

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:

Application for Certification for )  
Inland Empire Energy Center by ) Docket No.  
Inland Empire Energy Center, ) 01-AFC-17  
(IEEC) LLC )  
\_\_\_\_\_ )

EASTERN MUNICIPAL WATER DISTRICT

BOARD ROOM

2270 TRUMBLE ROAD

PERRIS, CALIFORNIA 92570

WEDNESDAY, JULY 30, 2003

1:05 p.m.

Reported by:  
James Ramos  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Commissioner Robert Pernel, Presiding Member

HEARING OFFICER AND ADVISORS PRESENT

Kerry Willis, Hearing Officer  
E. V. (Al) Garcia, Advisor to Commissioner Pernel  
Michael Smith, Advisor to Commissioner Boyd

STAFF AND CONSULTANTS PRESENT

Paul Kramer, Staff Counsel  
James Bartridge, Siting Project Manager

STAFF WITNESSES

Alvin Greenberg, Hazardous Materials expert  
Brewster Birdsall, Aspen Environmental Group

PUBLIC ADVISOR

Kenneth Graff, Riverside County Board of  
Supervisors (representing Public Advisor)

APPLICANT

Greggory L. Wheatland, Esq.  
Christopher Ellison, Esq.  
Ellison, Schneider & Harris, L.L.P.

Jim McLucas, P.E.  
Michael A. Hatfield  
Calpine

APPLICANT WITNESSES

Gary S. Rubinstein, Sierra Research  
Jenifer Morris, JJR Resources, LLC

INTERVENORS

Glen E. Daniels, President,  
Romoland Community Council

AGENCIES

John Yee  
Danny Luong  
South Coast Air Quality Management District

PUBLIC COMMENT

Bradley Hudson, Riverside County  
George Rackstrau, resident of Romoland  
John Puentes, resident of Romoland  
Nancy Dean, resident of Romoland  
Bob Gibbons, Harvest Valley Community Council  
Ralph Lunstrum, Harvest Valley Community Council  
Melinda Puentes, resident of Romoland

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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

2 1:05 p.m.

3 COMMISSIONER PERNELL: Good afternoon,  
4 I'd like to welcome everyone. Let me just ask,  
5 are the Applicants ready?

6 MR. MCLUCAS: Yes, we are.

7 COMMISSIONER PERNELL: Staff ready?

8 HEARING OFFICER WILLIS: Yes.

9 COMMISSIONER PERNELL: Any Intervenors?  
10 Okay, be ready to speak. Okay. This is the  
11 Committee's formal Evidentiary Hearing on the  
12 Inland Empire Energy Center, LLC's Application for  
13 Certification of the Inland Empire Energy Center.

14 We will first introduce the parties,  
15 starting with the Committee and the Applicant,  
16 Intervenors, Agencies, and we will hear from our  
17 Public Advisor or her representative.

18 Starting with the Committee, my name is  
19 Commissioner Robert Pernel. I'm the Presiding  
20 Member of the Committee. Commissioner Jim Boyd is  
21 the Associate Member and couldn't be in attendance  
22 today. However, his Advisor, to my far right, is  
23 Michael Smith, who is with us today representing  
24 Commissioner Boyd.

25 Al Garcia, seated to my left, is my

1 Advisor, and Kerry Willis is our Hearing Officer  
2 for the Committee. At this time I'd like the  
3 Applicant to introduce himself and his team.

4 MR. WHEATLAND: Good Afternoon. My name  
5 is Gregg Wheatland, and I am one of the attorneys  
6 for the Applicant. And I would like to, in a  
7 moment, ask the others at this table to introduce  
8 themselves.

9 We also will have one or two additional  
10 witnesses who will introduce themselves later  
11 today at the appropriate time in the hearing, but  
12 for now I'd like those at the table to introduce  
13 themselves please.

14 MR. ELLISON: Good Afternoon, my name is  
15 Christopher Ellison. I'm also an attorney  
16 representing the Applicant in this proceeding.

17 MR. MCLUCAS: I'm Jim McLucas, engineer  
18 with Calpine.

19 MS. MORRIS: I'm Jenifer Morris, the  
20 Applicant's Environmental Project Manager.

21 MR. HATFIELD: My name is Mike Hatfield,  
22 and I'm the Development Manager for the project,  
23 with Calpine.

24 COMMISSIONER PERNELL: Okay, welcome Mr.  
25 Wheatland and your team. Staff, please.

1 MR. KRAMER: Good afternoon, I'm Paul  
2 Kramer, the Staff Counsel for this project. With  
3 me is Jim Bartridge, the Project Manager, and we  
4 have several witnesses here today that we will  
5 introduce later.

6 COMMISSIONER PERNELL: All right. We  
7 want to welcome you, Mr. Kramer, and your team.  
8 Now, Intervenors.

9 MR. DANIELS: I'm Glen Daniels,  
10 President of the Romoland Community Council.

11 COMMISSIONER PERNELL: Okay, is there --

12 MR. DANIELS: I don't think we're  
13 formally an Intervenor, we may have misunderstood  
14 what that means. I might add, though, that a  
15 letter was sent to this Commission, and it's in  
16 doubt, so that's what I want to clarify. It was  
17 sent last January, a year ago.

18 COMMISSIONER PERNELL: Okay. We will  
19 clear that up before we leave today. Okay, are  
20 there any other Intervenors? Anyone from the  
21 school district? Agencies? Please, into the  
22 mike.

23 MR. YEE: Good afternoon, my name is  
24 John Yee, with the South Coast Air Quality  
25 Management District. Today I have with me Danny

1 Luong, and he's an Air Quality Analysis  
2 Supervisor, and Li Chen, one of my engineers.

3 COMMISSIONER PERNELL: All right.  
4 Welcome, South Coast, and your team, John. Our  
5 Public Advisor is not here at this time. However,  
6 anyone who -- I'm sorry, you represent the Public  
7 Advisor?

8 MR. GRAFF: Yes. Good afternoon, my  
9 name is Ken Graff. I'm a Legislative Assistant to  
10 County Supervisor Jim Venable, Riverside County  
11 Third District, in which district the plant is  
12 being proposed.

13 COMMISSIONER PERNELL: Okay. Are there  
14 any other, anyone representing public officials?  
15 Okay. The Public Advisor's office is being  
16 represented today by myself.

17 And I would just say if anyone wants to  
18 address the Committee please fill out a white card  
19 that Mr. Garcia has, and we will call you at the  
20 appropriate time to address the Committee.

21 And finally, from the Public Advisors --  
22 I'm wearing the Public Advisors hat here --  
23 members of the public may offer comments after the  
24 presentation of evidence on all the topics. So  
25 you don't have to wait until the end.

1           Once we get done with a topic, if you  
2 have some questions or want to make comments, you  
3 can do it at that time. Once the topics are  
4 closed, then the topics are closed. So, we don't  
5 want to go back and be redundant in that regard.

6           At this time, I would like to turn the  
7 hearing over to our Hearing Officer, Ms. Willis.

8           HEARING OFFICER WILLIS: Thank you. The  
9 purpose of this Hearing is to receive evidence,  
10 including sworn, written and oral testimony, as  
11 well as Exhibits, to establish the factual record  
12 necessary to reach a decision on this AFC.

13           This is a formal Evidentiary Hearing.  
14 Witnesses will testify under oath or affirmation,  
15 and are subject to cross-examination. The  
16 Reporter will administer the oath. Applicant and  
17 Staff have submitted sworn witness declarations  
18 for topics that are not in dispute.

19           We discussed these topics at the  
20 prehearing conference on June 24th, and based on  
21 the second prehearing statements filed by both  
22 parties on July 18th, 2003, the parties have  
23 agreed to waive cross-examination and oral  
24 testimony, and will submit testimony by  
25 declaration on the following areas that were

1 listed on the handout that starts with page two  
2 and three, starting with Alternatives and going  
3 through Worker Safety and Fire Protection.

4 A party sponsoring a witness shall  
5 briefly establish the witnesses' qualifications,  
6 and ask the witness to orally summarize his or her  
7 prepared testimony before requesting the testimony  
8 be moved into evidence. Relevant Exhibits may be  
9 offered into evidence at that time as well.

10 Multiple witnesses may testify as a  
11 panel if necessary, and I think we've listed Air  
12 Quality and Public Health together as a panel, and  
13 if that works for both parties then that usually  
14 works for the public.

15 At the conclusion of the Witnesses'  
16 direct testimony the Committee will provide the  
17 other parties who have so requested an opportunity  
18 for cross-examination, followed by redirect and  
19 recross-examination as appropriate. The Committee  
20 may also question the Witness.

21 At the conclusion of each topic area we  
22 will provide an opportunity for public comment on  
23 that topic. If there's any reason -- we had  
24 planned on taking the uncontested topics at the  
25 end.

1           If there's any member of the public who  
2 cannot stay until the end and would like to  
3 comment prior to that time, let us know early on  
4 and we'll make sure you have that opportunity  
5 before you need to leave.

6           We have distributed a tentative Exhibit  
7 List. There are copies in the middle on the back  
8 of that table. Please identify the Exhibits  
9 relevant to each topic as it is presented, and  
10 move the pertinent Exhibits into evidence as  
11 appropriate.

12           We will follow the schedule shown on the  
13 Evidentiary Hearing topic and Witness schedule,  
14 beginning with Project Description, and work our  
15 way through the remaining topics. At the end of  
16 oral testimony we will take the remaining topics  
17 by declaration.

18           We'll take periodic breaks, and probably  
19 a dinner break around 5:00 p.m. depending on how  
20 we're moving through the schedule. We will  
21 continue into this evening and return tomorrow if  
22 necessary.

23           We would like to remind the parties that  
24 the findings made in this case will be based  
25 wholly on the written and oral evidence presented

1 during these proceedings. We discourage  
2 discussion of agreements, positions advanced, or  
3 decisions made in other recent proceedings. None  
4 of these are precedential or binding in these  
5 proceedings.

6 And so, if there are any questions  
7 before we begin? So let's start with the  
8 Applicant, and they will be giving some testimony  
9 on project description. Mr. Wheatland?

10 MR. WHEATLAND: Thank you. May we go  
11 off the record for one moment please?

12 HEARING OFFICER WILLIS: Sure.  
13 (Off the record.)

14 HEARING OFFICER WILLIS: Back on the  
15 record.

16 MR. WHEATLAND: May we have Mr. McLucas  
17 sworn in as a witness please?

18 Whereupon,

19 JIM MCLUCAS  
20 was called as a witness herein, and after first  
21 having been duly sworn, was examined and testified  
22 as follows:

23 MR. WHEATLAND: Would you please state  
24 your name for the record?

25 MR. MCLUCAS: My name is Jim McLucas.

1           MR. WHEATLAND: And do you have before  
2 you Chapter One of Exhibit Two, Project  
3 Description?

4           MR. MCLUCAS: Yes, I do.

5           MR. WHEATLAND: And for the purposes of  
6 your testimony on Project Description are you also  
7 sponsoring Sections 1, 2, 3, 4 and 6, of Exhibit  
8 One, which is the AFC?

9           MR. MCLUCAS: Yes, I am.

10          MR. WHEATLAND: And are you also  
11 sponsoring Exhibit 3, the Data Adequacy Supplement  
12 to the AFC?

13          MR. MCLUCAS: Yes, I am.

14          MR. WHEATLAND: Would you please briefly  
15 state your qualifications?

16          MR. MCLUCAS: I'm a registered  
17 Mechanical Engineer in California, 21 years of  
18 experience in the design of power generation  
19 facilities, water and wastewater treatment  
20 facilities.

21                 Currently I'm the Western Region and  
22 Canada Regional Engineering Manager for Calpine,  
23 and on this particular project functioned as the  
24 Project Engineer for the development.

25          MR. WHEATLAND: Thank you. Is the

1 testimony that you are sponsoring and the facts  
2 contained therein true to the best of your  
3 knowledge?

4 MR. MCLUCAS: Yes.

5 MR. WHEATLAND: And do the opinions in  
6 this testimony represent your best professional  
7 judgment?

8 MR. MCLUCAS: Yes.

9 MR. WHEATLAND: And do you adopt the  
10 documents that we previously described as your  
11 testimony in your proceeding?

12 MR. MCLUCAS: Yes.

13 MR. WHEATLAND: At this time, then, Mr.  
14 McLucas, could you please provide for the  
15 Committee and for the audience a description of  
16 the project?

17 MR. MCLUCAS: Okay. I'd like to do that  
18 in the form of a Powerpoint presentation, just to  
19 give an overall picture of the project for the  
20 benefit of everybody here. And much of this was  
21 discussed during the informational hearing at the  
22 very beginning of the process, but I realize that  
23 not everybody was in attendance.

24 This first slide is the main cycle  
25 diagram --

1           COMMISSIONER PERNELL: Excuse me, can  
2 you -- that's a hand-held mike, can you just take  
3 it off of the stand and get it a little closer?  
4 Great.

5           MR. WHEATLAND: Oh, and before you  
6 begin, I think you have some hard copies of the  
7 presentation as well?

8           MR. MCLUCAS: Yes, I do. At what point  
9 would you like me to distribute those?

10          MR. WHEATLAND: I think if we could  
11 distribute those now, please.

12          MR. MCLUCAS: Okay.

13          MR. KRAMER: Does this need a new  
14 Exhibit number then?

15          MR. WHEATLAND: This is a hard copy of  
16 the slides that we'll be viewing here.

17          MR. KRAMER: Okay, but is this going to  
18 be entered into the record?

19          MR. WHEATLAND: If the Committee so  
20 desires.

21          MR. KRAMER: Okay, I'm just -- it's not  
22 on the list right now, though?

23          MR. WHEATLAND: No, it's not. It's not.  
24 We're just offering a hard copy for the ease of  
25 following the presentation, but we certainly can

1 identify it as an Exhibit if the Committee so  
2 desires.

3 HEARING OFFICER WILLIS: I don't think  
4 we need to.

5 COMMISSIONER PERNELL: All right, you  
6 may continue.

7 MR. MCLUCAS: Okay. This first diagram  
8 is the cycle diagram for the project. Starting in  
9 the upper left corner there is the combustion  
10 turbine. In this particular project we'll use  
11 two combustion turbines. One is shown in the  
12 figure there.

13 They're very much like an engine hanging  
14 off the wing of a jet, only much larger. They use  
15 clean natural gas, just like the fuel that's used  
16 for many of your homes for hot water and space  
17 heating.

18 In the far left hand there, air is  
19 coming in the top and is compressed, and the  
20 natural gas is entered and combusted, and then the  
21 hot, expanding gases then drive the power turbine,  
22 which is on the right hand of the machine there.  
23 And that in turn drives the shaft that turns the  
24 generator, and also the compressor.

25 The hot exhaust gases then exit the left

1 side there, and come into the heat recovery steam  
2 generators, or HRSG's or Hersigs, and those are  
3 the large boxy things that you'll see later on in  
4 a simulation.

5 In those, the hot exhaust gas, which is  
6 entering about 1,165 degrees, is used to generate  
7 steam at three pressures, recovering all the  
8 energy feasible out of that waste heat, and then  
9 exiting the stack is warm exhaust at approximately  
10 190 degrees.

11 Steam from the acute recovery steam  
12 generator then -- shown in the red line -- is then  
13 injected into the steam turbine. It's actually  
14 three different pressures that enters the steam  
15 turbine at three different points.

16 And, similar to the combustion turbine,  
17 that steam comes in at a high pressure, expands  
18 through the steam turbine, driving the shaft which  
19 then turns a second generator -- and a third  
20 generator in this case.

21 The steam then exhausting out of the  
22 steam turbine is discharged into a condenser, and  
23 it's exiting the steam turbine at sub-atmospheric  
24 pressure. And because of that the temperature is  
25 only about 85 degrees.

1           And then that condenser is a shell and  
2 tube heat exchanger, where the steam is on the  
3 shell side, and then there's water flowing through  
4 the tube side that is used to condense the steam  
5 back down to condensate.

6           And then you see the line leaving the  
7 top of the condenser is the condensed steam that  
8 is then recycled right back to the HRSG. So that  
9 flow is essentially an enclosed loop.

10           The heat from the condenser then is  
11 dissipated to the atmosphere through the cooling  
12 tower through an evaporative process. And the  
13 majority of the water makeup for the project is to  
14 replace that water that's lost to evaporation.

15           And then, because the water that's  
16 leaving the cooling tower is pure, it leaves  
17 behind the dissolved solids. And then to control  
18 the water chemistry a portion of the cooling tower  
19 flow needs to be discharged to control the  
20 dissolved solids.

21           Then the power generated from the  
22 combustion turbines is produced at 18 to 23  
23 kilovolts, and stepped up through transformers to  
24 500 kilovolts in the switchyard, and from there  
25 transmitted to the Southern California Edison

1 substation.

2           So, the major equipment. Two GE,  
3 General Electric, 7FB combustion turbine  
4 generators -- and those are the most current  
5 offering from GE in that size. And they're  
6 provided with dry low NOX, which is oxides of  
7 nitrogen combusters, which is the first stage of  
8 emissions control for this project.

9           Following that, the two heat recovery  
10 steam generators will be provided with duct  
11 burners, which is another place where natural gas  
12 is entered into the process. And those are used  
13 to provide peaking power, where they add  
14 additional heat to the exhaust gases to produce  
15 additional steam that can then make energy in the  
16 steam turbine.

17           Also in the heat recovery steam  
18 generators are two other components of the mission  
19 control system. And the first is a selective  
20 catalyst reduction system, and that's used to  
21 reduce the oxides of nitrogen.

22           And in that process ammonia is injected  
23 into the stream to react with the NOX. And then  
24 also there is an oxidation catalyst to reduce the  
25 carbon monoxide emissions. The cooling tower

1 proposed for this project is 14 cell, and again  
2 the 500 KV switchyard.

3 The generation capability for this  
4 project, it's nominally a 670 megawatt plant, and  
5 that's the peak output. At base load conditions,  
6 which is with no duct firing on an average ambient  
7 day, it's projected to put out 538 megawatts.

8 And at that 538 megawatts it comes in at  
9 an efficiency of about 51 percent, which is a heat  
10 rate of 6,700 BTU's per kilowatt hour on a higher  
11 heating value basis. The peak capacity, as I  
12 said, is 670 megawatts, and that is on a hot day,  
13 with 100 percent duct firing and combustion  
14 turbine power augmentation.

15 And that's another feature of peaking  
16 capacity, where steam is entered into the  
17 combustion turbine to produce additional energy  
18 out of the combustion turbine. And that steam is  
19 produced in part by the duct firing.

20 The incremental heat rate for the  
21 peaking capacity, which is the duct firing and  
22 power augmentation, is approximately 8,100 to  
23 9,000 BTU's per kilowatt hour on a higher heating  
24 value basis, and that's 38 to 42 percent  
25 efficient.

1           And so, while that's not as efficient as  
2 the baseload combined cycle capacity of the plant,  
3 it is more efficient than the comparable simple  
4 cycle combustion turbines which are typically used  
5 to provide peaking power in the state, which have  
6 an efficiency of 37 to 38 percent.

7           This next figure shows the vicinity of  
8 the project, and goes into a little bit as to why  
9 we located the project here. Typically, when we  
10 look to site these projects we look for locations  
11 where the power, water, gas and electricity  
12 infrastructure all, you know, cross one another or  
13 come very close. And this is another very prime  
14 site from that standpoint.

15           In the middle there you see the yellow  
16 boxes pointing to kind of a greenish area, that's  
17 the power plant site. It will occupy 35 acres of  
18 a 46 acre parcel, bounded by Antelope Road to the  
19 west, San Jacinto Road to the east, Southern  
20 California Edison's existing 500 KV transmission  
21 corridor to the south, and then an asphalt plant  
22 to the north -- which is a familiar landmark for  
23 most people in the Romoland area.

24           In addition, it's one of California's  
25 largest growing regions. Lots of homes being

1 built every day in this area, and because of that  
2 the electrical demand is increasing, so this goes  
3 along with our philosophy of trying to locate the  
4 generation close to where it's being used.

5           And in fact the Valley Substation --  
6 which is to the far right of the figure there --  
7 is a major substation for Southern California  
8 Edison and in demonstration of the growth that's  
9 going on here there's a large 115 KV load center  
10 that's just been recently added there.

11           So much of the power that's being  
12 generated from this plant will get consumed right  
13 through that 115 KV load center. Natural gas is  
14 nearby, it's in Menafee Road. There's several  
15 large natural gas transmission lines that are  
16 running north and south.

17           And then water supply is a real  
18 important aspect. We always try to first go with  
19 a water-cooled facility, and then once we've got  
20 that hurdle then we look for recycled water as our  
21 preferred source of water.

22           And Eastern Municipal Water District,  
23 which is the water supplier in the area, has one  
24 of the most mature recycled water systems that  
25 we've come across.

1           Wastewater disposal is another factor.  
2   And there is a sanitary sewer immediately adjacent  
3   to the site. There's non-reclaimable wastewater  
4   disposal through Eastern's system, which is, we  
5   can therefore avoid the need for an expensive ZLD  
6   process.

7           And then lastly some other factors is  
8   that it's a heavily zoned industrial area. That  
9   whole corridor, for the most part bounded by  
10   Efenac (sp) Road to the north and McLaughlin Road  
11   to the south, is zoned for heavy industrial.

12           This next figure shows Eastern Municipal  
13   Water District System in yellow, which is over 500  
14   square miles in area. They provide potable  
15   water -- both wholesale and resale -- recycled  
16   water, and raw water. And they dispose of  
17   sanitary wastewater and non-reclaimable high TDS  
18   wastewater.

19           Potable water in their system is  
20   provided by two large water treatment plant  
21   facilities that are treating surface water in  
22   addition to some groundwater supplies.

23           Recycled water is produced by five  
24   treatment plants throughout their system. And  
25   the pink lines there show the recycled water

1 network. And so all the backbone pipelines for  
2 their recycled water distribution system are  
3 already in place.

4 As part of this project the water that  
5 would go to the Inland Empire Energy Center would  
6 come primarily from the Perris Valley Regional  
7 Water Reclamation Facility, which is in the middle  
8 of the picture there, and then also from the  
9 north, the Moreno Valley plant, which is the far  
10 north green box there.

11 And at the Moreno Valley plant part of  
12 the project would involve adding a pump station  
13 there to boost the pressure of that recycled water  
14 to get it all the way down to the project site.  
15 And those facilities would be located within the  
16 existing treatment plant.

17 Raw water is another important aspect of  
18 this project in that Eastern has the Colorado  
19 River Aqueduct running right through their  
20 district here just to the south of Lake Perris and  
21 to the north of the Perris Water Treatment Plant,  
22 which is that blue shaded box.

23 And that's running east-west across  
24 their district. Raw water would be used in the  
25 event that recycled water is not available. And

1 based on predictions they're showing that there  
2 may be periods of time in the early years of the  
3 project when they would have to supplement with  
4 raw water.

5           And it would be drawn from an existing  
6 turnout, discharged into a new pump station that  
7 would then inject it into the recycled water  
8 system. So the recycled water structure would be  
9 used to convey the raw water towards the project  
10 site, although most of that water would get  
11 consumed before it would ever make it to the site.  
12 And that pump station would be constructed at  
13 their Perris water treatment plant.

14           Sanitary sewer -- as I said before --  
15 there's a large sanitary sewer trunk line just to  
16 the south of the site that discharges to their  
17 Perris Valley Wastewater Treatment Plant. And  
18 then non-reclaimable wastewater -- this is a real  
19 important aspect of this project.

20           Eastern presently owns capacity in the  
21 Temesco Valley regional interceptor and the Santa  
22 Ana regional interceptor. And then they recently  
23 extended a line from the terminus of the Temesco  
24 Valley interceptor to their Sun City Regional  
25 Water Reclamation Facility. And that's the bottom

1 green box there.

2           And then as part of this project we  
3 would then run a new 4.7 mile pipeline to connect  
4 the Inland Empire Energy Center's discharge to the  
5 Sun City plant. And then from there that water  
6 would flow all the way through the Tevere (sp)  
7 line, the Santa Ana line, to Orange County  
8 Sanitation District's plant, where it would then  
9 be treated before discharge into the ocean.

10           The next figure just shows the linear  
11 facilities associated with the project. The  
12 purple line there is the 500 KV transmission line  
13 that would come south out of the Energy Center and  
14 then run east, paralleling the existing 500 KV  
15 transmission that Edison has, and then run north  
16 up into the Valley Substation.

17           The natural gas pipeline is the orange  
18 line there which would parallel the transmission  
19 line but would run to the south side of McLaughlin  
20 Road, and then it would turn south -- and I'll  
21 pick that up on another figure.

22           The blue is the potable water line. As  
23 part of the improvements for the project we would  
24 run a potable water line down the Antelope Road,  
25 between Efenac (sp) and McLaughlin, which would

1 essentially loop two existing potable water  
2 pipelines.

3 Sanitary sewer would exit the project  
4 along Antelope Road, and tie in to the existing  
5 main on McLaughlin Road. Recycled water is also a  
6 short linear, running along Antelope Road and  
7 tying into a 48 inch main in McLaughlin Road.

8 And then the bright green there is the  
9 non-reclaimable waste line, and that would come  
10 also down Antelope Road and then turn west along  
11 McLaughlin Road, and I'll pick that up on the next  
12 slide.

13 So the plant here -- the Energy Center  
14 is up there in the yellow shaded box, and you can  
15 see the orange line is the natural gas pipeline,  
16 and it runs down -- from McLaughlin it turns and  
17 runs down Junipero Road, and then there's another  
18 yellow-shaded box there, and that is a gas  
19 compressor site.

20 Pipelines coming from Menafee (sp) Road  
21 would run over to that compressor site where the  
22 pressure would be boosted to maintain the pressure  
23 in the pipeline so that gas reaches San Diego  
24 under pressure.

25 The gas that's actually going to the

1 project site would be under sufficient pressure  
2 where it would not require compression. So this  
3 is just mainly to make up for pressure losses  
4 associated with the use of the gas at this  
5 project.

6 The non-reclaimable wastewater line is  
7 the green line, which runs along McLaughlin Road,  
8 under I-215, over to Murrieta Road, and from there  
9 runs south to the Sun City Regional Plant.

10 This next figure is a rendering that was  
11 prepared early on in the project of the project  
12 site. It's basically looking to the southeast  
13 from a helicopter view. At the bottom right is  
14 Antelope Road. San Jacinto Road is to the top  
15 left.

16 And I want to note that this is not a  
17 current view, in that it shows landscaping along  
18 the north edge or the bottom edge of the site  
19 there, and as part of the evolution of this  
20 project staff suggested that we move that  
21 landscaping further to the north to the property  
22 line in order to put the screening closer to the  
23 viewers, which benefits in that it provides more  
24 screening at an earlier date. And so we've agreed  
25 to do that -- I just wanted to point that out.

1           The switchyard, the 500 KV switchyard,  
2 is to the left. The cooling tower is towards the  
3 top of the screen, the 14 cells. And the tank  
4 right next to that is recycled water storage tank.  
5 Below that is the admin control maintenance  
6 warehouse building.

7           And then in the middle of the plant,  
8 starting from the switchyard side there, are the  
9 combustion turbines, discharging into the heat  
10 recovery steam generators, which are the kind of  
11 dark shapes, which then have the stacks associated  
12 with them.

13           In summary, Inland Empire Energy Centers  
14 is a clean, reliable energy solution for the  
15 Inland Empire area. It's environmentally  
16 responsible, using natural gas as the fuel supply,  
17 and efficient combined-cycle technology, which  
18 makes the best use of that supply.

19           It's going to provide 670 megawatts on a  
20 hot day, which is much-needed capacity for one of  
21 California's fastest-growing regions. And it's a  
22 325 to 400 million dollar privately financed  
23 investment on the Applicant's part. That  
24 concludes my description of the project.

25           MR. WHEATLAND: When would you like us

1 to move our Exhibits into evidence?

2 HEARING OFFICER WILLIS: Just a moment.  
3 I have one question. I'm going to ask the  
4 Commissioner if he has any questions?

5 COMMISSIONER PERNELL: I don't have any  
6 questions. Mr. Garcia?

7 MR. GARCIA: Yes, thank you. Referring  
8 to your drawing that has the linear routes, I just  
9 want to make sure that the light green line is the  
10 proposed recycle pipeline, and that it connects  
11 with an existing recycle line that runs east and  
12 west along McLaughlin? Is that accurate?

13 MR. MCLUCAS: That's accurate, yes.

14 MR. GARCIA: Okay. The other thing that  
15 I wanted to ask -- and I don't know if you're the  
16 person to answer that, but the owner of the  
17 recycled water is?

