

CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION
COMMITTEE HEARING
ON PRESIDING MEMBER'S PROPOSED DECISION

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

HUNTINGTON BEACH CITY HALL
2000 MAIN STREET
HUNTINGTON BEACH, CALIFORNIA

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COMMITTEE MEMBERS PRESENT

Arthur H. Rosenfeld, Commissioner
Presiding Member

Robert Pernell, Associate Member

Ellen Townsend-Smith, Commissioner Advisor

Garret Shean, Hearing Officer

STAFF PRESENT

Jack Caswell, Project Manager

Paul Kramer, Staff Counsel

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Rick Rothman
McCutchen, Doyle, Brown & Enersen, LLP

Ed Blackford, AES, Project Manager

INTERVENOR

Matt Lamb, City of Huntington Beach

Bill Workman, City of Huntington Beach

Ralph Bauer, City of Huntington Beach

ALSO PRESENT

Mark Wolfe, CURE
Adams, Broadwell, Joseph & Cardozo

William Reid, Utility Workers Union

PUBLIC ADVISER

Roberta Mendonca, Public Adviser

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

2 HEARING OFFICER SHEAN: Good morning,
3 ladies and gentlemen. Garret Shean, the Hearing
4 Officer for the California Energy Commission on
5 the Huntington Beach Generating Station Retool
6 Project.

7 To my left is Commissioner Art
8 Rosenfeld, who is the Presiding Member of the
9 Committee. To my right, Commissioner Robert
10 Pernell, the Associate Member, and to his right
11 Ellie Townsend-Smith, his Advisor.

12 What we'd like to do at this point is
13 have parties introduce themselves, and then we
14 will proceed with this morning's agenda.

15 Why don't we go to the Commission Staff
16 first.

17 MR. KRAMER: I'm Paul Kramer, the Staff
18 Counsel for the Staff in this case.

19 MR. CASWELL: I'm Jack Caswell, Project
20 Manager for the Huntington Beach Retool Project
21 for the CEC.

22 MR. BLACKFORD: Ed Blackford, Project
23 Director for the Retool Project of 3 and 4 at
24 Huntington Beach.

25 MR. ROTHMAN: Rick Rothman, Counsel for

1 AES Huntington Beach.

2 MR. WOLFE: Good morning. Mark Wolfe,
3 Counsel for CURE.

4 MR. REID: William C. Reid, Utility
5 Workers.

6 MR. WORKMAN: Good morning. Bill
7 Workman, Assistant City Administrator here in
8 Huntington Beach, and welcome back to Huntington
9 Beach.

10 HEARING OFFICER SHEAN: Thank you. We
11 always enjoy being here, and your weather is a lot
12 nicer than it has been in Sacramento.

13 Mr. Lamb.

14 MR. LAMB: Yes. Matt Lamb, Application
15 Project Manager, City of Huntington Beach.

16 MR. PAK: Al Pak, Counsel for City of
17 Huntington Beach.

18 PUBLIC ADVISER MENDONCA: And I'm
19 Roberta Mendonca, the Energy Commission's Public
20 Adviser.

21 HEARING OFFICER SHEAN: Well, since Ms.
22 Mendonca has stepped away from the microphone, let
23 me just indicate to you members of the public who
24 are here this morning and would like to comment,
25 we are going to run through comments by the

1 parties and the public on the Presiding Member's
2 Proposed Decision, which was published and
3 disseminated basically -- well, let me get the
4 precise date -- on March 29th.

5 The principal parties to the proceeding
6 have filed written comments. We have them from
7 the City of Huntington Beach, from CURE, from AES,
8 and from the Commission Staff. Many of those
9 comments that are from the Staff are essentially
10 ministerial or diction typo-type errors, and I
11 want to indicate to everyone that we've sort of
12 gone over those, and many of those have already
13 been made. But there are more substantive
14 comments from the other parties.

15 It's hard to tell at this point how long
16 this morning's proceedings will take, but our --
17 our general purpose here will be to run through
18 these, and then we'll come to you, and we have an
19 open mic, if you would just come down and make
20 your comments. There are some small blue cards.
21 If you wish, you can fill those out and we'll take
22 them up here and make sure that we call upon you
23 before we leave this afternoon.

24 So with that, what our agenda proposes
25 to do is to go through the comments on the

1 Presiding Member's Proposed Decision, essentially
2 in the order that they are in the table of
3 contents, and that will mean the initial comments
4 either go as to the adequacy of the Project
5 Description, or the section called California's
6 Electricity Emergency. I think what we'll do is
7 rotate this through the Staff, the City of
8 Huntington Beach, CURE, and the Unions, and then
9 to AES, since that will probably be the least
10 disjointed transcript on the proceeding.

11 So with that, we'll go to the Commission
12 Staff. Do you have any comments on this section?

13 I just want to make sure, now. With
14 respect to the Commission Staff --

15 MR. CASWELL: Mr. Shean, are you making
16 reference to what the Staff --

17 HEARING OFFICER SHEAN: The California's
18 Electricity Emergency, that begins on page 9.
19 And the three conditions associated with that.

20 MR. KRAMER: Just for the record, in
21 addition to the Staff comments that were filed,
22 our Legal Office will be filing and docketing
23 today, and serving electronically, some additional
24 comments. Most, I think most relevant to this was
25 we -- we're requesting that two additional

1 conditions be recommended, along with the duration
2 condition be added to the PMPD. One was a --
3 basically a conflict resolution condition that
4 would -- would say if two conditions conflict, the
5 condition that is more protective of the
6 environment or public safety would be the -- would
7 take precedence.

8 And the other was simply a general
9 condition that said that promises that were made,
10 or descriptions of the way the facility would
11 operate that are in the -- either the Staff
12 analysis or, more importantly, the Application for
13 Certification, those would be also general
14 conditions of the project, and therefore make
15 those enforceable.

16 HEARING OFFICER SHEAN: So promises made
17 in either the Staff Assessment of the AFC will
18 become conditions and enforceable?

19 MR. KRAMER: Right. This was language
20 that was proposed in the -- this Final Staff
21 Analysis, two -- two conditions right after the
22 duration condition, and we wanted to highlight
23 those and ask that those be inserted, more for the
24 matter of making the process run smoothly if
25 certification is granted, and avoiding some

1 uncertainty if -- because this was a relatively
2 speedy process, you know, it's probably more
3 likely than in the normal case that we may
4 discover a condition or two that conflicts with
5 another condition. And we didn't want to leave
6 the resolution completely open. We wanted to have
7 a formula for resolving that.

8 HEARING OFFICER SHEAN: Well, I
9 understand that. I mean, in our haste, we have --
10 we have borrowed from every resource we had, so
11 I'm sure the City of Redlands will be quite
12 surprised to find out they're involved in the
13 proceeding in some way.

14 Let me ask you this. The Staff has,
15 during the interim from the Evidentiary Hearing to
16 today, taken a position, or at least expressed a
17 position with regard to the effect of the
18 interstate commerce clause. And that has occurred
19 other than on the record. Can we get the Staff or
20 the legal office views with respect to that, since
21 the matter is raised in the brief by Mr. Pak, from
22 the City of Huntington Beach?

23 MR. KRAMER: Could we defer that long
24 enough so that I can review Mr. Pak's brief?

25 HEARING OFFICER SHEAN: Sure.

1 Okay. Anything further from the Staff,
2 then, on the section called California's
3 Electricity Emergency?

4 MR. KRAMER: No. There may be one or
5 two minor corrections, but they're not worth
6 reiterating at this point.

7 HEARING OFFICER SHEAN: Okay. And the
8 Staff is currently supporting a five-year
9 certification; is that correct?

10 MR. CASWELL: Yes.

11 HEARING OFFICER SHEAN: Okay.

12 Mr. Pak, or Mr. Workman, whoever wishes
13 to go, or Mr. Lamb.

14 MR. PAK: Thank you, Your Honor. I
15 think I'll start on behalf of the city.

16 Good morning, Commissioners.

17 PRESIDING MEMBER ROSENFELD: Good
18 morning.

19 MR. PARK: The city supports the
20 proposed decision's adoption of a five-year term
21 for the certificate. We believe it's entirely
22 supported by the record. It is also supported by
23 the Commission's siting authorities.

24 First of all, the condition is wholly
25 consistent with the record. The five-year term,

1 in fact, observes the proposal of the Applicant
2 itself. The application describes a five to
3 eight-year operating term and fails to request a
4 certificate coincident with equipment life.

5 The five-year term also provides, as the
6 city's evidence submitted in this case
7 demonstrates, a full and fair opportunity for AES
8 to recapture its investment in this plan, and earn
9 a reasonable return within the five-year period.

10 The five-year term for this certificate
11 provided in the Proposed Decision is also
12 consistent with providing a solution to the
13 current energy emergency, and should be adopted.

14 I think all the parties in this case
15 recognize that the Commission has performed
16 remarkably under the constraints imposed by the
17 schedule observed in this case, but that's not to
18 say that the quality and depth of the review
19 conducted in this matter comports with the
20 Commission's normal standards and practices.
21 There are studies that have yet to be conducted
22 with respect to the environmental impacts this
23 project will have. This is a clear departure from
24 the normal practices of this Commission, and from
25 other commissioners, and, in fact, this departure

1 is the one cited by the Coastal Commission as most
2 troubling.

3 The limitation of the certificate to
4 five years recognizes the deficiencies of the
5 review that has been conducted, but still strikes
6 an appropriate balance between addressing the
7 energy emergency and the requirement that the
8 Commission protect the environment, the public
9 health and safety.

10 In the event that AES, as provided in
11 the Proposed Decision, files for an extension of
12 the certificate, the five-year limitation on the
13 life of the certificate will provide for a process
14 by which the Commission may fully and adequately
15 revisit environmental and public health and safety
16 issues not satisfied by the present record. It
17 also allows for evaluating the adequacy of any
18 mitigations that might have been implemented by
19 AES in the interim.

20 This is really important, in light of
21 the expectations that the energy market five years
22 from now will be significantly different than the
23 market we confront today, in large part due to the
24 efforts of this Commission. Thus, the five-year
25 term will provide for better decisions on the

1 resource, guarantee better protections of the
2 environment and the public health and safety, and
3 support effective energy planning and land use
4 planning. The record, in particular, will be
5 augmented at that time by the Site Master Plan
6 that has been required elsewhere in the Proposed
7 Decision, and has -- as has been recommended by
8 the city.

9 The Commission can find ample precedent
10 for the five-year limitation on the certificate in
11 similar procedures recently adopted for other
12 plants where time limitations as short as three
13 years have been imposed as a matter of statute or
14 by governor's order. It is also consistent with
15 the other permits related to this plant, which
16 terminate within periods of between one to five
17 years. We fully support the Proposed Decision's
18 adoption of a five-year limitation on this
19 certificate, and urge that the full Commission
20 adopt the restriction.

21 I want to turn now briefly to this issue
22 regarding the delivery of power to the State of
23 California. As you know, the city has
24 recommended, as supported now by CURE and the
25 Commission Staff, that the Commission impose

1 conditions assuring that the power generated by
2 this facility be provided for the benefit of the
3 consumers of the State of California. While it
4 may be obvious that any power delivered by this
5 facility to the bus bar will ultimately be
6 physically consumed in California, the Commission
7 should recognize that the contractual arrangements
8 associated with this power will ultimately
9 determine the actual net benefits to the state.
10 This is required under interstate commerce,
11 interstate compacts and agreements, and current
12 transmission operating rules.

13 Adding capacity to the region itself
14 does not pose a solution to California's energy
15 problems. Direct solutions for the energy
16 shortages will only derive from a net increase in
17 the capacity that is actually applied to
18 California's demand requirements. Therefore, a
19 contract, an enforceable contract assuring
20 deliveries to California as a matter of preference
21 should be adopted so as to turn this project into
22 the solution that the record indicates that it can
23 be.

24 In the first instance, as the proposed
25 decision itself points out, the city's position is

1 entirely consistent with the Applicant's own
2 showing. If the conditions proposed by the city
3 are inconsequential, and the Proposed Decision
4 seems to indicate that they are, there will be no
5 harm that accrues from adopting them. But if AES
6 does not, in fact, intend to operate these units
7 so as to provide a solution to the energy
8 emergency, then this condition is vitally
9 important for the protection of the electricity
10 consumers of this state.

11 The city's proposed conditions would
12 reduce the threat that the benefits of this plant
13 will not be lost to net exchanges in broader
14 regional markets or through the withholding of
15 deliveries until local wholesale prices rise to
16 the unconscionably high levels that we foresee for
17 this and next summer. If AES is, in fact, the
18 shining knight that everybody thinks they are,
19 then the city agrees we should open the gates.
20 But if AES is just another pirate, then let's
21 disarm them now. Require them to enter into a
22 contract with the Department of Water Resources,
23 or some other agent of the state.

24 The conditions proposed by the city are
25 consistent with other state procedures providing

1 operating privileges in exchange for enforceable
2 promises to deliver power to either the Department
3 of Water Resources or the California Independent
4 System Operator. These sorts of conditions are
5 consistent with the general requirement that the
6 Commission make findings that the project will
7 serve the public convenience and necessity.

8 We have cited several of those
9 procedures newly instituted by both the
10 legislature and the governor, in the brief that
11 has been filed this morning.

12 The conditions proposed by the city are
13 wholly consistent with the concept of native load
14 preferences that virtually every plant sited by a
15 state agency today, in any state, have carried.
16 Such a preference, providing that the consumers of
17 the state in which a plant is located will receive
18 the first and primary benefits from its operation,
19 represents the rule, rather than the exception.
20 This preference predates the passage of the
21 Federal Power Act, and is still enforceable in
22 each and every of the 50 states.

23 The native load preference which the
24 city recommends be incorporated into the
25 certificate for the issuance is supportable by the

1 state's police powers under which it conducts
2 siting process, and regulates the in-state power
3 industry. Failing to adopt these conditions will
4 leave state's ratepayers exposed to the ravages of
5 a dysfunctional market, contrary to the governor's
6 instructions that this agency, in this case, find
7 solutions and provide some leadership.

8 The city respectfully urges the
9 Commission to exercise the fully extent of its
10 authorities and go beyond the Proposed Decision's
11 hope, and require that this project provide a part
12 of the elusive solutions to California's energy
13 emergency. To do otherwise lowers the bar for
14 merchant plants that may never benefit California
15 consumers, a violation of the Warren-Alquist Act,
16 Section 25525. The commerce clause of the United
17 States Constitution does not states to issue any
18 permits, and it certainly doesn't require the
19 issuance of any permits to merchant plants. No
20 part of the Federal Power Act requires the states
21 to ignore local interests in issuing a permit to
22 operate to any applicant.

23 Therefore, we find, consistent with all
24 of the cases we have found with respect to the
25 siting of plants and native load preferences, that

1 this Commission may adopt the conditions proposed
2 by the city, and we strongly urge you to do so.

