICH:  Okay, then I'll go to  
22          the third one.  This one comes from Poseidon

23          Resources:

24                      "Dear Sirs:  We have reviewed the staff  
25          assessment for the AES Huntington Beach

1           Generating Station Retool Project. As the  
2           developer of the proposed seawater  
3           desalination project to be located on site at  
4           the Huntington Beach AES Generating Station,  
5           we offer the following comments:"

6           "One. Project Setting. The proposed  
7           seawater desalination project will be located  
8           on site at the AES Huntington Beach  
9           Generating Station. The seawater  
10          desalination project will connect to the AES  
11          cooling water system return line on the back  
12          side of the condensers. No other AES  
13          facilities will be impacted. The  
14          desalination project will not increase or  
15          decrease the required seawater inflow. The  
16          desalination project will decrease the total  
17          cooling water discharge by approximately 50  
18          million gallons per day."

19          "Number two: Regulatory review process.  
20          Poseidon Resources concurs with the staff  
21          assessment that detailed information  
22          regarding the seawater desalination project  
23          is unknown at this time. Further, the staff  
24          assessment states several times that the  
25          impacts, and this is including cumulative

1 impacts in certain areas, from the seawater  
2 desalination project will be appropriately  
3 evaluated through the seawater desalination,  
4 CEQA and regulatory permitting processes. We  
5 concur and endorse this approach."

6 "We would urge the Commission to concur with  
7 the findings in the staff assessment as they  
8 relate to the Poseidon Resources seawater  
9 desalination project. Currently there is  
10 inadequate information to make findings with  
11 regard to the cumulative impacts of the  
12 seawater desalination project on the  
13 Huntington Beach Generating Station Retool  
14 project. We will be initiating the CEQA  
15 process on the seawater desalination project  
16 this month. The CEQA process will take  
17 approximately nine to 12 months."

18 "At the conclusion of the CEQA process there  
19 will be adequate information for the City of  
20 Huntington Beach, the Santa Ana Regional  
21 Water Quality Control Board, and other  
22 pertinent regulatory agencies and interested  
23 parties to assess the impacts of the seawater  
24 desalination project, both singular and  
25 cumulative with the AES Huntington Beach

1           Generating Plants, and impose appropriate  
2           mitigation measures. Sincerely. Virginia  
3           Greblien, Senior Vice President, Project  
4           Development."

5           And lastly, Michael Stockstill, who is  
6           the Director of Public Affairs from PMSI, handed  
7           me 12 copies of five letters of support, who are  
8           in favor of this project.

9           The first one comes from Assemblyperson  
10          Lou Correa, that's Assembly Member from the 69th  
11          District.

12          The next one is from the Orange County  
13          Business Council, and it's signed by Julie  
14          Puentes, Executive Vice President, Public Affairs.

15          The third one is a resolution from the  
16          Newport Harbor Area Chamber of Commerce.

17          The fourth one is the Building Industry  
18          Association of Southern California, the Orange  
19          County Chapter. And it is signed by Christine  
20          Diemer-Iger, who is the Chief Executive Officer.

21          And the last one is from California  
22          Small Business Association, signed by Betty Jo  
23          Toccoli, President.

24          And they are all in favor of the  
25          project. Thank you.

1 HEARING OFFICER SHEAN: Thank you.

2 COMMISSIONER PERNELL: Thank you.

3 HEARING OFFICER SHEAN: All right, why  
4 don't we give each party about five minutes to say  
5 anything they'd like to say, or let me put it this  
6 way, up to five minutes. And then we'll conclude  
7 our evidentiary hearing.

8 Why don't we begin with the staff, if  
9 you have anything.

10 MR. KRAMER: The staff will be filing a  
11 brief on or before the Wednesday of next week  
12 deadline, and we'll have our say there.

13 HEARING OFFICER SHEAN: All right. City  
14 of Huntington Beach.

15 MR. PAK: Your Honor, we'll be filing  
16 our brief on Wednesday, as well. But just in  
17 closing, on behalf of the City of Huntington  
18 Beach, we did want to thank the Commission and the  
19 Committee for holding these hearings here in  
20 Huntington Beach.

21 HEARING OFFICER SHEAN: CURE.

22 MR. WOLFE: Yes, we would just echo that  
23 expression of appreciate for both the Committee  
24 and the staff. Under the circumstances it's  
25 amazing how much we did actually accomplish.

1                   We would simply once again reiterate  
2                   that these circumstances are indeed exceptional,  
3                   and warrant, more than any other proceeding that  
4                   we've been aware of in the last few years,  
5                   adhering to the principle that any reasonable  
6                   doubt be resolved in favor of more, not less,  
7                   mitigation.

8                   Thank you.

9                   HEARING OFFICER SHEAN: Thank you. And  
10                  AES.

11                  MR. ROTHMAN: Like everybody else, I'm  
12                  sure we'll be submitting a brief on Wednesday, but  
13                  we did want to conclude with a few remarks, mostly  
14                  from Mark Woodruff.