18 MR. MCLUCAS: Eastern Municipal Water  
19 District.

20 MR. GARCIA: And is there an existing  
21 recycled water purchase agreement?

22 MR. MCLUCAS: They have a structure for  
23 that already for all of their customers.

24 MR. GARCIA: Is there an existing  
25 agreement between the project and the Eastern

1 Water District?

2 MR. MCLUCAS: We have a Memorandum Of  
3 Understanding that covers a variety of different  
4 areas, and I believe that's -- we're getting into  
5 water, but I believe that's part of the Exhibits  
6 that have been filed.

7 MR. GARCIA: Is that part of the record?

8 MR. MCLUCAS: Yes. But the recycled  
9 water is something that they have a rate structure  
10 for that created project, so that's not  
11 something -- the intent was more to cover the  
12 supplemental raw water supply which was going to  
13 require some additional facilities, and also the  
14 non-reclaimable waste system.

15 MR. GARCIA: Okay. But the MOU between  
16 the Project and Eastern is part of the evidentiary  
17 record?

18 MR. MCLUCAS: Yes it is.

19 MR. GARCIA: Thank you.

20 MR. WHEATLAND: We actually have our  
21 water specialist here today if you have more  
22 questions on water. He'd be glad to come up and  
23 answer them for you.

24 MR. GARCIA: Not right now, thank you.

25 HEARING OFFICER WILLIS: I have a

1 question. I didn't notice in the recent testimony  
2 any date change of when you think operations will  
3 begin?

4 MR. HATFIELD: We haven't put in any  
5 date change as to when we think operations will  
6 begin.

7 HEARING OFFICER WILLIS: Well, this is  
8 from the AFC that was filed in 2001, so I'm  
9 assuming there's been a change in the date from  
10 when you believe construction will begin and  
11 operations will begin?

12 MR. HATFIELD: There will be, but we  
13 haven't published any such date at this time.

14 HEARING OFFICER WILLIS: Do you have a  
15 date anticipated when you believe that  
16 construction will begin, and the length of  
17 construction?

18 MR. HATFIELD: We expect the length of  
19 construction to be two years. And we anticipate  
20 that the project could begin, could be on line as  
21 early as 2006, subject to market conditions.

22 HEARING OFFICER WILLIS: Thank you.  
23 Staff, do you have any questions for this witness?

24 MR. KRAMER: No.

25 HEARING OFFICER WILLIS: Would you like

1 to move your documents?

2 MR. WHEATLAND: Yes. I'd like to move  
3 into evidence Exhibit One, Sections 1, 2, 3, 4,  
4 and 6. Exhibit Two, Chapter 1. And Exhibit  
5 Three.

6 HEARING OFFICER WILLIS: Any objections?

7 MR. KRAMER: No.

8 HEARING OFFICER WILLIS: So moved. Mr.  
9 Kramer, would you please have Mr. Bartridge sworn  
10 in, and then we'll enter his testimony by  
11 declaration.

12 Whereupon,

13 JAMES BARTRIDGE  
14 was called as a witness herein, and after first  
15 having been duly sworn, was examined and testified  
16 as follows:

17 MR. KRAMER: Now if this testimony is  
18 coming in by declaration, normally I would just  
19 offer that without him --.

20 HEARING OFFICER WILLIS: I'm only having  
21 him sworn in because there might be other issues  
22 that come up during the proceeding.

23 MR. KRAMER: Okay, for the future, sure.  
24 So we should just offer the Project Description  
25 portion of the final staff assessment. I've

1 forgotten the Exhibit number on that.

2 HEARING OFFICER WILLIS: Is there any  
3 objection?

4 MR. WHEATLAND: No objection.

5 HEARING OFFICER WILLIS: So moved. At  
6 this time we have a few cards for public comment.  
7 Mr. Graff?

8 MR. GRAFF: Again, my name is Ken Graff,  
9 Legislative Assistant to Supervisor Jim Venable,  
10 Riverside County's Third District. I'm just here  
11 this afternoon to reaffirm the Board of  
12 Supervisor's support for this, and a resolution  
13 that they had submitted as a part of this project  
14 several months ago into the public record.

15 And also that the Supervisor has  
16 requested that Mr. Bradley Hudson from our  
17 Economic Development Agency would also come this  
18 afternoon and speak more in detail to how this  
19 will be of benefit to the county. Thank you.

20 COMMISSIONER PERNELL: Thank you. And  
21 on behalf of the Committee thank the Supervisor  
22 for us. Is Brad here?

23 MR. HUDSON: Thank you very much for  
24 letting me speak to you. Brad Hudson, I'm the  
25 Assistant CEO for Riverside County. And I'm

1 representing both Riverside County and Riverside  
2 County Redevelopment Agency.

3 This project, as you well know, is  
4 within Riverside County. It's also within the  
5 I-215 corridor redevelopment project area that is  
6 a redevelopment project area of the county of  
7 Riverside. And I've been asked to convey to you  
8 the Board's support for this project on a number  
9 of fronts.

10 Particularly on the jobs and investment  
11 front, and the amount of tax resource that will be  
12 available for the local community around the  
13 project area, including the local schools.

14 We anticipate, as a result of this  
15 project and other projects that will come  
16 subsequent, that we will have a variety of  
17 resources to invest in public facilities,  
18 including schools and parks, roads, business  
19 assistance -- it's a heavy industrial area, we  
20 have a lot of space available to entice local job  
21 opportunities to what amounts to basically a  
22 commuting community right now.

23 And then we have significant affordable  
24 housing issues, that resources generated by this  
25 project will be able to be utilized to provide

1 affordable housing opportunities for residents of  
2 the local community.

3           It's important to note that, of the  
4 resources the redevelopment agency gets, a  
5 significant portion of that, pursuant to AB 1290,  
6 is conveyed on to other taxing entities. So we'll  
7 be providing financial assistance not only to the  
8 water districts and park districts but also to the  
9 local school district.

10           We have a long history of support to the  
11 local school district, including providing  
12 financing for their capital facilities as well as  
13 cooperative partnerships in terms of parks and  
14 recreation.

15           I think this is a great location for  
16 this particular plant. It's consistent with our  
17 general plan, in a manufacturing area. It's also  
18 consistent with our recently adopted multi-species  
19 habitat conversation plan.

20           So the project can move forward without  
21 the inconsistencies or incompatibilities that you  
22 often see with a project like this, or impacts to  
23 wildlife resources which, in this case, we don't  
24 believe they'll be anything significant.

25           The infrastructure obviously is there.

1 That's what makes this viable as well, in terms of  
2 the distribution as well as the fuel available to  
3 fire the plant. And I think generally it serves a  
4 need for probably, arguably, the fastest-growing  
5 large county -- maybe in the world, I don't know -  
6 - this side of Calcutta, I think we're the fastest  
7 growing large county.

8           So we need the resources, southern  
9 California needs the resource, and this is a good  
10 location. It has a lot of community support and  
11 local government support, and so we would ask --  
12 and also it's much cleaner and efficient than some  
13 of the older plants from the 50's and 60's and  
14 70's that we see online.

15           And hopefully, if a few of these can get  
16 fired up maybe some of those older ones could be,  
17 if not shut down, maybe retooled to be more  
18 environmentally friendly.

19           So for all those reasons the Board of  
20 Supervisors and the Board of Directors of the  
21 redevelopment agency support this project. Thank  
22 you.

23           COMMISSIONER PERNELL: Thank you, thank  
24 you for being here. Just to, before I hand this  
25 off, I'm going to call out some names. What we're

1 taking is comments on the project description.

2 After each topic we'll have public comment.

3 And if you don't have any comment on the  
4 project description then we'll move on, but  
5 somewhere down the line we'll get to you and what  
6 your comments or issues are.

7 HEARING OFFICER WILLIS: Mr. Rackstrau?

8 MR. RACKSTRAU: Yes, ma'am.

9 HEARING OFFICER WILLIS: And what topic  
10 were you intending on speaking about?

11 MR. RACKSTRAU: I'd like to address the  
12 issue of the leach line. The green line.

13 COMMISSIONER PERNELL: Okay, come  
14 forward please. That is on the project  
15 description?

16 MR. RACKSTRAU: Yes. I'd like to  
17 know --

18 COMMISSIONER PERNELL: We need your name  
19 for the record.

20 MR. RACKSTRAU: Oh, my name is George  
21 Rackstrau. I'm a resident of Romoland. Do you  
22 need my address?

23 HEARING OFFICER WILLIS: Please.

24 MR. RACKSTRAU: 25270 Tradewinds Drive  
25 in Romoland. Some of the notifications that the

1 citizens of Romoland have not received are a  
2 concern to me.

3 But also, yes sir, that leach line --  
4 I'd like to know, because of its proximity to  
5 other undeveloped land in the area, are there  
6 going to be, or is there the opportunity for,  
7 other entities coming in to the area to tap into  
8 that leach line and what type of industry will  
9 that leach line attract?

10 COMMISSIONER PERNELL: Applicant, he's  
11 referring to -- on your slide?

12 MR. MCLUCAS: Yes. As I said, the  
13 interceptor that accepts the high TDS waste  
14 presently terminates at the Sun City Regional  
15 Water Reclamation Facility. As part of this  
16 project the Applicant would be paying for adding  
17 4.7 mile extension of that up to the project site.

18 But that pipeline would be owned by  
19 Eastern Municipal Water District for their use,  
20 however they choose to use it in the future. In  
21 terms of other types of industries that could make  
22 use of that source, it's typically going to be  
23 industries that would use pure water.

24 A lot of electricity industries, where  
25 they have to make pure water and from that they

1 take the TDS out of the water, those are the types  
2 of industries that would like to discharge to a  
3 similar type facility.

4 COMMISSIONER PERNELL: To your knowledge  
5 there is no prohibition on that line? First of  
6 all, it's not going to be your line so maybe we're  
7 asking the wrong person here, but --

8 MR. MCLUCAS: Right. It's not our line,  
9 but there are standards as to the quality of water  
10 that can be discharged into that. And the  
11 limitations are such that if they want high TDS  
12 waste to go in there, salty type water, but they  
13 do not want hazardous materials to go in that  
14 line.

15 And basically what Eastern has done is  
16 adopted the standards that Orange County  
17 Sanitation District has for receiving that water  
18 at the final location. They are the ones  
19 responsible for treating it before it goes into  
20 the ocean.

21 So the water ultimately is discharged  
22 from the Orange County plant, so they're very  
23 concerned about what goes into that line, and have  
24 some very specific limits as to the quality of  
25 that water.

1 COMMISSIONER PERNELL: Okay.

2 MR. RACKSTRAU: Okay, sir, can I ask one  
3 more question? I, if I may, originally I was a  
4 first Vice-Chair of the Romoland Community  
5 Council. And I was dismissed from that position  
6 after attending a board meeting.

7 I'm not a NIMBY, but I want to have more  
8 information from Calpine about infrastructure and  
9 how this is going to affect air quality in the  
10 area.

11 COMMISSIONER PERNELL: Okay. We're  
12 going to get to air quality, so that's a different  
13 topic.

14 MR. RACKSTRAU: Well, on this leach  
15 line, why I'm concerned about it is if I  
16 understand the man's comments correctly, Eastern  
17 Municipal is going to install that leach line to  
18 your premises?

19 MR. MCLUCAS: We haven't worked out the  
20 details as to who is going to be --

21 MR. RACKSTRAU: And see, that's my  
22 point. The people in Romoland don't know what's  
23 going on other than just this plant plopping down  
24 in the middle here. There's infrastructure  
25 issues, access issues, all these various issues

1 that are going to affect the quality of life here.

2 And so, when we talk about the plant we  
3 can't just talk about it in pure antiseptic terms.  
4 It's going into our community. And we want to  
5 know what we can expect, not only after the plant  
6 goes in, what type of industries are going to be  
7 drawn to this area, because leach lines are not  
8 available in all areas.

9 So industries that need those leach  
10 lines would be coming here and locating here  
11 because of the access to that leach line. So I'm  
12 trying to get some information for the residents  
13 of Romoland so that we can understand the impact  
14 that this plant is going to have on our total area  
15 and our quality of life.

16 So it's not just an air issue, it's an  
17 infrastructure issue, it's a quality of life  
18 issue. And I don't know how to address this  
19 Committee in any other way than to express my  
20 concerns about how much information we have not  
21 been given about what happens afterwards or as a  
22 result of this plant going in. Thank you.

23 COMMISSIONER PERNELL: All right, sir.

24 Thank you.

25 MR. MCLUCAS: Can I make one

1 clarification?

2 COMMISSIONER PERNELL: Yes.

3 MR. MCLUCAS: He's referring to it as a  
4 leach line. It's a non-reclaimable waste line, or  
5 a high TDS wastewater line, and a lot of people  
6 refer to it as a brine line, meaning salty water.

7 Leach -- I'm not sure that term is what,  
8 you know, applies to this line. That's more  
9 designed to dispose of sanitary waste in a septic  
10 system. So this is not leaching anything into the  
11 soil. It's collecting high TDS water and taking  
12 it all the way down to the Orange County plant --  
13 sealed system.

14 COMMISSIONER PERNELL: Okay. Thank you  
15 for the clarification.

16 HEARING OFFICER WILLIS: I also have a  
17 card from John and Melinda Puentes. What topic  
18 area were you interested in?

19 MR. PUENTES: I was going to ask a  
20 couple of questions that deal with -- since they  
21 described the whole plant, --?

22 COMMISSIONER PERNELL: All right. Come  
23 to the plant, please, if it's under plant  
24 description. Ask the question and we'll tell you  
25 whether -- we need your name for the record,

1 please.

2 MR. PUENTES: John Puentes, 26851 Dawson  
3 Road, Romoland. They described where it was going  
4 to be built, and I was wondering -- the way they  
5 described the area, and they described bringing  
6 all these jobs and stuff over to Romoland, which  
7 happens to be a low-income, minority area,  
8 especially where they're picking to go build it.

9 I was curious how they came up with this  
10 -- was it just the luck of the draw, they threw a  
11 little arrow in the air and it plopped down on  
12 this one little area here that I guess they don't  
13 see too much complaints about?

14 Because they're talking about all this  
15 electricity that people need, all this electricity  
16 Temecula needs maybe, but not Romoland, and  
17 certainly not the little retirement communities  
18 that are around this area here.

19 They said they're going to build it near  
20 a school, and they were going to build another  
21 school -- they were going to anyhow -- which is  
22 another reason I have a problem with it. Because  
23 if they're going to have a school move and not be  
24 built because they're going to be here, I'd rather  
25 have the school here than the plant.

1           They described the whole plant, and they  
2   said how it operates, what the exhaust is, but  
3   they don't tell you how many tons is going to go  
4   back up in the air.

5           COMMISSIONER PERNELL: We're going to  
6   get to that on the Air quality.

7           MR. PUENTES: Yes, I understand that.  
8   But it really doesn't take much to look outside  
9   here and try to see that mountain that you can't  
10  really see. Right now you've got a good shot at  
11  seeing it because the sun isn't out, but when the  
12  sun's out you can't see Mt. San Jacinto, which is  
13  the south side of Palm Springs.

14          The reason is because there's enough  
15  pollution here already. So I guess adding to it  
16  isn't going to make our allergies, smog and things  
17  like that -- the problems that the kids and stuff  
18  have around here already -- not going to help that  
19  out any time soon.

20          And they said they were going to bring  
21  all these jobs to this area, but anybody in  
22  Romoland going to get a job?

23          COMMISSIONER PERNELL: Okay, well, we  
24  need to stay on project description.

25          MR. PUENTES: Well, that's what they

1 described. They described this whole thing and  
2 what it was going to do for everybody.

3 COMMISSIONER PERNELL: Well, but we're  
4 describing the facility, and the effects of the  
5 facility in terms of air quality, in terms of  
6 public health and all of that, will be dealt with  
7 as we go through this process.

8 MR. PUENTES: Well, all right, then  
9 that's all I had. I just need an answer to the --

10 COMMISSIONER PERNELL: To how they  
11 picked the place for the site. And my  
12 understanding is -- and I'll let them comment --  
13 is that it was close to some infrastructure  
14 natural gas pipeline that's already running  
15 through.

16 So perhaps someone on the Applicant's  
17 team can give a comment on what's the  
18 justification for that particular site?

19 MR. PUENTES: Thank you.

20 MR. MCLUCAS: Yes, this is Jim McLucas  
21 again. I covered that in the presentation. It's  
22 the convergence of transmission, natural gas line,  
23 recycled water line, sewer, non-reclaimable waste,  
24 all those things, you know, in the proximity of  
25 this area that really led us to this site.

1           The most important of which is the  
2 transmission. It's a major transmission  
3 distribution system that's going in there at the  
4 Valley Substation. And powerflow studies  
5 performed for this project show that most of the  
6 time the generation produced by this facility  
7 doesn't leave that substation except for in the  
8 distribution system.

9           MR. PUENTES: You're saying that's the  
10 only place -- are they saying that that's the only  
11 place that has this kind of setup is over here in  
12 Romoland and not in Temecula, not in Moreno  
13 Valley, not in Canyon Lake, not in any of those  
14 areas?

15           They don't have any of these sewer  
16 lines, they don't have any of these gas lines,  
17 they don't have any of this stuff anywhere else?

18           COMMISSIONER PERNELL: Well, I'm not  
19 sure they're saying that. They're just giving you  
20 an explanation as to why they picked this site.

21           MR. PUENTES: Well, they're saying that  
22 those are the reasons why.

23           COMMISSIONER PERNELL: Right. But they  
24 didn't say that they don't have anywhere else but  
25 that spot. And I think -- you asked for an

1 explanation as to why they picked that site, and  
2 they gave that to you.

3 There's natural gas, there's water,  
4 there's transmission, and I don't know what else I  
5 can --?

6 MR. PUENTES: Well, there's got to be  
7 another factor. Well, what factor's missing out  
8 of the equation. If there's a whole bunch of  
9 places they could pick with the same type of  
10 factor what other factor on top of that leaned it  
11 towards Romoland?

12 COMMISSIONER PERNELL: I couldn't answer  
13 that for you. But I don't know that every other  
14 site has the same infrastructure proximity. So,  
15 you know, you mentioned other areas that I'm not  
16 familiar with.

17 MR. PUENTES: All right. Well, Temecula  
18 is probably the biggest city around here. It's  
19 the biggest growing one, and much more affluent I  
20 guess you'd say. And they have plenty of open  
21 areas with power and sewer and all that stuff.

22 Because they have, what, I guess it's  
23 well over 100,000 people right now, and I'm sure  
24 that's a big draw around here for the power and  
25 the services and things like that.

1           COMMISSIONER PERNELL: Let me ask you,  
2 are you in favor or opposed to the project?

3           MR. PUENTES: I'm opposed to the  
4 project.

5           COMMISSIONER PERNELL: Okay.

6           HEARING OFFICER WILLIS: Mr. Daniels, if  
7 you could just tell us what you'd planned on  
8 asking? What question, or what you're --

9           COMMISSIONER PERNELL: Project  
10 description?

11          MR. DANIELS: To do with the description  
12 of the location, the trends that are going into  
13 this location, and then my viewpoint of failure to  
14 notify the people of Romoland, and also to correct  
15 the letter that was sent to this commission back  
16 in January of 2002.

17          COMMISSIONER PERNELL: Okay, come up  
18 here.

19          MR. DANIELS: Thank you. I'm Glen  
20 Daniels, 28675 Watson Road, Romoland. I'm  
21 President of the Romoland Community Council since  
22 January of 2003.

23                 In January of 2002 Mr. Aaron Knox and a  
24 gentleman who identified himself as an attorney  
25 gave a presentation to the Romoland Community

1 Council. At that time a lady named Pat Bernadine  
2 was the president.

3 They encouraged the Council to support  
4 this project, that was there reason for being  
5 there. The question was asked, the vote was  
6 taken, and there were positive and there were  
7 negative responses from the Council itself, the  
8 general assembly.

9 Shortly thereafter, without the  
10 authority of the Council, Pat Bernadine wrote a  
11 letter to the Commission stating that the Romoland  
12 Community Council supported the Calpine project in  
13 Romoland. This is not true because she cannot do  
14 that without the authority of the Council.

15 It's my feeling, as President of the  
16 Council now, that we need to correct this. And if  
17 the Community Council and the community members  
18 wish to support this Commission in a full-blown  
19 attitude, then I will issue the letter and do it  
20 properly by the bylaws of our Council. Right now,  
21 it was not done properly.

22 That -- I think it's important that they  
23 know that the President at that time, I better be  
24 careful, was easily led into doing things without  
25 the consent and authority of the Council. You do

1 not have the authority to make these commitments.

2 And I'm concerned that the  
3 misrepresentation that, now as President of the  
4 Council I'm being looked at -- in fact in the  
5 newspaper -- I have done these things, according  
6 to the way the story comes out, which is not true.

7 Not that I have to back up to anything,  
8 but I want to make sure that the Commission and  
9 everyone involved knows the position of the  
10 Council, and that is I do not have the authority  
11 to approve of or disapprove of this program. They  
12 have not given me that authority.

13 I think it needs to be done for the sake  
14 of what's happened in the past. And a description  
15 of the area of the program. If you look at the  
16 trend -- and I know why -- if you look at the  
17 trend in Romoland, we have sewer plants, we have  
18 asphalt plants, now we're having a power plant.  
19 All out of sight, out of mind of all the new  
20 housing that's going into this area.

21 Kind of coincidental perhaps, but what  
22 they're doing, they're keeping everything in old  
23 town Romoland, old community Romoland, that would  
24 be not-in-my-backyard projects, that they don't  
25 want to be seen when the new buyers come in to buy

1 homes.

2 I think it's an unfortunate thing,  
3 because basically this community is a equestrian-  
4 oriented lifestyle. And what they're doing to us  
5 is destroying that. I know there's going to be  
6 new houses, and there's going to be progress and  
7 all these things, but the trend is not for the  
8 benefit of the community.

9 One other factor and then I'll leave  
10 you. The failure of the community to be  
11 notified -- I learned about this project on the  
12 28th of June, last month. The first I knew of  
13 this project.

14 I immediately called Sacramento, the  
15 Energy Commission, asked for information packets  
16 so that I could intelligently review this program.  
17 I've yet to receive anything from them. In fact,  
18 I made two calls. It happens, I know, it's  
19 nobody's fault, I don't mean it that way, but it  
20 does happen.

21 But we knew nothing about this program  
22 until all of a sudden hey, we're ready to start  
23 building this plant. I think it's wrong, I think  
24 it should be corrected in the future for any other  
25 communities.

1           COMMISSIONER PERNELL: Thank you. Just  
2 a couple of quick notes. We're not ready to start  
3 building the plant. The plant has to get through  
4 this licensing process. And if your Board has  
5 changed officers or membership or whatever, I  
6 mean, you're free to write the Commission with  
7 whatever.

8           I would encourage you to have your  
9 Board's permission to do so, so you won't find  
10 yourself in the same position. But that's  
11 certainly something you can do.

12          MR. DANIELS: Yes. That will be  
13 corrected, from our level here that will be  
14 corrected. But I want to make it clear, for the  
15 record, how this came about and that we are not  
16 going outside of our bylaws to do these things.  
17 We don't have that authority, either the President  
18 or anybody else on the Council.

19          I personally, as a citizen and a  
20 resident of Romoland, don't approve of the  
21 program. For several reasons, and I won't go into  
22 that. But as a personal individual, not as the  
23 President of the Council, I don't approve of the  
24 program, mostly because of the way it's been  
25 handled. I thank you, sir.

1           COMMISSIONER PERNELL: Thank you. Ms.  
2 Dean, would you like to come up now, because I  
3 don't think we're going to be able to get to you  
4 once we get back into the flow of the  
5 presentations. Your name for the record, please?

6           MS. DEAN: Yes. I'm Nancy Dean, I'm a  
7 property owner at 29723 Gretchen Lane, Romoland.  
8 I have lived adjacent to the transmission lines  
9 for 14 years. I have questions on hazardous  
10 materials as well as air quality.

11           I'm wondering if Edison is still in all  
12 deniability that this has any adverse affects on  
13 the people that live anywhere near these lines,  
14 because I know they do. I've butted heads with  
15 Edison before.

16           I almost lost two horses and a small  
17 barn that was adjacent to the power lines, that  
18 had no electricity to it, but they were  
19 electrocuted nonetheless, verified by  
20 veterinarians.

21           And Edison came out and found that there  
22 was 500 watts of electricity in a two-inch metal  
23 stripping around that barn. Insisted that I had  
24 electricity to it, but I did not. They shut the  
25 whole area down, still 500 watts went around that.

1           Five people in seven years, that lived a  
2 little bit closer to these lines than I do, have  
3 died of cancer. Within a square block. Two  
4 people in the property directly behind me died of  
5 cancer within two years of each other.

6           The man that lived in the property next  
7 to me got cancer so bad he committed suicide. And  
8 two people on the other side of him also died of  
9 cancer.

10           They can say that these lines are not  
11 detrimental. I can tell you for a fact -- my  
12 horses won't even eat green grass underneath those  
13 lines if it's damp because there is so much  
14 electricity bleeding off them.

15           We can't park a truck or a car back  
16 there and go up and touch it without having  
17 sparks. I can take you out and take two  
18 fluorescent bulbs and put it like this together  
19 and they will light up.

20           And yet Edison insists that they are not  
21 bleeding off. Okay, I had an electrician come up.  
22 He says, look we can take and run copper wire down  
23 your lines, down your fence roads, and I can build  
24 you a generating plant just off of what's bleeding  
25 off of those lines.

1           Well, I thought about it, and my lawyer  
2   said Edison will be all over you if you do. Which  
3   I'm sure they would. However, it's in the air.  
4   To me, if it's out there in the air it's free.

5           I want to know -- okay, it shows the  
6   transmission lines going from the plant to the  
7   existing plant on Menafee, where it is there.  
8   Where are those transmission lines going from  
9   there? South, I hope.

10           COMMISSIONER PERNELL: Can someone  
11   answer the question on the Applicant's team?

12           MR. MCLUCAS: The question of where the  
13   transmission lines are going?

14           MS. DEAN: Are going from there, yes.

15           MR. MCLUCAS: They're going to the  
16   Valley Substation, and that's the end of the  
17   transmission lines to the project. And from there  
18   existing transmission lines that go out of Valley  
19   Substation would be used to convey that  
20   electricity to wherever it would be used.

21           MS. DEAN: Okay. So there will be no  
22   more 500,000 lines put up?

23           MR. MCLUCAS: For the benefit of this  
24   project there will be no additional 500 KV lines  
25   put in, other than the one we've identified.

1 MS. DEAN: So everything is going into  
2 there. Where is it going to there? Just over  
3 little lines?

4 MR. MCLUCAS: Yes. Well, there are 500  
5 KV lines that come in and out of Valley Substation  
6 right now. There's a powerflow study that was  
7 prepared as part of this project that shows how  
8 the power from this facility then gets distributed  
9 amongst Edison's system. And so those existing  
10 lines are sufficient to convey that energy to the  
11 end use.

12 MS. DEAN: The existing lines, there  
13 will not be another set of towers put up all the  
14 way back through there?

15 MR. MCLUCAS: Okay, now, what Edison  
16 puts in for other benefits unrelated to this  
17 project we don't have any control over. It's not  
18 anything that's as a result of this project.  
19 There's a Valley Rainbow Project that's been  
20 discussed and --

21 MS. DEAN: And they're fighting it, I  
22 realize that.

23 MR. MCLUCAS: -- and our interest in  
24 this, and we actually had Edison prepare, at the  
25 request of the staff, prepare a second system

1 impact study showing how this project works if  
2 that project were never built. Since that project  
3 was assumed in the base case.

4 And the impacts were very similar to  
5 this project with and without that project.  
6 Currently, Edison is building a 115 KV load center  
7 at Valley Substation to support all the growth in  
8 the area from a distribution standpoint. So those  
9 are new lines that would come into Valley  
10 Substation. But, again, they're not as a result  
11 of this project.

12 MS. DEAN: Okay. I find it hard to  
13 believe that they're going to put this whole  
14 project in and not transmit this electricity  
15 through some pretty fair-sized lines somewhere.

16 Okay, my question to Edison and to these  
17 people is what have you done in the last 14 years  
18 that I know of to try and protect the people that  
19 are anywhere near this power line? I have enough  
20 paper from PUC, from electric companies all over  
21 for 14 years, to paper this room with.

22 A lot of it is adverse as to what  
23 happens to people who live, but there is not  
24 proof, okay. I can only say that it's pretty  
25 strange that five people within a ten-acre plot

1 have died within seven years of cancer. Five  
2 people -- you think about that, that's a pretty  
3 big percentage.

4 And I want to know what they're doing to  
5 protect the people. If this big plant is going to  
6 be down here, I find it really hard to believe  
7 that there's not going to be some bleedoff. I've  
8 sat in my home in the morning when it's a damp day  
9 and listened to those lines scream at me.