3 Thank you.

4 HEARING OFFICER SHEAN: Thank you.

5 MR. WORKMAN: Mr. Chairman, I'd like to
6 just underscore what Mr. Pak had indicated.

7 Foundational to this entire --

8 COMMISSIONER PERNELL: Would you state
9 your name for the record, please.

10 MR. WORKMAN: This is Bill Workman. I'm
11 the Assistant City Administrator for the City of
12 Huntington Beach.

13 Foundational to the city's continued
14 participation and support for this ongoing
15 permitting certification activity has been the
16 five-year permit limitation. Throughout this
17 process a number of rationalizations and
18 compromises and justifications have been made, and
19 we've worked through all those and we've been very
20 pleased, to this point, with the Energy Commission
21 Staff and -- and the Commission itself throughout
22 this process.

23 That foundational support for the five
24 years is very important to the community. This
25 facility is aged and obsolete. Were it not for

1 our energy situation that we're facing we'd be
2 looking at a totally different project proposed
3 for the city.

4 Important to note for -- for this
5 Commission is the city has been an active
6 participant in positively influencing the process
7 where we can. And while the at the same time
8 we've recognized that there's some very aggressive
9 negotiations going on between the Department of
10 Water Resources and AES over contracting for this
11 power, this five-year limit should not be the
12 trump card played on the community and extending
13 it beyond that five years.

14 The energy is needed. The AES
15 Corporation will make a significant amount of
16 money over that five years and be responsive to
17 the energy market here in California. But again,
18 for the City of Huntington Beach to be able to
19 live through this process with this plant for a
20 few more years, that limit of five years has got
21 to be in that certification.

22 Thank you.

23 HEARING OFFICER SHEAN: Thank you.

24 MR. WOLFE: Good morning. Mark Wolfe,
25 for CURE.

1 I think we would second each and every
2 one of the excellent comments you've just heard
3 from the city, and we won't repeat them, in the
4 interest of time, though I would like to second
5 the notion that under the circumstances, and all
6 things considered, this is truly an excellent job
7 in a lot of respects.

8 I think this PMPD is in some respects
9 the culmination of an exceptional degree of hard
10 work and professionalism by the Staff, by the
11 Committee, and, indeed, I think by all of the
12 parties here. And to the extent that it
13 represents a balanced, reasonable, and forward
14 thinking approach to this, we would just extend
15 our -- our applause and commendation to everyone.

16 I particularly was pleased to see what
17 -- what I would describe as a big picture approach
18 to the process. The PMPD does recognize what Mr.
19 Workman just said, that under normal
20 circumstances, I don't think there would be any
21 question that this project could not be licensed.
22 In California, in the year 2001, retooling of a
23 vintage just isn't good enough. Californians
24 demand more, and they deserve more. They deserve
25 modernization, and that is what applicants and

1 other coastal plants up and down the state are
2 bringing before the Commission. And under normal
3 circumstances, I think that's the only direction
4 the licensing of this facility could go in.

5 But we are in a state of crisis, and I
6 think the five-year certification strikes a very
7 even-handed balance of addressing the needs that
8 are exigent in the current crisis, while
9 recognizing that, you know, we're not going to
10 have this plant be the plant for the next 30 to 50
11 years.

12 So we also firmly second the condition
13 that by 2004, AES come forward with a master
14 development plan for the entire facility, and the
15 way it's going to operate in the long run.

16 With that said, our one comment on this
17 section of the PMPD is Condition Emergency-1,
18 which states, to be eligible for expedited
19 regulatory review, AES shall demonstrate that it
20 will be producing electricity 90 days after
21 certification. That's on page 12.

22 Respectfully, that strikes us as overly
23 ambiguous. First of all, it seems to us that
24 expedited regulatory review has already occurred,
25 and any question of eligibility may be moot. We

1 don't -- we don't really understand what the
2 Committee was intending with that clause there.

3 And second, what's the verification, or
4 what's the mechanism by which AES will demonstrate
5 that it will be producing electricity 90 days
6 after certification. There's no verification
7 specified, and I guess our comment is there needs
8 to be some certainty in that regard.

9 In our comments, we'd actually tied that
10 to our proposed condition SOCIO-3, which, as you
11 will recall from the hearings, we had proposed
12 that a condition be imposed that AES' contractors
13 be required to employ a journey level workforce in
14 which at least 50 percent of the workers from
15 apprentice-able occupations were graduates from an
16 apprenticeship program approved by the CAC. We
17 think that would go a long way towards providing
18 the necessary certainty that the project can be
19 safely built and online by July. Which, again, is
20 the entire reason we're all here.

21 But that's -- that's a comment that will
22 go in the Socioeconomic topic, as well. But I
23 would just flag the ambiguity that we see in
24 Condition Emergency-1, and maybe open it up for a
25 dialogue to find out how that can be enforced.

1 Thank you.

2 HEARING OFFICER SHEAN: Thank you.

3 Mr. Reid, do you have anything for us?

4 MR. REID: It seems -- William Reid, for
5 Utility Workers. It seems like everything I came
6 here to say today has been very eloquently stated
7 by the gentlemen on either side of me. So very
8 simply, I'll -- I'll just add that we, too, feel
9 that it's necessary for the Commission to take a
10 position on this issue and impose a clear and
11 binding condition in this regard, in order to
12 ensure that the electricity generated by these
13 units is for the benefit of the people of the
14 State of California.

15 Furthermore, we feel that this is a
16 condition that can be imposed, and must imposed,
17 to ensure the fundamental motivation behind this
18 expedited process is met.

19 Thank you.

20 HEARING OFFICER SHEAN: Thank you, Mr.
21 Reid.

22 MR. BLACKFORD: Good morning. Ed
23 Blackford, for the Applicant.

24 First off, I'd like to -- to really
25 comment on everyone's efforts, all the

1 stakeholders involved. We really appreciate all
2 the effort and work that everyone has put into --
3 to get the process to this point, a process which
4 is pretty unique, by all standards, and we've all
5 been finding our way as we proceed.

6 I appreciate this last opportunity to
7 speak before the Committee, to a number of issues.
8 As you've noted, we've prepared a brief. Our
9 intent all along has been, through this process,
10 not to bypass any regulations and to promote the
11 most environmentally friendly project we have.

12 I think we've been very successful in
13 that, by Staff's own admission. From an air
14 emissions standpoint, this project is the cleanest
15 that's in the queue at this point in time.

16 There's been significant progress
17 amongst the parties. We've gone from a lot of
18 contentious issues down to what I would believe
19 would be a very few, and I think, you know,
20 everyone should be applauded for those efforts.

21 There are, amongst all the conditions, a
22 couple of key critical issues that remain, one of
23 which is pretty much the content of Emergency-2.
24 We have proposed arguments continually about the
25 certification limitation. What would make that

1 even more troubling is also that being further
2 coupled with a defined closure plan. We've
3 promoted arguments on a number of different levels
4 against this limitation of certification, and we
5 would urge the Committee to go back and review
6 those arguments before making any final decision.

7 If, in fact, the condition continues as
8 it presently exists, we will have no other option
9 but to argue the same before the full Committee.
10 Barring any change in this condition as currently
11 written would seriously jeopardize adhering to the
12 current schedule and proposed timetable for
13 bringing this power to the grid. Although not
14 addressed in Emergency-2, but since it has been
15 raised, as everyone well knows we are in serious
16 negotiations with CDWR to come to a definitive
17 contract for this power to remain in California,
18 clearly.

19 The conditions, and particularly
20 Emergency-2, have made those discussions and
21 contract negotiations that much more tedious,
22 because of raising the financial uncertainty of
23 this project in the near term.

24 MR. ROTHMAN: One more comment, as it
25 was raised just recently. We agree that the

1 Emergency Condition Number 1 is a little
2 ambiguous. And we had thought that Emergency
3 Condition Number 1 would be more appropriate as a
4 finding that as AES is eligible for the expedited
5 regulatory review, there should've been a finding,
6 or should be a finding that we made a
7 demonstration that AES has in plan to be producing
8 electricity within 90 days of certification.

9 I don't think anywhere has it been
10 stated that there is an unconditional guarantee
11 that 90 days is the absolute maximum amount of
12 time it would take, and it would be a shame if,
13 for want of a couple of days, based on this type
14 of ambiguous condition, the power would be
15 unavailable.

16 HEARING OFFICER SHEAN: If I may just
17 explore some of what you said here, with respect
18 to if Emergency-2 were not changed, it would make
19 it difficult to stay on schedule. Can you expand
20 for us that rationale, so that as we review this
21 we can understand what -- what that means?

22 MR. BLACKFORD: I made that reference in
23 lieu of, or in addressing the -- the 60 day
24 process and the certification at that time. As we
25 had mentioned in the past, both myself and Mr.

1 Mark Woodruff, that if these conditions remain
2 because of uncertainty, heaping conditions on the
3 project, then let's take time to eliminate some of
4 these conditions by further review. In other
5 words, revert back to a 12 month process.

6 COMMISSIONER PERNELL: Are you
7 suggesting that AES wants to go to the 12 month
8 process?

9 MR. BLACKFORD: I'm suggesting if some
10 of these conditions which in sum total become very
11 overbearing on the project, that if a review under
12 12 month would make those disappear, because of
13 eliminating some uncertainty and concern, then
14 that perhaps is the better way to go.

15 COMMISSIONER PERNELL: And at this time,
16 you don't know whether the conditions will be
17 overbearing?

18 MR. BLACKFORD: Well, we know in fact
19 that they have added a financial burden to the
20 project. And that has, as I alluded to, produced
21 problems in negotiating with the CDWR. The intent
22 was to bring power to the citizens of California
23 at a very reasonable rate, and the sum total of
24 the conditions make that more difficult.

25 COMMISSIONER PERNELL: And I've -- I've

1 heard you say on the record in other hearings,
2 that the intent is to bring the power to
3 California, Californians.

4 MR. BLACKFORD: That's correct.

5 COMMISSIONER PERNELL: So then are you
6 -- I'm a little confused on how we are -- we get
7 assurances that that happen.

8 MR. BLACKFORD: We're not arguing
9 against the negotiations we're currently involved
10 with the CDWR. What we're saying is that the sum
11 total of the conditions are making those
12 negotiations more difficult because of the added
13 financial bearing of the conditions.

14 COMMISSIONER PERNELL: And that's the
15 only objection you have, is the added financial
16 burden? I'm -- I'm assuming you're talking about
17 the up front deposit.

18 MR. ROTHMAN: No. I -- let me see if I
19 can help clarify. This is Rick Rothman, on behalf
20 of AES.

21 We'll divide this into two pieces. We
22 have concerns and objections to the condition --
23 Emergency Condition 2, because it is a limited
24 certification that we think is beyond the
25 appropriate jurisdiction of the Commission. But

1 more importantly, it is beyond what we think,
2 given the basket of conditions that are being
3 presented to us, is something that this project
4 currently can be evaluated upon with sufficient
5 certainty to allow us to go forward on -- on that
6 basis.

7 So what we're saying here is that with
8 respect to Condition Number 2, when you combine
9 that with a condition that includes preconceived
10 notions about closure in a certain timeframe, that
11 may set a different bar for a CEQA type review at
12 some point in the future, that the combination of
13 those two things is beyond what we believe is
14 appropriate for the project. It's beyond what we
15 believe is appropriate for you review, and that it
16 presents us with a condition, or a series of
17 conditions, that create a burden in terms of
18 evaluating our ability to pursue the project on
19 this timeframe.

20 We have -- now, to take the next issue.
21 We have presented the CDWR with a markup of terms
22 and conditions of the contract. That negotiation,
23 though, as Mr. Blackford has stated, is being
24 hampered by the uncertainty associated with this
25 process in terms of the length of time that this

1 facility may be operating, and how to
2 appropriately take that into account in terms of
3 these negotiations.

4 In addition, that process is being
5 hampered by the -- some additional costs that the
6 conditions that were created as part of this
7 process have now lumped into the project itself.
8 I think specifically what we're talking about is
9 costs associated with not -- just the shorter
10 timeframe and Unit 5.

11 COMMISSIONER PERNELL: Well, you know,
12 we're at a little bit of a disadvantage because
13 we're not privy to what type of negotiations is
14 going -- that you are negotiating with. So we're
15 just here dealing with the facts that's before us.
16 But to -- to suggest that, you know, these facts
17 are somehow dependent upon negotiation, I'm not
18 sure that that's the case.

19 MR. ROTHMAN: I'm not saying that
20 they're dependent upon the negotiation. In fact,
21 what we have argued consistently is that this
22 process needs to be separate and apart from those
23 negotiations, and that the -- you know, this
24 Committee's and this Commission's review is of the
25 appropriate siting requirements for the facility.

1 We believe that we've made the demonstrations that
2 this is an environmentally sound and appropriate
3 facility to go forward.

4 You run sort of both a technical and a
5 practical concern, in terms of getting beyond
6 that, and we don't think that it's appropriate for
7 you to be reviewing the financial impact on AES in
8 any way, shape, or form. Ultimately, the
9 technical aspect of this is you can't -- you can't
10 trace where any individual electron goes from AES
11 to the -- so there's no way to impose a condition
12 that says each and every electron stays in the
13 State of California.

14 The practical, and I think --

15 COMMISSIONER PERNELL: Is that what
16 we're saying?

17 MR. ROTHMAN: No.

18 COMMISSIONER PERNELL: Okay. I -- I'm
19 just trying to be on the same page with you. It
20 seems to me that you're saying that we're
21 advocating that, as a condition, that everything
22 stays here. And I don't -- I didn't read that, so
23 -- maybe I missed it.

24 MR. ROTHMAN: I'm sorry. I thought that
25 you were getting to the arguments we just heard,

1 which is that you include a condition that
2 everything stays in the State of California, or
3 that it all inure to the benefit of California.
4 And what we're saying is that that is all going to
5 be part of a separate and distinct negotiation
6 with the State of California that we are currently
7 engaged in, and that that ought to remain separate
8 from this consideration.

9 COMMISSIONER PERNELL: Okay.

10 HEARING OFFICER SHEAN: Well, how would
11 you have us address the uncertainty which this
12 Condition 2 creates in your mind?

13 MR. ROTHMAN: In the ideal world, I
14 think we've argued on a number of occasions that
15 it would be a certification like any other, which
16 doesn't have a -- a condition of an end date, nor
17 does it have a condition of a closure requirement.

18 In a spirit of compromise, we have been
19 exploring, I think, different ways of including a
20 condition that extends the timeframe contemplated
21 by Emergency Number 2, with all the parties, and
22 provides for a -- more of a ministerial review in
23 terms of continuation of that certification,
24 assuming that the facility has met all of the
25 conditions of certification to that date, whatever

1 that date may be.