15                  I would preface those remarks by also  
16                  complimenting the staff and the CEC. We've been  
17                  working, I think, very hard and I think all of the  
18                  parties ought to be complimented on the focus and  
19                  attention to detail and the amount of time that's  
20                  been spent to make this process what it was. And  
21                  in our minds, address all of the substantive  
22                  issues.

23                  I would mention one other thing, and  
24                  that is that although we are supposed to carry the  
25                  burden of proof here, to the extent that there are

1 a number of proposed conditions, certainly the  
2 proposed conditions that are justified, or have  
3 been tried to be justified by the accelerated  
4 process here, we would suggest to you that the  
5 proper burden of proof not be placed on AES. But  
6 that the proper burden of proof, for those  
7 conditions, is more properly placed on the party  
8 who is proposing those conditions.

9 With that, I would turn this over to  
10 Mark for just a short closing.

11 HEARING OFFICER SHEAN: Mr. Woodruff.

12 MR. WOODRUFF: Thank you. And given  
13 that bipartisanship seems to be the spirit of the  
14 day in Washington as well as California, I'd like  
15 to add my thanks to the members of the Committee,  
16 as well as the staff, as well as the intervenors.

17 I think this has been an extraordinary  
18 effort, and as well as everyone on the AES team in  
19 doing a tremendous amount of work. And I think  
20 one thing we can all stipulate to is everyone's  
21 good faith in this matter, that everyone is doing  
22 their best to try to meet our needs as citizens of  
23 California, and residents, trying to do the best  
24 for the state.

25 I'd like to make a couple points. One

1 is that we at AES believe that this is an  
2 exceptional project. Not only in terms of its  
3 uniqueness, and its ability to generate  
4 electricity quickly, but that the potential  
5 environmental impacts that do exist are  
6 exceptionally small. Units 3 and 4 have been a  
7 part of the landscape and resource mix for a long  
8 time in California. And we feel that we're making  
9 significant investments, or prepared to make  
10 significant investments to make that much more  
11 reliable than it was, and to reduce air emission  
12 to a level that's absolutely competitive.

13 I'll note in the staff's chart it showed  
14 that the emissions per megawatt hour is  
15 competition with brand new combined cycle  
16 technology and so there is nothing to apologize  
17 for whatsoever in terms of what we will end up  
18 with at the end of the day.

19 The proposed project's impacts of this  
20 will be exceptionally low. And what level impacts  
21 there have been, we believe mitigated to a level  
22 of insignificance. And we have accepted  
23 conditions that we think are proportionate to the  
24 level of significance that are there.

25 Staff and a number of the parties have,

1 as you have heard, asked for conditions -- because  
2 of the process that is being followed, asked for  
3 conditions that in our view are significantly  
4 disproportionately in excess of the level of  
5 significance of the small projects that are --  
6 small impacts that are being placed or potential  
7 to be there.

8           And we think that this places a  
9 significant burden, and in some cases, places a  
10 significant uncertainty in the investment  
11 environment with this.

12           Although we think this project is  
13 exceptional and low impact, we do not -- we want  
14 the staff, the Committee and everyone to take all  
15 the time they deem necessary to make appropriate  
16 decisions, given your responsibilities for the  
17 electricity environment in California. We do not  
18 want anyone to rush to judgment.

19           We believe, as the applicant, there is  
20 ample evidence in the record that the conditions  
21 that we have stipulated to will mitigate it to  
22 insignificance. But, if someone feels they need  
23 more time to do so, they should do so. We would  
24 far prefer to spend time, get it on the record,  
25 get clarity of any issues that can -- where there

1 are reasonable disagreement in your judgment, than  
2 to have either open-ended conditions or conditions  
3 that, by several orders of magnitude over-mitigate  
4 because of any levels of uncertainty and  
5 dramatically add to costs. Or potentially render  
6 the project inviable.

7 We'd prefer, let's take the time and get  
8 it done in your judgment. That's the balance that  
9 you have to strike. We, in turn, must strike a  
10 balance between whether the project can be done  
11 and is viable. And some of the conditions, as  
12 proposed, render that viability questionable.

13 Lastly, I would conclude that -- and I'd  
14 respectfully add that the Commission should  
15 consider, as a matter, there are many other  
16 projects. We own a number of other facilities in  
17 southern California. And there are others that  
18 are similarly situated, that are in a position to  
19 be able to repower or retool the facilities.

20 And people are watching how, this is the  
21 first of several that are coming through. And  
22 it's of a concern to us that plants, the existing  
23 plants that are being operated lawfully and in  
24 consistent with all the conditions, when one comes  
25 in to repower or retool a part of the facility

1 that the process be used to bootstrap into other  
2 aspects of the facility, and to regulate or reduce  
3 impacts in many cases, you know, many orders of  
4 magnitude beyond the level of the significance  
5 that we're adding in the given project.