10 COMMISSIONER PERNELL: Perhaps we can  
11 get a copy of the study that was done for this  
12 project. If you have a copy of the study you can  
13 provide that, and I don't know if that's going to  
14 satisfy your concerns or not, but this Committee  
15 cannot address what's bleeding off on Edison's  
16 lines for this particular project.

17 And so what I'm trying to do is get you  
18 additional information, if in fact there's a copy  
19 available, or we can get one sent to you, as it  
20 relates to this particular project.

21 MS. DEAN: I would like to hear what  
22 they have to say. I will keep that right  
23 alongside of me as it comes in. Like I said, it's  
24 on record, and you are aware it's happening.  
25 Whether they want to admit it or not it is

1 happening.

2 COMMISSIONER PERNELL: All right. Well  
3 let me -- do we have a copy of that study  
4 available? Or if not -- Al, would you make sure  
5 we get the name and address so we can send a copy  
6 of the study that you're referring to, as it  
7 relates to this project?

8 All right. Mr. Wheatland, can you make  
9 sure that happens?

10 MR. WHEATLAND: We will make a copy  
11 available and send it to her. That's a system  
12 impact study, and we will make it available.

13 COMMISSIONER PERNELL: Yes, a system  
14 impact study.

15 MR. WHEATLAND: Yes, we can make it  
16 available.

17 MS. DEAN: Is there someone here from  
18 Edison?

19 COMMISSIONER PERNELL: We don't have  
20 anyone who identified themselves from Edison,  
21 Ma'am. But you might want to ask the question.  
22 Is there anyone here from Edison? I don't think  
23 so. But thank you.

24 HEARING OFFICER WILLIS: Before we close  
25 project description, are there any more comments

1 on project description?

2           Hearing none, we'll close that topic for  
3 this hearing and move on to hazardous materials,  
4 and my understanding from the Applicant is that  
5 the staff is going to make their presentation  
6 first. Mr. Kramer?

7           MR. KRAMER: We're certainly willing to.  
8 We need to have Dr. Greenberg sworn.

9           HEARING OFFICER WILLIS: All right.  
10 Whereupon,

11                         ALVIN GREENBERG  
12 was called as a witness herein, and after first  
13 having been duly sworn, was examined and testified  
14 as follows:

15           COMMISSIONER PERNELL: All right. We  
16 are now on hazardous material. Mr. Greenberg?

17           MR. GREENBERG: Is this on?

18           MR. KRAMER: Yes. Could you please  
19 summarize -- let me go back. You prepared the  
20 hazardous materials section of the final staff  
21 assessment, is that correct?

22           MR. GREENBERG: Yes, I did.

23           MR. KRAMER: Could you summarize, in  
24 about five minutes or so, your findings and  
25 conclusions for everyone here?

1           MR. GREENBERG: I'd be happy to. The  
2 fact that a power plant will use hazardous  
3 material is not surprising at all. In fact, all  
4 power plants throughout the country, indeed  
5 throughout the world, must use some hazardous  
6 materials during the construction and operation  
7 phases.

8           In fact, one hazardous material, aqueous  
9 ammonia, is required to be used in order to  
10 control certain releases of air pollutants from  
11 the stack.

12           So the question that staff looked at is  
13 not so much are hazardous materials being used,  
14 but are they being stored and are they being  
15 transported in a safe manner, so as to reduce any  
16 risk to an insignificant level of an offsite  
17 impact, such that it would impact the general  
18 public?

19           Worker Safety and Fire Protection  
20 section addresses the safety of the workers on the  
21 site, and hazardous materials, therefore, it  
22 addresses the management of hazardous materials,  
23 looking to see whether or not the Applicant is  
24 proposing to use them, store them, and transport  
25 them in a safe manner so as to not impact the

1 offsite public.

2           Staff looked at all the aspects, in  
3 great detail, of hazardous materials management.  
4 We looked at engineering controls and  
5 administrative controls that are proposed by the  
6 Applicant to ensure the safe handling of hazardous  
7 material.

8           We also looked during the construction  
9 phase, during the operations phase, we looked at  
10 what the Applicant is proposing to do in so far as  
11 preventing a release of hazardous materials. And  
12 then, should a release occur, what the Applicant  
13 is proposing to do to contain and minimize that  
14 release so that there are no offsite impacts.

15           Some of the hazardous materials, by  
16 virtue of their physical state, such as they are  
17 solid, pose no risk of an offsite impact should  
18 there be a spill on the site. It's not going to  
19 spread offsite and thus endanger the public.

20           Some materials, by virtue of their  
21 volume, they're used in such small amounts and  
22 stored in such small amounts, likewise would not  
23 pose any risk of offsite impact.

24           And some of the hazardous materials, by  
25 virtue of their very low volatility, would not

1 pose an offsite risk to the public. That is, even  
2 if there were to be a spill that would be  
3 contained onsite, there would be no drift or  
4 migration offsite.

5 So staff looked at all of the hazardous  
6 materials and looked at those that could  
7 potentially pose a risk to the offsite public.  
8 One of those in particular that we analyzed in  
9 great detail was the use of aqueous ammonia, which  
10 is required in the use of selected catalytic  
11 reduction to control emissions of pollutants from  
12 the stack.

13 There will be two 16,000 gallon storage  
14 containers of aqueous ammonia onsite. And staff  
15 looked at the engineering and administrative  
16 controls, as well as the Applicant's analysis of  
17 an offsite consequence analysis.

18 That is an analysis that doesn't ask the  
19 question "what are the odds of their being an  
20 accidental release?" Instead, it assumes that an  
21 accidental release will occur, and an analysis is  
22 then conducted to see whether there would be any  
23 impacts offsite.

24 But not only did we look at the  
25 Applicant's analysis, we conducted our own air

1 dispersion modeling to make sure that there were  
2 no impacts offsite.

3 Staff also took into account the siting  
4 location. We are very much aware of the  
5 surrounding community, and the fact that there is  
6 the Romoland school nearby.

7 We're cognizant of state law which  
8 impacts on a school district wanting to site a  
9 school near an industrial facility, and even  
10 though this doesn't apply to an industrial  
11 facility wanting to locate near a school we took  
12 that into consideration as well.

13 And we believe we performed the  
14 necessary analysis as required by that state  
15 statute.

16 What we found is that the Applicant is  
17 proposing to use engineering and administrative  
18 controls that are adequate to ensure that there is  
19 a minimal risk to public health of the use,  
20 storage, and transportation of hazardous  
21 materials.

22 We have proposed 12 additional  
23 conditions of certification which we recommend  
24 that you adopt that will further enhance safety  
25 and ensure minimal impact. Six of these address

1 the handling, the storage, and the transportation  
2 of aqueous ammonia.

3 One of them in particular would require  
4 that there is a specific transportation route to  
5 be used by the vendor transporting a tanker of  
6 aqueous ammonia to the facility.

7 Another addresses the time of day of  
8 that delivery, to ensure that a tanker truck would  
9 not be delivering aqueous ammonia to a facility  
10 during times when children are going to and from  
11 the school.

12 These proposed conditions of  
13 certification therefore are in addition to the  
14 Applicant's own voluntary and stated mitigations  
15 that would ensure safety at the project.

16 And staff finds that, if the Commission  
17 adopts these proposed conditions of certification,  
18 that the Applicant can indeed handle, transport,  
19 and store hazardous materials with an  
20 insignificant risk to the public.

21 MR. KRAMER: Thank you.

22 COMMISSIONER PERNELL: Thank you.

23 HEARING OFFICER WILLIS: Mr. Wheatland,  
24 do you have any questions?

25 MR. WHEATLAND: No, we have no

1 questions. Thank you.

2 HEARING OFFICER WILLIS: Mr. Kramer,  
3 would you like to move that section into the  
4 record?

5 MR. KRAMER: Yes, move the --

6 COMMISSIONER PERNELL: I'm sorry. I do  
7 have one question here. Mr. Greenberg, when you  
8 said all of the analysis show that there was a  
9 minimal risk, is that less than significant?  
10 What's your definition of a minimal risk?

11 MR. GREENBERG: The CEC staff considers  
12 a certain threshold of airborne aqueous ammonia to  
13 be a level of insignificant risk. Any exposure  
14 below that level in an acute or short-term period  
15 would be an insignificant risk.

16 When I was referring to minimal risk I  
17 was also really using that as a term for  
18 insignificant risk, and should have really kept  
19 with the term insignificant risk as opposed to  
20 minimal.

21 COMMISSIONER PERNELL: Thank you.

22 HEARING OFFICER WILLIS: Mr. Kramer?

23 MR. KRAMER: We move the hazardous  
24 materials portion of the final staff assessment,  
25 including the supplements subsequent to that --

1 that would be Exhibits 67, 68 and 69.

2 HEARING OFFICER WILLIS: Any objection?

3 MR. WHEATLAND: No objection.

4 HEARING OFFICER WILLIS: Okay, so moved.

5 Mr. Wheatland?

6 MR. WHEATLAND: Yes, before I introduce

7 Mr. McLucas, do you want to have Dr. Greenberg

8 sworn as well?

9 HEARING OFFICER WILLIS: He was sworn.

10 MR. WHEATLAND: He was sworn, excuse me.

11 COMMISSIONER PERNELL: We've sworn one

12 person in on your team, Mr. Wheatland?

13 MR. WHEATLAND: Yes, Mr. McLucas has  
14 been sworn in, I just -- sorry. Okay, very good.

15 COMMISSIONER PERNELL: At the next  
16 opportunity, what we'll do is swear in the whole  
17 team, and then we won't have to --

18 MR. WHEATLAND: All right. Mr. McLucas  
19 has been previously sworn, and has previously  
20 stated his qualifications. Mr. McLucas, we just  
21 heard the testimony of Dr. Greenberg. Do you  
22 agree with that testimony?

23 MR. MCLUCAS: Yes.

24 MR. WHEATLAND: And is there anything  
25 that you would like to add?

1           MR. MCLUCAS: Yes, I would. With  
2 respect to the proposed licensing conditions,  
3 could --

4           COMMISSIONER PERNELL: Could you grab  
5 the mike, please?

6           MR. MCLUCAS: With respect to the  
7 proposed licensing conditions the Applicant agrees  
8 with all that are indicated in staff's  
9 supplemental testimony and addendum to the final  
10 staff assessment related to hazardous materials.  
11 And then I would like to make several corrections  
12 in my own written testimony.

13           And I have these in handouts, so I'll  
14 just summarize right now, and if you'd like to  
15 hand these --

16           MR. WHEATLAND: Wait just one moment and  
17 then I'll pass them out. These are purely erratic  
18 typographical corrections to the prepared  
19 testimony.

20           COMMISSIONER PERNELL: Does staff have a  
21 copy of your corrections?

22           MR. WHEATLAND: We're just passing it  
23 out now.

24           MR. MCLUCAS: Okay. We have three  
25 corrections. The first is on the last sentence of

1 the last paragraph of page 5.3-2 of our testimony  
2 on hazardous materials. It should be replaced  
3 with "storage areas for various hazardous  
4 materials are identified in the revised figure,  
5 56-1, transmitted on April 15, 2002, as part of  
6 informal data response 1-2."

7 The previous reference was an out of  
8 date figure, and the difference between the two  
9 figures was part of the outcome of one of our  
10 workshops on hazardous materials. We relocated  
11 the storage location for hydrogen at staff's  
12 suggestion. And that's reflected on the revised  
13 figure.

14 The second bullet is in the second  
15 sentence of the second paragraph on page 5.3-6.  
16 The maximum quantity of hydrogen to be stored  
17 onsite should read 126,000 SCF, which is standard  
18 cubic feet, not 12,600. And then the following  
19 sentence, the reference to 1,260 standard cubic  
20 feet for individual tube should be deleted.

21 And 126,000 standard cubic feet of total  
22 hydrogen storage is consistent with what was in  
23 the AFC and what the staff evaluated for the  
24 project.

25 The fourth sentence of the second

1 paragraph on page 5.3-6 should be revised to read  
2 "the trailer will be parked immediately south of  
3 the steam turbine generator." Again, this is in  
4 reference to the location of the hydrogen trailer,  
5 which I discussed in figure 56-1.

6 MR. WHEATLAND: Does that complete your  
7 direct testimony?

8 MR. MCLUCAS: It does.

9 HEARING OFFICER WILLIS: Mr. Wheatland,  
10 on that Exhibit marked as Exhibit 71, marked as  
11 staff's errata to the supplemental testimony filed  
12 on July 28th as Exhibit 70 to keep staff's  
13 Exhibits together. Mr. Kramer, do you have any  
14 questions for Mr. McLucas?

15 MR. KRAMER: No. I would, however, like  
16 Dr. Greenberg to confirm for the record whether or  
17 not Mr. McLucas's corrections change any of his  
18 findings or conclusions?

19 MR. GREENBERG: No, they do not. They  
20 are consistent with my understanding of the  
21 finding.

22 HEARING OFFICER WILLIS: Mr. Wheatland,  
23 would you like to move your documents into  
24 evidence?

25 MR. WHEATLAND: Yes, I'd like to move

1 into evidence the Exhibits that are sponsored by  
2 Mr. McLucas regarding hazardous materials. And  
3 those are Exhibit Two, Chapter 5.3, Exhibit One,  
4 Sections 1, 3, 5.12, 6, and Appendix H of the AFC.  
5 Exhibit Three, data adequacy response 27. Exhibit  
6 Four, Applicant's responses 53 through 56. And  
7 Exhibit 55, workshop responses 1-2, 1-3, 1-4, and  
8 Exhibit 71.

9 HEARING OFFICER WILLIS: Any objection?

10 MR. KRAMER: No.

11 HEARING OFFICER WILLIS: So moved. Are  
12 there any public comments on hazardous materials,  
13 just that topic? Okay, that being done, I'd like  
14 to close the topic of hazardous materials. The  
15 record is now closed, and move on to general  
16 conditions and compliance.

17 MR. WHEATLAND: Thank you. Mr. McLucas  
18 has been previously sworn and has previously  
19 stated his qualifications. Mr. McLucas, do you  
20 have before you a copy of Exhibit Two, the  
21 Applicant's testimony for the Inland Empire Energy  
22 Center?

23 MR. MCLUCAS: Yes, I do.

24 MR. WHEATLAND: And was Chapter Three of  
25 Exhibit Two, General Conditions, Compliance, and

1 Closure, prepared by you or at your direction?

2 MR. MCLUCAS: Yes, it was. Jenifer  
3 Morris and I co-sponsored this testimony.

4 MR. WHEATLAND: And are you also  
5 sponsoring Exhibit One, Section 3.9 of the AFC?

6 MR. MCLUCAS: Yes.

7 MR. WHEATLAND: Is the testimony that  
8 you are sponsoring and the facts contained therein  
9 true to the best of your knowledge?

10 MR. MCLUCAS: Yes.

11 MR. WHEATLAND: And do the opinions in  
12 this testimony represent your best professional  
13 judgment?

14 MR. MCLUCAS: Yes.

15 MR. WHEATLAND: And do you adopt Chapter  
16 Three of Exhibit Two as your testimony?

17 MR. MCLUCAS: Yes.

18 MR. WHEATLAND: Please summarize your  
19 testimony for the Committee.

20 MR. MCLUCAS: The staff has proposed  
21 conditions of certification pertaining to general  
22 conditions, compliance and closure in the FSA and  
23 its supplemental testimony. And essentially the  
24 Applicant agrees with all of these proposed  
25 conditions, with the exception of two, and that is

1 com 8 and com 15.

2 HEARING OFFICER WILLIS: I'm sorry, Mr.  
3 McLucas, can you use the microphone. We're just  
4 having a hard time hearing you.

5 MR. MCLUCAS: Okay, we essentially agree  
6 with all of those, with the exception of com 8 and  
7 com 15. First, let me talk about com 8. Com 8 is  
8 a recently proposed condition that would require  
9 the Applicant to prepare a site-specific plan and  
10 vulnerability assessment.

11 And while the Applicant recognizes the  
12 need to provide security for all its facilities,  
13 we believe that the specific provisions of com 8  
14 are flawed.

15 As Commissioner Pernell will recall,  
16 this issue was litigated in the East Altamount  
17 proceeding, and after hearing all of the  
18 testimony, the Committee in that case proposed  
19 provisions to com 8 in the errata to the revised  
20 PMPD.

21 And the Applicant supports the  
22 Committee's proposed resolution to this issue in  
23 the East Altamount --

24 HEARING OFFICER WILLIS: I'd like to  
25 keep the topic on this particular case, as I

1 talked about before. First of all, that decision  
2 hasn't been finalized, and second of all, that  
3 does not pertain to this particular case.

4 So if you could stick to your comments  
5 on this case, not on East Altamount.

6 MR. MCLUCAS: Well, okay. I guess the  
7 reason that we feel that it's important here is  
8 that we did not choose to go through all the  
9 individual objections that we have to com 9, in  
10 this particular case, because it was our belief  
11 that it would be acceptable to everybody.

12 And staff, in that case, didn't have a  
13 problem with com 9, and we have essentially the  
14 same witness in this area for staff. We were  
15 understanding that that would be acceptable for  
16 this project as well.

17 So in our testimony, what we did is  
18 recommend the changes to com 9 that were  
19 consistent with what was decided in that other  
20 case. We recognize that's not a --

21 HEARING OFFICER WILLIS: You're talking  
22 about com 8?

23 MR. MCLUCAS: I'm sorry. It was com 9  
24 in that case -- com 8, yes. So, I guess that's  
25 that. I can go through what the differences are

1 from what we recommended and what's been accepted  
2 thus far, and what we'd still like to see changed?

3 And then if you'd like to get into the  
4 specifics of the issues we have with that  
5 condition we can talk about it.

6 MR. WHEATLAND: If I could, at this  
7 point, Mr. McLucas, ask you whether or not --  
8 you've stated previously the language we proposed  
9 is consistent with the language that is under  
10 consideration by the Commission in a different  
11 proceeding.

12 Whether or not that language is adopted  
13 by the Commission in another docket, would you  
14 still recommend that language to the Committee in  
15 this proceeding?

16 MR. MCLUCAS: Yes, I would, and that's  
17 what we've done in our testimony. Well, we've  
18 recommended a number of changes in our testimony,  
19 and some of those have been accepted by staff.  
20 First, staff proposes that com 8 be replaced or  
21 terminated pursuant to Commission's rulemaking or  
22 other action.

23 And it's the term "or other action" that  
24 we object to being added here, as we feel it's  
25 unnecessarily vague. It's not clear whether this

1 means an action by the full Commission following a  
2 notice and hearing to all affected parties, in  
3 which case we would have no objection.

4 Or, on the other hand, is it an action  
5 by staff such that informal rules or guidelines  
6 issued by staff without input from affected  
7 parties could be making this determination? In  
8 that case we'd object to that.

9 Secondly, the language from the East  
10 Altamount case would suspend the condition in the  
11 event the Commission's rulemaking had not taken  
12 place by January 1st, 2005. And it was our  
13 understanding that staff was working on an overall  
14 program that would apply to all power plants, not  
15 just the ones that are being licensed since the  
16 East Altamount project.

17 And to be consistent we felt that that  
18 language should be preserved here. Which  
19 basically suspends this condition in the event  
20 that the rulemaking process is not taking place by  
21 January 1st, 2005. And that was a very generous  
22 time period, given that staff had indicated in  
23 that other proceeding that they expected to get  
24 that all approved this year.

25 COMMISSIONER PERNELL: Are you still on

1 com 8?

2 MR. MCLUCAS: Yes, I am.

3 COMMISSIONER PERNELL: Okay.

4 MR. MCLUCAS: So, in summary, we believe  
5 the simplest and fairest solution is not to  
6 litigate the details of com 8, but to simply adopt  
7 the language that was used in that other case,  
8 which is what we've proposed in our testimony.

9 MR. WHEATLAND: Would you turn now  
10 please to com 15?

11 MR. MCLUCAS: Concerning com 15, we  
12 appreciate the revisions to com 15 that have been  
13 incorporated by staff on page 121 of their  
14 supplemental testimony and addendum, but we  
15 request that additional revisions be incorporated  
16 into the first paragraph as follows.

17 In the second sentence of the first  
18 paragraph, which starts "if priority reserve  
19 emission credits are used, milestones and methods  
20 of verifications must be established and agreed  
21 upon by the project owner and the CPM no later  
22 than sixty days after" and it currently reads  
23 "project approval, the date of docketing."

24 And we request that, after "project  
25 approval, the date of docketing" be replaced with

1 "the Applicant has received a permit to construct  
2 from the South Coast Air Quality Management  
3 District or California Energy Commission  
4 certification, whichever is later."

5 The last sentence, which reads --

6 COMMISSIONER PERNELL: I'm sorry, did  
7 you agree with the 60 days?

8 MR. MCLUCAS: We agree with the 60 days  
9 after.

10 COMMISSIONER PERNELL: All right.

11 MR. MCLUCAS: And then the final  
12 sentence, which reads "if the deadline is not met,  
13 the CPM will establish the milestones," we're  
14 requesting that that sentence be stricken.

15 Now, understanding that the intent of  
16 com 15 is that it's to require that the project  
17 owner provide assurance that in the event that the  
18 priority reserve is used that the project is  
19 constructed in the timeframes that meets the  
20 requirements of South Coast Air Quality Management  
21 District rule 1309.1. And we have copies of that  
22 rule available for distribution, if interested.

23 Rule 1309.1 specifically requires that  
24 the facility has the new sources fully -- this is  
25 a quote -- "has the new sources fully and legally

1 operational at the rate of capacity within three  
2 years following issuance of a permit to construct  
3 or California Energy Commission certification,  
4 whichever is later, subject to an extension by the  
5 Executive Officer consistent with South Coast Air  
6 Quality Management District rule 205."

7           So the conditions proposed by staff  
8 would require that the Applicant file milestones  
9 within 60 days after the project is approved by  
10 the Commission. Which would be premature, because  
11 it could be before the Applicant has determined  
12 whether or not to even use the priority reserve.

13           And we believe that a more logical  
14 timeframe for filing the milestones would be  
15 promptly after the Applicant has received a permit  
16 to construct, which in the either/or obviously is  
17 going to be the latter here.

18           And since the Applicant has indicated  
19 that the Inland Empire Energy Center will take  
20 approximately two years to construct, a milestone  
21 schedule that is submitted no later than 60 days  
22 after the permit to construct, which is the start  
23 of the three year clock, would allow ample time  
24 for the CPM to review and approve the milestone  
25 schedule.

1 MR. WHEATLAND: That completes your  
2 direct testimony?

3 MR. MCLUCAS: Yes, it does.

4 HEARING OFFICER WILLIS: I had one  
5 question. Kind of back to my earlier question on  
6 operation date, and that's what I was trying to  
7 get to, of 2006.

8 In your com 8 you have a sunset clause  
9 of 2005, so a year basically before the project  
10 would be completed. So I was a little bit  
11 confused. If you could explain the relevance of  
12 2005?

13 MR. MCLUCAS: 2005, we were just taking  
14 the date that was used in that other case. There  
15 is no significance other than -- I think in that  
16 case it was believed that that allowed plenty of  
17 time for this issue to get worked out on a  
18 programmatic level that would apply to all plants.

19 But that was the date that was inserted  
20 by the Committee on that project, and it wasn't  
21 our suggestion.

22 HEARING OFFICER WILLIS: Staff?

23 MR. KRAMER: Yes. I hope I can keep  
24 this within the 15 minutes, I'll do my best.

25 Turning back to com 8, Mr. McLucas, I gather from

1 your testimony -- and I'm sure you'll correct me  
2 if I mis-characterize it -- you feel the current  
3 provisions of com 8 are defective in some sort of  
4 way and do not wish to be bound by them, but hope  
5 to be bound by some future rulemaking or different  
6 rules that will be adopted by the Commission, is  
7 that correct?

8 MR. MCLUCAS: Yes.

9 MR. KRAMER: Please turn to com 8, then,  
10 as it exists, in Exhibit 68. That's the  
11 supplemental testimony and addendum.

12 MR. WHEATLAND: What page are you on  
13 please?

14 MR. KRAMER: 20 -- I'm sorry, 120.

15 MR. MCLUCAS: I'm there.

16 MR. KRAMER: Okay. The condition  
17 requires a construction security plan that must  
18 address site fencing and enclosing the  
19 construction area, the use of security guards, a  
20 check-in procedure or tag system for construction  
21 personnel and visitors, protocol for contacting  
22 law enforcement in the event of suspicious  
23 activity or emergency, and evacuation procedures.  
24 What's unreasonable about that?

25 MR. MCLUCAS: Under construction

1 security plan it just says that it must address  
2 all of those issues --

3 COMMISSIONER PERNELL: I'm sorry, you're  
4 going to have to -- I don't know what it's going  
5 to take to keep that mike in your hand. Yes, move  
6 the stand, we'll try that.

7 HEARING OFFICER WILLIS: Yes, try that.

8 MR. MCLUCAS: It doesn't reach. It says  
9 that the construction security plan must address  
10 each of those issues. One way that that could be  
11 interpreted is that each of those things are  
12 absolutely required, --

13 COMMISSIONER PERNELL: If it was  
14 absolutely required it would say "shall."

15 MR. MCLUCAS: Okay.

16 COMMISSIONER PERNELL: In my opinion.

17 MR. MCLUCAS: Use of security guards is  
18 one of those things that we evaluate on a project  
19 by project basis, and do not, you know,  
20 unilaterally have security guards at every one of  
21 our facilities.

22 MR. KRAMER: In this day and age you  
23 don't think security guards are pretty much  
24 mandatory at a facility as important as this, and  
25 containing hazardous materials?

1 MR. MCLUCAS: Not as a rule, no.

2 MR. KRAMER: Okay. Then it also  
3 requires an operation security plan to address  
4 permanent site fencing in the security gate.  
5 Again, the use of security guards. Security alarm  
6 for critical structures.

7 Another repeat of the protocol for  
8 contacting law enforcement and the Energy  
9 Commission's construction project manager in the  
10 event of suspicious activity or an emergency.  
11 Evacuation procedures. Perimeter breach detectors  
12 and onsite motion detectors. Video or still  
13 camera monitoring system.

14 Fire alarm monitoring system. Site  
15 personal background checks, and site access for  
16 vendors and for hazardous materials vendors to  
17 conduct personnel background security checks.  
18 Which of those requirements do you believe are  
19 unreasonable?

20 MR. MCLUCAS: This gets in to where  
21 we've objected to this wording in the past. And  
22 one through eight we've not commented on in the  
23 past, those all seem reasonable things to address  
24 in the plan.

25 And it's nine, ten and eleven that's --

1 oh, excuse me, it's nine, ten and then the  
2 paragraph following ten -- that we take issue to.  
3 And it's not relative to the intent of --

4 COMMISSIONER PERNELL: Excuse me, what  
5 document are you guys reading from?

6 MR. KRAMER: It's Exhibit 69, our  
7 supplemental testimony and addendum to the staff  
8 assessment that was filed on July 18th.

9 MR. WHEATLAND: I believe that's 68?

10 MR. KRAMER: I'm sorry, 68.

11 MR. WHEATLAND: So Exhibit 68, page 120.

12 HEARING OFFICER WILLIS: And just to  
13 clarify, because I'm looking at both your file  
14 testimony and Exhibit 68, I don't see anything  
15 marked changes on nine, ten, or the paragraph  
16 following. So are we missing some information?

17 MR. MCLUCAS: Yes, that's the point I  
18 was trying to make is that we were recommending  
19 that the condition be modified the way it appeared  
20 in the errata to the revised PMPD of the East  
21 Altamount case, and not get in to the issues that  
22 we had relative to the individual items, which was  
23 nine, ten and the paragraph following ten.

24 HEARING OFFICER WILLIS: I'm just  
25 looking at, though, comparing the two -- staff's

1 version and Applicant's version, and I don't see  
2 anything different. So I'm not sure why we're  
3 talking about what issues you have with nine and  
4 ten?

5 MR. WHEATLAND: The Applicant had  
6 proposed, rather than a line-by-line corrections  
7 to the staff's proposed Com 8, that the Committee  
8 instead keep this as a placeholder, but say that  
9 it would be superseded by new rules that will be  
10 adopted by the Commission later this year.

11 And now Mr. Kramer is asking our witness  
12 why we're proposing that, why can't this just be  
13 the permanent rules that would be adopted, without  
14 a placeholder.

15 HEARING OFFICER WILLIS: So we're not  
16 missing any information, there has not been any  
17 additional filing that shows some difference of  
18 opinion on those items?

19 MR. WHEATLAND: That's right.

20 MR. MCLUCAS: That's correct. So if I  
21 could just comment on those items. Number nine,  
22 which reads "site personnel, background checks"  
23 and our recommendation for language on that would  
24 be to delete "site personnel" and say "background  
25 checks for onsite employees of the project owner."