2 HEARING OFFICER SHEAN: Okay. And in
3 the interest of a public process which, at least
4 for the 25 years that I've been doing this job,
5 I've felt was the guiding light, the north star,
6 if you will. To the extent that we've heard this
7 off the record, it is something in the nature of
8 if -- and I've been doing this long enough to know
9 that everything comes down to money. If you had a
10 satisfactory contract with DWR, it'd been signed
11 and you would be here saying we have a signed
12 contract and everything is hunky-dory. We're now
13 in the position, I guess, where given the time
14 restriction plus -- that's in the Proposed
15 Decision, plus the costs of the mitigation in the
16 Proposed Decision, on the one hand, versus the
17 amount that can be recovered through a DWR
18 contract, or some other sales, that's what we're
19 down to. And that if the contract with DWR
20 doesn't have enough for your purposes in five
21 years, you would like that longer. Or can we just
22 address that -- is that what you were referring to
23 in --

24 MR. ROTHMAN: I'm not sure I agree with
25 the statement --

1 HEARING OFFICER SHEAN: Okay.

2 MR. ROTHMAN: -- that if we had a
3 contract we'd be in here saying everything's
4 hunky-dory. I don't know if there is any way to
5 have a contract with a five-year certainty, like
6 Emergency-2. I'm not sure. It -- I'm not sure.
7 I've not heard anything that has suggested to me
8 that there could be a contract that would allow a
9 five-year timeframe as the only timeframe that
10 Huntington Beach 3 and 4 could be in operation as
11 being the basis for any agreement between the
12 State and AES. I have not heard that. And I
13 don't know that to be the case, so I would not
14 want to say that here or anywhere else.

15 HEARING OFFICER SHEAN: Okay. But
16 something longer than five years could be.

17 MR. ROTHMAN: Yes. I would -- I believe
18 the case to be that if you had something longer
19 than five years, with an appropriate opportunity
20 to continue that certification, that it could
21 provide the basis with sufficient certainty to
22 facilitate, I think, negotiations with California
23 Department of Water Resources. That's my
24 understanding.

25 HEARING OFFICER SHEAN: Okay. Well,

1 part of what the Committee gets to do is to line
2 up the ducks before we go to the full Commission
3 meeting on the 18th. So if I'm understanding you
4 correctly, that sort of is your alternative to
5 Emergency-2, is don't restrict it to five years,
6 but something longer, an unspecified period, would
7 give you the flexibility to continue your
8 negotiations perhaps to a successful conclusion
9 with DWR.

10 MR. ROTHMAN: That's correct.

11 HEARING OFFICER SHEAN: Okay.

12 COMMISSIONER PERNELL: I just have one
13 question on -- on this item, and that is I'm --
14 I'm fairly confident that AES will comply with the
15 conditions of the certificate. You're not arguing
16 against that, are you? I mean, this says that at
17 such time if AES has fully complied with the
18 Conditions of Certification, and so my question
19 is, you're not -- I'm assuming that you're going
20 to comply with the Conditions of Certification.
21 And if that's so, then the Commission may consider
22 an extension.

23 So I'm -- I'm having some difficulty in
24 understanding your argument. If, in fact, you're
25 going to comply with the conditions, and certainly

1 that can be done within five years, then you have
2 the -- if you so desire to continue to do
3 business, you can come back to us, we can consider
4 an extension of the certification. So to me, I
5 think it's -- it shows that there -- that if there
6 is intent by the -- by AES, that certainly that
7 will be realized by the Commission.

8 MR. BLACKFORD: As we've said before, we
9 fully intend to comply with all the conditions
10 that are, you know, other than this Emergency-2.
11 And in so saying, that reinforces the other
12 argument that if, in fact, we comply with all
13 conditions, then Emergency-2, to a large degree,
14 does not become necessary as a catch-all, end-all
15 condition, so to speak.

16 And, as Mr. Rothman stated, if at the
17 end of five years we are truly in compliance with
18 all the other conditions of the permit, then, in
19 fact, an extension of a permit should be much more
20 ministerial, as opposed to getting in the
21 definition, or splitting the definition between
22 may, shall, and will.

23 MR. ROTHMAN: I think what this boils
24 down to is that the condition itself is a bit
25 ambiguous as to what -- what fully complying with

1 the Conditions of Certification are, particularly
2 since we've heard Staff this morning recommend
3 that somehow every single statement in the AFC be
4 somehow incorporated as a Condition of
5 Certification. I was going to address that at
6 some point down the road. We would object to that
7 as being actually more ambiguous and more
8 difficult to parse through, and create greater
9 uncertainty in the process.

10 But also, the language of Condition 2 is
11 -- is an option. It just says it may consider an
12 extension, and it doesn't say upon what basis you
13 would consider it, what the baseline would be for
14 consideration.

15 For CEQA purposes would it be -- the
16 baseline be the continuing operations of 3 and 4,
17 would it be a world where 3 and 4 doesn't exist,
18 things like that, for CEQA purposes, that are
19 ambiguous by the condition, which is why we have
20 raised the concerns.

21 Like I said, one of the things that we
22 would hope is to discuss with the parties and the
23 CEC Staff making that type of review something
24 that is more certain and, to a great extent, more
25 ministerial in nature, as opposed to as open-ended

1 and as uncertain as currently drafted.

2 HEARING OFFICER SHEAN: Okay. And what
3 are the circumstances for trying to do that, I
4 mean, we're here now, do you have any language
5 that you would suggest as an alternative, or --

6 MR. ROTHMAN; I don't have any specific
7 language. I'm sure we could work on language.

8 HEARING OFFICER SHEAN: Well, I mean, I
9 think the Committee is willing to consider taking
10 to the full Commission anything that it, in its
11 judgment, thinks would improve the decision. So
12 if you have something for us that you think you
13 can both live with and that it will improve the
14 decision, I would just urge you to get it to us
15 and we will -- we will do that.

16 Otherwise --

17 PRESIDING MEMBER ROSENFELD: I'd like to
18 say -- this is the time to get it straight.

19 HEARING OFFICER SHEAN: Otherwise, it
20 leaves the constructing of that language to us.
21 Now, we have work two -- on April 4th, two other
22 cases that had considered under the 21-day review
23 for peakers, a term of certification, and I'm not
24 sure whether you're trying to follow on the
25 coattails of those, or exactly what. But if you

1 do have something in mind, by all means, get it to
2 us through the proof list, and we will certainly
3 consider it.

4 Okay. We've pretty much exhausted this
5 topic.

6 Yes, sir. Mr. Workman.

7 MR. WORKMAN: Thank you. It's
8 interesting that we're hearing a lot of this
9 concern with regards to the timing so late in the
10 game. We heard it first, I think, at the last
11 meeting when they had their AES regional vice-
12 president here, and talked about concern about it,
13 and now it's coming up. In business, time is
14 money, and -- and this process has sped along over
15 the 60 days at lightning speed, to allow AES to
16 come to market with their product, their
17 electricity, hopefully in the nick of time, to
18 save southern California, California from
19 additional rolling blackouts.

20 There was discussion that, you know,
21 these conditions have been onerous. In our view,
22 these conditions on this project have been fairly
23 minimal. The economic viability of this project
24 is -- is important to AES, and I think we've
25 submitted information about the economic viability

1 of this project where yes, they will be making
2 significant dollars on this -- on this project.

3 AES' application said that they were
4 looking for a five to eight-year certification,
5 and it was real clear from the outset, and we
6 focused as a community, as a city, on that five --
7 the five-year aspect, plus the master planning,
8 which was -- was critical to this community to
9 know what's going to be going on at that site for
10 the long run.

11 They're already under way on
12 construction. The demo's been going, they're
13 doing all the prep work. It's not like this
14 project isn't going to go forward. So some
15 illusion that suddenly everything's going to stop
16 on that site based on this application and the
17 conditions presented, I think is -- is fallacious.
18 There's a lot of back room lobbying going on in
19 Sacramento with regards to this project. We've
20 been up front and open in all these meetings with
21 regards to the conditions, and the protection of
22 both people and the environment, and will continue
23 to encourage AES and the Commission and the -- and
24 the community to fully participate in this open
25 process.

1 And then lastly, I -- I just hope that
2 we're not going to be held hostage by an energy
3 producer, as -- as my personal view is that we're
4 being held hostage by many of the
5 producer/suppliers in the Western United States
6 through this -- this crisis, through this crisis,
7 the lack of electricity. I know the other members
8 of our team here from Huntington Beach also have
9 some additional comments to make.

10 MR. LAMB: Matt Lamb, City of Huntington
11 Beach.

12 The AES had more than enough opportunity
13 to join our motion when we submitted it to the
14 Commission with regards to changing the schedule,
15 the review schedule. We submitted a formal motion
16 to you, and only at this time now, at this -- this
17 particular date, are they stating that now, oh,
18 gee, this -- this is an opportunity, well, yeah,
19 we want to go back to the 12 month process.

20 It's very important when you go through
21 such an expedited review, there's a set of
22 premises that you start to build on, and I know
23 that Mr. Shean and Jack Caswell, we went through
24 this whole process as we started to negotiate, and
25 obviously in negotiations, we -- we cut a lot of

1 things out that we normally would've been
2 discussing in the 12 month process. Absolutely,
3 we did. That was all with the idea of trying to
4 create some kind of balance, realizing the, you
5 know, electrical emergency we're under, and then
6 trying to create balance on what were the
7 important issues.

8 The five years is empirically an
9 important issue. This -- there's no way this
10 project meets the fuel efficiency requirements
11 that you would normally be requiring, there's no
12 way that this -- this plant is -- is where the
13 State of California wants to be in five years.
14 We've given sufficient evidence to prove that, and
15 they had more than enough opportunity.
16 Commissioner Pernell, you asked them, Mr.
17 Woodruff, to provide his revenues and his basis at
18 the last meeting we had, public workshop. And
19 they basically almost refused to do so.

20 Our -- our revenues show that they have
21 a five-year plan that basically should provide
22 them more than an ample return on their investment
23 on this project.

24 With regards to the requirement of
25 having the power go to California. The idea that

1 this is going to hamper their negotiations with
2 DWR, first about a five-year basis, or that you
3 make a requirement that the energy stay in
4 California, in no way should hamper it.
5 Basically, it gives a guiding principle to both
6 DWR and to AES. We're looking at the governor's
7 own executive orders, and he was talking a lot of
8 his conditions, a lot of the basis of his
9 executive orders is three years. The fact that
10 we've gone five, I think we've gotten clear, from
11 our perspective, we've gotten clear direction from
12 both the legislature and from the governor that
13 certain actions are being taken now with specific
14 timeframes, because you can't know everything.

15 So by putting certain time limits
16 allows, and I think Emergency-1 is very clear, I
17 think it very clearly says that AES -- it's not
18 ambiguous at all. It says, at such time AES can
19 come back to you into your normal process, that
20 process is a matter of public record, they know
21 what they have to go do, go do to go back before
22 you for that extension. You're not saying you're
23 -- withheld that extension, you've not saying that
24 you're going to put any more onerous burdens.

25 But it should go back through the public

1 process, because in five years, the picture may
2 change. We don't know what additional laws and
3 requirements that the state legislature may come
4 up with that may impact this, we don't know what
5 we're going to find out. I mean, the fact that we
6 have all those studies as a condition going
7 forward, after the certificate is issued, is
8 really relevant to us. And the fact that they're
9 kind of saying at this last minute, to me, it's
10 clear that this is a negotiating ploy.

11 The reality is, is that a five-year
12 premise is you have the authority to do it, it's
13 in clear alignment with the public health and
14 safety, and the -- for you to be able to put a
15 condition with regards to the power is also in
16 your authority. The idea that -- it may not be
17 every electron, but the idea that everything is
18 done with a paper contract, there's a basis by
19 which it can be crafted. And I think it gets, you
20 know, we've given you in our various motions what
21 we believe is a basis to make sure the net benefit
22 stays in California, which is what this is all
23 about. The whole premise.

24 We're here today, you're here today, to
25 solve the energy crisis. The city has come to the

1 table to solve the energy crisis, or at least to
2 be in a small way not obstructionist, but rather
3 participants, to make sure that the community is
4 protected on those issues.

5 We hope that you take that into
6 consideration. We believe that at this point
7 Emergency-2 is a very appropriate condition. It
8 doesn't need to be modified, and that the public
9 record is -- is in clear support of it.

10 Thank you.

11 HEARING OFFICER SHEAN: Thanks.

12 Anything further on this?

13 MR. KRAMER: Just a couple of comments.

14 We -- we definitely believe, in response to your
15 earlier question, that the Commission has the
16 authority to limit the duration of a permit. It's
17 not required to issue an unlimited permit. And --
18 but as far as conditioning the permit on the
19 execution of a DWR contract, has been expressed
20 previously by our Chief Counsel, we are concerned
21 that that may violate the commerce clause.

22 And, in fact, your proposed Condition
23 Emergency-2 does not make any such connection, so
24 there's -- there's no problem in that regard.

25 In the brief that we will be filing

1 today, we -- we reiterated similar concerns about
2 Emergency-1, just about the -- some of the
3 uncertainties that it created in our minds, as far
4 as how you're going to determine whether or not
5 they've -- they've met that goal. And also, it
6 does appear to us that the expedited review has
7 already occurred.

8 And finally, I don't know that AES can
9 have it both ways. On the one hand, they are
10 saying that their economic situation is
11 irrelevant, and yet they're using that to argue to
12 you that certain conditions are too burdensome.
13 And that sounds a lot like having your cake and
14 eating it too.

15 And if there -- if there were to be
16 negotiation and some clarification of Emergency-2,
17 we would propose that as a -- as -- from the Staff
18 and from AES, as a recommendation to the full
19 Commission, and we would pledge to get it to you
20 as soon as we can. But we're not ready to say
21 anything further about the modifications today.

22 HEARING OFFICER SHEAN: Okay. Anything
23 more? Quickly.

24 MR. PAK: I just wanted to respond to
25 Mr. Kramer's remarks, with respect to the commerce

1 clause implications of requiring a contract.

2 First of all, the city has proposed the
3 requirement of a contract so that we know what the
4 characteristics of this proposed project are.
5 Either it's a solution, or it's not. If it's a
6 solution to the energy crisis, you've got a
7 contract. If it's not, then you've got some other
8 kind of plan, and you probably should use some
9 other kind of process.

10 But specifically with respect to the
11 conclusions of the General Counsel, I read the
12 statement of the General Counsel from last week,
13 and I called Mr. Chamberlain when I read them and
14 advised him as to the arguments the city would be
15 presenting in this matter. We specifically -- we
16 discussed the notion of native load preferences,
17 and the case on which his opinion was based. And
18 I won't say that at the end of the conversation
19 that he was convinced that the city was correct,
20 but he -- he and I did agree that he was at least,
21 quote, intrigued by the city's reference to other
22 cases which presented a compelling argument,
23 including a case involving the -- this
24 Commission's jurisdiction that was decided by the
25 Supreme Court in 1978.

1 And he, again, allowed that he was
2 intrigued by our arguments, that he would consider
3 them upon the reading of our brief, and we
4 submitted that to him this morning. It's in the
5 essential document that you have today.

6 COMMISSIONER PERNELL: This conversation
7 was centered around the certification limits, or
8 whether or not this Committee can use as a
9 condition for selling to California?

10 MR. PAK: It was the latter. The
11 requirement that this power be delivered to
12 California under a contract with a state agency.

13 HEARING OFFICER SHEAN: Okay. We're
14 going to move on, then. And why don't we just
15 sort of move through these topic by topic. If
16 anyone has a change, or a suggestion, just, I
17 think raise your hand, and that way we'll -- we'll
18 move through these most expeditiously.

19 Our first topic area, then, is Air
20 Quality. Okay. No hands on that one.

21 And Biology?

22 MR. ROTHMAN: Are you saying that you
23 would like us to repeat what we've already
24 submitted in writing on each of these individual
25 topics?