6 And, you know, actions like this can  
7 have a chilling effect on applicants' desire to  
8 want to come in and enter into the process if, you  
9 know, there are other things that may be perceived  
10 as mitigations.

11 So, we're fully prepared to mitigate all  
12 impacts of this, but we think that those impacts  
13 should be proportionate to -- the mitigation  
14 should be in proportion to the impacts that are  
15 there.

16 You know, we're proud of this project.  
17 We think it can meet a significant public need.  
18 And we would encourage you to take whatever time  
19 you deem is in the public interest to get  
20 comfortable with that analysis.

21 And we thank you for your time.

22 HEARING OFFICER SHEAN: Thank you.

23 COMMISSIONER PERNELL: Thank you.

24 HEARING OFFICER SHEAN: All right. I  
25 think what we will do is take the matter under

1 submission. And our next challenge, as the  
2 Committee, is to come out with a Presiding  
3 Member's Proposed Decision. We are going to  
4 attempt to do that not only with dispatch, but  
5 with deliberation of all of the issues and the  
6 positions that have come before us today, and that  
7 we are aware of as a result of your efforts and by  
8 virtue of the briefs that will be forthcoming.

9 I guess what I would like to say is when  
10 I first came down here on February 21st as a fill-  
11 in Hearing Officer, I really had no idea what I  
12 was getting into. But I am, I think,  
13 exceptionally pleased with where we've gotten to  
14 in a relatively brief amount of time.

15 I think we, at least at the Commission,  
16 have afforded not only the applicant a fair and  
17 expedited review, and we know that it's been  
18 burdensome on you to some degree to satisfy the  
19 staff's requirements for data and information.

20 And you may not have had any greater  
21 expectation that you were in a 60-day process than  
22 any of the rest of us. I think the staff has done  
23 an outstanding job with the staff assessment for  
24 this project, which comes on top of a myriad of  
25 other projects which are at the Commission that

1 have stressed our resources absolutely to the  
2 point of inelasticity. Everyone is working lots  
3 of overtime to attempt to address these matters  
4 for the State of California. And I am proud of my  
5 colleagues.

6 I also hope that the City of Huntington  
7 Beach and CURE and the citizens of Huntington  
8 Beach come away from today with some sense that we  
9 have made every reasonable effort to try to  
10 address the concerns of the City and its citizens.

11 And of CURE and others, whose interests  
12 are similar to CURE's. This has not been easy and  
13 I think the format that we used yesterday and  
14 today have done this as well as it could be done  
15 under the circumstances.

16 I'd like to also thank the members of  
17 the public and the City for providing us with a  
18 medium to get not only the message of our process  
19 and the intensity with which we are trying to  
20 deliberate this matter out to the public, but also  
21 provide a means by which the public could  
22 identify, and if they chose to, and I think it has  
23 happened, come in here and make your comments and  
24 concerns known.

25 I'd also like to thank my Commissioners,

1 who have had to adjust their schedules to  
2 accommodate this particular proceeding. And to  
3 have been here today.

4 And that essentially concludes my  
5 remarks. We will try to get this out to the  
6 parties as quickly as possible.

7 Okay, thank you very much.

8 COMMISSIONER PERNELL: Let me just,  
9 before we do that, let me just thank the City of  
10 Huntington Beach for their hospitality, for  
11 working with the staff and certainly the  
12 applicant, all the intervenors, and certainly  
13 South Coast. We have worked together before, and  
14 it's always a pleasure.

15 So, with that, I would just like to  
16 thank -- last time I was here we had a lot of  
17 public comment, and I, in my ending remarks, said  
18 that the AES should be a good neighbor. And  
19 sounds like that's happening. I mean we have,  
20 you've worked through the issues; we've got a lot  
21 accomplished, and I want to thank you for that.

22 And I just think, someone mentioned  
23 that, you know, this is kind of a bipartisan  
24 support, but you know, this is not -- this is a  
25 California challenge that we all need to step up

1 to, and we're all working hard to meet that,  
2 including the applicant and including the  
3 communities that these facilities are going in.  
4 And not just Huntington Beach, but up and down  
5 California.

6 And it takes all of us to do that. And  
7 so I just want to thank everyone that was involved  
8 in this, and especially staff, we got a lot of  
9 professionals working for us. And it makes the  
10 Commissioners look good when they do the work.

11 So, thank you.

12 HEARING OFFICER SHEAN: Yes, and I guess  
13 since my eyes are getting tired and it's just a  
14 matter of not being able to see up into the  
15 gallery to the Air District, I did not mean to  
16 leave you out.

17 Because I have participated in multiple  
18 cases with you ongoing, and certainly the efforts  
19 of the District have been outstanding, given the  
20 kind of workload we've presented you with, and the  
21 time pressures.

22 So, I second the remarks of the  
23 Commissioner on that.

24 Thank you all very much. We will  
25 perhaps see you again in a time we're not sure of.

1           And we are adjourned.

2                           (Whereupon, at 5:47 p.m., the hearing  
3                           was adjourned.)

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## CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of March, 2001.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345