1           And we're just trying to clarify,  
2 really, who are we responsible for performing  
3 background checks on. The Applicant currently  
4 does background checks on our own employees. We  
5 do not do background checks on every single person  
6 that steps on to that site.

7           HEARING OFFICER WILLIS: Okay, now once  
8 again Mr. McLucas, I'm going to ask you, are you  
9 submitting new testimony right now? Because we  
10 don't have that information to say that you want  
11 changes to nine and ten.

12           MR. MCLUCAS: I'm answering staff  
13 counsel's question as to which of these conditions  
14 we feel are unreasonable.

15           HEARING OFFICER WILLIS: Well, that  
16 would be new information that the Committee does  
17 not have, in my view.

18           MR. WHEATLAND: Well, it's new  
19 information because the question is being asked of  
20 our witness for the first time. I didn't object  
21 to the question as being irrelevant, and so I'm  
22 allowing our witness to answer the question that  
23 is posed to him.

24           HEARING OFFICER WILLIS: With new  
25 changes.

1           MR. WHEATLAND: No, we're not proposing  
2 these as changes. We're not proposing that these  
3 items be deleted from the staff's recommendation.  
4 We're instead recommending that Com 8 be held as a  
5 placeholder until the --

6           HEARING OFFICER WILLIS: I understand  
7 that.

8           MR. KRAMER: You're basically proposing  
9 to nullify these rules with their automatic sunset  
10 provision. So I can see that they would have no  
11 reason to quibble about the language because they  
12 see it as already among the missing.

13           COMMISSIONER PERNELL: I'm sorry, I  
14 didn't -- your testimony is that these rules as  
15 written, that appears at least from up here that  
16 both parties have agreed to, is going to sunset at  
17 some point?

18           MR. KRAMER: The Applicant has proposed,  
19 and staff has rejected, including language from  
20 that other decision that we won't name, that would  
21 say that unless staff comes up with new rules,  
22 these rules are going to become ineffective -- I  
23 forgot the date.

24           MR. WHEATLAND: January 1st of 2005.

25           MR. KRAMER: Right. And since they

1     won't have the power plant on line before then,  
2     for sure, these rules won't apply to them.  So I  
3     can see why they didn't want to offer specific  
4     corrections, they simply want to throw out the  
5     whole thing, whether or not the Commission  
6     actually comes up with something new.

7             COMMISSIONER PERNELL:  Is that the  
8     intent?

9             MR. WHEATLAND:  Well, we don't want to  
10    throw it out, but what the staff has previously  
11    testified to is that they will be proposing to the  
12    Commission new rules that will apply on a  
13    statewide basis.

14            COMMISSIONER PERNELL:  Well, that  
15    doesn't -- a proposal, and whether or not we have  
16    staff and whether or not we have the budgetary  
17    means to get that done is a whole different  
18    question.  If we have rules in place we want them  
19    to stay there until something else takes its  
20    place, not have it sunset and have nothing in  
21    place.

22            MR. WHEATLAND:  Well, that would be one  
23    way to do it.  But what the Applicant is  
24    proposing, since these are general conditions that  
25    are supposed to apply to each project, we are

1 asking the Committee to consider applying the same  
2 language in Com 8 that is being proposed by a  
3 committee in a different siting proceeding.

4 So what we're asking is that the  
5 condition apply equally to each project, using the  
6 same language.

7 COMMISSIONER PERNELL: I understand  
8 that. But what we have said at the outset is this  
9 is Inland Empire Energy Center. What this  
10 Committee is concerned about is what is the rules,  
11 how are they going to be applied for this project.  
12 Not what's happening somewhere else.

13 And so I'm trying to get a focus here,  
14 because admittedly, you guys have me confused.  
15 So, what I would like to see and what we're seeing  
16 up here is that the language is -- there is no  
17 discrepancies in staff proposal or the Applicant.

18 My understanding, as the Applicant was  
19 making its presentation on Com 8 there, one of the  
20 concerns was "or other actions" and you didn't  
21 know what the other actions were.

22 MR. WHEATLAND: That's correct.

23 COMMISSIONER PERNELL: So I thought that  
24 was the issue, and that was the issue only. Now  
25 we're getting into some other things. So was the

1 issue "or other actions?"

2 MR. WHEATLAND: Well, one issue is "or  
3 other actions," and the other issue is when this  
4 particular language of Com 8 would sunset.

5 COMMISSIONER PERNELL: Right. It's not  
6 going to sunset until something takes its place.

7 MR. WHEATLAND: And if that was the  
8 Committee's order we would be in complete  
9 agreement with it.

10 MR. KRAMER: And I can attempt to  
11 explain "what other actions" is. What other  
12 actions was supposed to allow for --

13 HEARING OFFICER WILLIS: Well, let's  
14 wait and your witness can testify to that. Why  
15 don't you continue with your cross?

16 MR. KRAMER: Okay, let's turn to Com 15  
17 now. It's on page 128 of that same document.

18 MR. MCLUCAS: Okay.

19 MR. KRAMER: Do you understand the --  
20 well, let me rephrase that. Is it your  
21 expectation that the air district's permit to  
22 construct will come at some point in time after  
23 the Energy Commission issues the license for the  
24 project?

25 MR. MCLUCAS: That would be my

1 expectation.

2 MR. KRAMER: Are you familiar with the  
3 1975 Memorandum of Understanding between the  
4 Energy Commission and the Air Resources Board that  
5 says, to paraphrase, that the Energy Commission's  
6 license is the permit to construct for any project  
7 that's subject to its jurisdiction?

8 MR. MCLUCAS: I'm not personally  
9 familiar with that, no.

10 MR. KRAMER: Okay, well then I can't ask  
11 you any more about it. Will the Applicant, at the  
12 time of issuance of the permit to construct, be  
13 ready to prepare a proposed schedule of milestones  
14 and submit it for showing the plan for  
15 constructing the project?

16 MR. MCLUCAS: Yes, we would, within 60  
17 days after that.

18 MR. KRAMER: Okay, is the time of the  
19 issuance of the air district's permit to construct  
20 that you expect to make your choice as to whether  
21 or not you're going to use the priority reserve?  
22 Or will it be at some other time?

23 MR. MCLUCAS: I don't know if I can  
24 answer that.

25 MR. KRAMER: Is there somebody else on

1 your team that can?

2 MR. WHEATLAND: Yes. Mr. Rubenstein is  
3 here, and he can answer that question if you like.

4 HEARING OFFICER WILLIS: Okay. You'll  
5 want to be sworn in.

6 Whereupon,

7 GARY RUBENSTEIN

8 was called as a witness herein, and after first  
9 having been duly sworn, was examined and testified  
10 as follows:

11 MR. KRAMER: Do I need to repeat the  
12 question?

13 MR. RUBENSTEIN: Yes, if you would  
14 please.

15 MR. KRAMER: At what point will the  
16 Applicant be determining whether or not to use the  
17 air district's priority reserve credits for those  
18 pollutants for which it can use it? Will it be at  
19 the time of the air district's issuance of its  
20 permit to construct, or some time before or after  
21 that?

22 MR. RUBENSTEIN: It will have to be just  
23 before issuance of the district's permit to  
24 construct, because the district will not issue the  
25 permit to construct unless that determination has

1     been made by the Applicant.

2             MR. KRAMER:   Okay.  Are you familiar  
3     with the Memorandum of Understanding I described a  
4     minute ago?

5             MR. RUBENSTEIN:  Yes, I was a co-author  
6     of that.

7             MR. KRAMER:  And in what capacity were  
8     you co-author?

9             MR. RUBENSTEIN:  I was a deputy  
10    executive officer of the California Air Resources  
11    Board at the time.

12            MR. KRAMER:  Okay.  What is your  
13    understanding of what that memorandum was supposed  
14    to say with regard to the need for an air district  
15    to issue a separate permit to construct from the  
16    license that the Energy Commission issues?

17            MR. RUBENSTEIN:  That agreement  
18    indicated, insofar as the Air Resources Board and  
19    the California Energy Commission were concerned,  
20    that a final determination of compliance issued by  
21    an air district would automatically become an  
22    authority to construct upon certification of the  
23    project by the Commission.

24            However, that has not been implemented  
25    by all the air districts in California.  And in

1 particular it has not been implemented in the  
2 south coast air basin.

3 MR. KRAMER: Right. They will sometimes  
4 make amendments after a license is issued and not  
5 even tell the Commission that they've done so,  
6 right?

7 MR. RUBENSTEIN: Well, it's actually  
8 more than that. The south coast district had  
9 adopted a rule that implemented the MOU quite  
10 specifically with exactly those terms, that the  
11 FDOC would become an authority to construct upon  
12 licensing by the commission.

13 However, the south coast district  
14 repealed that rule sometime in the 1980's or early  
15 1990's I believe. At the present time an  
16 Applicant cannot commence construction of a  
17 project in the south coast air basin without  
18 obtaining a separate permit to construct.

19 The south coast district considers the  
20 licensing decision by the Energy Commission as  
21 satisfying CEQA obligations. Consequently, the  
22 district will not issue the permit to construct  
23 until after the Commission completes its licensing  
24 process.

25 MR. KRAMER: Thank you. I have no

1 further cross-examination questions.

2 COMMISSIONER PERNELL: Yes, just one,  
3 Mr. Rubinstein. So is it your understanding, as  
4 it relates to Com 15, that the 60 days starts  
5 when?

6 MR. RUBENSTEIN: It only makes sense to  
7 me in Com 15 that the 60 day period would start  
8 upon issuance of the permit to construct by the  
9 south coast district.

10 COMMISSIONER PERNELL: Okay. And Mr.  
11 Kramer, you still object to that?

12 MR. KRAMER: Well, staff holds to its  
13 understanding -- staff wants to apply the MOU, and  
14 it's probably a bureaucratic turf battle, frankly.

15 COMMISSIONER PERNELL: Well, I think we  
16 need to know whether or not the MOU has been  
17 repealed by one party or the other.

18 MR. KRAMER: Oh, I don't believe it has.  
19 But it's one of those cases where probably the  
20 Commission and the district just agree to  
21 disagree, and even if things aren't done exactly  
22 according to the letter, I think life goes on and  
23 projects -- they're properly conditioned when  
24 things are done.

25 But we are reluctant to buy into if you

1 will this alternative universe by agreeing to a  
2 condition that specifically recognizes that.

3 COMMISSIONER PERNELL: Okay. Mr.  
4 Kramer, do you have another witness?

5 MR. KRAMER: Yes. When we're done with  
6 staff we have our direct witnesses.

7 COMMISSIONER PERNELL: All right. On  
8 Com 8, on the question "on other actions" there  
9 seems to be a hangup and you were going to get  
10 back to that. What was your intent in that  
11 phrase?

12 MR. KRAMER: I could describe it, but  
13 you'll probably prefer that our witness testify to  
14 that.

15 COMMISSIONER PERNELL: Okay, so he'll  
16 cover that?

17 MR. KRAMER: Yes.

18 HEARING OFFICER WILLIS: And you're done  
19 with your cross?

20 MR. KRAMER: Yes.

21 HEARING OFFICER WILLIS: Mr. Wheatland,  
22 would you like to have any re-direct?

23 MR. WHEATLAND: Yes, just one question  
24 on re-direct for Mr. Rubinstein. Once the  
25 Commission issues a decision on this application

1 for certification, is it your understanding that  
2 the district will in fact issue a permit to  
3 construct at a subsequent date?

4 Or would they be acting consistent with  
5 the MOU in accepting the Commission's decision as  
6 the final action?

7 MR. RUBENSTEIN: The south coast  
8 district absolutely will not allow construction  
9 without their issuance of a separate document,  
10 which will be a permit to construct, sometime  
11 after the Commission issues it's decision.

12 And that permit to construct will not be  
13 issued until certain additional requirements that  
14 the district has are satisfied, such as  
15 identification of the quantity, for example of  
16 priority reserve credits that will be obtained,  
17 and payment of the required mitigation fees.

18 So those actions have to occur at some  
19 period of time after the Commission decision, but  
20 before permit to construct is issued. And this  
21 Applicant absolutely cannot commence construction  
22 until that second document is issued.

23 COMMISSIONER PERNELL: All right. I  
24 think what we'll do is we'll hear from south coast  
25 at the appropriate time.

1 MR. WHEATLAND: Thank you. That's all  
2 the questions I have on redirect.

3 HEARING OFFICER WILLIS: Mr. Kramer, do  
4 you have any recross on that redirect?

5 MR. KRAMER: No.

6 HEARING OFFICER WILLIS: Okay. Would  
7 you like to move your documents?

8 MR. WHEATLAND: Yes, I'd like to move  
9 into evidence Exhibit One, Section 3.9 of the AFC.  
10 And the other document which I've set aside --  
11 which is Chapter Three of Exhibit Two.

12 HEARING OFFICER WILLIS: Any objections?

13 MR. KRAMER: No.

14 HEARING OFFICER WILLIS: Okay. At this  
15 time, before we have staff's witness, we're going  
16 to take a five minute break.

17 COMMISSIONER PERNELL: Five minutes. We  
18 are off the record.

19 (Off the record.)

20 COMMISSIONER PERNELL: Back on the  
21 record. Ms. Willis?

22 HEARING OFFICER WILLIS: Okay, if staff  
23 would like to call its witnesses?

24 MR. KRAMER: Yes. Dr. Greenberg has  
25 already been sworn. I don't think we asked him to

1 recite his qualifications the last time, but I  
2 would ask that the parties would stipulate to his  
3 qualifications with the caveat that I've never  
4 heard him do it in less than five minutes.

5 MR. WHEATLAND: Well, I would stipulate  
6 on his qualifications on all matters other than  
7 those that relate to security issues. And I would  
8 love to hear him briefly state his qualifications  
9 with respect to that issue.

10 MR. KRAMER: Dr. Greenberg, can you  
11 describe your current activities with the  
12 Commission, and any prior activities that are  
13 relevant to the security issues before us?

14 MR. GREENBERG: Am I limited to five  
15 minutes?

16 MR. KRAMER: Yes.

17 MR. GREENBERG: Okay. I think it begins  
18 in the year 2000 when the US EPA issued some  
19 warnings on potential terrorism and mischief  
20 thefts of anhydrous ammonia shipments to  
21 industrial users, including power plants,  
22 throughout the United States. That was in January  
23 of the year 2000.

24 Subsequent to that I began working with  
25 a firm in Israel called SB Security, which is

1 israel's oldest security firm, which has  
2 government contracts and private contracts for any  
3 number of industrial and infrastructure sites  
4 throughout the world. They are currently working  
5 with the country of Greece to establish security  
6 for the 2004 Olympics.

7           And after the events of September 11th  
8 of 2001 I started working with the California  
9 Energy Commission directly on power plant security  
10 measures, particularly in regards to vulnerability  
11 assessments because of the use of hazardous  
12 materials and the previous warnings from the US  
13 EPA.

14           I have, since January of this year,  
15 developed presently a confidential model plant  
16 security plan. I have conducted training with my  
17 Israeli partners of CEC staff. We have prepared a  
18 CEC staff training manual.

19           And we have also prepared a worker  
20 training manual for future provision to power  
21 plant operators so that they may educate their  
22 workers on the need for and the implementation of  
23 power plant security.

24           MR. KRAMER: Is that sufficient?

25           MR. WHEATLAND: Yes, thank you.

1           MR. KRAMER: Are you involved Dr.  
2 Greenberg, then, in Commission efforts to review  
3 its standard condition regarding security?

4           MR. GREENBERG: Yes. I assisted the  
5 compliance project manager/supervisor, Mr. Chuck  
6 Najarian, in developing the generic Com 8 for  
7 other power plants, and have testified now on five  
8 or six power plant -- on Com 8, the need for power  
9 plant security plans for that number of siting  
10 cases before the Commission.

11          MR. KRAMER: So you're familiar then  
12 with the version of Com 8 that's in the conditions  
13 for this project?

14          MR. GREENBERG: Yes.

15          MR. KRAMER: Is it possible that general  
16 condition will change at some point in the future?

17          MR. GREENBERG: Yes, it is possible.

18          MR. KRAMER: Until it does, is it  
19 acceptable to you to have no condition, or do you  
20 think some form of condition is necessary?

21          MR. GREENBERG: It is not acceptable to  
22 myself and the other staff of the Energy  
23 Commission to have no condition at all. This is a  
24 new era that we are in and I'm sure everyone in  
25 this room is aware of it.

1           What we want to do is have power plant  
2 owners and operators make it as difficult as  
3 possible for there to be any intentional act of  
4 either disrupting the power supply or of turning  
5 the hazardous materials at a power plant into a  
6 weapon against the public, much as what occurred  
7 on 9/11, taking airplanes and using them against  
8 the public.

9           There is no doubt that power plants have  
10 been targeted and mentioned by existing terrorist  
11 groups. As recently as yesterday's USA Today --  
12 I'm sorry, today's USA Today, July 30th, 2003 --  
13 the Office of Homeland Security had issued a  
14 warning of a 9/11 style plane attack.

15           And the article states similar warnings  
16 have been issued about the rail industry, power  
17 plants etc. since 9/11. it is important to have  
18 security that is commensurate with the risk of a  
19 particular specific site.

20           And that is why staff is developing  
21 these generic guidelines that will be applicable  
22 to all power plants, those that are in the siting  
23 process as well as existing power plants, that  
24 will have different levels of security, depending  
25 upon how that power plant fits in the

1 vulnerability assessment matrix. But something is  
2 indeed needed.

3 MR. KRAMER: The version of Com 8 that  
4 staff has currently proposed allows the  
5 construction project manager to authorize  
6 modifications to the measures that are required in  
7 the condition or require additional measures, is  
8 that correct?

9 MR. GREENBERG: That is correct.

10 MR. KRAMER: You've heard some of the  
11 Applicant's concerns today. In your opinion, does  
12 Com 8 offer enough flexibility for the staff to  
13 properly address the Applicant's concerns?

14 MR. GREENBERG: I believe it does. I  
15 realize that the Applicant's witness did not have  
16 an opportunity to go more fully into his reasons  
17 for objecting to some of the provisions of Com 8.  
18 But nevertheless I believe that all of those could  
19 be addressed very easily if the Committee desires  
20 to go into an in-depth discussion and answer on  
21 them, question and answer on them.

22 MR. KRAMER: Could they also be  
23 addressed during the compliance process, when  
24 these plans were submitted and reviewed?

25 MR. GREENBERG: Yes. Once again, as

1 you've pointed out, we are requesting in this  
2 condition of certification that any plan be  
3 reviewed and approved by CPM's. That is one  
4 reason why myself and my Israeli colleagues  
5 conducted two days of intensive training of the  
6 compliance project manager staff at the CEC just  
7 this month.

8           They will have the ability to go to a  
9 power plant, review their power plant security  
10 plan, and see whether it is implemented  
11 appropriately and make recommendations and give  
12 flexibility to power plant owners and operators in  
13 implementing these plans.

14           I also want to state that we are in the  
15 process of developing cost estimates. And I can  
16 tell right now that every power plant can prepare  
17 a power plant security plan and implement them by  
18 adding certain features above which they already  
19 are installing for in a very cost-effective manner  
20 -- in all cases it would be less than \$50,000.

21           MR. KRAMER: Could you explain the  
22 phrase that was added in staff's proposed  
23 revision, at the end of Com 8. It spoke about the  
24 replacement of the requirements pursuant to the  
25 Commission's future rulemaking.

1           And then the phrase that was added is  
2 "or other action" on security. What was the staff  
3 trying to achieve with the addition of that phrase  
4 "or other action?"

5           MR. GREENBERG: Well, staff was trying  
6 to give flexibility to the Commission in how the  
7 Commission wishes to go forward with guidelines or  
8 rulemaking or other methods of getting these  
9 suggested security plan matrix and guidelines out  
10 to power plant owners and operators.

11           We don't wish to hold the Commission to  
12 a formal rulemaking process if there is another  
13 more expedited process that will achieve the ends  
14 as well as getting input and participation from  
15 power plant owners and operators that may be more  
16 efficient.

17           MR. KRAMER: And perhaps more expedient?

18           MR. GREENBERG: And more expedient.

19           MR. KRAMER: Did you have anything else  
20 you wanted to tell the Committee with regards to  
21 condition Com 8 and the security issues?

22           MR. GREENBERG: I think that covers it  
23 for now. Thank you.

24           MR. KRAMER: Thank you.

25           HEARING OFFICER WILLIS: That concludes

1 your testimony?

2 MR. KRAMER: Yes. Mr. Garcia?

3 MR. GARCIA: Mr. Greenberg, if I  
4 understood you correctly, I think you said that  
5 any plant -- and I may be paraphrasing you here --  
6 any plant could implement the elements of Com 8 at  
7 a cost of about \$50,000, is that what you said?

8 MR. GREENBERG: More or less. And I'd  
9 be happy to elaborate on that. I certainly would  
10 not include ongoing costs of a guard, for example,  
11 If guards are required 24/7.

12 But the physical implementation, in  
13 other words, for example, a fence is already going  
14 to be built. To enhance that to meet certain  
15 security needs by making it electronic in nature,  
16 such as putting on trip-wires on the fence or  
17 passive infrared on the inside perimeter of the  
18 entire site, is actually very inexpensive.

19 There's a lot of competition in the  
20 market nowadays. Closed-circuit television, so as  
21 to be able to look at three or four points, such  
22 as your main entrance, your hazardous materials  
23 location of storage, your control room, is only  
24 \$5,000. Adding passive infrared is only another  
25 \$5,000.

1           MR. GARCIA: So would it be fair to  
2 characterize what you just now said, that  
3 basically the \$50,000 refers to the capital costs.  
4 And the cost of the guards and the other overhead  
5 are other ongoing costs that could substantially  
6 dwarf the capital cost?

7           MR. GREENBERG: I would say that's  
8 correct, except for the substantially dwarf. When  
9 Com 8 refers to addressing guards, we were very  
10 careful to make sure that we did not say  
11 everybody's going to have to have a guard 24 hours  
12 a day, seven days a week, 365 days a year.

13           And indeed, without going into too much  
14 detail in a confidential document right now, there  
15 are certainly power plants that exist now and that  
16 are planning to be built now, where guards 24/7  
17 are not at all necessary nor should they be  
18 required, and we recognized that.

19           We're not trying to go overboard here,  
20 but rather we do want to focus on a minimal level  
21 of security for all power plants, and then  
22 enhanced security for those power plants that are  
23 deemed to be more attractive targets in that those  
24 that might have greater offsite consequence should  
25 there be an attack and intentional release of

1 hazardous materials.

2 MR. GARCIA: Let me go back to the voir  
3 dire part. In the process of equipping yourself  
4 with the skills necessary to prepare something  
5 like this, did you consult with the security  
6 specialists that the utilities have?

7 MR. GREENBERG: Let me briefly answer  
8 that question by saying yes, and then I'll go into  
9 it in more detail. I have reviewed guidance from  
10 the U.S. Department of Justice, from the chemical  
11 manufacturing community, from the North American  
12 Electrical Reliability Institute.

13 They have specific guidelines, which by  
14 the way do incorporate all of our suggestions for  
15 Com 8, including background security checks for  
16 all personnel, including those that are directly  
17 employed by an electrical utility, contractors and  
18 vendors who come onsite.

19 And I have reviewed the security  
20 measures of five power plants, and spoken with  
21 their security and management teams. So the  
22 answer is yes, I have. And my Israeli colleagues  
23 have not only done so in other parts of the world  
24 -- not the United States yet -- but in other parts  
25 of the world, and have prepared and implemented

1 security plans at power plants.

2 MR. GARCIA: Okay. You said something  
3 that I want to kind of poke at. You said that you  
4 spoke with the facility security personnel, but  
5 the question that I specifically asked you was did  
6 you speak to the corporate security management  
7 team, which is a very different level of  
8 individuals?

9 MR. GREENBERG: No. And not too many  
10 have corporate security personnel, which is a  
11 problem.

12 MR. GARCIA: All right. Thank you.

13 HEARING OFFICER WILLIS: And that  
14 concludes your testimony?

15 MR. KRAMER: Yes.

16 HEARING OFFICER WILLIS: Mr. Wheatland?

17 MR. WHEATLAND: Yes. I have a few  
18 questions, thank you. Dr. Greenberg, in  
19 describing what the term "other actions" might  
20 mean, I think you testified that you had in mind  
21 some alternative procedures other than a  
22 rulemaking that might be more expeditious in  
23 developing a statewide security program, is that  
24 correct?

25 MR. GREENBERG: Yes.

1           MR. WHEATLAND:  Could you elaborate a  
2 little more on what you have in mind in terms of  
3 an alternative procedure that would be more  
4 expeditious?

5           MR. GREENBERG:  Well, I think that there  
6 are procedures that the California Energy  
7 Commission Commissioners may wish to avail of  
8 themselves, and we don't want to limit their  
9 flexibility in this.  I think it'd be pure  
10 speculation on my part for me to state what they  
11 may or may not want to do in this matter.

12           I have testified previously that I am  
13 not sure at this point what management wants to  
14 do, and I think it would be conjecture for me to  
15 state what management wants to do at this point.

16           MR. WHEATLAND:  In your opinion, should  
17 these other actions -- if they are implemented --  
18 include an opportunity to publish the proposed  
19 standards and allow other parties to comment on  
20 them before they are adopted?

21           MR. GREENBERG:  That's a very  
22 interesting question, sir, because it brings to  
23 mind the balance that we must strike in our  
24 country today between full 100 percent disclosure  
25 and public participation, and the need to keep

1 some things confidential and not broadcasting all  
2 over the Internet and the newspapers a security  
3 plan or generic security plan that some adversary  
4 might be able to follow and subsequently thwart.

5 So I, that is my personal and  
6 professional opinion, that that balance must be  
7 weighed, and I don't think management has made  
8 that decision as to how to weigh that yet.

9 MR. WHEATLAND: Well, let me ask it in a  
10 more limited way. Would this security plan, which  
11 owners would be required to implement, would that  
12 security plan be disclosed to the facility owners?

13 MR. GREENBERG: Absolutely.

14 MR. WHEATLAND: And would they have an  
15 opportunity to review and comment on that plan  
16 before it's implemented?

17 MR. GREENBERG: It would be my  
18 intention, yes, definitely.

19 MR. WHEATLAND: I believe you've also  
20 stated that you were in the process of developing  
21 a statewide procedure which you would like to --  
22 for existing power plants -- that you would like  
23 to bring forth to the Commission, is that correct?

24 MR. GREENBERG: Well, I -- I'm hinging  
25 on the words "that I would like to." I don't know

1 whether management will bring it to the Commission  
2 and in what form, but I am developing those, and  
3 they are currently under review by six or seven or  
4 so individuals within CEC management.

5 MR. WHEATLAND: And I believe you  
6 previously indicated that, while you can't speak  
7 for management, you would expect that that would  
8 occur sometime this year, is that correct?

9 MR. GREENBERG: Hopefully.

10 MR. WHEATLAND: Now I'd like to ask a  
11 couple more questions about Com 8, because I  
12 frankly just don't understand it. The first one,  
13 under the operation security plan, item number  
14 nine, where it refers to site personnel background  
15 checks. By the term "site personnel", are you  
16 intending to refer to employees of the project  
17 owner?

18 MR. GREENBERG: As I stated in my direct  
19 testimony, all site personnel, whether they be  
20 employees of the project owner, whether they be  
21 contract employees who are there but they are not  
22 directly employees of the power plant owner and  
23 operator, but rather they are under contract, but  
24 they are there and they need to have daily site  
25 access.

1           MR. WHEATLAND: Right. Now this  
2 condition doesn't state that. Where is your  
3 definition of site personnel set forth?

4           MR. GREENBERG: Well, it's not, because  
5 once again Com 8 is a performance-based standard  
6 and not a specification standard. We are working  
7 on the specifications. You will have access to  
8 those specifications.

9           But right now staff believes that this  
10 type of performance approach gives you the  
11 greatest flexibility and if you note that there  
12 still is the review and approval by the CEC  
13 compliance project manager. And so there's  
14 discussions and give and take in there, and some  
15 degree of flexibility given to you.

16           MR. WHEATLAND: Well, if I understand  
17 what you're proposing in Com 8, the facility owner  
18 will develop an operations security plan, and then  
19 the CPM will review that plan to determine whether  
20 or not it is adequate, is that correct?

21           MR. GREENBERG: That is correct.

22           MR. WHEATLAND: All right. Where in Com  
23 8 does it state the standards by which the CPM  
24 will determine that the plan is adequate?

25           MR. GREENBERG: It does not. Of course,

1 it doesn't state anywhere in any of the conditions  
2 of certifications, you know, the criteria by which  
3 the compliance project manager considers it to be  
4 adequate or inadequate. Whether it be hazardous  
5 materials or air quality.