1 HEARING OFFICER SHEAN: One more time,
2 Mr. Rothman.

3 MR. ROTHMAN: We have -- we have some --
4 in our brief, our comments, we've pointed out some
5 specific issues, both errata and some of our
6 comments on individual portions of the Proposed
7 Decision. And I'm wondering if you want us to
8 raise our hand and then repeat what we've already
9 written at each time it comes up, or can we just
10 say that these comments are -- are what they are.

11 HEARING OFFICER SHEAN: I'd actually
12 like us to go through and -- and do the hand-
13 raising thing, because given the -- the time
14 pressures that we're under, it would be just
15 helpful to know that there's a particular problem
16 from any party's point of view. So if you do have
17 something on Air Quality --

18 MR. ROTHMAN: Well, simply on Air
19 Quality, we're -- we have a portion of our brief,
20 and we've made a continuing comment with respect
21 to Unit Number 5.

22 HEARING OFFICER SHEAN: Okay.

23 MR. ROTHMAN: And the fact that you're
24 imposing conditions on a previously permitted unit
25 that is not part of this project, and should not

1 have been considered as part of any cumulative
2 impact. But -- as you've heard before.

3 PRESIDING MEMBER ROSENFELD: You want to
4 tell us which page these are on, so we can -- can
5 you tell us what page these are on so we can
6 follow you?

7 MR. ROTHMAN: It starts on page 9, and
8 goes through to I believe page 13.

9 HEARING OFFICER SHEAN: Okay. This is
10 the Unit 5 argument; correct?

11 MR. ROTHMAN: That's correct.

12 HEARING OFFICER SHEAN: We got it.
13 Anything else in Air Quality?

14 MR. WORKMAN: Mr. Shean, I'd like to
15 introduce Ralph Bauer, from our City Council, who
16 has some comments with regards to Air Quality on
17 behalf of the city.

18 MR. BAUER: First, welcome again to
19 Huntington Beach. You've been down here a lot
20 lately, and we're very appreciative of your visit
21 to us.

22 One of the issues that concerns us, of
23 course, is air pollution, and we understand the
24 Applicant's been in negotiation with the SEAQMD,
25 for pollution credits. We were led to believe

1 that the pollution credits may be -- there may be
2 no upper limit, and even those that can be
3 purchased at some substantial fee, we're concerned
4 that those purchases may well be passed along to
5 the consumer, and we have the rather ironic
6 situation where the consumer is actually
7 subsidizing the purchase of pollution credits and
8 thereby suffering from those.

9 We would urge that we either put some
10 upper limit on that, or that the credits not be
11 allowed to be purchased, but rather bring in
12 technology which deals with air pollution.

13 The irony of it all is that SEAQMD is
14 busy enforcing something in its 1190 series which
15 requires all public agencies under their
16 jurisdiction to deal with smog producing vehicles,
17 low smog vehicles, at the same time Southern
18 California Association of Governments, SCAG, is
19 busy putting together a regional transportation
20 plan which has to meet federal pollution
21 standards, on one hand. On the other hand, we may
22 be undoing all of that by allowing people to
23 purchase credits, and then passing that along to
24 the -- the cost of that to the end user, which we
25 think is highly inappropriate.

1 So I would like to see some method of
2 addressing the limitation or the elimination of
3 purchase of credits at any price, so that we keep
4 the atmosphere as clean as we can in California.

5 Thank you.

6 HEARING OFFICER SHEAN: Thank you very
7 much.

8 Mr. Pak.

9 MR. PAK: Just a couple of quick
10 comments on air. First of all, the city does
11 support the conditions related to the operation of
12 Unit 5. We believe the full Commission should
13 adopt those. We think this is an effective way of
14 limiting the impacts of air -- of emissions on the
15 local community.

16 But we -- we had proposed two additional
17 conditions related to obtaining emission offsets
18 from within Orange County as a first resort, and
19 secondly, to require monitoring for ammonia slip
20 through the use of the injection system. These
21 two conditions were omitted from any discussion in
22 the Proposed Decision, and we would urge that the
23 Commission consider those. By their omission, our
24 concern -- by omission of any consideration or
25 discussion of those two conditions, we're

1 concerned that the full Commission may not be
2 aware that the city had proposed those -- those
3 two conditions, and would respectfully request
4 that the Commission be permitted the opportunity
5 to review those.

6 HEARING OFFICER SHEAN: All right.
7 Anything else?

8 MR. WOLFE: I would just add -- I won't
9 -- I won't repeat what we said in the briefs, but
10 as we said there, the conditions related to Unit
11 5, in our view are not only completely appropriate
12 and legal, but absolutely necessary in order to
13 justify the licensing of the project under the
14 circumstances.

15 There were some additional conditions
16 related to Air Quality that we had proposed, and
17 we would've liked to have seen the Committee adopt
18 some of them. We think there were additional
19 conditions that could've provided additional
20 assurances that the project's air quality impacts
21 could be reduced to less than significant levels.
22 But we understand that time and resource
23 constraints may have made it too difficult for the
24 Committee and for the Staff to afford those
25 proposals more in depth consideration, so we will

1 look forward to re-presenting them next time the
2 project comes up, and we support the Air Quality
3 conditions as they stand.

4 HEARING OFFICER SHEAN: Thank you.

5 Okay. Let's move to Biology, then.

6 MR. CASWELL: Yes. In the Staff's
7 comments document that we've presented to you
8 today, we would like to see the -- on page 42,
9 BIO-4, the section read as we've indicated here,
10 with verification. And that's to put the funding
11 into a third party -- deposit it into a third
12 party controlled, with CEC authorize that the
13 project owner's expenditures for a study in BIO.

14 That's the only one we have.

15 HEARING OFFICER SHEAN: Okay. Anything
16 from any other party?

17 MR. LAMB: Yes. Matt Lamb.

18 You know, we concurred all along that
19 the Biology -- BIO-4, as Staff has indicated, the
20 1.5 million to be put on basically deposit, is an
21 appropriate action, considering that these --
22 these various studies will need to basically, you
23 know, execute very, you know, very quickly, or
24 hopefully very immediately after or during the
25 time which this project will be constructed. By

1 having the pre-funding, it sets -- sets the course
2 in motion and shows clear intent, and it allows
3 for this to be moved under the control of the CEC.

4 We think it's appropriate, and we would
5 like to see the BIO-4, which we saw in the Staff
6 Assessment, carried forward into the Proposed
7 Decision. Thank you.

8 MR. ROTHMAN: And we can address it when
9 we get to Water Quality, but there's a little bit
10 of a timing interplay with BIO-1, and I believe
11 it's Water Quality 1, that we can address at that
12 time. It has to do with the time necessary to do
13 site improvements for the purposes of the
14 stormwater pollution prevention plan.

15 HEARING OFFICER SHEAN: Okay. We'll
16 come to it in Water Quality, then.

17 Anything further?

18 MR. WOLFE: Just -- we second BIO-4, and
19 we would just point out that with the
20 understanding that any unused funds revert to AES.
21 And I also assume, I could be wrong, that the --
22 the funds go into an interest bearing account in
23 the meantime. There's absolutely no harm that AES
24 will suffer by being required to comply with this
25 requirement.

1 The Committee has stated that it doesn't
2 appear necessary, but, again, all we see are
3 benefits in the form of the necessary certainty,
4 and absolutely no harm to the Applicant.

5 HEARING OFFICER SHEAN: All right.

6 Anything on Cultural Resources? I know
7 there were some ministerial changes to that,
8 converting from Word to PDF, we -- we lost some
9 things due to their font. And we'll take care of
10 those that have the verifications that need to be
11 added. Okay. Nothing in Cultural.

12 Then how about Geology?

13 Hazardous Materials? Okay.

14 MR. LAMB: A quick comment on Hazardous
15 Materials. One of the questions that we had
16 proposed, or had early in this process, was that
17 the AES' hazardous materials storage area is not
18 located, at least on their -- on their site plan
19 is indicated on property owned by another party,
20 by Southern California Edison, and it's not
21 contained on property owned by them.

22 That leads some concerns to us that
23 basically there is no agreement on file that says
24 that they have clear rights to that storage
25 facility, or that the storage -- you know, there's

1 no clear understanding in the record that even
2 though the conditions for the proper hazardous
3 waste storage plans are in the record, there is no
4 connection between the location. It means
5 basically this slab, or this site facility is
6 located on Edison's property.

7 Maybe the site plan is incorrect, but we
8 would like it -- if it's -- if it is located on
9 somebody else's property, we would like a
10 condition that the hazardous waste pad or site be
11 located on AES' site, or that prior to
12 certification, that AES submit an agreement
13 between themselves and SCE indicating that they
14 have full rights of ingress and egress, and they
15 have a lease for said storage facility.

16 And that's -- that's all we have on
17 that.

18 MR. ROTHMAN: I guess we've addressed
19 this, I think, on a number of occasions. I
20 believe that there is basically just a
21 misunderstanding of the underlying fundamental
22 facts. I don't think that the hazardous waste
23 storage area is where the city believes it to be.
24 I believe that the fire department has actually
25 bene out and inspected our hazardous waste storage

1 areas, and that it is on our property, and
2 appropriate, and has passed that inspection. So
3 I'm not --

4 HEARING OFFICER SHEAN: Well, can I just
5 ask you to go to -- to page -- it'll be page 6,
6 it's the Project Description Figure 2. And this
7 was derived from the Staff, which I think was
8 derived from your AFC Figure 3.2-1. And what
9 we're showing is a hazardous waste storage area
10 essentially just a wee bit south of Edison Avenue,
11 south and west of Edison Avenue, between the two
12 main storage tanks. Is that -- do you see where
13 it's marked there? Is that just a historical
14 designation? Is that what you were referring to,
15 Mr. Lamb?

16 MR. LAMB: Yes.

17 HEARING OFFICER SHEAN: Okay.

18 MR. LAMB: Yes, I am. That's what's
19 confusing to me. I'm showing a -- a plant layout,
20 and it was never modified to show where AES
21 believes it's at, so I -- I'm stuck with an
22 inconsistency in the record. I just don't
23 understand where it's at.

24 HEARING OFFICER SHEAN: Do you see what
25 we're talking about?

1 MR. ROTHMAN: Yes.

2 HEARING OFFICER SHEAN: Okay.

3 MR. ROTHMAN: It's not there. It's
4 somewhere else.

5 HEARING OFFICER SHEAN: All right. Can
6 you tell us where it is?

7 MR. BLACKFORD: If you notice, on that
8 same site plan --

9 HEARING OFFICER SHEAN: Yes.

10 MR. BLACKFORD: -- it's basically in the
11 area between Units 1 and 2, 3, and 4, just to the
12 left of the storage tank area.

13 HEARING OFFICER SHEAN: Okay. Near
14 where it says 55 gallon yellow drum shelter?

15 MR. BLACKFORD: Correct.

16 MR. LAMB: Then I -- I would just
17 suggest that AES submit a modified plant layout
18 that indicates and makes that correction for the
19 record.

20 MR. BLACKFORD: If that hasn't already
21 been done, that will be done.

22 HEARING OFFICER SHEAN: I would
23 appreciate that. I love getting great big files,
24 something like that, so if you can do that for me
25 I would appreciate that.

1 MR. LAMB: Thank you.

2 HEARING OFFICER SHEAN: Okay. That
3 takes care of Haz Mat.

4 Land Use?

5 How about Noise? Mr. Pak.

6 MR. PAK: As you are probably aware, the
7 construction schedule that is approved by the
8 Proposed Decision allows construction on a 20-hour
9 construction schedule per day, with no single day
10 break for the 90 or so days that there will be
11 construction. It's not hard to imagine that under
12 those circumstances there are going to be
13 complaints from the nearby residents who are just
14 across the street at some point in time.

15 The city has asked for two conditions
16 with respect to providing, A, a place where people
17 adversely affected by the noise and construction
18 can lodge a complaint, so we have recommended that
19 there be an appropriate onsite public official or
20 noise technician to receive those complaints
21 during any hours during which there is
22 construction.

23 Secondly, it is typically the practice
24 of California's public utilities, who perform
25 construction into the very late hours for their

1 convenience, make some allowance for -- lodging
2 allowance for those suffering inconveniences of
3 around the clock construction. We had proposed
4 those conditions when it became clear that the
5 Commission was likely to overrule the local noise
6 ordinances and provide for late night
7 construction.

8 We would recommend again, since it was
9 omitted from discussion in the Proposed Decision,
10 that at least some discussion of that matter be
11 provided, and ultimately that the Commission be
12 permitted to consider the condition and adopt it.

13 Thank you.

14 MR. LAMB: Matt Lamb, with the city.

15 Just to support what Al -- Mr. Pak has
16 stated for us. The issue comes in is that in
17 Noise-2, in the verification process, basically
18 says attempt to contact the person within 24
19 hours. Well, most people work during the day, so
20 the ability to contact the person could be very
21 problematic.

22 The verification requires that if a
23 complaint is not resolved, if the complaint is not
24 resolved within a three-day period, project owners
25 will -- shall submit an updated noise complaint

1 resolution form. Well, we're talking three days
2 where somebody could be having serious noise
3 issues, and there could be a very hidden mis-
4 issue. And this is a very real issue of the
5 surrounding, you know, surrounding residents.

6 I think a more affirmative action on
7 this is required, where we have a noise
8 technician, you know, they have somebody with a
9 noise technician that has a -- a decibel meter out
10 there, that has a cell phone, designated phone
11 number, after 8:00 p.m., and that person, anybody
12 who has complaints can call that person. That
13 noise technician can also be onsite to give AES
14 guidance as to which activities are exceeding that
15 five decibel requirement that you've put in this.

16 So it's -- basically the condition we're
17 trying to set forward is a more -- a more
18 immediate resolution process. Somebody's there,
19 somebody can call, they get an immediate response
20 with somebody from a cell phone, who has the
21 information and provide a resolution immediately,
22 on the spot.

23 If it can't be resolved, people do
24 experience noise differentially, we did propose in
25 our motion that basically if somebody complains

1 twice and still doesn't get resolution or feels
2 that they're still being mitigated or still being
3 impacted, that an appropriate mitigation would be
4 by, you know, offsite loading. That's very
5 standard. I worked for Sempra Energy
6 International, or Sempra Energy, and that was
7 something as a standard project clause that we
8 did. It would seem to me that 90 days of -- of
9 high impact, there should be some type of process
10 that allows somebody to get a decent night's
11 sleep.

12 Thank you.

13 HEARING OFFICER SHEAN: Where are we
14 going to find your proposed conditions? Is that
15 in your initial -- do you want to re-submit
16 something, language in terms of the language that
17 we actually have here?

18 MR. PAK: The conditions that we've
19 proposed are in our -- our brief that was filed, I
20 believe it was the end of March, the 28th. We --
21 we can provide that to you later today.

22 HEARING OFFICER SHEAN: Well, it doesn't
23 need to be today, but how about --

24 MR. PAK: It is in the brief, though.

25 HEARING OFFICER SHEAN: -- tomorrow

1 sometime.

2 MR. PAK: The condition that we're
3 recommending.

4 HEARING OFFICER SHEAN: Or if you have
5 that tailored to what exists, so that we can
6 consider adding it.

7 MR. PAK: We can do that.

8 HEARING OFFICER SHEAN: Okay. Now, we
9 recognize that it's going to be a ticklish issue,
10 and to the extent that we can mitigate it on the
11 front end as much as possible, and then provide
12 that there will be effective relief if the
13 mitigation is not wholly successful, I think is
14 how we want to take care of the back end.

15 All right. Anything more on Noise?

16 How about Public Health?

17 Socioeconomics?

18 MR. CASWELL: Staff would just like to
19 make reference to page 85, 87, and 88 under that
20 heading, Socioeconomics. There were some -- there
21 was further information from the original Staff
22 Assessment, in the Errata, that may not have
23 gotten into -- or been under your review in
24 writing that section, so we would ask that you
25 would take a look at those pages again, 85, page

1 87, and page 88.

2 HEARING OFFICER SHEAN: Okay. That's
3 from Staff. Mr. Pak.

4 MR. PAK: Just one more try on the parks
5 and recreation fund, Your Honor.

6 It's typically the case that the Public
7 Utilities Commission had required of applicants
8 for these kinds of plants, including Southern
9 California Edison, the predecessor owner of this
10 facility, under Public Utilities Code Section
11 1002, that local parks and recreation be
12 considered as part of the application, and part of
13 the benefit that could be provided to local
14 residents in the siting of a power plant.

15 So the city has proposed, in the absence
16 of any offer from AES, that a similar practice be
17 adopted for this certificate. It is de minimus in
18 cost and impact to the Applicant. It is
19 consistent with the local Huntington Beach
20 Municipal Code affecting permitting of local
21 construction projects, where either -- where
22 proponents of projects would either contribute
23 land or in lieu fees for local public park
24 services and recreation.

25 The -- the Proposed Decision indicates

1 that there's no basis on which the fee recommended
2 by the city, or the contribution recommended by
3 the city be imposed. However, we did take a look
4 at the scope and scale of the project, and the
5 contribution that might be made to the local area
6 in making that assessment, and we set it at
7 \$500,000. I think it's consistent with the city's
8 practice, as well as the prior practices of the
9 Public Utilities Commission in that regard. I
10 think Mr. Lamb has a little more on that.

11 MR. LAMB: Thank you. The issue for us
12 is -- is normally, we would take a look at any
13 project like this in terms, you know, especially
14 because of the Uniform Building Code. The current
15 assessed property value for this particular
16 equipment and land parcel, as opposed to the 2000-
17 2001 tax rolls, is around \$99 million. The
18 proposed project is going to encompass around \$140
19 million investment, well over basically, in
20 effect, replacement value, inasmuch as that, you
21 know, certainly Units 3 and 4 will be brand-new
22 units in some respects. They'll be retooled.

23 The -- the issue, at least from the
24 city's perspective, is we get to the -- from our
25 respect, the good neighbor -- the good neighbor

1 aspect of AES within the community. Any other
2 developer that would be part of, like, residential
3 development, under the Quimby Act, there is a
4 nexus established between the impact of the
5 development and the impact to the community.

6 The city, you know, in taking a look at
7 it, since we've basically been preempted on this,
8 we would take a look at that if this was something
9 that was being reviewed under our jurisdiction,
10 something of this significance, we would
11 definitely look at the impacts related to the
12 surrounding community.

13 Our proposal is just simply that as part
14 of the good neighbor, as part of the impact fee,
15 that our parks -- that it's a simple way for AES
16 to contribute to the overall betterment and which
17 the community will really see. What we're talking
18 about, very minimal benefit at this point. The
19 idea that, as stated in the Staff's Assessment,
20 that there's going to be some roads and some
21 miscellaneous taxes paid. At this point, the
22 city, I believe, and I may be incorrect, but I
23 believe we get 12 percent of -- we get 12 percent
24 of the one percent that AES pays in property tax.

25 This is not, you know, at this time I do

1 know the legislature is looking at some, you know,
2 differential legislation that may swing some
3 property tax to the city, but at this time that's
4 not a matter of the record or a matter of law.

5 We believe we'd like you to consider
6 that the city, under its jurisdiction and under
7 the Quimby Act, would take a look at a development
8 impact fee specifically relating to the park and
9 rec fund.

10 Thank you.

11 HEARING OFFICER SHEAN: Okay. Thank
12 you.

13 Anything from anybody else?

14 MR. WOLFE: Yes, thank you. Quickly, on
15 Socio-1, which is on page 91 of the PMPD. The
16 Commission itself I think adequately captures what
17 we all agreed to at the workshops in March.

18 Our issue's with the verification that's
19 proposed. It says that 30 days prior to the start
20 of construction AES shall submit copies of
21 guidelines, stating hiring requirements and
22 procedures.

23 First, we would hope that we're within
24 30 days of construction already. But more
25 importantly, you know, guidelines are nothing more

1 than guidelines. I think the verification as
2 written renders the condition essentially
3 toothless, and for that reason we would
4 respectfully urge the Committee to adopt the
5 proposed verification mechanism that both we and
6 the City of Huntington Beach proposed earlier,
7 which we have reproduced for the sake of
8 convenience on page 4 of today's submittal, but
9 which appears in our post-hearing brief, and which
10 I think also appears in the city's earlier
11 submittal on at least one occasion.

12 Second, we would also respectfully ask
13 you to reconsider your proposed Condition Socio-3.
14 We think that the record, based primarily on our
15 testimony in the March 16th hearing, shows that
16 this requirement not only would not slow down
17 construction but, quite the contrary, it would
18 ensure that the project will, in fact, be built,
19 or contribute to certainty that the project will,
20 in fact, be built safely and online -- and will be
21 online by July, which, again, is the reason we're
22 all here.

23 The safety issue is -- is paramount, as
24 I think we all agree, particularly given this 20-
25 hour per day construction schedule that's being

1 proposed. And we also think that that condition
2 could contribute to providing some of the
3 certainty necessary to give some force to proposed
4 Condition Emergency-1, as we referenced earlier
5 today.

6 Thank you.

7 HEARING OFFICER SHEAN: Okay. Anything
8 further?

9 All right. Let's move on to Traffic and
10 Transportation, then.

11 Mr. Lamb.

12 MR. LAMB: Yes. Matt Lamb.

13 With regards on page 95 and parking, the
14 city has concerns that the AES submitted a permit
15 from the State Beach parking. I know that the,
16 you know, state has obviously looked at that, but
17 there's a cumulative impact. The city is
18 currently going to be under construction for a --
19 the next year and a half, starting this summer, on
20 half of its beach parking lot, which will in
21 effect eliminate access to the surrounding
22 regional area for -- to the beach. So thereby the
23 State Beach and the state parking will become an
24 increasing resource in the next two years for
25 access to the beach. I mean, to the general

1 enjoyment of a state resource.

2 We believe there is sufficient parking
3 offsite, outside of the coastal zone, readily
4 available, easily acquired, that is -- would
5 eliminate this impact we're talking about. We're
6 talking upwards of, right now it looks like two --
7 200 parking spaces. And on a weekend, as you
8 would imagine, during the summer, the -- a variety
9 of people from a variety of socioeconomic
10 backgrounds come to the beach, and the State Beach
11 is a cheap and economical way for them to
12 experience that state resource, the beach.

13 I would propose that this condition
14 would be that they have to park outside of the
15 coastal zone. There's plenty of parking that they
16 could shuttle to, rather than impacting and taking
17 away parking from the resident or the regional
18 area, because the -- the use is differential. One
19 is for construction, one is for recreational
20 purposes. Why should the citizens not have the
21 ability to recreate for this project?

22 Thank you.

23 COMMISSIONER PERNELL: Can you describe
24 for me the coastal zone? Is -- is that -- would
25 you describe that.

1 MR. LAMB: Sure. Typically, the coastal
2 zone is considered one mile from the high tide
3 waterline. So basically if they parked in North
4 Beach Boulevard, there's several open pieces of
5 land specifically at the intersection of Beach and
6 Edinger. The -- there's a -- basically an
7 abandoned -- not abandoned, but currently a closed
8 down shopping center that has more than sufficient
9 parking, where they could be shuttled just down
10 Beach Boulevard to the plant. I'm sure an
11 arrangement could be made with the private
12 individual for these parking spaces, and thereby
13 have no impact to the available beach parking
14 during the crucial summer experience that most
15 people count on.

16 COMMISSIONER PERNELL: And how far is
17 that from the site?

18 MR. LAMB: I don't have an exact, but I
19 would -- it's at the intersection of Beach and
20 405.

21 COMMISSIONER PERNELL: I'm from northern
22 California.

23 MR. LAMB: I believe --

24 COMMISSIONER PERNELL: I really don't
25 have a --

1 MR. LAMB: I believe it would be like
2 two and a half to three miles, approximately.

3 HEARING OFFICER SHEAN: Thank you.

4 MR. BLACKFORD: If I could offer some --
5 some comment on that issue.

6 HEARING OFFICER SHEAN: Sure.

7 MR. BLACKFORD: We have been working
8 with the State Beach authority, as far as parking
9 people offsite. That authority is very
10 conditional. They review on a weekly basis that
11 we are not impacting the beachgoers. Spots that
12 have been designated for parking use are those
13 adjacent to Pacific Coast Highway, as opposed to
14 anywhere near the beach area, which are those
15 spots which typically beachgoers do not use
16 anyhow.

17 But it is conditional that we don't
18 impact beachgoers. So that is ongoing with review
19 on a weekly basis.

20 I would argue also that the -- the site
21 that Mr. Lamb mentions is more six miles, as
22 opposed to three miles. It's about a 20 minute
23 transit.

24 HEARING OFFICER SHEAN: Do we have
25 information from the Evidentiary Hearing on this

1 city construction? I don't recall it.

2 MR. LAMB: It was not -- no, we did not,
3 in the evidentiary process, mainly because at --
4 it was only at the last meeting that we actually
5 got wind of the permits, so it was not relevant to
6 it at this time. Now that they are saying they
7 want to park in a State Beach area, it becomes
8 relevant. So that's why I brought it up at this
9 point, as a matter of record.

10 HEARING OFFICER SHEAN: Okay. Thank
11 you.

12 COMMISSIONER PERNELL: One -- whose --
13 whose jurisdiction is it? Is it the city's, or
14 the coastal zone --

15 MR. LAMB: It -- it is the state's -- it
16 is the state's jurisdiction. The only comment I'm
17 really trying to bring up to you is that having
18 been in Huntington Beach for over nine years, on
19 any summer weekend the State Beach is sold out
20 completely. I mean, there are people filing out,
21 I mean, basically the cars are queued on Pacific
22 Coast Highway getting into both our beach and the
23 State Beach, so the idea that there's not going to
24 be an impact I think is problematic. And that's
25 what I was trying to bring to your consideration.

1 Maybe it's just a matter they don't park
2 there on the weekends. I'm just concerned -- I
3 know a lot of people count on that beach for
4 access, and that's what I'm trying to bring
5 forward.

6 COMMISSIONER PERNELL: Okay.

7 HEARING OFFICER SHEAN: Okay. How about
8 Visual Resources.

9 MR. ROTHMAN: We just have a short
10 comment on page 19, with respect to the
11 construction lighting, in that it not be
12 conditioned in such a way as to jeopardize the
13 safety of the workers.

14 HEARING OFFICER SHEAN: What's the --
15 what's the page reference? I'm sorry --

16 MR. ROTHMAN: Page 19. Your page 19.

17 HEARING OFFICER SHEAN: On, on your
18 brief?

19 MR. ROTHMAN: Of the brief. Yes.

20 HEARING OFFICER SHEAN: I think it may
21 be that one of the Staff proposed changes
22 addresses that. I -- I think the answer is yes,
23 they have proposed changes to Visual-4E -- Visual-
24 4E, indicating that it had to be consistent with
25 construction personnel safety.

1 I think those two will end up coming
2 together.

3 MR. KRAMER: There are some minor
4 comments, but we won't go over them, in the
5 Staff's analysis, and in the legal brief that'll
6 be filed and served today. Well, there is one in
7 the Staff we want to mention. That's the page
8 104, they were changing the conclusion that was
9 made in the Errata. It should be at the top of
10 the -- these pages aren't numbered, but the top of
11 the page of the Staff's comments on Visual.
12 They're -- they're recommending that the paragraph
13 in the -- in the PMPD be replaced with another
14 paragraph to reflect that revised conclusions that
15 were made in the Errata to the FSA.

16 and in addition, there was a discussion,
17 and this may have been covered in the Errata, I
18 can't recall, but the Staff ultimately concluded
19 that the city's requirement for the screening of
20 mechanical equipment did not apply to a project
21 such as this. It was meant to apply to, say,
22 rooftop air conditioners and things of that sort,
23 and this -- this facility really isn't a
24 traditional commercial or industrial structure
25 with a rooftop. It's all mechanical.

1 So that change would need to be made in
2 the PMPD to -- if the Commission agreed with the
3 Staff's revised assessment of that ordinance.

4 HEARING OFFICER SHEAN: Okay. And I
5 understood from your Errata, essentially all but
6 the top paragraph on page 104, and then the top
7 paragraph on 105, are to be deleted, and the
8 single paragraph in your Errata is substituted for
9 those. Is that correct?

10 MR. CASWELL: That's correct.

11 HEARING OFFICER SHEAN: All right.
12 Anything to shorten the decision is good.

13 COMMISSIONER PERNELL: Is everyone
14 following this? The city, and AES are in
15 agreement with this? I can just put a big okay by
16 it.

17 MR. ROTHMAN: Yeah, I think from our
18 perspective you can put a big okay by it. We've
19 reviewed the Errata.

20 COMMISSIONER PERNELL: Okay. Right, we
21 agree on something. We're making progress here.

22 HEARING OFFICER SHEAN: Okay. Anything
23 more on Visual?

24 Let's go to Waste Management, then.

25 And then move on into Water Quality and Soils.

1 MR. ROTHMAN: I think we have two or
2 three brief issues that we have been raising for a
3 number of different -- number of different
4 instances during this process.

5 Starting at page 16 of our brief, and
6 going through to page -- really to page -- top of
7 page 19. Briefly summarized, the first issue has
8 to do with, as I said, the infrastructure
9 improvements necessary to prevent discharges
10 pursuant to a stormwater pollution prevention
11 plan. And it's really just a timing issue, and
12 allowing the facility until November of 2001 to
13 complete such improvements.

14 The second issue has to do with the
15 language of the condition associated with
16 obtaining and executing a water service agreement
17 with the city. It's exclusive, and our concern is
18 if -- although we don't believe it should be
19 necessary, if there's some disagreement with the
20 city that would create a circumstance whereby we
21 would have to construct or do something else that
22 would put us beyond the timeframes that
23 everybody's contemplating, that we have an option
24 of procuring water from alternative sources, or
25 something along those lines.

1 And then the last issue is the ongoing
2 issue with respect to providing money up front for
3 these studies and projects as part of a trust
4 fund, as opposed to simply being obligated to pay
5 for them.

6 HEARING OFFICER SHEAN: Okay. I think
7 at least for our purposes, we have that in mind.
8 And I -- I do understand more fully than before
9 the deal about the stormwater pollution prevention
10 plan.