6 MR. WHEATLAND: Well, I beg to differ  
7 with you on that, but I'm not going to ask you to  
8 testify under those matters because that's not  
9 what you're here for today. Under ten, you talk  
10 about site access for vendors and requirements for  
11 hazardous materials.

12 Now, you understand the difference  
13 between hazardous materials and acutely hazardous  
14 materials, do you not?

15 MR. GREENBERG: Yes, I do.

16 MR. WHEATLAND: And items such as paint  
17 or motor oil are hazardous materials, is that  
18 correct?

19 MR. GREENBERG: Yes, they can be.

20 MR. WHEATLAND: All right. And are you  
21 proposing that there be personnel background  
22 security checks of individuals who might deliver  
23 paint or motor oil to the site?

24 MR. GREENBERG: Well, there's where we  
25 get the flexibility in your plan. If you want to

1 try and dilute this plan by requesting the vendor  
2 to provide background checks for anything that may  
3 remotely be a hazardous material I would support  
4 you on that, but that's not something that a CPM  
5 would require.

6 If you just want to limit it to acutely  
7 hazardous materials, then something as explosive  
8 as hydrogen gas could be delivered by a driver  
9 without a background check, and that's what we're  
10 trying to avoid.

11 We're very serious about this, and we're  
12 not trying to be frivolous and include paint, but  
13 we are trying to include hydrogen, which is not an  
14 acutely hazardous material.

15 MR. WHEATLAND: But how does the  
16 facility owner know when to conduct such a check.  
17 For example, if they call up Kragen's and ask for  
18 four quarts of motor oil, how do they know whether  
19 or not to require a security background check,  
20 under the language of number ten?

21 MR. GREENBERG: Because you'll be  
22 writing a power plant security plan that will be  
23 reviewed and approved by a compliance project  
24 manager.

25 MR. WHEATLAND: Under standards that

1 have not yet been promulgated to determine whether  
2 or not the plan is adequate?

3 MR. GREENBERG: Yes.

4 MR. WHEATLAND: Now you also -- it would  
5 require in Com 8 that the project owner will  
6 prepare a vulnerability assessment, is that  
7 correct?

8 MR. GREENBERG: That's correct.

9 MR. WHEATLAND: Where is this term  
10 "vulnerability assessment" explained?

11 MR. GREENBERG: That would be on page  
12 5.4-16 of the staff assessment, under hazardous  
13 materials, site security.

14 MR. WHEATLAND: 5.4-16?

15 MR. GREENBERG: Correct. At the bottom  
16 of the page.

17 MR. WHEATLAND: Could you read for me  
18 the language explaining what a vulnerability  
19 assessment is?

20 MR. GREENBERG: "This facility proposes  
21 to use hazardous materials which have been  
22 identified by the USEPA as materials where special  
23 site security measures should be developed and  
24 implemented to ensure that unauthorized access is  
25 prevented."

1           "The EPA published a chemical accident  
2 prevention alert regarding site security, and the  
3 U.S. Department of Justice published a special  
4 report on chemical facility vulnerability  
5 assessment methodology."

6           "In order to ensure that this facility  
7 or a shipment of hazardous materials is not the  
8 target of unauthorized access, staff's proposed  
9 general condition of certification on construction  
10 and operation security plan Com 8 will require the  
11 preparation of a vulnerability assessment and the  
12 implementation of site security measures  
13 consistent with the above-referenced documents."

14           The next paragraph goes on to discuss  
15 the vulnerability assessment methodology, and Com  
16 8 says that the vulnerability assessment would be  
17 consistent with US EPA and U.S. Department of  
18 Justice guidelines.

19           MR. WHEATLAND: Good, and I'll ask you a  
20 question about the guidelines in just a minute.  
21 But with respect to the vulnerability assessment,  
22 now this is a -- the one that's mentioned her,  
23 published by the U.S. Department of Justice,  
24 applies to chemical facilities, not power plants,  
25 is that correct?

1           MR. GREENBERG: That's correct. And  
2 it's irrelevant, quite frankly, as to whether or  
3 not the site is specifically a power plant or a  
4 chemical facility. It addresses the nature of the  
5 chemical itself and the vulnerability assessment  
6 guidance is useful and generic in nature.

7           Now I submit to you, and I agree, that  
8 the U.S. Department of Justice guidelines are not  
9 specific for power plants. That's why we are  
10 writing specific ones for power plants.

11           MR. WHEATLAND: But if the Applicant or  
12 project owner, after the AFC is granted, were to  
13 sit down the next day and write a vulnerability  
14 assessment, you'd want them to write an assessment  
15 that was consistent with the ones that would be  
16 prepared for chemical facilities, is that right?

17           MR. GREENBERG: I emphasize the word  
18 "consistent." And I fear that your question is  
19 more precise than the word consistent is meant to  
20 be. I would hope that you would also follow -- if  
21 you were writing it today -- that you would follow  
22 the North American Electrical Reliability  
23 Institute guidelines as well.

24           MR. WHEATLAND: Can you give us a  
25 reference to those?

1 MR. GREENBERG: Forgive me, I would love  
2 to, but off the top of my head it's --

3 MR. WHEATLAND: After the hearing.

4 MR. GREENBERG: Okay. And it's 2002.

5 MR. WHEATLAND: And if the chemical  
6 facility vulnerability assessment methodology --  
7 is that a proposed methodology or is that a  
8 prescribed methodology for chemical facilities?

9 MR. GREENBERG: Recommended.

10 MR. WHEATLAND: And finally, you  
11 mentioned the USEPA guidelines. Can you give me a  
12 reference to those please?

13 MR. GREENBERG: No, I didn't mention  
14 that these are specific vulnerability assessment  
15 guidance, but rather, if you go back to page 5.4-  
16 16, the reference there is chemical accident  
17 prevention alert regarding site security, EPA  
18 2000A.

19 I'm sorry if it's confusing, but it  
20 looked pretty clear to me when I wrote it.

21 MR. WHEATLAND: And so those are the  
22 USEPA guidelines you're referring to. And the  
23 U.S. Department of Justice guidelines that you're  
24 referring to are those for chemical facilities  
25 that we've just referenced, is that right?

1 MR. GREENBERG: Correct.

2 MR. WHEATLAND: All right. A moment ago  
3 we were discussing the difference between acutely  
4 hazardous materials and hazardous materials.  
5 Would you be willing to consider stating under  
6 number ten and number 11 that it would apply to  
7 acutely hazardous materials and hydrogen?

8 HEARING OFFICER WILLIS: Excuse me, Mr.  
9 Wheatland, what number are you referring to, there  
10 is no 11?

11 MR. WHEATLAND: I apologize for that,  
12 it's the paragraph immediately following number  
13 ten. I apologize for the confusion.

14 HEARING OFFICER WILLIS: Thank you.

15 MR. GREENBERG: Excuse me, can you  
16 repeat that? I was looking for number 11 also.

17 MR. WHEATLAND: That paragraph, number  
18 ten, and the paragraph that immediately follows,  
19 both just address hazardous materials. And I'm  
20 asking if that language were modified to state  
21 "acutely hazardous materials and hydrogen" would  
22 that be an acceptable change to you?

23 MR. GREENBERG: Sir, if you'll give me a  
24 moment, let me look at your Table 3.4-7 from the  
25 AFC, which is the chemical inventory for project

1 operations. If you would agree to include the 93  
2 percent sulfuric acid I would agree with you.

3 MR. WHEATLAND: That's a change that we  
4 would agree to. And with that, that completes my  
5 cross-examination.

6 HEARING OFFICER WILLIS: Thank you. Any  
7 redirect?

8 MR. KRAMER: No. But does everybody but  
9 me understand what the change is, then? If so,  
10 that's fine.

11 MR. GREENBERG: I'll go over the change,  
12 so the staff counsel understands. Number ten  
13 would state "site access for vendors and  
14 requirements for hazardous materials vendors  
15 delivering acutely hazardous materials plus  
16 hydrogen and 93 percent sulfuric acid to conduct  
17 personnel background security checks."

18 MR. KRAMER: Okay. The same in the  
19 vulnerability assessment paragraph?

20 MR. GREENBERG: Correct. So that  
21 paragraph would read "in addition, the project  
22 owner shall prepare a vulnerability assessment and  
23 implement site security measures addressing  
24 acutely hazardous materials and hydrogen and 93  
25 percent sulfuric acid storage and transportation,

1 consistent with USEPA and U.S. Department of  
2 Justice guidelines."

3 MR. KRAMER: Thank you. No further  
4 questions.

5 COMMISSIONER PERNELL: Okay. I just  
6 have one for Mr. Wheatland. We're clear on the  
7 "on other actions" with security, we're clear on  
8 that issue?

9 MR. WHEATLAND: One moment please.  
10 Based on our understanding that other actions  
11 would include actions by the Commission in which  
12 facility owners would have an opportunity to  
13 review and comment upon any proposed guidelines  
14 before they are implemented, that language would  
15 be acceptable to the Applicant.

16 COMMISSIONER PERNELL: Okay. Mr.  
17 Kramer?

18 MR. KRAMER: We proposed it, we still  
19 like it.

20 COMMISSIONER PERNELL: Okay. Let's move  
21 on. Ms. Willis?

22 HEARING OFFICER WILLIS: You have some  
23 documents to move into evidence?

24 MR. KRAMER: Yes, the general conditions  
25 portion of the final staff assessment, which is

1 Exhibit 67, and Exhibit 68, and Exhibit 70 -- I  
2 can't recall if the errata affected those at all  
3 but if they did it wouldn't hurt to have that in  
4 there.

5 HEARING OFFICER WILLIS: Any objections?

6 MR. WHEATLAND: No objections.

7 HEARING OFFICER WILLIS: So moved. Are  
8 there any comments from the public on the topic of  
9 general conditions and compliance? Hearing none,  
10 we'll close that topic.

11 COMMISSIONER PERNELL: At this time,  
12 before we get into air quality, we do have two  
13 other requests to address the Committee. And I  
14 think we should accommodate them now before we get  
15 into the topic of air quality and public health.  
16 So Ms. Willis, will you call up the witnesses?

17 MR. GIBBONS: Thank you. I apologize  
18 for being late, but I had another meeting I had to  
19 go to. I'm Bob Gibbons, and I'm in charge of the  
20 Harvest Valley Citizen Patrol. Also I'm a member  
21 of the Harvest Valley Community Council.

22 I'm also the spokesperson for the  
23 members of the Harvest Valley Community Council,  
24 as well as a member of the Romoland School Board.  
25 So I'm here to speak on behalf of the Harvest

1 Valley Community Council.

2 We are in favor of the project. The  
3 project will bring jobs. It will bring the  
4 economy up to a standard that I believe it should  
5 be brought up to. And with this, I'm very much in  
6 favor of it, and I'm representing a lot of people.

7 Will they please stand up? I brought  
8 these people with me to verify that I'm here in  
9 favor of the program. And I urge you to please  
10 accept this project in our community. It's going  
11 to be an asset to all people here.

12 COMMISSIONER PERNELL: Thank you, Mr.  
13 Gibbons. It's always a pleasure to see you and  
14 members of your council.

15 HEARING OFFICER WILLIS: Thank you. Mr.  
16 Busch? Daryl Busch?

17 MR. BUSCH: Thank you. Hello, I'm Daryl  
18 Busch. I too have an excuse, jury duty, that's  
19 why I'm late. Okay. I'm here on behalf of the  
20 city of Perris.

21 Although this project is not in the city  
22 of Perris it borders on our city limits -- but you  
23 are presently in the city of Perris, and I do want  
24 to welcome you here.

25 The city of Perris has endorsed this.

1 We have a letter endorsement that's supported by  
2 our city council. We know the need for the power  
3 today, and what we're going to need in the future  
4 with our growth and development, and the city  
5 council supported that.

6 And I'm here on behalf of the council to  
7 again say we support this.

8 COMMISSIONER PERNELL: Thank you, Mr.  
9 Busch. And I certainly -- and the Committee --  
10 appreciates the hospitality that the council has  
11 shown us since we've been down here.

12 MR. BUSCH: Thank you.

13 HEARING OFFICER WILLIS: Can we go off  
14 the record for just one moment?

15 (Off the record.)

16 HEARING OFFICER WILLIS: Back on the  
17 record. At this time we'll go ahead with air  
18 quality and public health. And staff counsel, Mr.  
19 Kramer, will call the air district please.

20 MR. KRAMER: Did you want to try and  
21 swear everyone in at once, and get that out of the  
22 way?

23 HEARING OFFICER WILLIS: Why don't we do  
24 that? And who is -- Mr. Birdsall, why don't you  
25 go ahead and we'll have you sworn in. Does that

1 cover everybody?

2 Whereupon,

3 BREWSTER BIRDSALL, JOHN YEE, AND DANNY LUONG  
4 were called as witnesses herein, and after first  
5 having been duly sworn, were examined and  
6 testified as follows:

7 HEARING OFFICER WILLIS: If both Mr.  
8 Kramer and everybody could just hold the mikes,  
9 because we're having a little bit of a hard time  
10 hearing.

11 MR. KRAMER: Okay. If, one after the  
12 other, could you state your names for the record?

13 MR. YEE: Yes. My name is John Yee,  
14 Senior Air Quality Engineer with the South Coast  
15 AQMD.

16 MR. LUONG: I'm Danny Luong with the  
17 South Coast Air Quality. My title is Air Quality  
18 Analysis and Compliance Supervisor.

19 MR. KRAMER: Okay. Mr. Yee, you were  
20 involved in the preparation and the final  
21 determination of compliance for this project, is  
22 that correct?

23 MR. YEE: That's correct.

24 MR. KRAMER: And that is Exhibits --  
25 Jenifer, if you could help me out. It's in

1 several pieces, one is Exhibit 69, which are  
2 replacement pages. That's probably the last of  
3 the three or four documents.

4 Okay, Exhibit 48, the first part of the  
5 FDOC, and Exhibit 52 is a letter dated April 25th,  
6 2002, an amendment from Pang Mueller to Jim  
7 Bartridge.

8 Do those documents constitute the  
9 district's FDOC in this case?

10 MR. YEE: Yes, I believe so.

11 MR. KRAMER: And do those documents  
12 represent the air district's current position  
13 about the air quality aspects of this project?

14 MR. YEE: Yes, they do.

15 MR. KRAMER: Okay. As the FDOC really  
16 isn't in dispute by the parties, I have no further  
17 questions for these witnesses, except perhaps on  
18 redirect -- it's more in the order of cross. Mr.  
19 Luong was, his presence was requested I believe at  
20 the behest of the Applicant.

21 HEARING OFFICER WILLIS: Before -- I  
22 wanted to go ahead and ask -- did you have any  
23 questions for the air district? It probably would  
24 flow easier if we heard Mr. Rubinstein's testimony  
25 and then had followup questions for the district,

1 but it's up to you. How do you want to handle  
2 it?

3 MR. ELLISON: Well, if I'm following the  
4 procedure correctly -- first of all, let me  
5 introduce myself. I'm Christopher Ellison, I'm  
6 the attorney that's going to be handling air  
7 quality for the Applicant.

8 If I understood Mr. Kramer correctly,  
9 the staff has no questions for these witnesses,  
10 then we would have no questions for them either  
11 and we could just let them go.

12 HEARING OFFICER WILLIS: Well, I think  
13 the Committee will have some.

14 COMMISSIONER PERNELL: We can't just let  
15 them go.  
16 (laughter)

17 HEARING OFFICER WILLIS: They've been  
18 sitting here too long.

19 MR. ELLISON: Well, the Committee I'm  
20 sure will have questions for them. I didn't mean  
21 let them go in literally the physical sense, but  
22 I'm not sure what the procedure is. I got the  
23 feeling that Mr. Kramer may not be sure either,  
24 given that neither of us are sponsoring these  
25 witnesses technically.

1 HEARING OFFICER WILLIS: How long do you  
2 thing your direct testimony will be?

3 MR. ELLISON: Well, we've identified 45  
4 minutes. I think we can do it in less than that.

5 HEARING OFFICER WILLIS: I'd just like  
6 to get them out of here before 4:30, if that would  
7 work.

8 MR. ELLISON: I agree.

9 HEARING OFFICER WILLIS: I just have a  
10 feeling that, once your testimony is over, there  
11 might be some followup questions that the  
12 Committee might have for the air district folks.

13 MR. ELLISON: That's fine. Whatever the  
14 Committee's pleasure is, we're happy to cooperate.

15 COMMISSIONER PERNELL: We'll proceed  
16 with Mr. Rubinstein. That's fine.

17 MR. ELLISON: Mr. Rubinstein, you've  
18 been previously sworn. If you could state and  
19 spell your name for the record, please?

20 MR. RUBENSTEIN: Yes, my name is Gary  
21 Rubinstein, that's R-u-b-e-n-s-t-e-i-n.

22 MR. ELLISON: And do you have before you  
23 a copy of a portion of Exhibit Two, which is the  
24 Applicant's testimony addressing air quality,  
25 beginning on page 5.1-1?

1 MR. RUBENSTEIN: Yes, I do.

2 MR. ELLISON: And are you the person --  
3 was this prepared by you or at your direction?

4 MR. RUBENSTEIN: Yes, it was.

5 MR. ELLISON: This testimony  
6 incorporates by reference a number of Exhibits.  
7 Could you identify them at this point?

8 MR. RUBENSTEIN: Yes. As shown in the  
9 list beginning on page 5.1-17 of my testimony. It  
10 incorporates, by reference, specific portions of  
11 Exhibits 1, 3, 4 and 7 through 54. And the  
12 specific portions of those Exhibits are identified  
13 in the table beginning on page 5.1-17 of my  
14 testimony.

15 MR. ELLISON: Okay. At this time  
16 forward I'm going to refer to Section 5.1 of  
17 Exhibit Two and the Exhibits incorporated by  
18 reference therein, without naming all of them, as  
19 the Applicant's testimony.

20 Mr. Rubenstein, could you briefly  
21 summarize your qualifications for addressing the  
22 issues discussed in this testimony?

23 MR. RUBENSTEIN: Yes. I have a Bachelor  
24 of Science degree in Engineering from the  
25 California Institute of Technology. I worked from

1 1973 through 1981 with the California Air  
2 Resources Board, ending my career at ARB as the  
3 Deputy Executive Officer for Technical Programs.

4           When I left the Air Resources Board in  
5 1981 I co-founded Sierra Research and have been a  
6 senior partner with that firm since that time.

7           During my career both with the Air  
8 Resources Board and with Sierra Research I have  
9 participated in a large number of energy facility  
10 siting cases before this Commission as well as  
11 other bodies, and those are specifically  
12 identified in my testimony.

13           MR. ELLISON: Do you have any  
14 corrections or clarifications that you would like  
15 to make in your testimony at this time?

16           MR. RUBENSTEIN: Yes, I do, there's one  
17 correction that I need to make. At the bottom  
18 page 5.1-13 of my testimony is a citation and a  
19 quotation from Section 25523D2 of the Public  
20 Resources Code.

21           And I inadvertently placed into my  
22 testimony the old version of that Section as  
23 opposed to the current version of that Section. I  
24 had in fact reviewed the current version of the  
25 Section and my testimony is based on the correct

1 version.

2 I would simply ask that the current  
3 version of that Section of the Public Resources  
4 Code be inserted to replace the quotation that I  
5 have there now.

6 MR. ELLISON: And with that correction,  
7 are the facts contained in Section 5.1 of Exhibit  
8 Two and Exhibits incorporated by reference therein  
9 correct, to the best of your knowledge?

10 MR. RUBENSTEIN: Yes, they are.

11 MR. ELLISON: And do the opinions  
12 therein represent your best professional judgment?

13 MR. RUBENSTEIN: Yes, they do.

14 MR. ELLISON: And do you adopt this as  
15 your testimony in this proceeding?

16 MR. RUBENSTEIN: I do.

17 MR. ELLISON: Yesterday, in addition to  
18 these Exhibits, Calpine distributed certain tables  
19 regarding the historic ambient concentrations of  
20 particulate matter. Could you briefly describe  
21 those tables?

22 HEARING OFFICER WILLIS: We don't have  
23 those tables in front of us. I know they were  
24 sent out by e-mail yesterday, late, but I was not  
25 able to print them out.

1           MR. ELLISON: Okay, we will provide  
2 copies.

3           COMMISSIONER PERNELL: Mr. Yee, do you  
4 have copies of that?

5           MR. YEE: No, I don't.

6           COMMISSIONER PERNELL: As we're passing  
7 these out, Mr. Wheatland, can you inform the  
8 Committee of why we're getting this so late?

9           MR. ELLISON: Mr. Parnell, allow me to  
10 address your question. This information -- and I  
11 can have Mr. Rubinstein testify to this, in fact  
12 that was going to be my next question -- this  
13 information is information that is already in the  
14 record.

15           It's a graphic presentation of  
16 information that we've already presented, with the  
17 exception that it is updated to match an update  
18 that appeared of similar information in the  
19 staff's supplemental testimony.

20           We did not understand that the staff was  
21 going to update that analysis until we saw their  
22 supplemental testimony, and therefore we wouldn't  
23 have known to do this until we saw their  
24 supplemental testimony.

25           But with that exception of updating it

1 to be current and to match what the staff has  
2 presented, this is simply a collection of  
3 information that is already in the Applicant's  
4 testimony. I would also say --

5 COMMISSIONER PERNELL: So this is in  
6 response to staff's updated testimony?

7 MR. ELLISON: Well, the only thing  
8 that's new in this, that was not already in our  
9 prefile testimony, is the updating. And the  
10 updating was done in order to reflect the staff's  
11 updating in their supplemental testimony, so we  
12 would have an apples and apples comparison.

13 COMMISSIONER PERNELL: I see.

14 HEARING OFFICER WILLIS: Is there any  
15 objection from staff to include this data?

16 MR. KRAMER: I guess Mr. Birdsall has  
17 been able to review it, and he didn't find  
18 anything new or disturbing to him in there.

19 COMMISSIONER PERNELL: All right. You  
20 may proceed. Thank you.

21 MR. ELLISON: Mr. Rubinstein, could you  
22 briefly summarize -- actually, could I have these  
23 marked for identification?

24 HEARING OFFICER WILLIS: Sure. We each  
25 got the packets differently, so do you want to

1 mark each table or page or the whole group as  
2 a --?

3 MR. ELLISON: Well, whatever the  
4 Committee's pleasure is. However, I think  
5 probably, my suggestion would be that we mark each  
6 table separately.

7 HEARING OFFICER WILLIS: Okay. You're  
8 going to have to lead us through the tables,  
9 because we didn't get them in the same order.

10 MR. ELLISON: Okay, the first one is a  
11 two-page document, at the top of which is labeled  
12 "Table One, PM-10 levels in Perris, 1991 through  
13 2002." And I would ask that that two-page  
14 document consisting of that Table One plus Figures  
15 1, 2, and 3 be marked as the next Exhibit in  
16 order.

17 HEARING OFFICER WILLIS: That'll be  
18 Exhibit 72.

19 MR. ELLISON: Next is also a two-page  
20 document, at the of top which appears "Table Two,  
21 PM-2.5 levels in Riverside Rubidoux, 1988-2002."  
22 And that's followed by a Figure 4, Figure 5, and  
23 Figure 6. I would ask that that be marked as  
24 Exhibit 73.

25 HEARING OFFICER WILLIS: Okay, that will

1 be marked as Exhibit 73.

2 MR. ELLISON: Next is a two-page  
3 document, at the top of which appears "Table  
4 Three, PM-2.5 levels in Riverside Magnolia, 1988-  
5 2002," followed by Figure 7, Figure 8 and Figure  
6 9. I would ask that that be marked as Exhibit 74.

7 HEARING OFFICER WILLIS: So marked.

8 MR. ELLISON: Next is an isopleth map of  
9 the site, consisting of one page, the top of which  
10 appears "IEEC construction, 24-hour total PM-10,  
11 1981 Riverside Met." And I would ask that that be  
12 marked as Exhibit -- are we up to 75 now?

13 HEARING OFFICER WILLIS: Exhibit 75.

14 MR. ELLISON: And finally, a one-page  
15 Table, at the top of which appears "IEEC project  
16 construction, ambient impact analysis." I would  
17 ask that that be marked as Exhibit 76.

18 HEARING OFFICER WILLIS: So marked.

19 MR. ELLISON: Given that the staff, as I  
20 understand it, does not have an objection to the  
21 admission of these Exhibits, I'm not going to ask  
22 any further foundation questions or ask Mr.  
23 Rubinstein to summarize them separately from the  
24 summary of his overall testimony. Is that  
25 acceptable?

1 MR. KRAMER: That's fine.

2 MR. ELLISON: All right. Mr.  
3 Rubinstein, could you summarize your testimony  
4 regarding air quality in this proceeding?

5 MR. RUBENSTEIN: Yes. We reviewed the  
6 air quality impacts from the proposed Inland  
7 Empire Energy Center, and concluded that the  
8 project would comply with all applicable laws,  
9 ordinances, regulations and standards.

10 And further concluded that, with the  
11 implementation of the mitigation measures proposed  
12 by the Applicant, that the project would not have  
13 any significant un-mitigated air quality impacts.

14 With respect to compliance with  
15 applicable laws, ordinances, regulations and  
16 standards, we relied both on our review and the  
17 confirmation of that conclusion contained in the  
18 district's final determination of compliance.

19 It's my understanding that, in this  
20 case, there is no dispute among the parties, but  
21 that the project does in fact comply with the air  
22 district's requirements.

23 With respect to analysis on the  
24 California Environmental Quality Act, we took a  
25 look at both local and regional air quality

1 impacts. With respect to local impacts our  
2 analysis consisted of three parts.

3           The first part was ensuring that the  
4 project uses the best available pollution control  
5 technology, because minimizing the emissions at  
6 the source is the best way to minimize localized  
7 impacts.

8           In addition to that, we performed an air  
9 quality impact analysis. And that analysis  
10 concluded that the project would not cause any new  
11 violations of any state or federal air quality  
12 standards, although of course the project will  
13 contribute to existing violations of the state and  
14 federal air quality standards.

15           And the third element of our analysis,  
16 with respect to local air quality, was the  
17 performance of a screening level health risk  
18 assessment. And that health risk assessment  
19 demonstrated that the project's risks from toxic  
20 air contaminants would not be significant at any  
21 location under any operating conditions.

22           Each of those analyses were  
23 conservative, in that they looked at worst-case  
24 emissions from the project based on worst-case  
25 operating conditions, combined that with worst-

1 case meteorological conditions, and on top of that  
2 added worst-case existing air quality levels, even  
3 if all three of those could not physically occur  
4 at the same time.

5 So our analysis and our conclusions, we  
6 believe, are properly conservative. With respect  
7 to regional air quality our analysis also included  
8 three components.

9 That analysis again included a  
10 determination of best available control  
11 technology, because without BACT you can't be  
12 certain that you've properly minimized the  
13 regional contribution of the project to existing  
14 air quality problems.

15 In addition, we prepared cumulative air  
16 quality impact analysis, taking a look at the  
17 project in combination with air concentrations  
18 from other sources in the area, and again  
19 concluded that the project would not cause any new  
20 violations of any air quality standards, although  
21 again, of course, the project would contribute to  
22 existing violations.

23 The third element of our regional  
24 analysis was to ensure that all of the project's  
25 impacts are in fact properly mitigated to make

1 sure that that contribution to existing air  
2 quality problems is addressed.

3 And the mitigation for this project  
4 comes in the form of satisfying the south coast  
5 district's emission offset requirements and  
6 reclaim requirements, and the conditions proposed  
7 both in the final determination of compliance and  
8 in the staff's testimony ensure that that  
9 mitigation will be provided.

10 In summary, I believe -- as I said --  
11 that the project will satisfy all laws,  
12 ordinances, regulations and standards, and with  
13 the implementation of mitigation measures that the  
14 Applicant has proposed, will not result in any  
15 significant un-mitigated air quality impacts.

16 There are four issues that remain, in my  
17 testimony, of dispute with the staff regarding --  
18 or actually three issues regarding proposed issues  
19 of certification -- and a fourth issue as well.  
20 Subsequent to publication of the staff's  
21 supplemental testimony. Let me briefly touch on  
22 those four issues.

23 The first issue relates to the staff's  
24 proposed condition AQSC5. That is a condition  
25 that would establish an ambient air quality

1 monitoring requirement for PM-10 during earth  
2 moving activities associated with project  
3 construction.

4           The staff's supplemental testimony  
5 suggests that this condition is required because  
6 our analysis suggests that there may be a new  
7 violation of an ambient air quality standard.  
8 However, I think it's important to note that the  
9 impacts associated with the project construction  
10 are in fact lower now than they were when the  
11 preliminary staff assessment was prepared.

12           This particular condition, however, in  
13 recommendation, has not substantively changed. We  
14 believe that ambient monitoring for PM-10 is not  
15 necessary. it is certainly not typical for  
16 Commission projects.