11 Anything from any other party?

12 MR. KRAMER: Just to note that the Staff
13 is -- in its Errata, or its comments, is
14 recommending an additional sentence on a couple of
15 those paragraphs to recognize the November 1,
16 2001, as the deadline to complete the
17 improvements. So we're in agreement on that
18 score, at least. Not on -- on the matter of the
19 deposit of the funds, just on the study.

20 HEARING OFFICER SHEAN: All right.
21 Well, my notes show that Staff had recommended
22 replacing the entire Water Quality-1, review that
23 to be consistent with what you're talking about.

24 MR. KRAMER: And I think -- I was
25 comparing it quickly, and I think the changes are

1 really in the last sentence on -- on the first
2 paragraph, and on the verification paragraph.

3 HEARING OFFICER SHEAN: Okay. Anything
4 further on Water? Water Quality, that is.

5 COMMISSIONER PERNELL: I have a
6 question. Considering the -- related to the up
7 front funds, seem to be in question. My
8 understanding is that the funds will be deposited
9 and will be used only when there's a need, and if
10 all of it is not used, then it goes back to AES.
11 Is that --

12 MR. CASWELL: That's correct.

13 COMMISSIONER PERNELL: -- I'm
14 paraphrasing here, but is that correct?

15 MR. CASWELL: That's the gist of the
16 condition, and section.

17 COMMISSIONER PERNELL: Okay. And then
18 there was another, just a follow-up on that. I'm
19 assuming that this is going to be deposited in a
20 interest bearing account. So is the interest
21 included, will go back to AES, as well?

22 MR. KRAMER: Currently, the condition
23 doesn't make that clear. And you might want to
24 clarify it to do that. That's -- Staff feels
25 that's appropriate.

1 COMMISSIONER PERNELL: Maybe I turned
2 over something I shouldn't have.

3 MR. KRAMER: That's Water Quality-4. It
4 doesn't speak to interest in any respect.

5 HEARING OFFICER SHEAN: Okay. All
6 right, anything further on Water Quality, then?

7 Let's go then to Water Resources.

8 Hearing nothing, we'll move to
9 Alternatives.

10 And moving rapidly on to Efficiency.

11 Okay. I know there are going to be some
12 on Facility Design.

13 First of all, let me indicate all those
14 dates have been changed, so that they're -- the 15
15 day -- and also, discussion -- Staff recommended
16 in their changes that the discussion of existing
17 and new -- that the existing and language be
18 deleted.

19 And is that along the lines of your
20 comments on Structural-1?

21 MR. ROTHMAN: Very much so.

22 HEARING OFFICER SHEAN: Okay. I think
23 we're on the same -- same page on those.

24 Anything additional on Facility Design?

25 Mr. Lamb.

1 MR. LAMB: The city, you know, I guess
2 takes exception to the revision of -- removing
3 existing and. Because in effect, even though the
4 City of Huntington Beach at this time, due to
5 several issues relating to the CBO, and actually
6 respectfully declined Commission Staff's
7 invitation to be the Chief Building Official, the
8 city is still concerned that it's kind of like if
9 we -- the city originally looked at that from the
10 respect of Uniform Building Code. And that
11 because of the substantial nature and the
12 timeframe in which this original structure and
13 foundational systems were installed, that it would
14 not comply.

15 Typically, the requirement needed for a
16 building code is when, again, you have more than
17 50 percent investment or redo into any particular
18 structure, and particularly an equipment structure
19 like this, there would be requirements to not just
20 look at the new, but actually look at the
21 existing, to make sure that it meets code, to
22 actually bring it up to that code.

23 That does become kind of -- if we -- if
24 the city were to know uniformly that, again, we
25 were to stick to the five, that it might be just a

1 general review of the -- you know, if we were the
2 CBO, and if we'd know -- if we knew that it was
3 just going to be certified for five years, then
4 you might only look at certain aspects of the
5 structure to make sure it's strengthened
6 sufficiently. Because the day after you certify
7 this, this -- this structure very well could
8 experience a seismic evidence there. It's not
9 conditioned on duration. It could happen at any
10 one particular time.

11 Public Health and Safety does require us
12 to take a look at structures, especially in this
13 case, when they're coming back before you, to in
14 effect retool. Part of your review should include
15 existing, under the cumulative impacts
16 perspective, that in effect, in compliance with
17 the Uniform Building Code, they should, in effect,
18 review the existing structure sufficiently to
19 ensure that it can withstand the appropriate
20 seismic event, and the appropriate liquefaction
21 information that is -- was detailed by Staff in
22 Geology.

23 Our concern is that if you only -- if
24 you only thing used was five, then maybe the
25 review could be less intense. But if the argument

1 goes forward that it continues to go beyond five,
2 whatever reason, then certainly an entirely
3 different perspective, again. This goes to our
4 cause of the city has been trying to review this
5 from a perspective of the five-year mark that was
6 established in the AFC.

7 We'd submit that the Uniform Building
8 Code requires the review of the existing -- the
9 level of retool. This is the opportunity, since
10 all the wires, all the conduit, everything will be
11 out of the way, and you can afford, or, in effect,
12 you can have access to do this. You will never
13 have access to do this again until you demolish,
14 and, of course, that'll be moot.

15 But this is the -- this is the
16 appropriate time to do it, but we would submit
17 that it should include existing. Thank you.

18 HEARING OFFICER SHEAN: Okay. Anything
19 more on the Facility Design issue?

20 Okay. Let's see, how about Reliability?

21 Transmission Line Safety and Nuisance.
22 I'm kind of curious here. Given that the
23 Commission has almost always had radio, TV and
24 Trans issues, and magnetic field mitigation in the
25 conditions, why the Staff has requested that they

1 be omitted, or deleted. And if you don't know
2 now, you can tell me later.

3 MR. CASWELL: Under -- due to the fact
4 that certain aspects of the transmission lines
5 have not changed, or are not being proposed to
6 change at this time, I believe Staff decided not
7 to add any conditions, any further conditions in
8 there.

9 I will get -- I will get clarification
10 for you on that issue, though.

11 HEARING OFFICER SHEAN: Okay. If I
12 understand correctly, the only significant change
13 would be that there -- it had previously been
14 operating at -- in the short term, at lower
15 current levels, and now is operating on a higher
16 current level. And while it ought not to have an
17 effect on either field strengths or TV and radio
18 interference, why don't you look at it and see if
19 -- this may be a no harm, no foul type of
20 condition, but --

21 MR. CASWELL: I'll check into that.

22 HEARING OFFICER SHEAN: Okay. How about
23 Transmission System Engineering.

24 The last one would be Worker Safety.

25 MR. ROTHMAN: Just so that we're being

1 complete here, there were -- there's a couple --
2 at least one Worker Safety condition that includes
3 a 30-day prior to the startup. I don't know if
4 that's included in your revisions to the timing of
5 submittals.

6 HEARING OFFICER SHEAN: Let me just
7 look.

8 MR. ROTHMAN: I think it's Worker
9 Safety-3. Hold on.

10 HEARING OFFICER SHEAN: Maybe you can
11 point me to that, Mr. Rothman. This is in Worker
12 Safety? Oh, the 30 days prior to construction on
13 Worker Safety-1? Is that what you're referring
14 to?

15 MR. ROTHMAN: And Worker Safety-3.

16 HEARING OFFICER SHEAN: And those we're
17 saying should be 15?

18 MR. ROTHMAN: Yes.

19 HEARING OFFICER SHEAN: Okay. It's
20 done.

21 All right. We have marched through it.
22 Is there anything anybody wants to add from the
23 parties at this point, before we go to our patient
24 public and ask for their comments?

25 Last -- last chance.

1 Okay. Why don't we go to the public at
2 this point. We appreciate your patience in wading
3 through this stuff. I understand also that this
4 was televised, or at least recorded to be
5 televised, and I'm sorry we couldn't spice this up
6 with something a little more juicy than details on
7 where -- where we're parking and things like that.
8 But that's just the way it is.

9 Okay. I'm going to go through these in
10 the order that I have received them. And we have
11 first Lisa Lawson, from the Orange County
12 Sanitation District.

13 MS. LAWSON: Thank you, Mr. Chairman,
14 Members of the Committee.

15 I'm here purely for information, because
16 we understand that there were some questions that
17 were brought up about the coordinated plan that's
18 going to occur to test a hypothesis that relates
19 to both Orange County Sanitation District and the
20 AES Corporation.

21 Orange County Sanitation District serves
22 2.2 million people in central and northern Orange
23 County, and we treat 250 million gallons of sewage
24 a day. Two hundred and forty million gallons of
25 that treated sewage is released to the ocean.

1 Orange County Sanitation District is coordinating
2 plans for the summer of 2001 to test a hypothesis
3 that states, the Sanitation District's treated
4 wastewater is pulled to shore by a combination of
5 internal and external tides and waves, and
6 operations at the -- at the AES Corporation power
7 plant in Huntington Beach.

8 Part of the coordinated effort work is
9 to determine what role the Santa Ana River and the
10 Talbert Marsh have on beach water quality in the
11 area surrounding the AES Corporation power plant
12 between the Santa Ana River and the Huntington
13 Beach pier.

14 A technical advisory committee was
15 formed in January to determine the best way to
16 test this hypothesis involving AES Corporation and
17 Orange County Sanitation District. Study plans
18 will be finalized by the advisory committee April
19 20th, or very near there.

20 The technical advisory committee
21 consists of scientists and engineers, Dr. Stanley
22 Grant from University of California at Irvine, he
23 is the author of the hypothesis. The United
24 States Geological Survey, Scripps Institute of
25 Oceanography, and USCC grant, to help Orange

1 County healthcare agencies also involved in this
2 committee. So is AES Corporation. In addition to
3 that, environmental group representatives and
4 members of the general public.

5 The study plan includes six different
6 testing events scheduled to begin in May and end
7 in September. The ocean near shore and shoreline
8 will be tested. Specific to the AES Corporation
9 power plant operations, tests will occur near and
10 around their intake outfall structure. This will
11 investigate conditions under which deep ocean
12 water can potentially interact with this intake
13 outfall structure.

14 The total cost of the comprehensive
15 study is approximately \$3.5 million. The Orange
16 County Sanitation District Board of Directors has
17 authorized the spending of \$1 million of ratepayer
18 moneys to date, with the potential of more money
19 from Orange County Sanitation District if other
20 funding cannot be found.

21 With the Orange County Sanitation
22 District funding and the funding by the County of
23 Orange, and USCC grant, there is a remaining
24 shortfall of approximately \$2.5 million. Orange
25 County Sanitation District is seeking additional

1 funding, including federal and state funding.

2 I can address any questions, if you have
3 those.

4 HEARING OFFICER SHEAN: I don't think
5 so. That was very complete.

6 MS. LAWSON: Thank you.

7 HEARING OFFICER SHEAN: Thank you.

8 All right. How about Roger Roundy, is
9 it -- from the Pipefitters Union. And after him
10 will be Mr. John F. Scott.

11 MR. ROUNDY: Good morning,
12 Commissioners. My name is Roger Roundy, I'm with
13 Local Union -- Pipefitters Local Union Number 250.

14 I have two concerns. My key concern is
15 labor, of course. This plant was originally
16 constructed by qualified union laborers several
17 years ago. My -- my concern is right now, AES is
18 using a number of out of state workers, paying
19 substandard wages and benefits, when located
20 within Huntington Beach alone, we have qualified
21 labor who worked on that plant and who can build
22 that plant.

23 My other concern is, is there was a
24 comment by AES, who has enjoyed concessions under
25 -- under the state of crisis, you might say. For

1 them to say that we want to negotiate where every
2 electron is channeled, I find that ludicrous.

3 Thank you, Commission.

4 HEARING OFFICER SHEAN: Thank you.

5 Mr. Scott. Behind him will be Mr. Doug
6 Chappell.

7 MR. SCOTT: Thank you for coming to
8 Huntington Beach. I have been asked by Huntington
9 Beach Tomorrow, a respected grass roots
10 organization in our city, to make some comments
11 for them because they were unable to be here
12 today. And then I'd like to make comments for
13 Southeast Huntington Beach Neighborhood
14 Association.

15 Huntington Beach Tomorrow feels that --
16 that it is very important to have a phone number
17 that can be called in the event that someone is
18 awakened at 2:00 o'clock in the morning. That is
19 fraught with problems, in the sense that a person
20 awakened at 2:00 o'clock is -- is not going to be
21 in a good mood, and a lot of trouble could result
22 from that. And there should be someone on the
23 other end of the line that is able to tell the
24 noise makers to stop doing it.

25 They also are concerned about the

1 screening of the plant. Apparently that was lost
2 in the -- in the shuffle. Down the road a while,
3 OCSD is -- is preparing to launch into a multi-
4 million dollar landscaping of their plant to make
5 the east portal of Huntington Beach something
6 that's appropriate to a city of -- of its stature
7 and beauty. And we think that -- that -- we think
8 that AES should do the same with its plant, and --
9 and paneling and screening is an important part of
10 that.

11 Finally, the Huntington Beach Tomorrow
12 feels that the five-year limit should be a firm
13 limit, and that anything beyond that point should
14 go through the normal permitting process, because
15 the -- hopefully, the crisis of electricity will
16 be over at that time.

17 I would like to, as I begin my comments
18 for the neighborhood association, to comment,
19 three things about the process.

20 I attended the workshops, and I thought
21 it was extraordinarily well done. It isn't often
22 that the public has the opportunity of
23 participating in the actual goings on. Usually
24 they're relegated to three minutes of comments
25 before the process begins, and then that's the end

1 of it. They're there to listen. And I thought
2 that the workshops here that were done by the
3 Staff were outstanding.

4 The second comment I'd like to make is
5 about the Internet. I think that the Staff has
6 embarked upon a process that is -- is also
7 outstanding in their use of the Internet. Almost
8 any -- any schedule, data, document, was able to
9 be found and accessed by the public, and I think
10 this is a great step forward for public
11 participation, and I would like to see other
12 government agencies adopt what you have done here.

13 And, finally, I'd like to comment about
14 the Staff accessibility. This has been
15 extraordinary. We have been able to contact Staff
16 even after hours, and have received call-backs
17 from Staff after hours. And I think this is
18 indicative of the Staff concern for the public at
19 large.

20 Southeast Huntington Beach, concerning
21 the five-year certification. The premise of the
22 documents is retooling of a vintage coastal boiler
23 plant is warranted because of the current power
24 crisis. I think we would deny that premise
25 categorically. Huntington Beach, the power plant

1 in Huntington Beach is surrounded on three sides
2 for at least 100 miles by cities. That means
3 homes, families, children, pregnant women, elderly
4 who have health problems, for 100 miles, on three
5 sides of that plant. And I think that it just
6 isn't warranted under those circumstances.

7 The number one chronic disease in this
8 area is asthma. And Orange County is one of four
9 counties in the State of California that has a
10 significantly higher rate of -- of cancer and
11 heart disease than the other counties of
12 California. I think that you cannot ignore the
13 people that are living around this plant. And so
14 I -- I just don't agree with that premise, but
15 that's neither here nor there.

16 I do want to say that we strongly
17 support the city's position. I think the city did
18 an outstanding job of responding to the -- to your
19 report, and we -- we back that fully. Given the
20 fact that -- that the process is going to go for
21 five years, at least, we -- we feel that at the
22 end of that it should go through a normal -- a
23 normal review.

24 Under Air Quality, the report says that
25 adding state of the art best available control

1 technology to minimize emissions does not -- is
2 required, and that also you want offsets. I would
3 submit that this doesn't do us any good. We live
4 in the shadow of that plant, and last year the
5 emissions of -- of NOx for power plants in this
6 air quality district was limited to 2,334. In
7 fact, the actual emissions were 6,000 tons, in
8 stead of 2,334. That's 3,666 tons more than the
9 limits. RECLAIM doesn't protect us. It actually
10 works against us, because pollution is brought in
11 -- into this -- into this area.

12 The addition of the catalytic devices,
13 the selective catalytic reduction, adds another
14 threat of particulate matter. And we don't see
15 any protection from -- from that. It just
16 compounds the problems that we already have.

17 We think that -- in the workshops, AES
18 argued that Unit 5 should not be taken into
19 consideration, that the focus should be on Units 3
20 and 4 because they were the ones that were going
21 to be opened up. I think we would take a position
22 that not only should Unit 5 be in the mix, but we
23 would think that OCSD, a mile down the road,
24 should also be in the mix because they emit two
25 tons of pollution every day, and that impacts the

1 people that live in the shadow of that plant all
2 around.

3 Finally, this pertains to not much of
4 anything, but I'd like to make this comment. In
5 our neighborhood, people have really responded to
6 the energy crisis. I know of countless families
7 that have gone out and spent \$10 to \$15 buying
8 energy saving light bulbs, they have replaced old
9 appliances. I know of one neighbor that has spent
10 \$20,000 putting photovoltaic cells on their roof,
11 so that they don't have to bear the burden of when
12 they turn the lights off, feeling that they're
13 polluting their world and -- and causing health
14 problems for their neighbor.

15 In great contrast to that, we have
16 another neighbor, the power plant, and this is the
17 approach that they take. They say well, we've got
18 a 50 year old plant here, and we're going to
19 continue to run that 50 year old plant. It's so
20 inefficient that it dumps 300 million gallons of
21 water, heated 20 to 30 degrees above the ambient
22 ocean temperature, we're going to dump that, just
23 dump that into the ocean each day. And we would
24 like permission to add another 300 million gallons
25 to that.

1 There's -- there's something wrong with
2 that picture. Thank you.

3 HEARING OFFICER SHEAN: Thank you, Mr.
4 Scott.

5 COMMISSIONER PERNELL: Thank you.

6 HEARING OFFICER SHEAN: And let me also,
7 on behalf of the Staff, thank you for your kind
8 words. A lot of them were keeping construction
9 hour worker hours on this and other projects.

10 We've got Mr. Chappell, and behind him
11 Mr. Adams.

12 MR. CHAPPELL: Thank you. My name's
13 Doug Chappell. I'm the Business Manager for the
14 International Brotherhood of Electrical Workers
15 here in Orange County. And I want to thank you
16 guys for the hard work you've put into this --
17 into this. I know it's very complicated.

18 But we have some issues. I testified at
19 the last meeting on the merits of apprenticeship
20 programs and workers that complete those
21 apprenticeship programs, and the fact that they
22 are very efficient and they are able to -- would
23 be able to put this project together on a very
24 timely basis.

25 I want to encourage you to think about

1 those considerations, because those guys that we
2 have in our unions in Orange County have all gone
3 through apprenticeship programs. And, as Mr.
4 Roger Roundy testified before, our predecessors
5 and our ancestors worked on this plant. My father
6 and my grandfather worked on this plant. We hate
7 to see some big company come in here and be
8 allowed all the concessions that they're allowed
9 on the basis of this energy crisis.

10 Our people have to breathe these
11 emissions, they have to live with these rate
12 increases that are going to occur because of this
13 energy crisis. And they have to live in this
14 community, and it costs money. And it looks real
15 bad when a big company like this comes in and
16 brings out of state workers here to take their
17 place, and they don't have jobs. I don't know
18 what I'm going to tell my 700 apprentices when
19 they're told that their apprenticeship program
20 means nothing, that a company like this can come
21 in and use whoever they want, and not demand that
22 they have completed some type of formal training.

23 Thank you very much.

24 HEARING OFFICER SHEAN: Thank you, Mr.
25 Chappell.

1 Mr. Jim Adams, and David Guido.

2 MR. ADAMS: Good afternoon. My name is
3 Jim Adams. I'm an Orange County representative
4 for the Los Angeles/Orange County Building and
5 Construction Trades Council. We represent
6 construction unions with a membership in excess of
7 140,000 workers. Many of these members live
8 within the City of Huntington Beach, and the
9 surrounding communities.

10 Our affiliated unions and their
11 membership is well aware of the shortage of
12 electricity in the state, and how important the
13 Huntington Beach power plant is to help with that
14 shortage. However, we are not willing to stand by
15 and watch our long fought for area standards be
16 destroyed by greed. AES, PMSI, but maybe more
17 importantly, Williams Company from Tulsa,
18 Oklahoma, reap the profits by returning the power
19 flow back through the grid system and charging
20 outrageous prices. We're not willing to stand by
21 and watch out of state workers come into our city,
22 take our jobs from our members, and destroy our
23 standards, pollute our beaches, all because the
24 deregulation plan go in favor of big business,
25 with out of control price gouging for the citizens

1 of this state, and big business doesn't have the
2 decency to keep the jobs in this locale.

3 I'm well aware this Commission is
4 obligated to find ways to create more electricity
5 in a very limited time. However, the speakers
6 from the community, I've not heard anyone state
7 that they had a problem with the power plant here
8 locally. They are asking for a modern, low
9 profile, non-polluting, with electricity staying
10 locally. I respectfully request you deny the
11 permit, you go back to Sacramento, and report
12 there has to be another way.

13 Thank you for your time.

14 HEARING OFFICER SHEAN: Thank you.

15 (Applause.)

16 HEARING OFFICER SHEAN: Okay. Mr.
17 Richard Loy. Is he here? Behind Mr. Loy will be
18 Ms. Helen Anderson.

19 MR. LOY: Good morning, Commission,
20 Staff. I want to thank you, on behalf of the
21 residents that live surrounding the power plant,
22 for your time, for your energy that you've
23 expended, and for listening to the residents, the
24 concerned residents.

25 I have some -- I have some real concerns

1 about conditions that are going on and have been
2 allowed to go on, and also conditions that have
3 not actually been addressed about -- about the
4 power plant.

5 I read your latest report, and in that
6 it states that that power plant's not on a flood
7 plain. Now, I beg to differ. I -- I think that's
8 wrong, and I think that needs to be looked at.

9 Also, the fact that -- that that power
10 plant lies right on the Inglewood/Newport Fault.
11 Now, they had earthquakes in '71 in Sylmar that
12 were 70 miles away. And, of course, they say
13 well, the power plant wasn't -- wasn't destroyed
14 or injured at that time. But the thing is, is if
15 they have that size of earthquake, which is
16 catastrophic, probably around a 7, I think that
17 that power plant's going to collapse like a --
18 like a house of cards. And I -- I have not seen
19 any structural studies that address that. You
20 know, they talk around it and refer to it, but I
21 haven't actually seen any -- any, by a structural
22 engineer that goes in and examines that power
23 plant, and lets us know, the local residents, what
24 exactly the situation is over there.

25 As far as AES being good neighbors, I'm

1 sorry, but I just can't agree with that. I don't
2 think they've been good neighbors in the past.
3 They're not good neighbors in the present, and
4 they're doing anything and everything they can to
5 get out of doing anything that a good neighbor
6 would do of their own volition, and not be forced
7 into it.

8 So I'll close my comments, but I hope
9 that you don't allow yourselves to be drawn in to
10 what I consider to be a dereliction of duty. I
11 hope that you -- that you go back to the governor
12 and maybe re-evaluate this whole application, and
13 maybe suggest to the governor that this is not the
14 power plant to fast track at this time.

15 And I thank you very much, and I hope
16 you enjoyed your stay in Huntington Beach.

17 HEARING OFFICER SHEAN: Thank you very
18 much. And we certainly always do.

19 Ms. Anderson. Behind her will be Mr.
20 Ralph Bauer.

21 MS. ANDERSON: Mr. Chairman, all
22 Commission Members, and friends of the small
23 business community.

24 Thank you for the opportunity to speak
25 on the AES Huntington Beach Retooling Project. I

1 come before you not only as a small business owner
2 that resides in Orange County, but also as a
3 trustee of the National Small Business United, and
4 the Environmental Chair of the California Small
5 Business Association.

6 The licensing of the Huntington Beach
7 plant is a project the California Small Business
8 supports. We were on record last month citing the
9 need for additional power supply as a key element
10 in solving our state's energy crisis. What is
11 more, we continue to support additional generation
12 throughout the state and in the western region.

13 California's 8,000 small businesses are
14 likely to be the biggest losers in this energy
15 crisis, or crunch, whatever term you want to use.
16 The recently declared bankruptcy of PG&E sends
17 shivers down the spine of small business owners.
18 These owners are the heart and soul of every
19 California community, the state's economic engine,
20 and our chief job creator. However, many of them
21 operate on slim profit margins, so rolling
22 blackouts, increased electricity bills hang over
23 them like a dark cloud. I advocate that the
24 silver lining for small business is our ability to
25 be more energy efficient, and thus weather the

1 current crisis and increase profits over the long
2 haul. But the cloud still remains.

3 Small businesses account for over half
4 of all commercial energy use in the state, so I
5 applaud the efforts of your Staff to expedite the
6 process of the Huntington Beach license under the
7 60-day emergency order. And in hearing some of
8 the testimony today, the oversight, the good
9 oversight on the City of Huntington Beach.

10 To keep our doors open, we need reliable
11 and affordable energy. While a 60-day timeframe
12 may not be the most effective, it does demonstrate
13 that virtually any government permitting effort
14 can be done quicker. I urge the Commission to use
15 this situation as a learning process to determine
16 that when we return to more normal times, the
17 timeframes can be shortened.

18 As chief of the California Small
19 Business Environmental Committee, I am also
20 concerned about the potential impact the plant
21 will have on the environment. As all of us search
22 for the best ways to solve California's energy
23 problem environmental concerns should not be
24 tossed aside. Increased energy efficiency by
25 small business helps the environment, and the U.S.

1 Environmental Protection Agency has set up a Web
2 site for small business to do just that, with
3 their assistance, www.epa.gov/smallbiz.

4 Nonetheless, I am here to offer our
5 support for the Commission's requirements for AES
6 to participate in studies that do impact on air
7 and quality, as well as on biological resources.
8 All of us, while concerned about solving our
9 energy crisis want to have clean air, coastlines,
10 and healthy marine life.

11 Thank you for inviting me here to speak
12 today. I hope we can reach solutions to our
13 energy emergency that blend our concerns for
14 energy.

15 HEARING OFFICER SHEAN: Thank you, Ms.
16 Anderson.

17 COMMISSIONER PERNELL: One question. Do
18 the small businesses support a MOU or contract, or
19 some other document, that would allow the power to
20 be sold in California?

21 MS. ANDERSON: At this point, we have
22 not come to a conclusion on that, because it's
23 very hard to control where the electron goes. We
24 understand that. And yet, it's, you know, within
25 your powers that you're going to have to work on

1 that.

2 I -- in the ideal world, we would like
3 it all in California.

4 COMMISSIONER PERNELL: Thank you.

5 HEARING OFFICER SHEAN: Thank you.

6 Mr. Ralph Bauer. Okay. He had spoken
7 earlier, I think.

8 How about Mr. Michael Stevens.

9 All right. Eric Jackson. And behind
10 him, Mr. Richard Kennedy.

11 MR. JACKSON: Good afternoon,
12 Commissioners.

13 COMMISSIONER PERNELL: Good afternoon.

14 MR. JACKSON: My name is Eric Jackson.
15 I'm a resident of Orange County. And I've been a
16 resident of Orange County some time.

17 I'm in favor of the power house, because
18 I know the need for electricity. What I'm not in
19 favor of, bringing people from out of state to do
20 the work that I personally went through a five-
21 year apprenticeship program as a steamfitter,
22 pipefitter, welder, and so forth, and I'm not
23 capable of getting a job at that plant for a fair
24 wage.

25 What I'm saying, what I call fair wage

1 is not \$22 an hour, or \$75 per diem, if I live 50
2 miles beyond the plant. A fair wage is the
3 prevailing wage of the industry in the area, which
4 is \$28.76.

5 Again, the State of California is losing
6 money on this because AES is paying state
7 disability insurance on \$22 an hour instead of \$28
8 an hour, and 76 cents. We are losers. We're
9 losing. We're losing because they're paying on
10 \$22 versus 28.76.

11 I'm a resident of California. My
12 children have been educated here. I live here. I
13 register my cars here. I buy major appliances
14 here. And I intend to stay here. Now, these out
15 of work -- state workers are only going to be here
16 for a short time. I imagine they have to rent
17 motel rooms, or live with friends and neighbors,
18 and so forth, and send the money back to the
19 various states in which they come. That's all
20 right. That's the American way. But why, I ask,
21 has the Commission allowed these people to come in
22 here and not pay just due.

23 All right. The opportunities of a
24 quality life is not afforded me now because I
25 don't have the ability to go to work in the -- in

1 the profession that I've been trained. We have
2 the skilled craftsmen, technicians, and so forth.

3 Now, I've gone through an apprenticeship
4 program with over 10,000 hours, 10,000 hours of on
5 the job training. Six hundred hours of classroom
6 training. And you want me to work for substandard
7 wages, and if I go fill out a application I have
8 to lie and deviate, and not tell the truth on
9 that, so possibly I can get employed.

10 I urge the Commission, I beg the
11 Commission, look into these incidents. And let's
12 hire the people from southern California, such as
13 myself, and my brothers and sisters that are
14 residents of this fine community.

15 Thank you.

16 (Applause.)

17 HEARING OFFICER SHEAN: Thank you.

18 Thank you, Mr. Jackson.

19 Mr. Kennedy. Is he here?

20 Joey Racano. And then we'll have an
21 open mic for anyone who would like to speak.

22 Yes, sir.

23 MR. RACANO: Good morning.

24 HEARING OFFICER SHEAN: Good morning.

25 MR. RACANO: I'm here speaking on behalf

1 of 7,312 residents of the City of Huntington Beach
2 that voted for me in last year's election. And I
3 would like to remind you of their concern for
4 their environment.

5 As you know, here in Huntington Beach we
6 have an ocean based economy. And in this fashion,
7 we do tend to diverge from the needs of the State
8 of California. In this ocean based economy, we
9 have to be very careful because we have been
10 sorely affected by ocean closures. We would like
11 to submit that additional generation of
12 electricity should be second in priority to the
13 smart use of energy and conservation.