17           We believe that our analysis of PM-10  
18 impacts -- and we're talking about construction,  
19 we're principally talking about fugitive dust --  
20 we believe that those impacts are extremely  
21 conservatively overstated.

22           The information that we had previously  
23 submitted to the staff in support of our analysis  
24 of construction impacts indicates that, for  
25 example, for the basic project site, five large

1 pieces of large earth-moving equipment would be  
2 operating for eight hours a day.

3 Even at a relatively slow speed of three  
4 miles an hour for those eight hours of operation,  
5 for the main project site, that would suggest that  
6 every square inch of soil on that site would be  
7 disturbed nine times during a single day. That's  
8 the extent of the overestimate that's built into  
9 the analysis that we've already provided.

10 With respect to the compressor site,  
11 which the staff's supplemental testimony also  
12 cites. The degree of conservatism is even  
13 greater, and the assumptions we used were  
14 equivalent to assuming that every square inch of  
15 soil at the compressor station is disturbed 20  
16 times a day.

17 We believe that that degree of  
18 conservatism in the basic analysis is sufficient  
19 to ensure that we have overstated impacts, and  
20 that ambient monitoring should not be required.

21 In addition, we believe that ambient  
22 monitoring should not be required because this  
23 plant will also be subject to rule 403 of the  
24 South Coast Air Quality Management District.

25 This rule specifically governs fugitive

1 dust from construction activities. It is one of  
2 the most stringent dust control rules in the  
3 country.

4           And that rule contains a number of  
5 provisions, but it does not include an ambient  
6 monitoring requirement unless you fail to  
7 implement recommended mitigation measures in the  
8 rule, which are similar to the mitigation measures  
9 that the staff is proposing, and that we have  
10 accepted with respect to dust control.

11           We believe that the basic provisions of  
12 AQSC4, which limit dust generating activities to  
13 make sure that there are no visible dust that  
14 leaves the project site, is sufficient in  
15 combination with the dust mitigation plan that's  
16 required to ensure that dust levels will be  
17 managed.

18           That is the same basic philosophy that's  
19 used in district rule 403. We see no reason for  
20 ambient monitoring in addition to that.

21           One of the things that I would point out  
22 -- looking particularly now at Exhibit 75, which  
23 is an isopleth. That document actually comes from  
24 one of the data responses we filed with the  
25 Commission.

1           And it shows 24 hour average PM-10  
2 concentrations based on these extremely  
3 conservative worst-case assumptions associated  
4 with construction activities. And as you can see,  
5 by the time you get to route 74, by the time you  
6 get to the nearest houses, the construction  
7 impacts are predicted to be less than ten  
8 micrograms per cubic meter.

9           And at that concentration it becomes  
10 extremely difficult to measure, particularly if  
11 you're looking at background concentrations that  
12 are anywhere from 50 to 120 or 130 micrograms per  
13 cubic meter. Consequently, we believe that the  
14 monitoring requirement is superfluous, and is not  
15 necessary.

16           It is not routinely required by the  
17 Commission. In fact, to the best of my knowledge  
18 it has been required by the Commission in only one  
19 prior proceeding, and that was as a demonstration  
20 project.

21           And that demonstration project was  
22 declared to be a failure by the Commission staff  
23 in a subsequent proceeding. Consequently, I see  
24 no reason to continuing pursuing this. And we  
25 recommend that AQSC5 not be adopted by the

1 Committee.

2           The second issue relates to condition  
3 AQSC6. And that is a condition that the staff has  
4 proposed to limit dust generating activities to  
5 not more than ten hours in a particular day. The  
6 staff proposes that because that is consistent  
7 with the assumption that we made in our modeling  
8 analysis.

9           My understanding of CEQA, and all of the  
10 analyses we've prepared in the past, especially  
11 for construction impacts, have been based on the  
12 principle of reasonably foreseeable impacts and  
13 reasonably worst-case assumptions.

14           We believed at the time we did the  
15 analysis, and we believe now, that an assumption  
16 that construction activities that generate dust  
17 will take ten hours per day or less is a  
18 reasonable worst-case assumption.

19           However, in this particular case the  
20 staff has suggested that that reasonable worst-  
21 case assumption become an absolute maximum under  
22 all conditions, and I don't believe that's  
23 appropriate.

24           Had we known at the time that the staff  
25 was going to take the position that whatever

1 assumption we used would become an absolute limit,  
2 we would have modeled something that's more  
3 consistent with limitations that are being imposed  
4 in other disciplines, such as noise, which is for  
5 a 12-hour maximum construction day.

6           If you take a look at Exhibit 76, which  
7 is a summary table, and that summary table does  
8 include two columns of new information, and those  
9 are the columns labeled "July 22nd '03 analysis"  
10 -- but this was provided to staff I believe about  
11 a week ago -- this indicates that, even if we were  
12 to spread the construction emissions out over 12  
13 hours instead of ten hours, meaning we're dealing  
14 with potentially more adverse weather conditions,  
15 that the impacts are not significantly greater,  
16 and that the conclusions regarding project impacts  
17 would not change.

18           As a result, with respect to AQSC6, we  
19 recommend that that condition be deleted, or in  
20 the alternative that it simply be made to cross-  
21 reference with condition Noise 8, which already  
22 contains a restriction on construction activities  
23 between 7:00 a.m. and 7:00 p.m. weekdays, and a  
24 slightly shorter duration on weekends.

25           The third issue that remains, with

1 respect to air quality, between the Applicant and  
2 the staff, deals with condition AQSC3, Paragraph O  
3 like in Oscar. That is the condition that deals  
4 with the application of soot filters to diesel  
5 construction equipment.

6 We have proposed, in our testimony, that  
7 this Committee adopt the same compromise on this  
8 issue that was suggested by the Committee and the  
9 Presiding Members proposed decision for the East  
10 Altamount case. This exact same issue was  
11 litigated in that case, and the Committee in the  
12 East Altamount case struck a balance between the  
13 position of the staff and Applicant.

14 The proposed decision for East  
15 Altamount, which my understanding is no longer  
16 disputed in that proceeding by the Commission  
17 staff was in fact a compromise, because the  
18 Applicant's position -- both in this case and in  
19 the East Altamount case -- was that either EPA  
20 certified engines or soot filters, either/or,  
21 should be used for large equipment.

22 And the compromise established by the  
23 Committee in the East Altamount case said that  
24 both should be used, but only under specified  
25 conditions. It's interesting to note that, in the

1 Inland Empire case, the preliminary staff  
2 assessment did not contain a requirement to use  
3 soot filters in conjunction with certified  
4 engines. It contained language that the Applicant  
5 had found acceptable.

6 The final staff assessment in the Inland  
7 Empire case contains more stringent requirements,  
8 which we disagreed with and responded to in our  
9 testimony. And staff's supplemental testimony  
10 provides yet more stringent requirements still.  
11 More stringent than was in the staff assessment.

12 Requiring soot filters to be used on  
13 even more engines, and adding additional  
14 requirements on construction equipment. This  
15 comes despite the fact that when you follow the  
16 same train from the preliminary staff assessment  
17 to final staff assessment to the supplement, the  
18 air quality impacts associated with construction  
19 are going down, they're not going up, as we  
20 further define the analyses.

21 There's no logical connection between  
22 the mitigation measures and the impacts. The  
23 issue about how to apply soot filters and when to  
24 apply soot filters to construction equipment was  
25 debated extensively in the East Altamount hearing.

1 I believe that the Committee in that  
2 case rendered a reasoned, compromised decision.  
3 And, as I said, we recommend that that same  
4 approach be taken here.

5 I believe that one of the reasons why  
6 such a compromise is necessary is because the  
7 California Air Resources Board has raised  
8 substantial concerns about the introduction of  
9 soot filters on too-rapid a basis.

10 This is part of a statewide program,  
11 construction of power plants is only a very small  
12 part of it. And the Air Resources Board wants to  
13 make sure that soot filters are implemented in a  
14 technically rational manner that will not upset  
15 their plan for putting this equipment on a wide  
16 range of equipment throughout the state.

17 MR. KRAMER: I object to that last  
18 testimony as hearsay. He's putting words in the  
19 mouth of the Air Resources Board now.

20 MR. ELLISON: Mr. Rubinstein is a  
21 qualified expert on, among other things, the  
22 California Air Resources Board, and he's entitled  
23 to give his opinion as to what their position on  
24 this issue is.

25 COMMISSIONER PERNELL: Mr. Kramer, are

1 you objecting, was that an objection?

2 MR. KRAMER: Yes.

3 MR. ELLISON: He is not giving testimony  
4 as to what the Air Resources Board has said per se  
5 in the nature of hearsay, he's giving his expert  
6 opinion as to what the Air Resources Board policy  
7 is, as occurs frequently in Energy Commission  
8 hearings.

9 COMMISSIONER PERNELL: Mr. Rubinstein,  
10 you want to restate that as your opinion? Keep it  
11 in mind that you are not a member of the Air  
12 Resources Board.

13 MR. RUBENSTEIN: Based on meetings that  
14 I have had with the staff of the Air Resources  
15 Board, specifically on this issue of the Energy  
16 Commission's requirement of -- excuse me, the  
17 staff's requirement -- of accelerating the use of  
18 soot filters on construction equipment, it is my  
19 opinion that the Air Resources Board is concerned  
20 about such an approach because it could tend to  
21 create problems in the field which could  
22 jeopardize implementation of the broader statewide  
23 program.

24 COMMISSIONER PERNELL: And were those  
25 meetings with staff or Board members?

1 MR. RUBENSTEIN: With staff members up  
2 to and including the Executive Officer.

3 COMMISSIONER PERNELL: Thank you.  
4 Please continue.

5 MR. RUBENSTEIN: I believe that the  
6 language adopted by the Committee in the East  
7 Altamount proceeding adequately and properly  
8 addresses those concerns and makes sure that soot  
9 filters are required only in cases where they're  
10 clearly going to be effective.

11 IN summary, my recommendation on  
12 condition AQSC3, Paragraph O, is consistent with  
13 what's contained in my testimony, which represents  
14 a restatement of what is contained in the proposed  
15 decision for East Altamount.

16 The last issue that remains between  
17 Applicant and staff relates to the question of  
18 reclaimed trading credits. As I indicated in my  
19 written testimony, in the south coast air basin  
20 projects have to satisfy two different types of  
21 requirements for regulatory mitigation.

22 One relates to emission reduction  
23 credits, which applies to certain pollutants, and  
24 the second type relates to reclaimed trading  
25 credits. Reclaimed trading credits are a

1 fundamentally different type of mitigation  
2 currency, if you will, and the only disagreement  
3 in this proceeding that I'm aware of relates to  
4 reclaimed trading credits, which is something that  
5 is unique to Nox emissions in the south coast air  
6 basin.

7           It's important for me to emphasize that  
8 we do not disagree with the staff's proposed  
9 conditions on this point. Rather, we disagree  
10 with the staff's recommendation or conclusion that  
11 they cannot recommend certification of the project  
12 because of this issue.

13           The staff has agreed, in their  
14 supplemental testimony, that the Inland Empire  
15 project fully complies with all south coast  
16 district requirements with respect to reclaimed  
17 trading credits. In addition, the staff's  
18 supplemental testimony contains conditions  
19 ensuring that the district's requirements will be  
20 met, and we have no objections to those conditions  
21 as well.

22           The staff has argued, however, both at  
23 workshops and in their testimony, that the  
24 Applicant has not done enough on the issue of  
25 reclaimed trading credits. And in particular, the

1 staff has argued that, at a minimum, a purchase  
2 option agreement has to be executed in order to  
3 ensure that the credits have been identified to  
4 the staff's satisfaction.

5 I believe that that goes beyond the  
6 requirement -- it certainly goes beyond the  
7 district's requirements, and I think there's no  
8 dispute about that -- and I think it also goes  
9 beyond the Commission's requirements as well,  
10 which is that the credits have to be identified  
11 and some confirmation provided that they will be  
12 obtained.

13 I believe that those requirements are  
14 satisfied in combination by the final  
15 determination of compliance and information  
16 contained in my testimony.

17 I believe that Inland has done all that  
18 can be done short of actually purchasing credits  
19 or purchasing an option on credits to identify  
20 reclaimed trading credits that will be used for  
21 this project.

22 Included with my testimony is a letter  
23 from an emission credit broker specifically  
24 listing ten real -- not hypothetical -- but real  
25 emission credit sales opportunities, or purchase

1 opportunities for Inland in a quantity that in  
2 total would exceed the project's needs.

3           The only thing that the project could do  
4 beyond that would be to actually execute an option  
5 agreement, and I believe that is what goes beyond  
6 the requirements that the Commission has  
7 identified.

8           Again, it's important to understand  
9 that, unlike emission reduction credits, where  
10 there can be significant shortages or even a  
11 wipeout of a market, reclaimed trading credits are  
12 much more of a fungible commodity. It is almost  
13 analogous to going to a store and buying ears of  
14 corn.

15           If we went to a grocery store and we saw  
16 that there was a bushel of corn sitting on the  
17 rack, and we needed five ears of corn, we could  
18 say unequivocally "there are five ears there."  
19 The staff has indicated that's not sufficient  
20 because we haven't identified the credits that  
21 we'll be purchasing.

22           We have gone, in my testimony with the  
23 letter from Cantor Fitzgerald, we've gone further  
24 and said "in that store, on that rack, here are  
25 five ears of corn." And we've specifically

1 identified them. The names have been protected by  
2 Cantor Fitzgerald because of confidentiality  
3 requests, but we've specifically identified the  
4 five ears of corn.

5 The staff is indicating that is still  
6 not sufficient, and suggests that the only thing  
7 we can do to satisfy the requirements is to either  
8 buy those ears of corn or to pay some money to the  
9 market owner and say "I want you to set those ears  
10 of corn aside from me." And that's where we cross  
11 the line, in my opinion, beyond identification to  
12 actual obtaining of the credits.

13 COMMISSIONER PERNELL: Mr. Rubinstein,  
14 what can you, in your analogy -- what can you say  
15 that will guarantee that that same five ears of  
16 corn will be there when you come back to pick them  
17 up?

18 MR. RUBENSTEIN: The only thing that I  
19 can do is point to the other portion of the letter  
20 from Cantor Fitzgerald, or, using that analogy to  
21 the interview with the supermarket manager, saying  
22 that I've had corn here all the time, I expect to  
23 have corn here now, I can't guarantee you what  
24 price that corn's going to be, but I can be pretty  
25 darn certain that corn's going to be here when you

1 come back.

2 COMMISSIONER PERNELL: And is that what  
3 the letter says?

4 MR. RUBENSTEIN: In short form, I  
5 believe it does, yes.

6 COMMISSIONER PERNELL: Okay, anything  
7 else?

8 MR. RUBENSTEIN: Well, let me just  
9 conclude by saying that, with respect to this  
10 issue, we have done everything an Applicant can do  
11 short of spending money to either purchase the  
12 credits or purchase an option for the credits, to  
13 identify them.

14 And the only thing to go beyond that is  
15 to cross that line that I don't think the  
16 Commission's requirements intended that an  
17 Applicant had to cross. And that concludes my  
18 testimony.

19 MR. ELLISON: Let me ask just a couple  
20 of followup questions. Before I do that, by way  
21 of explanation, and partly in response to the  
22 Commissioner's question, when Mr. Rubinstein  
23 refers to the line between identifying the  
24 credits, which we believe we've done, and legally  
25 obtaining them, I want you to know that we believe

1 that line exists in the Energy Commission's  
2 statute, and we will be briefing to you in our  
3 brief the legal issues, not so much the factual  
4 issues.

5 So we may touch upon it at various  
6 points today, but fundamentally we're going to  
7 address it in the brief and not get into it today.  
8 But it's not just a line of his own invention.

9 We will be briefing to you specific  
10 authority in the Energy Commission statute that  
11 makes that distinction, and makes I think very  
12 clear to you that not only is the Applicant not  
13 required to obtain offsets prior to licensing, but  
14 that the Energy Commission is required to adopt  
15 provisions that say that they will be obtained  
16 consistent with the district's timetable.

17 And the district's timetable, there's no  
18 dispute in this proceeding, is that the RTC's need  
19 to be obtained prior to operation, and not prior  
20 to licensing.

21 With that explanation, though, let me  
22 ask a couple of followup questions, one of which  
23 gets to a practical problem as opposed to a legal  
24 problem, with obtaining versus identifying. And  
25 let me start with that.

1           Mr. Rubinstein, the reclaim program,  
2 among its differences from traditional offsets, is  
3 that reclaimed credits are purchased for specific  
4 years, is that correct?

5           MR. RUBENSTEIN: That is correct. We  
6 think credits only have a life of one year, 12  
7 months.

8           MR. ELLISON: And if you purchase  
9 reclaimed credits for let's say the year 2005 for  
10 a plant that's supposed to begin operation in  
11 2005, but that plant is delayed by litigation or  
12 some other thing beyond your control, you cannot  
13 use the reclaimed credits you've purchased for  
14 2005 in a subsequent year, correct?

15          MR. RUBENSTEIN: No, you cannot.

16          MR. ELLISON: The second question  
17 relates to something you said about condition  
18 AQSC5. This is the ambient monitoring issue. You  
19 mentioned that in only one prior case has the  
20 commission required an Applicant to engage in this  
21 kind of monitoring. That case was the Los Esteros  
22 case, is that correct?

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

24          MR. ELLISON: And you testified that  
25 that was a demonstration effort that the staff

1 later concluded was a failure, do you recall that?

2 MR. RUBENSTEIN: Yes, I do.

3 MR. ELLISON: Isn't it the case that, in  
4 Los Esteros the Applicant was proposing to use  
5 essentially double shifts of construction activity  
6 because of an urgent need to bring that plant  
7 online?

8 MR. RUBENSTEIN: Yes, it was. And that's  
9 specifically the reason that was cited by the  
10 staff as wanting ambient monitoring at that time.  
11 It's because dispersion conditions during  
12 nighttime hours are significantly worse than they  
13 are during the day, and as a result there was  
14 concern that if these dust generating activities  
15 occurred at night there would be significantly  
16 higher concentrations over the course of a 24-hour  
17 period.

18 It was very specific to that double  
19 shift construction schedule that the demonstration  
20 project was proposed and agreed to.

21 MR. KRAMER: I would object to further  
22 journeying down this line of questioning, as it  
23 does nothing to explain whether this monitoring is  
24 appropriate in this particular case.

25 MR. ELLISON: I would just have to

1 disagree. It explains why this case is different  
2 from the one circumstance in which the Commission  
3 has ordered these things previously, and that's  
4 certainly relevant as to why it's not appropriate  
5 here.

6 COMMISSIONER PERNELL: All right. I'll  
7 allow you to continue.

8 MR. ELLISON: There was basically only  
9 one more question anyway, which is in this case,  
10 in the Inland Empire case, you've testified  
11 earlier that there are noise restrictions that  
12 would prevent the same kind of construction  
13 activity at night as you were just discussing with  
14 respect to Los Esteros, is that correct?

15 MR. RUBENSTEIN: That's right. Those  
16 restrictions are condition Noise 8.

17 MR. ELLISON: That's all I have. Mr.  
18 Rubinstein is available for examination.

19 COMMISSIONER PERNELL: Okay. We're  
20 trying to accommodate our sister agency here, and  
21 I know that we're running a little bit behind. Of  
22 course, it's always informational to listen to Mr.  
23 Rubinstein. Why don't we ask some questions to  
24 the air district?

25 HEARING OFFICER WILLIS: Mr. Yee, I kept

1 one question for you. Just to clarify on the  
2 FDOC. I believe that a letter that was attached  
3 stated that the air permit, or the authority to  
4 construct, is not issued unless the Energy  
5 Commission has issued a license, is that correct?

6 MR. YEE: That's correct.

7 HEARING OFFICER WILLIS: So the order is  
8 that we would issue the license first, and then  
9 you issue the air permit?

10 MR. YEE: That's correct.

11 HEARING OFFICER WILLIS: And somewhere  
12 in between times, for the district's purposes,  
13 then the reclaimed trading credits need to be  
14 purchased, before the permit is issued?

15 MR. YEE: The reclaimed trading credits,  
16 according to our condition, would need to be  
17 demonstrated or purchased prior to the year of  
18 operation that they start.

19 HEARING OFFICER WILLIS: So it could be  
20 like 2006, if that was their beginning operation  
21 date?

22 MR. YEE: Yes, that's correct.

23 HEARING OFFICER WILLIS: Now, as far as  
24 the authority to construct -- we'll go back. You  
25 were here earlier for testimony on Com 15, I

1 believe, and you're aware of the MOU between the  
2 Energy Commission and the ARB?

3 MR. YEE: I've heard about it today.

4 HEARING OFFICER WILLIS: Okay, so that's  
5 not something that you're familiar with?

6 MR. YEE: No, it's not something that  
7 I'm familiar with.

8 HEARING OFFICER WILLIS: And so the air  
9 district still issues ATC's?

10 MR. YEE: That's correct. We would  
11 require that the district first issue the ATC  
12 prior to construction, beginning by the Applicant.

13 HEARING OFFICER WILLIS: And I'm not  
14 sure which --?

15 COMMISSIONER PERNELL: Well, I guess my  
16 question is, how long after certification does it  
17 take for you to issue the -- and this is going  
18 back to the Com 15 question -- how long after the  
19 Commission issues a certification before you issue  
20 a permit?

21 MR. YEE: We can issue the permit  
22 immediately after the decision is rendered,  
23 because it functions as a CEQA equivalent document  
24 for our permit.

25 The only thing that I have encountered

1 in the past is that projects such as this will  
2 require the submittal of, well actually they'll  
3 require the full submittal of offsets for the  
4 criterion pollutants prior to our issuance of the  
5 permit.

6 So there are sometimes that the  
7 Applicant will, after they receive certification,  
8 they'll file for their fees for the priority  
9 reserve, and that does take some time.

10 COMMISSIONER PERNELL: So when you say  
11 projects such as this you're referring to the fact  
12 they might file for the priority reserves?

13 MR. YEE: In order to receive priority  
14 reserve they need to file a request and pay a non-  
15 refundable fee to the district. Many of the  
16 proponents that have received priority reserve do  
17 wait for the decision from the California Energy  
18 Commission before they submit that request to the  
19 district because they understand it's not  
20 refundable.

21 HEARING OFFICER WILLIS: And when you  
22 say it takes awhile, do you know approximately, is  
23 that months or --?

24 MR. YEE: Oh, no. It may take an entity  
25 -- we had one entity which was a utility which

1 first needed to secure funds through their  
2 ratepayers, but we've had other facilities the day  
3 after they received certification sent us a  
4 request for that with a non-refundable check.

5 HEARING OFFICER WILLIS: Now have there  
6 been other projects, that you're aware of, before  
7 the Energy Commission in your district that have  
8 also been required to purchase RTC's?

9 MR. YEE: In the sense of our rules for  
10 the project, no. When you say purchase RTC's --  
11 prior to operation or prior to construction?

12 HEARING OFFICER WILLIS: Have they been  
13 required just to purchase them in general for the  
14 project -- let me step back. Are they required to  
15 purchase, is this Applicant required to purchase  
16 reclaimed trading credits, or can they use ERC's  
17 or something else?

18 MR. YEE: If a facility is in reclaim,  
19 such as a facility like this who's opted in to  
20 reclaim, they are required to purchase RTC's or  
21 demonstrate that they possess enough RTC's for the  
22 following compliance year after they, from when  
23 they operate.

24 HEARING OFFICER WILLIS: Now I believe  
25 this Applicant also has -- do they have ERC's for

1 some of the Nox?

2 MR. YEE: They do not have any ERC's for  
3 NOx. They have ERC's for the other criterion  
4 pollutants.

5 HEARING OFFICER WILLIS: So it would be  
6 totally reclaimed credits for NOx?

7 MR. YEE: Correct. In our program we do  
8 not allow the intermixing of ERC's and RTC's once  
9 you're in reclaim.

10 HEARING OFFICER WILLIS: So, in other  
11 cases of Energy Commission projects, when do they  
12 generally purchase their reclaimed trading credits  
13 then, if they are required also to have an Energy  
14 Commission license?

15 MR. YEE: The requirement in our rule  
16 and in our condition says that they have to  
17 demonstrate that they hold enough reclaimed  
18 trading credits for the compliance year that they  
19 enter into. Other facilities, which have been  
20 longstanding reclaim facilities, may hold credits.

21 And the other facilities may elect to  
22 purchase credits beforehand, but that's their  
23 option.

24 HEARING OFFICER WILLIS: I guess my  
25 question was do they generally purchase them prior

1 to receiving a Commission license, or just right  
2 before -- as this Applicant is proposing -- some  
3 time after the Commission issues their license?

4 MR. YEE: I don't think there's -- the  
5 district doesn't require them to purchase them  
6 before the license.

7 HEARING OFFICER WILLIS: I understand  
8 that. I was just wondering if you knew what the  
9 practice had been in the past? And if you don't  
10 know, that's fine.

11 MR. YEE: Um --

12 MR. KRAMER: If I might, I think muni's,  
13 for instance, are not in the reclaim program,  
14 correct?

15 MR. YEE: No, muni's are -- well, it  
16 depends. Anybody who emits over four tons of NOx  
17 a year is in the reclaim program.

18 MR. KRAMER: Okay. I thought I'd read  
19 in the rules that some of those --

20 MR. YEE: The POTW's are not in the  
21 reclaim program.

22 MR. KRAMER: Okay. So the bigger  
23 utility plans.

24 COMMISSIONER PERNELL: Just a followup  
25 question. When you say they have to purchase or

1 demonstrate either the ability or that they are  
2 available. In your definition of demonstrate,  
3 what does that entail?

4 I mean, a letter from somebody saying "I  
5 got some?" Or is it something more concrete?

6 MR. YEE: For that I'd like to have  
7 Danny Luong answer that, because he is our  
8 supervisor of reclaimed admin, who oversees that  
9 area.

10 COMMISSIONER PERNELL: Mr. Luong?

11 MR. LUONG: Hi. On the subject of  
12 holding when the requirement sets in, the  
13 requirement sets in when the operation starts.  
14 Demonstration of holding means they have to have  
15 it in their possession.

16 The timing is such that it's not  
17 required at the time the ATC is issued. It's only  
18 when they start operation. I think what it is is  
19 that our requirement is we will issue a permit to  
20 construct with the condition that they have to --  
21 prior to the start of operation -- demonstrate  
22 that they have adequate RTC to cover the first  
23 year of operation.

24 So the timing can be that the permit for  
25 construction is issued, then they purchase the

1 credit for the year they anticipate to operate  
2 first.

3 COMMISSIONER PERNELL: Let me ask you,  
4 that's the RTC's only?

5 MR. LUONG: Right.

6 COMMISSIONER PERNELL: So the other  
7 credits that they need, --?

8 MR. LUONG: The RTC's are required to be  
9 secured prior to issuing of permit.

10 COMMISSIONER PERNELL: Prior to  
11 certification from us?

12 MR. LUONG: No, prior to us issuing the  
13 permit to construct.

14 COMMISSIONER PERNELL: The permit to  
15 construct.

16 MR. LUONG: Right. Those are our  
17 permits, and not the certification from the CEC.

18 COMMISSIONER PERNELL: Right. Now, as I  
19 understand it, the Applicant has kind of a multi-  
20 mix, either RTC's or other credits in order to  
21 qualify? Let me rephrase. Is there anything else  
22 they need besides the RTC's and additional credits  
23 in order for you to issue the FDOC?

24 MR. YEE: I'll answer that. No, the  
25 only thing that they need to do is to -- if they

1 have enough ERC's or VOC's, they have partial  
2 ERC's --

3 COMMISSIONER PERNELL: Say that again,  
4 VOC's?

5 MR. YEE: For voluntary organic  
6 compounds. And they have -- let me get my notes  
7 here. Let's put it this way. Prior to us issuing  
8 the permits the only thing that we are going to  
9 require is that if they are going to purchase  
10 offsets, priority reserve offsets, then they'll  
11 need to request from the district a certain amount  
12 of priority reserve offsets to complete their  
13 offset package.

14 That's the only thing that would be  
15 required at this point, other than the  
16 certification through the CEC.

17 COMMISSIONER PERNELL: Okay, in order to  
18 complete their offset package. I guess my  
19 question is -- and forgive me for lack of  
20 knowledge here -- but it's included in the  
21 package?

22 MR. YEE: Included in the package, well,  
23 the offset package for the priority reserve?

24 COMMISSIONER PERNELL: The offset  
25 package for this Applicant in order for you to

1 issue the FDOC.

2 MR. YEE: In order for us to issue --  
3 excuse me, I think it's the permit to construct --

4 COMMISSIONER PERNELL: The permit.

5 MR. YEE: The permit to construct --

6 COMMISSIONER PERNELL: Right.

7 MR. YEE: We would have to verify that  
8 they currently hold enough ERC's for the criterion  
9 pollutants, and/or a combination of ERC's and  
10 requested priority reserve credits for the entire  
11 project minus the RTC for NOx, which would have to  
12 be obtained as described earlier.

13 COMMISSIONER PERNELL: Okay. Now -- let  
14 me just ask all my questions and then pass it on.  
15 On your south coast rule 403, that deals with  
16 construction?

17 MR. YEE: Yes, it does.

18 COMMISSIONER PERNELL: Staff is  
19 recommending something different than what your  
20 rule is?

21 MR. YEE: That might be, I'm not well-  
22 versed in that as --

23 COMMISSIONER PERNELL: So let me ask you  
24 this. Your rule 403 is, in terms of your air  
25 district, sufficient to deal with construction

1 dust?

2 MR. YEE: To the degree that the rule  
3 was promulgated, yes.

4 COMMISSIONER PERNELL: Has it changed,  
5 or has south coast required anything else, to your  
6 knowledge?

7 MR. YEE: I'm sorry, could you repeat  
8 the question? I was conferring with my colleague.

9 COMMISSIONER PERNELL: That's okay. I'm  
10 not an attorney, so -- in your rule 403, which  
11 deals with construction dust, has the south coast  
12 air quality district changed their rule or  
13 required additional mitigation to that rule, in  
14 your knowledge?

15 MR. YEE: To my knowledge we have not  
16 amended it since 1998. We have not added any  
17 additional requirements since that time.

18 COMMISSIONER PERNELL: Okay.

19 MR. GARCIA: Mr. Yee, I have a couple of  
20 short questions. With regards to the district's  
21 rule 2005 that requires the Applicant to identify  
22 the RTC's, I don't know if you've seen the letter  
23 that Applicant has provided from Cantor  
24 Fitzgerald? Do you have that handy?

25 MR. YEE: Yes.

1           MR. GARCIA:  Would you consider that  
2 sufficient showing that that, for your purposes,  
3 determines that they have identified the credits?

4           MR. LUONG:  I'll answer that.  At the  
5 time of the requirement to meet the 2005  
6 requirement, that statement would not be  
7 sufficient.  But again, we're dealing with timing.  
8 At the time 2005 is going to be implemented, it  
9 will be at the time of operation, and they would  
10 have to have it in their possession, the amount of  
11 RTC required for the project, for the first year  
12 of operation.

13           MR. GARCIA:  Okay.  But I'm going back  
14 to the rule that says "the executive officer shall  
15 not approve the application" blablabla, "unless  
16 the Applicant demonstrates the facility holds  
17 sufficient trading credits to" -- oh, that's  
18 holds, that's not identify.  Okay.

19           MR. LUONG:  It may not be, the key  
20 wording in there is that we may not approve an  
21 application for operation versus operation to  
22 construct.  So the distinguish in that part, in  
23 that particular segment of the rule that you're  
24 reading, the active word is operation, not  
25 construction.

1           So that's how we see it, the requirement  
2 to be the first year of operation, not when we  
3 issue the permit to construct.

4           MR. GARCIA: All right. My second  
5 question has to do -- let's look at a hypothetical  
6 scenario, where the Energy Commission has issued  
7 its certificate, and the district has not yet  
8 because the Applicant has not, for whatever  
9 reason, obtained the RTC's.

10           Is there a period of time, a maximum  
11 period of time that might elapse before -- at  
12 least for the district's purposes -- you have to  
13 start all over again? In other words, could they  
14 wait 18 months, 24 months?

15           MR. YEE: I believe the -- we go by what  
16 we call the permit streamlining act. And to my  
17 knowledge the district has up to 12 months to act  
18 after a CEQA document is finalized, actually an  
19 EIR type of document. And that would be the  
20 timeframe that we would have to act within.

21           If it went beyond that period of time I  
22 don't know what we would do necessarily. I'd  
23 probably have to talk to our counsel to determine  
24 what action the district would take, and whether  
25 or not we would request an extension of CEQA

1 through your agency or we would just at that point  
2 say well, it's over and you have to reopen the  
3 case.

4 MR. GARCIA: Thank you very much.

5 MS. SMITH: Mr. Yee, one point of  
6 clarification. You said 12 months from the point  
7 that a CEQA document is filed?

8 MR. YEE: Actually it's the point where  
9 the CEQA document is certified, excuse me.

10 MS. SMITH: So, in this case the Energy  
11 Commission's permit?

12 MR. YEE: That's correct, because the  
13 AFC functions as a CEQA equivalent.

14 MS. SMITH: Okay. I just wanted to  
15 clarify that language.

16 COMMISSIONER PERNELL: Could we go off  
17 the record a minute please?

18 (Off the record.)

19 COMMISSIONER PERNELL: Back on the  
20 record. The Committee has no further questions  
21 for Mr. Yee or Mr. Luong -- I'm sorry, staff has  
22 some questions?

23 MR. KRAMER: At least a couple.

24 HEARING OFFICER WILLIS: Actually, you  
25 already had your opportunity to ask questions.

1           MR. KRAMER: Well, these would be by the  
2 way of rebuttal to clarify, and also, one of the  
3 questions is just to clarify a point that was left  
4 unclear from the Committee's questions. It would  
5 be taking them out of order, but it also may allow  
6 them to leave sooner than making them wait until  
7 after I cross-examine Mr. Rubinstein.

8           HEARING OFFICER WILLIS: Is there any  
9 objection from the Applicant?

10          MR. ELLISON: It's hard to know without  
11 knowing what the questions are going to be.

12          HEARING OFFICER WILLIS: He's trying to  
13 ask -- they'd have to ask the question then in  
14 order to --

15          MR. ELLISON: Is the Committee planning  
16 to break at five, is that --?

17          HEARING OFFICER WILLIS: We're actually  
18 trying to get them out, and then I thought we can  
19 go ahead and continue until the dinner break.

20          MR. ELLISON: My concern would be that I  
21 may have followup questions to Mr. Kramer's  
22 questions, so I wouldn't want to be put in a  
23 position where he's able to ask the questions but  
24 we're not. We would be willing to stop here and  
25 not ask any questions, but if Mr. Kramer is

1 allowed to ask questions I may have some too.

2 COMMISSIONER PERNELL: Mr. Kramer, how  
3 long is your --?

4 MR. KRAMER: No more than five minutes.

5 COMMISSIONER PERNELL: Proceed, please.

6 MR. KRAMER: Mr. Luong, as far as  
7 reclaimed credits go, is my understanding correct  
8 that the district maintains an official record of  
9 who owns each credit?

10 MR. LUONG: Yes.

11 MR. KRAMER: So is this demonstration  
12 then that somebody possesses the credits the fact  
13 that you show them as the owner on your books?

14 MR. LUONG: The ownership, yes. Not  
15 until they register with us.

16 MR. KRAMER: Okay. So if somebody's  
17 going to buy a credit they have to get it  
18 registered on your records before they have any  
19 effective ability to use it?

20 MR. LUONG: Yes, that's the usage of it.  
21 However, I just want to bring up one more point.  
22 Since 2001 the market has developed to have  
23 futures, options and future purchases, which are  
24 certainly recognized as a demonstration of  
25 availability. However, it's not good enough for

1 demonstration of the rule 2005 paragraph that  
2 we've talked about.

3 MR. KRAMER: Are those options in future  
4 also tracked on your official records?

5 MR. LUONG: They are required to report  
6 to us. We maintain a record that's not a part of  
7 the official RTC listing.

8 MR. KRAMER: Okay. About how many  
9 facilities are currently participating in the  
10 reclaim program?

11 MR. LUONG: Currently around 300.

12 MR. KRAMER: And do those facilities  
13 ever have their emissions exceed the amount of  
14 RTC's that they hold?

15 MR. LUONG: Yes, individual facilities,  
16 on the average, I would say about five percent of  
17 facilities each year exceed their allocation.

18 MR. KRAMER: Okay. And is that  
19 considered a problem for the district if  
20 facilities are exceeding their allocated credits?

21 MR. LUONG: Certainly. That carries  
22 quite a bit of fines with it.

23 MR. KRAMER: Thank you, that's less than  
24 five minutes.

25 COMMISSIONER PERNELL: Thank you, Mr.

1 Kramer.

2 HEARING OFFICER WILLIS: Mr. Ellison?

3 MR. ELLISON: I think I can do this in  
4 two questions. First, I'll address this to either  
5 of you. At the present time, recognizing you  
6 don't have a crystal ball, but at the present time  
7 is there any shortage of reclaimed credits?

8 MR. LUONG: No, there is not currently  
9 an indication of shortage.

10 MR. ELLISON: And my second question is,  
11 I want to read you a portion of the Energy  
12 Commission statute, and then ask you a question  
13 about it. But I want to be very clear that you  
14 understand what I'm reading, so if you don't  
15 understand what I'm reading ask me to repeat it.

16 And I'm reading from 25523D2, and the  
17 sentence I'm interested in says as follows, "the  
18 Commission shall require, as a condition of  
19 certification, that the Applicant obtain any  
20 required emission offsets within the time required  
21 by the applicable district rules." And then it  
22 goes on.

23 Do you have that in mind? Let me read  
24 it one more time, "the Commission shall require,  
25 as a condition of certification, that the

1 Applicant obtain any required emission offsets  
2 within the time required by the applicable  
3 district rules."

4 With that law in mind, and with the  
5 issue of RTC's in mind for NOx, when do your  
6 rules --

7 HEARING OFFICER WILLIS: Mr. Ellison,  
8 where are you reading from? Mine says "identify."

9 MR. ELLISON: I'm reading from a portion  
10 of 25523D2, the second sentence, the last  
11 sentence.

12 HEARING OFFICER WILLIS: And is  
13 identified in that sentence?

14 MR. ELLISON: No. Identify appears  
15 earlier --

16 HEARING OFFICER WILLIS: Okay, so you're  
17 paraphrasing --?

18 MR. ELLISON: No, I'm not paraphrasing,  
19 I'm reading exactly. And let me be clear what's  
20 going on here. The statute discusses  
21 identification and obtaining offsets as separate  
22 concepts.

23 COMMISSIONER PERNELL: Well, one of the  
24 things we have to have is what you have, and we  
25 don't have it yet, so I'm not --

1 HEARING OFFICER WILLIS: If you're  
2 reading it straight through --

3 MR. ELLISON: I'm reading it straight  
4 from the statute. I believe the staff has quoted  
5 in their AFC testimony as well, if I can find it.  
6 Well, I'm -- D as in dog 2.

7 COMMISSIONER PERNELL: Could we go off  
8 the record until we --  
9 (Off the record.)

10 COMMISSIONER PERNELL: Back on the  
11 record. Ms. Willis?

12 HEARING OFFICER WILLIS: Mr. Ellison?

13 MR. ELLISON: Thank you. Before we went  
14 off the record I was reading from Section 25523D2,  
15 which I believe is accurately quoted by the staff  
16 at Exhibit 68, the bottom of page three and the  
17 top of page four.

18 And the provision that I am calling to  
19 your attention says "the Commission shall require,  
20 as a condition of certification, that the  
21 Applicant obtain any required emission offsets  
22 within the time required by the applicable  
23 district rules."

24 Do you have that in mind or see it in  
25 front of you? With that in mind, when do your

1 rules require that Calpine obtain RTC's for this  
2 project?

3 MR. LUONG: Prior to start of operation.

4 MR. ELLISON: Thank you.

5 COMMISSIONER PERNELL: Prior to start of  
6 operation?

7 MR. LUONG: Yes.

8 HEARING OFFICER WILLIS: Thank you very  
9 much.

10 MR. ELLISON: That's all I have, thank  
11 you.

12 HEARING OFFICER WILLIS: Mr. Garcia?

13 MR. GARCIA: All right, and this is back  
14 to Mr. Yee, I think. I apologize for my earlier  
15 question, I was reading the wrong section. And I  
16 want you to take a look at the section that's on  
17 the bottom of staff supplemental testimony, page  
18 three, that the counsel just read.

19 MR. YEE: I see it.

20 MR. GARCIA: And my question is  
21 basically the same, does the letter from Cantor  
22 Fitzgerald, does that satisfy the district with  
23 regards to the identification of the RTC's so that  
24 it can certify that that portion of the  
25 requirement has been met?

1           MR. LUONG: Again, the district's  
2 requirement is to obtain and not to identify, so  
3 at the time that they need to purchase, outright  
4 purchase the RTC, so --

5           MR. GARCIA: I understand that. This  
6 question has to do with regards to the Energy  
7 Commission's requirement, and the requirement says  
8 that -- it says two things.

9           It says that the district has to certify  
10 that the Applicant has been able to identify and  
11 purchase the RTC's, and I'm just asking you to  
12 look at the identification part. Does the letter  
13 give you the comfort that you can certify that the  
14 RTC's have been identified?

15          MR. KRAMER: I really hate to object to  
16 a Committee question, but I don't know that it's  
17 been established that this letter has been offered  
18 to the district for purposes of making  
19 certification to the Commission.

20          So I don't even know if they'd consider  
21 that as a foundational issue, and I'm also not  
22 sure --

23          COMMISSIONER PERNELL: All right, we're  
24 going to sustain this objection. What's next?

25          MR. KRAMER: We're done.

1 HEARING OFFICER WILLIS: Now thank you  
2 very much. I appreciate your spending the extra  
3 time.

4 COMMISSIONER PERNELL: Thank you. Tell  
5 my friends over there hello.

6 HEARING OFFICER WILLIS: Okay, before we  
7 continue with Mr. Rubinstein we'll go ahead and  
8 take a break, until 5:45. And there's food out in  
9 the lobby.

10 (Off the record.)

11 COMMISSIONER PERNELL: Back on the  
12 record. Ms. Willis?

13 HEARING OFFICER WILLIS: Okay, why don't  
14 we have staff cross-examine Mr. Rubinstein? Oh,  
15 before we do that, why don't we ask Mr. Ellison  
16 if there are documents to be put into evidence?

17 MR. ELLISON: Would you like me to do  
18 that now?

19 HEARING OFFICER WILLIS: Yes, why don't  
20 you go ahead and do that.

21 MR. ELLISON: All right. At this time  
22 the Applicant would like to move its air quality  
23 testimony consisting of Section 5.1 of Exhibit  
24 Two, and the Exhibits that were identified earlier  
25 by Mr. Rubinstein as being incorporated by

1 reference therein. As well as Exhibits 72, 73,  
2 74, 75, and 76.

3 HEARING OFFICER WILLIS: You said that  
4 you had previously identified, have they been  
5 assigned specific numbers?

6 MR. ELLISON: They are on your list, and  
7 they were identified by Mr. Rubinstein, by number,  
8 as part of his testimony today.

9 HEARING OFFICER WILLIS: Is there any  
10 objection?

11 MR. KRAMER: No.

12 HEARING OFFICER WILLIS: All right, so  
13 moved. Staff?

14 MR. KRAMER: Okay. Mr. Rubinstein, do  
15 you have a copy of the Cantor Fitzgerald letter in  
16 front of you?

17 MR. RUBENSTEIN: Yes, I do.

18 MR. KRAMER: And for the record --  
19 Jenifer, what's the Exhibit number on that one?

20 MR. RUBENSTEIN: Well, it's attachment  
21 three to Exhibit Two in my testimony.

22 MR. KRAMER: Okay.

23 MR. RUBENSTEIN: And it's also  
24 separately Exhibit 54.

25 MR. KRAMER: 54, okay. Was this letter

1 obtained at your request or someone else's?

2 MR. RUBENSTEIN: It was obtained at  
3 Calpine's request.

4 MR. KRAMER: Were you a participant in  
5 the conversation in which the request was made, or  
6 the communication?

7 MR. RUBENSTEIN: Yes, I was.

8 MR. KRAMER: And can you describe the  
9 question as it was framed to Cantor Fitzgerald  
10 that resulted in this reply?

11 MR. RUBENSTEIN: Yes. Cantor was asked  
12 whether they could provide a letter indicating  
13 whether reclaimed trading credits in the  
14 approximate amounts of 500,000 pounds in calendar  
15 year 2006, and 340,000 pounds in calendar years  
16 2007 and later could be available and could be  
17 obtained on the market.

18 And also they were asked to  
19 specifically, as best they could, identify current  
20 sellers on the market who would be able to satisfy  
21 a purchase request if one was made today.

22 MR. KRAMER: Okay, so the second page is  
23 a table, if you will. And it looks like there's  
24 ten different orders. Is it your understanding  
25 that each one of those is a different seller?

1           MR. RUBENSTEIN: They are not  
2 specifically identified as such, but I believe,  
3 based on my discussions with representatives of  
4 Cantor, that they are ten different sellers.

5           MR. KRAMER: Do you know, are there more  
6 sellers than this available, or was this the  
7 entirety of the RTC's that are available at this  
8 time?

9           MR. RUBENSTEIN: I don't know. We had  
10 simply asked Cantor to identify enough to meet the  
11 quantities that we had specified.

12          MR. KRAMER: Okay, so there might be  
13 more than 504,700 credits available. You just  
14 don't know?

15          MR. RUBENSTEIN: Well, I'm certain in an  
16 absolute sense there are more, because I have a  
17 client who is currently in the selling position  
18 and they're not one of the ten listed. So I don't  
19 know how many more there are, but I know in an  
20 absolute perspective there are more than 504,700.

21          MR. KRAMER: How do you know if your  
22 client is not one of the ten if you don't -- well,  
23 let me back up. Do you know the identity of any  
24 of these sellers?

25          MR. RUBENSTEIN: No, I do not.

1 MR. KRAMER: So how can you tell whether  
2 or not your client is in this list or not?

3 MR. RUBENSTEIN: Because I specifically  
4 asked Cantor the question as to whether that  
5 client was, because they are a mutual client.

6 MR. KRAMER: So you don't know who these  
7 people are then?

8 MR. RUBENSTEIN: That's correct, I do  
9 not.

10 MR. KRAMER: It wasn't clear to me from  
11 your testimony today whether you were offering  
12 this list and this letter as an identification of  
13 specific RTC's for purposes of the Warren-Alquist  
14 Act, Section 25523D2, or if you were just offering  
15 them as an example of a sample package of credits  
16 that could be put together to meet the  
17 requirements. Could you clarify that for me?

18 MR. RUBENSTEIN: I think the answer is  
19 that it was intended to address both of those  
20 issues, both to address the specific requirements  
21 of 25523D2 and to provide a real indication of  
22 actual sellers of credits in the quantities  
23 necessary.

24 MR. KRAMER: So then you're saying this  
25 is your "identification" that you think is

1 required by the Warren-Alquist Act?

2 MR. RUBENSTEIN: My testimony was that  
3 this letter, in combination with a final  
4 determination of compliance, I believe satisfies  
5 that requirement.

6 MR. KRAMER: So are you saying then that  
7 Calpine intends to purchase these specific  
8 credits, or use these specific credits when it  
9 comes time to operate the plant?

10 MR. RUBENSTEIN: They might, or they  
11 might purchase other reclaimed trading credits at  
12 that time if they were available and less  
13 expensive.

14 MR. KRAMER: So then, there's an air  
15 quality condition, I believe it's SC 10, that has  
16 a table of various credits -- it's SC 9, pardon  
17 me, on page 12 of the Exhibit 68. In that list  
18 NOx credits, CO credits, VOC, PM-10, SOx credits.

19 And for instance, for CO there are  
20 several different credits listed, and the ERC  
21 number is identified. Would it be appropriate for  
22 the Commission to amend this table and include  
23 those ten RTC credits that are shown in the Cantor  
24 Fitzgerald letter in here as credits that you plan  
25 to use for this project?

1 MR. RUBENSTEIN: I don't know what you  
2 mean by appropriate. Appropriate for what  
3 purpose?

4 MR. KRAMER: Well, to make the condition  
5 complete. You purchased the -- Calpine plans to  
6 use, for example, the CO credits that are listed  
7 in that table, right?

8 MR. RUBENSTEIN: Calpine intends to  
9 specifically use those CO credits, not example  
10 credits.

11 MR. KRAMER: Okay. Then I gather they  
12 do not specifically intend to use the credits that  
13 are shown in the Cantor Fitzgerald letter, that's  
14 up in the air at this point. Is that a fair  
15 statement?

16 MR. RUBENSTEIN: I don't know that  
17 they've made any intention or stated any intention  
18 one way or another. They're no comparable way in  
19 the reclaim program that you can identify reclaim  
20 trading credits analogous to the ERC certificate  
21 numbers that you have listed there.

22 Just like you can't identify specific  
23 certificate numbers for the PM-10 or the SOx  
24 credits coming from the priority reserve.

25 MR. KRAMER: Right.

1 MR. RUBENSTEIN: I think this condition  
2 is complete.

3 MR. KRAMER: You understand staff  
4 doesn't, though, correct?

5 MR. RUBENSTEIN: No, I don't understand  
6 that. I understand staff has indicated that they  
7 can't recommend certification, but I did not  
8 understand that staff believes this condition is  
9 incomplete.

10 MR. KRAMER: Well, I want to make sure.  
11 I'm just trying to understand what you mean by  
12 identifying the context of RTC's. Did I hear you  
13 a minute ago say that Calpine may or may not use  
14 the RTC's -- some or all of them -- that are  
15 listed in the Cantor Fitzgerald letter?

16 MR. RUBENSTEIN: Yes. Going back to the  
17 analogy I gave during my testimony regarding years  
18 of corn. At the time that Calpine actually goes  
19 to purchase RTC's, these ten ears of corn may no  
20 longer be on the market, or they may no longer be  
21 the cheapest ears of corn on the market, and they  
22 may purchase some others, or they may purchase  
23 these ten.

24 MR. KRAMER: At this point in time you  
25 wouldn't want to make a commitment to purchase

1 those ten?

2 MR. RUBENSTEIN: At the risk of  
3 overusing this phrase, it depends on what you mean  
4 by make a commitment. Certainly, Calpine and  
5 Inland Empire is not in the position to expend  
6 funds to ensure that these specific RTC's can be  
7 purchased at a later day.

8 MR. KRAMER: Okay, if this project were  
9 in some other air district that did not have a  
10 program like the reclaim program, but just used if  
11 you will generic offsets, would you be able to  
12 simply point to a list of available credits and  
13 say we're going to be able to pick some from this  
14 list or maybe some others, whichever are cheaper,  
15 and say that you had satisfied the requirement in  
16 the Warren-Alquist Act to identify credits?

17 MR. ELLISON: I'm going to object to  
18 that question on two grounds. One, it calls for a  
19 legal conclusion. But secondly, it's a  
20 hypothetical involving a project in a different  
21 district and is irrelevant to the project here.  
22 We are in the south coast district, we do have a  
23 reclaim program.

24 HEARING OFFICER WILLIS: We're going to  
25 overrule that. We've been allowing your testimony

1 on various East Altamount issues and that is  
2 definitely in a different air district, so Mr.  
3 Kramer, proceed.

4 MR. RUBENSTEIN: No, I don't believe  
5 that would be sufficient because that would not be  
6 allowed under any of the district regulations that  
7 I'm familiar with. All of the district  
8 regulations in those other cases specifically  
9 require the identification by certificate number  
10 of emission reduction credits before a final  
11 determination of compliance is issued.

12 MR. KRAMER: Central to your argument is  
13 your assertion that RTC's are different than ERC's  
14 in various ways. Would you agree with that  
15 characterization of your argument?

16 MR. RUBENSTEIN: Yes.

17 MR. KRAMER: Isn't it true though that  
18 in both cases, RTC's and ERC's, that if somebody  
19 obtains either of them from a source, or the  
20 seller rather, has had to curtail his own  
21 emissions in order to allow that transaction to  
22 take place?

23 MR. RUBENSTEIN: No. They're  
24 fundamentally different in that regard. As I  
25 indicated in my written testimony, the initial

1 supply of reclaimed trading credits was issued by  
2 the south coast district. They're not created by  
3 any individual sources.

4 And the quantity of credits that was  
5 issued by the district was pre-ordained to decline  
6 from one calendar year to the next, and  
7 consequently, whether a particular company chooses  
8 to buy or sell credits can have ultimately nothing  
9 to do with whether they choose to curtail  
10 operations or install retrofits or they just  
11 happen to have a surplus.

12 MR. KRAMER: Okay, but how were those  
13 credits issued? Were they just issued randomly to  
14 the people in the community, or what?

15 MR. RUBENSTEIN: They were issued based  
16 on a negotiated baseline, which I believe was a  
17 two or three year period at the end of the 1980's,  
18 and the quantity was deliberately set higher in  
19 the initial years of the program, beginning I  
20 think in 1996, deliberately set higher than actual  
21 NOx emissions within the air basin.

22 And then the quantity that was issued  
23 declined over time such that, around 2000 or 2001,  
24 if there were no emission controls retrofit in the  
25 exact same universe of sources remaining in

1 operation, that demand would have started to  
2 exceed supply.

3           And the purpose of that structure was to  
4 initially get the universe of sources familiar  
5 with how the market would operate, allow them to  
6 engage in long-term planning that would help them  
7 manage what their individual demand for RTC's  
8 might be, and then make individual judgment as to  
9 whether they would purchase RTC's or whether they  
10 would sell RTC's, or whether they would retrofit  
11 emission controls in order to generate an  
12 additional supply.

13           But it's fundamentally different than  
14 emission reduction credits.

15           MR. KRAMER: Okay, but the credits, the  
16 RTC's, were issued to businesses that at the time  
17 were currently emitting NOx, correct?

18           MR. RUBENSTEIN: That's correct.

19           MR. KRAMER: And in some rough  
20 proportion to the amount of emissions they were  
21 creating, is that correct?

22           MR. RUBENSTEIN: No, it was in rough  
23 proportion to the amount of emissions emitted in  
24 the negotiated baseline, which was at least five  
25 years before the start of the baseline program.

1           MR. KRAMER: Okay, but emitted by each  
2 particular source, or each location or business?

3           MR. RUBENSTEIN: Yes.

4           MR. KRAMER: So if I were a small  
5 emitter, I would get -- it was a guess as to what  
6 I was doing five years previous, an educated  
7 estimate of that was the basis for what I would  
8 receive, and a larger emitter like a refinery  
9 would receive more, but again it was related to  
10 what they had been doing prior to the assignment?

11          MR. RUBENSTEIN: That's correct.

12          MR. KRAMER: And then over time you  
13 indicated that the amounts were ratcheted down.  
14 Was that to encourage people to reduce their  
15 emissions?

16          MR. RUBENSTEIN: The purpose of the  
17 ratcheting -- and let me be clear, the ratcheting  
18 occurred at the start of the program, there is not  
19 an ongoing ratcheting effort. The quantity of  
20 credits issued for 1997 -- and these are  
21 hypothetical numbers -- were only 95 percent of  
22 the credits that were issued for 1996.

23                 The quantity of credits issued for 1998  
24 were only 95 percent of the credits issued for  
25 1997. And so the entire scheme was laid out in

1 advance, with a declining quantity of credits  
2 available.

3 And the purpose of the declining value  
4 of credits, or the declining quantity of credits  
5 rather, was to ensure that NOx emissions from this  
6 universe of sources was reduced in a manner  
7 consistent with the air quality plan.

8 And the expectation was that the  
9 reductions would occur at a lower cost than under  
10 a traditional command and control approach where  
11 individual industries were required to retrofit  
12 controls on a prescribed schedule, and also in  
13 contrast to the system where new sources were  
14 required to purchase emission reduction credits.

15 This was intended to replace both  
16 elements of the south coast district's regulatory  
17 program for NOx.

18 MR. KRAMER: Okay, and then it was up to  
19 the sources as to how they reduced their emissions  
20 then, right? They could either -- for one thing,  
21 they could choose which equipment to retrofit if  
22 that was their choice.

23 Or they had the option of buying RTC's  
24 from somebody else who could more economically  
25 reduce his own emissions, correct?

1 MR. RUBENSTEIN: Correct, or they could  
2 buy RTC's from a source that was shutting down and  
3 moving out of the basin.

4 MR. KRAMER: Okay. And in this  
5 particular case, if Calpine is going to buy RTC's  
6 from someone, it's going to be because they are  
7 going to be available because that someone doesn't  
8 need them anymore, right?

9 MR. RUBENSTEIN: That's correct.

10 MR. KRAMER: And they won't need them,  
11 as you said a minute ago, or less than a minute  
12 ago, because they've shut down or they have excess  
13 credits that they don't require?

14 MR. RUBENSTEIN: That's right. They  
15 have excess credits that they don't require for  
16 the specific year when they're making a sale.

17 MR. KRAMER: And that's another aspect  
18 of the flexibility, I gather, because if somebody  
19 has to shut down let's say for retrofit for a  
20 year, in any other air district they would just  
21 have that credit sitting there that they paid for,  
22 and there'd be no way to get any value back out of  
23 it.