14 Stanley Grant's UCI study that suggested
15 that the hot water from the AES outfall might be
16 drawing in a plume of bacteria from the Orange
17 County Sanitation District's four mile outfall was
18 not the first time that we were warned of this
19 possibility. In 1985, when the Orange County
20 Sanitation District first applied for the now
21 infamous 301H waiver, which allows them to dump
22 partially treated sewage into our ocean instead of
23 full secondary treatment, as is necessary, a Dr.
24 J. Skinner, out of Newport Beach, forewarned us.
25 And unfortunately, it seems to me that the people

1 who are doing the polluting are also the ones who
2 are doing the studies. That's why I'm glad about
3 the sea grant study.

4 It is no secret that the AES Company
5 signed the Williams contract too soon to
6 capitalize on current high market prices for
7 electricity. But it's very interesting to me that
8 Units 3 and 4 would not be subject to the
9 limitations of this contract. That means we have
10 every reason to believe that AES wants to
11 circumvent environmental safeguards so that they
12 can hurry up and get Units 3 and 4 online, so they
13 can reap these enormous profits.

14 The people of Huntington Beach will not
15 accept that their environment -- their air, their
16 water, their beaches -- be sacrificed to make
17 electricity that won't be used in this area
18 anyway. I've heard no talk of energy
19 conservation, and so it's very difficult to think
20 that AES is being honest with Huntington Beach.
21 We demand a modern facility, one that will be
22 gentler on our beaches, our fishes, our kelp, our
23 air, and our pocketbooks.

24 We will not allow our ocean based
25 economy to be compromised, and we will stand fast

1 to protect our worldwide reputation of surf city,
2 a place with clean water, clean air, and a
3 beautiful environment. A place to live, shop,
4 surf, swim, and even raise a family in.

5 This, I consider an all out effect, an
6 all out assault on our local environment, and the
7 people of Huntington Beach would like to make it
8 clear that we will not be guinea pigs for the sake
9 of corporate profits.

10 Thank you.

11 HEARING OFFICER SHEAN: Thank you.

12 PRESIDING MEMBER ROSENFELD: Thank you.

13 (Applause.)

14 HEARING OFFICER SHEAN: Is there anyone
15 who has not filed a blue card, but who would wish
16 to come down and speak to us before we adjourn our
17 hearing.

18 PUBLIC ADVISER MENDONCA: While we're
19 waiting for the speakers to come down, the Public
20 Adviser received two sets of comments. One came
21 from George Mason, and Mr. Mason's comments will
22 be docketed. He basically remains concerned. He
23 applauds the Energy Commission Staff for the
24 excellent job that they've done in managing this
25 process, but he is continuing to be concerned

1 about pollution and the use of pollution credits,
2 which are not locally generated.

3 In addition, Mr. William Reid has
4 submitted written comments, and those will be
5 docketed. Mr. Reid intervened.

6 Okay. Thank you.

7 HEARING OFFICER SHEAN: Yes, sir.

8 MR. TUCKER: Hi. My name's John Tucker.
9 I'm a resident of Huntington Beach also.

10 And to get back to the labor thing and
11 quality of help. In the State of Oregon they have
12 to be certified to work in the power plants. That
13 might be something we might want to look at one of
14 these days, also. And that -- if out of state
15 help does come in, at least they have to be
16 certified and licensed in some area.

17 My concern is, is when you bring in out
18 of state help do you bring in the quality control
19 people with them? Do you bring your x-ray
20 technicians with you? We don't want to get in the
21 position where we're getting sub-quality wells out
22 there, like they did on the Alaskan Pipeline, and
23 some of the nuclear power plants that were built
24 back in Texas.

25 There's a nuclear power plant back there

1 now that they cheated when they dumped concrete
2 in. I don't think it ever even got online.

3 So there is more to this, and it's not
4 just a labor thing, and stuff like that. When you
5 have some kind of protection, through your union,
6 you're not as apt to do something that's not up to
7 code. You're more apt to watch that x-ray
8 technician and make sure he is legit, and to make
9 sure they're not slipping in dirty film and
10 everything else on that main steamer down there.

11 My kids live here, and I know what
12 happens when one of them things go off, and it's
13 not pretty.

14 We had a pipeline blow up down in Long
15 Beach years ago, it took a whole city block out,
16 because a non-union outfit went and got a piece of
17 pipe out of a scrap yard and put it in that gas
18 main down there. So there's more to it. It's not
19 just a -- a union thing. It's a quality control
20 issue, and you should look at that for all our
21 power plants in this state.

22 Thank you.

23 HEARING OFFICER SHEAN: Thank you, Mr.
24 Tucker.

25 Is there anyone else? All right.

1 MR. MOSHIRI: My name is Mike Moshiri.
2 That's M-o-s-h-i-r-i. I'm a resident of
3 Huntington Beach. In fact, I live about a quarter
4 of a mile north of the power plant.

5 I'm supportive of the project. I
6 recognize that we have the energy crisis, and it's
7 time for us to move with the project.

8 I heard some excellent comments from
9 City of Huntington Beach and Staff, and I'd just
10 like to reiterate some of them. One of them is
11 that the five-year permit limit be maintained, and
12 then at the end of five years the project be
13 subject to a full review.

14 And the other one, that the energy
15 produced be used beneficially in California.

16 That's about the extent of my comments.

17 HEARING OFFICER SHEAN: Thank you, sir.

18 Is there anyone else?

19 MR. MOYMAGH: Yeah, I'd like to say
20 something, sir.

21 HEARING OFFICER SHEAN: Okay.

22 MR. MOYMAGH: How we doing? Good
23 morning -- or, good afternoon.

24 I'm kind of curious. I'm a contractor
25 in the area.

1 HEARING OFFICER SHEAN: May we have your
2 name, please, sir.

3 MR. MOYMAGH: Mike Moymagh. I'd like to
4 know, as a contractor, I'm not large enough to
5 compete with this company. But are they planning
6 on staying in the area after this is completed?
7 And if so, are they going to continue to bring
8 labor in? Because I can't compete with prices
9 that cheap when I draw off my pool of labor here.
10 So if I'm going to build a plant and remain in
11 business, and feed people from here, not out of
12 state, but here, I pay wages here, taxes here,
13 everything goes to California, not to wherever
14 they're from.

15 I'd like to stay in business. And I'd
16 like to take care of the people that work for me,
17 and continue to work for me. But on a competitive
18 basis, I can't compete. So how is a company like
19 myself, and others, going to compete on a -- on a
20 fair playing field?

21 We're looking at 22, 28, that's a lot of
22 money. It adds up. And if they can come in and
23 bring cheap labor in, it will destroy some of the
24 businesses. I won't be able to keep the doors
25 open.

1 So that's all I have to say. I'm just
2 curious. Are they going to do this plant next and
3 then start on small projects? Take them away from
4 us? If so, it'll upset me. I'll tell my
5 employees there's nothing I can do, because I
6 can't, dollar for dollar, compete against a
7 company this large. Bechtel might, Fluor might.
8 Fluor and Bechtel draw all their labor from here.
9 Why can't they? And still remain competitive.

10 Bechtel and Fluor make a lot of money.
11 So will these people. But let them pay the same
12 rate that everybody else pays. Let them be fair
13 across the board, and let the money stay here.
14 Let's feed the people here, clothe the people
15 here, you know. These people have kids, go to
16 school here, pay taxes here. Everything stays in
17 California. It doesn't go back to wherever
18 they're from, whatever state it may be. That
19 doesn't matter. Let it stay here in California.

20 They can be competitive. But let it
21 stay here.

22 That's all I have to say. Thank you
23 very much.

24 HEARING OFFICER SHEAN: Thank you.

25 Can you, either Mr. Rothman, tell me,

1 I'm trying to recollect from the Evidentiary
2 Hearing, but we can sort of answer this gentlemen.
3 But for the purposes of -- in a general way, is
4 that you do have a local hiring program that you
5 intend to use, and that's why you agreed to the
6 conditions in the sociology.

7 Can you refresh my recollection on this?

8 MR. ROTHMAN: Unfortunately, I don't
9 think we -- I mean, in terms of refreshing your
10 recollection, we did agree to the conditions that,
11 you know, have us employing I believe it's 30
12 percent or 50 percent, depending on how, you know,
13 which -- 30 percent of -- within Orange County,
14 and 50 percent within California.

15 We've agreed to that. I just don't
16 have, in terms of detail on the local hiring
17 program, I don't have those details in terms of
18 what the outreach is, or what the program is
19 specifically. But we -- we are agreeing to and
20 have committed to meeting the 30 percent local and
21 the 50 percent California for the project itself.
22 I think, for the actual ongoing operations of the
23 facility, everybody's from California.

24 FROM THE AUDIENCE: Bullshit.

25 HEARING OFFICER SHEAN: Okay. We can

1 conduct ourselves in a civil manner and still get
2 our opinions out.

3 Do you have anything further?

4 MR. BLACKFORD: To the second part of
5 those comments. We intend to be here for the long
6 haul. And unfortunately, on major projects like
7 this, larger companies are more competitive, be it
8 a Bechtel or a Fluor or a PMSI.

9 However, in smaller ongoing projects, we
10 routinely contract out smaller projects that
11 smaller entities are able to bid on, and if the
12 gentleman is willing to drop off his
13 qualifications and information about his company,
14 he's more than welcome to participate down the
15 road.

16 HEARING OFFICER SHEAN: Okay.

17 COMMISSIONER PERNELL: Let me be clear
18 on what I thought I heard. And that is that AES
19 intend to employ 30 percent of workers from this
20 area, and 50 percent from California?

21 MR. BLACKFORD: As regards the project
22 itself, it was 30 percent from Orange County and
23 50 percent from the State of California.

24 COMMISSIONER PERNELL: All right. So --
25 which is a total of 80 percent of your workforce.

1 MR. BLACKFORD: No, it's a total of 50
2 percent. Clearly the people that are in Orange
3 County also count as living in California.

4 COMMISSIONER PERNELL: Okay.

5 I just have a couple of -- especially
6 the city has talked about noise, and I just wanted
7 to be clear on that.

8 I have one of their suggestions was to
9 get a person onsite, and is that -- I guess this
10 is for the city. Is that after 8:00 p.m.? So
11 this would be like the third shift?

12 MR. LAMB: Matt Lamb. It would be after
13 8:00 p.m. that we're looking for a noise
14 technician that would carry a decibel meter, and a
15 cell phone, and that point of contact number would
16 be established at the, you know, on the fence,
17 large enough so that people complaining, you know,
18 also the flyers that you're requiring to send out
19 that that number would be on the flyer. And that
20 technician would be available to immediately
21 answer and resolve issues.

22 COMMISSIONER PERNELL: All right. And
23 for AES, my understanding is that that will be a
24 -- that timeframe will be low noise activity --

25 MR. BLACKFORD: That's correct.

1 COMMISSIONER PERNELL: Okay. And the
2 other question is simply because we've had a lot
3 of open mic and public comments about the workers
4 and who's going to work there, so that question, I
5 think, got answered, at least for me.

6 The other one dealt with a lot of
7 comment on being able to supply California and
8 helping with this present challenge. And you
9 mentioned, or at least AES representative
10 mentioned something about a DWR and those contract
11 negotiations.

12 And I know that we're not -- can't be
13 privy to them, because they're negotiation. Let
14 me just ask, is that close to coming to an end, or
15 do you know exactly where we're at on that?

16 MR. ROTHMAN: I think that depends a lot
17 on the representatives of the Department of Water
18 Resources. They've got a proposal, and we have
19 not heard back, and so I can't tell you, unless
20 they've communicated something today while we've
21 been here, whether things are close or not.

22 COMMISSIONER PERNELL: All right. Let
23 me ask, is there someone from the Department of
24 Water Resources here?

25 Okay. And then there was some comment

1 on -- by, I think, the city, and some other
2 residents, about the air quality, and whether or
3 not you could buy credits and -- and those -- and
4 I think for this proceeding, and correct me if I'm
5 wrong, it's the South Coast Air Quality District
6 that has jurisdiction over this area?

7 MR. ROTHMAN: That's correct. The South
8 Coast Air Quality Management District.

9 HEARING OFFICER SHEAN: All right. What
10 we propose to do is to take these comments back
11 with us and try to crank back out a revised
12 Proposed Decision, and have it available to you by
13 the end of the week.

14 We anticipate further that the full
15 Commission will hear this matter on April 18th, in
16 Sacramento. Undoubtedly, the notice for that will
17 indicate that if there are -- there will be an
18 opportunity to make written comments on the
19 revised PMPD. So stand by your computers, and we
20 will also, I think, as we did, try to mail out or
21 express deliver CD versions of the decision so you
22 don't have to download the whole thing, because
23 it's getting -- well, hopefully, no larger. But
24 it is pretty large to begin with.

25 So that's how we see things laying out.

1 Mr. Workman.

2 MR. WORKMAN: Mr. Shean, at one point
3 you and I discussed the availability of sort of a
4 call-in public hearing of -- before the
5 Commission, so individuals wouldn't have to fly to
6 Sacramento to testify. Could you explain what
7 kind of public participation would be permitted in
8 front of the Commission on the 18th, and whether
9 or not we could have a call-in?

10 HEARING OFFICER SHEAN: I think, and the
11 Public Adviser is usually the facilitator of this
12 technology, but we do have a --

13 PUBLIC ADVISER MENDONCA: Generally our
14 Business Meetings are Webcast, and there are up to
15 60 slots for listening to the presentation. We,
16 when requested, and obviously you have requested,
17 we can set up a teleconference call for real time
18 participation.

19 MR. WORKMAN: We would certainly like to
20 do so, to allow full participation by the public
21 here in Huntington Beach with the Commission's
22 consideration of this application.

23 PUBLIC ADVISER MENDONCA: How many lines
24 do you think you would want to have?

25 MR. WORKMAN: That's to be determined.

1 PUBLIC ADVISER MENDONCA: Okay. We'll
2 start out with 15.

3 MR. WORKMAN: I think that might be
4 good.

5 HEARING OFFICER SHEAN: Let's see. The
6 Commissioner just asked me about when we
7 anticipate --

8 COMMISSIONER PERNELL: Yeah, I can --

9 HEARING OFFICER SHEAN: Sure.

10 COMMISSIONER PERNELL: Let me just
11 suggest that those that will be filing additional
12 information not show up on the 18th with a
13 document and expect the Commissioners to digest
14 that document. So without putting a time limit on
15 it, I would just ask to be considerate of our
16 eyesight and -- and comprehension the day of the
17 Business Meeting. So I would suggest that anyone
18 who wants to get comments in related to this
19 proceeding do it in a timely manner, so that we'll
20 have time to digest the information.

21 HEARING OFFICER SHEAN: And I would say
22 that if any come to me by -- by e-mail, by the
23 close of business on Monday, that would be the
24 16th, we will reproduce them and make sure that
25 the Commissioners' Business Meeting packet would

1 have them. But just make sure that you note that
2 that's your intention or request if you send them
3 to me.

4 Okay. Is there anything further?

5 All right. Well, once again, we are
6 very grateful to the City of Huntington Beach for
7 your hospitality here with the hearing room, and,
8 just in general, we like being here.

9 Thank you, and our hearing is adjourned.

10 (Thereupon the Committee Hearing was
11 adjourned at 12:45 p.m.)

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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 Committee 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 the outcome of said Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of April 2001.

VALORIE PHILLIPS

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