24 But in the south coast system they could  
25 in effect sell it for a year, in effect lease it

1 out to somebody else and get some financial  
2 return, right?

3 MR. RUBENSTEIN: Conceptually, that's  
4 correct. The terms are very different, because  
5 they wouldn't be leasing, they would be selling.

6 MR. KRAMER: Right.

7 MR. RUBENSTEIN: But the concept is  
8 right.

9 MR. KRAMER: Selling a years' worth, as  
10 opposed to -- in other districts all you can sell  
11 is the perpetual right?

12 MR. RUBENSTEIN: That's correct.

13 MR. KRAMER: So having said all that,  
14 how is an RTC really different, for the purposes  
15 of offsetting emissions, from an ERC? Both appear  
16 to involve somebody else either presently or in  
17 the past having curtailed operations, correct?

18 MR. RUBENSTEIN: No, not quite. Because  
19 for an ERC the curtailment would have to be  
20 permanent and enforceable and the curtailment  
21 would have to result in emission reductions lower  
22 than what would be achievable either with  
23 reasonable available or best available control  
24 technology, depending on the district.

25 There would be, if you will, a haircut

1 or a discount, on what the credit would be that  
2 would be issued.

3 And in contrast, for a reclaimed trading  
4 credit, the reduction doesn't have to be  
5 permanent, doesn't have to be enforceable, doesn't  
6 have to be in excess of anything, can occur for  
7 absolutely any reason. And that's why they're  
8 fundamentally different.

9 MR. KRAMER: But during the time that  
10 the credit is in use, in the case of an RTC it's a  
11 yearly period, in the case of an ERC it's  
12 perpetual, somebody has curtailed their emissions?

13 MR. RUBENSTEIN: No, I guess I disagree  
14 with that characterization, because it implies  
15 that they are consciously or deliberately  
16 curtailing their emissions to generate a credit.

17 As an example, you indicated earlier, if  
18 they had to take a piece of their plant and shut  
19 it down for six months for maintenance, if they  
20 chose to do that then that would reduce their  
21 demand for reclaimed trading credits during that  
22 year, and they might choose to sell some credits.

23 If they had an inadvertent shutdown that  
24 they hadn't planned on that put them out of  
25 commission for a month, that would enable them to

1 sell some quantity of reclaimed credits if they  
2 chose to do so.

3 MR. KRAMER: Your counsel asked you what  
4 happened if you retained an RTC during a  
5 particular year and for some reason you couldn't  
6 operate, whether you could carry the RTC over to  
7 another year, and you said no, you couldn't, it  
8 would be lost.

9 But isn't it true that you would have  
10 had the option during that year to sell it to  
11 someone else?

12 MR. RUBENSTEIN: Yes, certainly.

13 MR. KRAMER: During the energy crisis of  
14 2001, what happened to the price and availability  
15 of reclaimed credits?

16 MR. RUBENSTEIN: The price of credits  
17 went high, and there's a disagreement on the  
18 reason. I was extensively involved in the  
19 regulatory proceedings as well as strategic  
20 planning with some of my clients on the south  
21 coast, and the reasons had to do with unexpected  
22 increases for demand for electricity produced by  
23 power plants in the south coast air basin,  
24 combined with delays by the south coast district  
25 in processing permit applications for emission

1 controls systems for those same power plants.

2           The result being that there was a period  
3 of probably six to ten months when there was  
4 increased power generation, and where the  
5 companies -- even though they wanted to retrofit  
6 emission controls -- were legally prohibited from  
7 doing that because they did not have permits from  
8 the south coast district.

9           Once that imbalance was corrected,  
10 approximately a year later, the prices began to  
11 stabilize quite substantially, and now the  
12 market -- my understanding -- is operating at a  
13 near normal level.

14           MR. KRAMER: Did the south coast split  
15 the reclaimed program into two separate tiers?

16           MR. RUBENSTEIN: Yes, they did. And  
17 that split was also a source of controversy.  
18 There were a number of people who were arguing  
19 that the split was not necessary because the  
20 market was correcting itself.

21           MR. KRAMER: Okay. Who were in the two  
22 different tiers?

23           MR. RUBENSTEIN: One group consisted of  
24 operators of then-existing power plants, and the  
25 other group consisted of everyone else.

1           MR. KRAMER: So which tier would this  
2 project fall into?

3           MR. RUBENSTEIN: If the market were not  
4 to be recombined, this project would fall into the  
5 everyone else category. However, the district has  
6 announced its intention to recombine the market, I  
7 believe later this year.

8           MR. KRAMER: Can the air district force  
9 somebody to sell you an RTC?

10          MR. RUBENSTEIN: No, they cannot.

11          MR. KRAMER: So if there are no willing  
12 sellers you're up a creek without a paddle?

13          MR. RUBENSTEIN: Under that  
14 hypothetical, yes.

15          MR. KRAMER: Calpine does have a  
16 relatively small amount of NOx RTC's already in  
17 its possession, I guess would be the term. Is  
18 that correct?

19          MR. RUBENSTEIN: They have credits in  
20 their possession, as indicated in both FDOC and in  
21 the staff testimony. I'm not sure I'd categorize  
22 it as small in this context. it's about ten  
23 percent of their needs for any individual year,  
24 but it is a perpetual stream.

25                 And in total number of pounds it's

1 actually comparable to the total number of pounds  
2 required for one years' worth of operation.

3 MR. KRAMER: But you couldn't use it for  
4 one year?

5 MR. RUBENSTEIN: That's correct.

6 MR. KRAMER: So you just compared apples  
7 and oranges, didn't you?

8 MR. RUBENSTEIN: In terms of pounds,  
9 yes. In terms of financial commitment, no, it's  
10 apples to apples.

11 MR. KRAMER: Big apples. No further  
12 questions. Thank you.

13 HEARING OFFICER WILLIS: Before I ask  
14 for redirect, I had a question. You just  
15 mentioned a perpetual stream, how does that work?  
16 Maybe you could explain that a little more?

17 MR. RUBENSTEIN: In the reclaimed  
18 marketplace companies can either purchase a  
19 certain number of credits for a very specific  
20 calendar year or reclaim year, or they can  
21 purchase it for multiple years, or they can  
22 purchase what's referred to as a perpetual stream,  
23 which means that they purchase, for example as  
24 Calpine did, a certain number of credits for  
25 calendar year 2004, the same number for 2005, the

1 same number for 2006, etc., with the final year  
2 referred to as after 2010, which means the company  
3 has the right to those same reclaim credits for  
4 every reclaim trading year after 2010.

5 And so, in quantity, Calpine has  
6 purchased credits that cover, I think it's roughly  
7 38,000 pounds, roughly ten percent of a year's  
8 needs, for calendar years 2004, 2005, 2006, etc.  
9 for a total of eight reclaim years.

10 And so, eight reclaim years times  
11 roughly 38,000 pounds is roughly 300,000 pounds  
12 total they have purchased. As Mr. Kramer  
13 indicated, they can only use them at 38,000 pounds  
14 per year, but in terms of the total financial  
15 commitment it is in fact comparable roughly to one  
16 year of routine operation.

17 HEARING OFFICER WILLIS: So it would  
18 also be possible to purchase the other 90 percent  
19 in that manner as well?

20 MR. RUBENSTEIN: Yes, and in fact it  
21 would be likely, based upon my experience with  
22 reclaimed purchasers, that they would purchase a  
23 larger amount for the first year only, because  
24 there is an increase due to commissioning  
25 activities and a lot higher NOx emissions.

1           And they would likely purchase one or  
2 more perpetual streams for the subsequent years to  
3 fill out the remainder of their needs. It is also  
4 possible that they could just purchase them a year  
5 at a time. But from a practical matter a company  
6 is unlikely to get financing if they're planning  
7 on satisfying the reclaim requirements in that  
8 manner.

9           HEARING OFFICER WILLIS: Is it your  
10 testimony then tonight that Calpine is not  
11 planning on purchasing or agreeing to purchase or  
12 an option to buy any more reclaimed credits for  
13 NOx prior to the Energy Commission's license?

14           MR. RUBENSTEIN: At this point Calpine  
15 doesn't believe that it needs to purchase or  
16 option any additional reclaim credits to satisfy  
17 the Commission's requirements. And because they  
18 believe they are not required to do so they are  
19 not planning on doing so.

20           HEARING OFFICER WILLIS: Mr. Ellison, do  
21 you have any redirect?

22           MR. ELLISON: No.

23           MR. GARCIA: I have a couple of  
24 questions. Mr. Rubenstein, have you considered  
25 requesting the air district to provide the

1 certification based on the Cantor letter?

2 MR. RUBENSTEIN: No, Mr. Garcia, we  
3 haven't. And part of the reason why is that, in  
4 my experience in projects since this legislation  
5 was passed, I have I think in only one case  
6 actually seen a district letter formally providing  
7 that certification.

8 Normally the certification is subsumed  
9 or implied within the final determination of  
10 compliance, which I believe is the case here as  
11 well. And so we had not planned on formally  
12 asking the district to provide a separate  
13 certification here.

14 MR. GARCIA: But isn't that the crux of  
15 the disagreement between Calpine and staff? And  
16 if you did that, wouldn't that resolve it?

17 MR. RUBENSTEIN: To be honest, even if  
18 we had a letter from the district, no, I'm not  
19 certain that that would resolve it. And I don't  
20 know whether the district would in fact provide  
21 such a letter because it all hinges on the term  
22 identification and what it means to different  
23 people. And I'm not sure that the district would  
24 necessarily weigh in on that dispute.

25 MR. GARCIA: But in the event that they

1 did, that would resolve the disagreement?

2 MR. RUBENSTEIN: I think that perhaps is  
3 a question better put to the staff than to me as  
4 to whether a letter from the district would in  
5 fact resolve the disagreement.

6 COMMISSIONER PERNELL: Are you proposing  
7 that to Mr. Kramer?

8 MR. KRAMER: Unless the facts changed  
9 I'm not sure we'd put much stock in such a letter  
10 from the district.

11 MR. GARCIA: All right. Thanks.

12 COMMISSIONER PERNELL: I do have a  
13 followup on your explanation as to the perpetual  
14 stream. Who monitors that, is that the air  
15 district?

16 MR. RUBENSTEIN: Yes. The air district  
17 has a registry. You can think of it like they are  
18 a banker and they maintain bank accounts, and  
19 every facility operator, every reclaim credit  
20 holder in the south coast air basin, has one  
21 account which has separate sub-accounts for each  
22 reclaim year.

23 And in fact it gets a little more  
24 complicated because we've been talking about  
25 reclaim years and there are actually four

1 subsets -- no, I'm sorry -- two subsets to each  
2 year, referred to as cycle one and cycle two.

3 And actually there are two variations on  
4 that, whether they're inland or coastal. So for  
5 each calendar year each account holder would have  
6 four separate sub-accounts.

7 And the district's registry keeps track  
8 of all of that, and every permit holder gets a  
9 statement at the beginning of each calendar year,  
10 in their facility permit, telling them exactly how  
11 many credits they have of each type for each year,  
12 in perpetuity. And so the district tracks all of  
13 that.

14 COMMISSIONER PERNELL: Is that every  
15 district, or just south coast?

16 MR. RUBENSTEIN: This program is unique  
17 to the south coast.

18 HEARING OFFICER WILLIS: I believe  
19 you've moved in all your documents. Is there any  
20 other documents you need to move in at this time?

21 MR. ELLISON: No.

22 HEARING OFFICER WILLIS: Okay. Staff, I  
23 believe you've already sworn in your witnesses?

24 MR. KRAMER: And the plan is we're going  
25 to have public health separately after this, is

1 that correct? Okay. Mr. Birdsall, if you would  
2 identify yourself for the record?

3 MR. BIRDSALL: Hi, good evening, my name  
4 is Brewster Birdsall. I'm a contractor helping  
5 the Energy Commission on the topic of air quality.

6 MR. KRAMER: And did you prepare the air  
7 quality portion of the staff assessment in this  
8 case?

9 MR. BIRDSALL: I did.

10 MR. KRAMER: And does it represent your  
11 best professional judgment?

12 MR. BIRDSALL: Yes, it does.

13 MR. KRAMER: And that includes both the  
14 final staff assessment and the --

15 COMMISSIONER PERNELL: Mr. Birdsall, you  
16 really need to speak directly into the mike.

17 MR. BIRDSALL: Okay.

18 MR. KRAMER: That's better.

19 COMMISSIONER PERNELL: Thank you.

20 MR. KRAMER: And your testimony includes  
21 the supplemental testimony, that's Exhibit 68?

22 MR. BIRDSALL: Correct.

23 MR. KRAMER: Let's turn to the issue of  
24 AQSC5, the upwind and downwind monitoring  
25 requirements. Could you explain why staff

1 believes that it's important to provide that  
2 monitoring?

3 MR. BIRDSALL: AQSC5 addresses the  
4 ambient air concentrations of particulate matter  
5 upwind and downwind of the site during the heavy  
6 construction and earth work phase of the site  
7 development.

8 This is a monitoring recommendation that  
9 staff has created to provide some kind of  
10 assurance that the dust control measures that are  
11 specified by the previous conditions, conditions  
12 AQSC 1 through 4, are implemented effectively.

13 The reasoning behind AQSC5 is unique to  
14 this case, as is every staff assessment to every  
15 power plant site that we approach. When we look  
16 at the conditions that the Inland Empire plant is  
17 going to insert itself to, we take a look at the  
18 existing background conditions and the project  
19 surroundings.

20 The existing background conditions in  
21 terms of the ambient air quality have all been  
22 laid out in the AFC, originally, and then  
23 subsequently in the staff assessment and with  
24 updates in the addendum to the staff assessment.  
25 This is the Exhibit 68.

1           The Applicant has also provided some  
2 interesting and relevant information that is  
3 updated tonight in their Exhibits -- I believe 72,  
4 73, and 74. And these Exhibits all illustrate the  
5 background conditions here in this part of the  
6 Inland Empire with regard to PM-10 as being well  
7 in excess of the state and federal ambient air  
8 quality standards for PM-10, and there's no  
9 dispute about that from any of the parties  
10 involved.

11           The ambient conditions exceed the  
12 ambient air quality standards, and in this regard  
13 the Inland Empire isn't very much different from  
14 some of our other more-polluted basins for  
15 particulate matter -- like the Central Valley or  
16 -- well, really, the Central Valley.

17           What I've done is I've taken a look at  
18 the background conditions. Because the background  
19 conditions are indeed over the standards we feel  
20 that additional or, we feel that the dust control  
21 strategy needs to be very carefully implemented.

22           The Applicant has put forward some  
23 information tonight that says that the background  
24 conditions are improving in the south coast  
25 district, and this is part of the Applicant's

1 testimony submitted earlier in July.

2           Staff doesn't dispute that some great  
3 achievements have been made in the basin about  
4 reducing the background concentrations of PM-10.  
5 But the Applicant's table and graphs that were  
6 submitted tonight in the Exhibits 72 through 74  
7 reveal to us that, although on a day-by-day basis  
8 the worst days are better now than they used to  
9 be, on an annual basis the PM-10 concentrations  
10 tend to be more flat.

11           The trend, really, over the past five  
12 years or so, for the annual average concentrations  
13 of PM-10, is really quite stable. And the figures  
14 that were submitted tonight into evidence show  
15 that and confirm that.

16           Additionally, with the average annual  
17 concentrations being relatively stable over the  
18 past five years, the ambient air quality standards  
19 in the past five years have been reviewed and  
20 adjusted.

21           Both federally, early on in this sort of  
22 hypothetical five-year window, with revisions to  
23 the federal PM standard in 1997, but also  
24 recently, this summer -- the ARB actually proposed  
25 last summer and then finalized more stringent

1 standards for annual average PM-10 concentrations.

2           So what we have here is a case where the  
3 average concentrations are remaining relatively  
4 unchanged. And the standard by which they're  
5 measured is actually decreasing. I don't know if  
6 additional reductions in the standards will occur,  
7 that's beyond the scope of my work --

8           MR. KRAMER: Could you put some numbers  
9 on that? In other words, what's the average  
10 you're talking about and what's the standard, so  
11 we can understand how close or far apart they are?

12           MR. BIRDSALL: Sure. And I'll refer to  
13 the convenient figures that were provided tonight  
14 by the Applicant.

15           In the figure 2 there's a chart of  
16 annual PM-10 concentrations in -- let me see if  
17 I'm getting that right -- if there are annual PM-  
18 10 concentrations then I assume they are an annual  
19 average, not maximum annual, which maybe means  
20 that figure 2 is slightly mislabeled.

21           But this is the figure 2 of the handout  
22 from earlier tonight -- I believe it's called  
23 Exhibit 72. The California standard, this summer,  
24 became 20 micrograms per cubic meter on an annual  
25 basis. At the time that we started this case the

1 California annual standard was 30 micrograms per  
2 cubic meter.

3           The average concentrations around Perris  
4 are hovering roughly at 40 micrograms per cubic  
5 meter, and that has been the case since 1996. And  
6 prior to that it was declining, up to 1996, and up  
7 to about that 40 micrograms per cubic meter. Some  
8 years are higher, some years are lower.

9           But essentially the ambient conditions  
10 are two times the California standard. That's  
11 giving you an overview of the air quality  
12 conditions here in the Inland Empire, which are  
13 unique to this case, and, well, any other project  
14 that happens here in the Inland Empire.

15           But what is also especially unique about  
16 this case is the proximity of the receptors. We  
17 have sensitive land uses that are within -- and I  
18 say a rule of thumb for "close" is a quarter mile  
19 or a thousand feet -- we have homes that are  
20 within one thousand feet. We have a rural  
21 residence on Efenac which is about 600 feet to the  
22 north, and there is the Romoland elementary school  
23 which is .34 miles to the north.

24           The proximity of the receptors is a  
25 major factor in our considering what is

1 appropriate mitigation and what is feasible  
2 recommendation.

3 And we've got residents nearby, we've  
4 got the school nearby, we also have evidence and a  
5 chart of socioeconomic figures that show that  
6 there are pockets and clusters of minority census  
7 tracks in Romoland. This is also a concern.

8 We have, along with the two big picture  
9 items -- the ambient air quality and then the uses  
10 that surround the project site -- we have an  
11 Applicant assessment of dust impacts during  
12 construction that reveals that they are very close  
13 to the 24-hour state standard of 50 micrograms per  
14 cubic meter during their construction activities.

15 And the Applicant has provided  
16 information tonight, and testimony, that  
17 illustrates this is a conservative assessment,  
18 meaning the Applicant's assessment of property  
19 line impacts being 49 micrograms per cubic meter  
20 takes into account a number of very conservative  
21 assumptions, and I agree with that.

22 The Applicant does say tonight that the  
23 emissions are probably still overestimated, even  
24 though they have been reduced as this case has  
25 proceeded. I'm not sure that the impacts are

1 indeed overstated.

2 I do agree that there is conservatism  
3 built into the method of the analysis, but the  
4 impacts being illustrated at 49 micrograms per  
5 cubic meter on a 24-hour basis at the fence line  
6 to me seems that impacts are probably not  
7 overestimated based on my experience with other  
8 CEC projects that sometimes and commonly have a  
9 modeling analysis demonstrating more than a 50  
10 microgram per cubic meter fence line impact.

11 MR. KRAMER: And when you talk about 49  
12 micrograms per cubic meter, is that the total  
13 concentration that would be experienced at that  
14 place, or is that just what the power plant is  
15 adding to the background level?

16 MR. BIRDSALL: That's the amount that  
17 the construction activity is adding to the  
18 background level.

19 MR. KRAMER: And the background level is  
20 already above the standard, is that what you said?

21 MR. BIRDSALL: Right. Now I have to be  
22 careful not to mix 24-hours averages with annual  
23 averages. The background that I was talking about  
24 prior was on an annual average basis.

25 On a 24-hour basis the background

1 concentrations tend to be -- at least on a maximum  
2 basis -- the worst day is generally above 80  
3 micrograms per cubic meter. Recently there have  
4 been days up around 100 micrograms per cubic  
5 meter.

6 So that's a single worst maximum  
7 background concentration. And during the earth  
8 work activities the project could add as much as  
9 49 to that.

10 MR. KRAMER: So that would be half again  
11 as much?

12 MR. BIRDSALL: Right. Taking these  
13 factors into consideration we've created a  
14 mitigation scheme for construction that involves  
15 rigorous dust control, and these are included in  
16 the AQSC 1 through 4. And to those of you  
17 familiar with siting cases, they do appear on  
18 other cases quite commonly, and we try to  
19 implement these as a standard.

20 And because of the proximity of the  
21 receptors, and because of the background  
22 conditions here at this site, we've recommended an  
23 additional ambient air monitoring program to allow  
24 the Applicant to track the effectiveness of those  
25 first four measures.

1           Meaning if the monitoring data shows an  
2 extreme difference in concentrations -- something  
3 on a 24-hour basis that would be over 50  
4 micrograms per cubic meter would certainly be  
5 extreme -- but if the Applicant observes this with  
6 the fence line ambient monitoring that's  
7 recommended under AQSC5, then the Applicant would  
8 know or at least have an indication of how  
9 effective their dust control is to that point, and  
10 could adjust their dust control within the  
11 measures that are set forth in AQSC 1 through 4.

12           COMMISSIONER PERNELL: Excuse me, 1  
13 through 4, are you talking about air quality  
14 construction mitigation management requirements?  
15 Those construction mitigation plan requirements,  
16 is that what you're talking about, 1 through 4?

17           MR. BIRDSALL: That's what I'm talking  
18 about. And those are the recommendation to --

19           COMMISSIONER PERNELL: So we're putting  
20 these monitors up to ensure that they are being in  
21 compliance with 1 through 4?

22           MR. BIRDSALL: Essentially. It provides  
23 a measure of compliance assurance.

24           COMMISSIONER PERNELL: All right. Let  
25 me give you a break here and ask some other

1 questions. We're talking about construction dust,  
2 right?

3 MR. BIRDSALL: Correct.

4 COMMISSIONER PERNELL: And there's, I'm  
5 probably overlooking it, but I'll assume that  
6 there is a condition that allows watering on the  
7 site to control the dust?

8 MR. BIRDSALL: That's correct. There  
9 are conditions, mainly in AQSC3, which have  
10 essentially a recipe of management practices for  
11 dust. And in there is watering the site, among  
12 other things.

13 COMMISSIONER PERNELL: All right. So we  
14 have watering on the site to help control the  
15 dust. So the air monitors that you're  
16 recommending is only doing ground operations on  
17 the site? So what happens when the foundation and  
18 everything is poured? Do you request that it  
19 continue monitoring for dust?

20 MR. BIRDSALL: No, we're only  
21 recommending that they monitor during the  
22 excavation, earth moving, and grading activities.  
23 Mainly because once the site is paved and made  
24 impermeable that the ambient dust that's kicked up  
25 by activity on the site would be substantially

1 reduced and become less of a concern.

2 COMMISSIONER PERNELL: Okay, so, I guess  
3 final question and then I'll let you go on on this  
4 -- there is a compliance manager on site?

5 MR. BIRDSALL: That's correct. There is  
6 a recommendation in AQSC1 that the project owner  
7 fund a air quality construction mitigation  
8 manager, and that is somebody on site who helps to  
9 coordinate these mitigation activities.

10 COMMISSIONER PERNELL: And so they  
11 wouldn't -- I guess my question is if we have a  
12 monitor on site, and you have a water mitigation  
13 plan to keep the dust down, the monitor on site  
14 wouldn't, couldn't require a stop or, I mean -- I  
15 guess my question is the justification for having  
16 these monitors when you've got somebody on site,  
17 you have a watering plan, and it's only going to  
18 last until you're out of the ground, so to speak,  
19 so during the construction and grading period.

20 And so, I guess it leads me to believe  
21 that you don't have a lot of confidence in your  
22 monitor that's on site?

23 MR. KRAMER: Well, maybe I can ask a  
24 clarifying question. Can somebody see the levels  
25 of PM-10 in the air with their eyes that you're

1 concerned about?

2 MR. BIRDSALL: Well, this is, I think,  
3 the answer to your question. AQSC4 requires the  
4 monitoring personnel to look at the fence line,  
5 look at the dust clouds, to make sure that none  
6 are migrating off site, and to make sure that dust  
7 is visibly kept to a minimum.

8 The problem is that the particulate  
9 matter that's inhalable is not necessarily  
10 visible. And we're recommending the monitoring  
11 devices to track the fine particulate matter, the  
12 PM-10, that is inhalable but not necessarily  
13 visible.

14 I think that concludes my ideas on  
15 recommending AQSC5. The Applicant had some other  
16 questions about the construction conditions that I  
17 can get into, I suppose, if now is the right time.

18 MR. KRAMER: Yes. Turning your  
19 attention to the Applicant's continuing concerns  
20 about diesel equipment mitigation requirements.  
21 AQSC3, O I believe it was, you were able to hear  
22 the testimony, and could you provide your response  
23 to the Applicant's concerns?

24 MR. BIRDSALL: Yes, I sure can. The  
25 Applicant -- well, backing up. AQSC3, Paragraph

1 O, is regarding the tailpipe control of diesel  
2 particulate matter. And this is not the fugitive  
3 dust from the site, but rather the particulate  
4 matter that's emitted by the equipment while the  
5 equipment is operating and burning its diesel  
6 fuel.

7 Diesel particulate matter is a  
8 carcinogen and it's included in a health risk  
9 assessment. What is at issue here is how to  
10 ensure that the equipment that's used on site is  
11 really the best and cleanest that can be had. And  
12 there have been a lot of gyrations on how to  
13 achieve this in recent cases.

14 And the Applicant put forward the  
15 example of the East Altamount case that's still  
16 being worked on, and says that they've  
17 recommended --

18 COMMISSIONER PERNELL: We will try not  
19 to identify specific cases.

20 MR. BIRDSALL: Okay, we will not  
21 identify specific cases, but the Applicant has  
22 identified another case where this issue was  
23 litigated, and as a compromise they had come up  
24 with some language that is included in the  
25 Applicant's testimony from early July.

1           We had a workshop in early July to talk  
2 a little bit about this, and concluded that staff  
3 would go ahead and propose an independent  
4 recommendation. Some of the difficulties that the  
5 staff has with the Applicant's recommendations are  
6 based on the terminology that would be used in  
7 their version of AQSC3, Paragraph O.

8           The Applicant's version of AQSC O -- I  
9 guess, maybe I'll kind of backtrack and I won't  
10 try to explain the content of the Applicant's  
11 condition because it's the Applicant's --

12           COMMISSIONER PERNELL: I guess the  
13 bottom line is you don't agree with it?

14           MR. BIRDSALL: The bottom line is that I  
15 don't agree with it, thank you for getting me out  
16 of that. The Applicant has said that our  
17 recommendation forces the use of soot filters and  
18 certified engines simultaneously. Meaning we've  
19 gone into this highly stringent mode of requiring  
20 not only certified engines but use of soot filters  
21 and certified engines.

22           And I think that that's a  
23 misinterpretation of our version of Paragraph O.  
24 What we are recommending is that EPA and ARB  
25 certified engines, certified to the level of tier

1 one control, be used for all equipment. And I  
2 don't think that there is a dispute about that.

3           The second part of our recommendation in  
4 AQSC3, O, says that all large construction diesel  
5 engines which have a rating of 50 horsepower or  
6 more that do not have an EPA tier one particulate  
7 standard -- which is a very small class of  
8 engines, between 50 and 175 horsepower -- and do  
9 not meet tier two particulate standards, shall be  
10 equipped with catalyzed diesel particulate  
11 filters.

12           What I'm trying to illustrate here is  
13 that we only request catalyzed diesel particulate  
14 soot filters for a class of engines that has no  
15 other particulate standard. And if the engine  
16 does meet what is known as a tier two standard we  
17 don't mandate the soot filters.

18           Further, if the on site air quality  
19 construction mitigation manager, in consultation  
20 with the engine manufacturers -- and presumably by  
21 looking at the ARB publications on which soot  
22 filters are appropriate for which equipment -- if  
23 they make a determination that soot filters are  
24 not practical for certain engine types, then the  
25 air quality construction mitigation manager can,

1 on the site, waive this requirement for the soot  
2 filter.

3 So I don't think that our version of  
4 Paragraph O is as onerous as the Applicant  
5 portrays it to be, because it provides some room  
6 for negotiation, and it provides some room for the  
7 Applicant and the project owner at that time to  
8 demonstrate that, for a certain piece of equipment  
9 a soot filter is not practical.

10 And that determination would be made as  
11 they go, but it does provide the project owner  
12 with the assurance that, if there is something  
13 that is technically unfeasible, we aren't hanging  
14 around and mandating it.

15 Staff recommends that the version of  
16 Paragraph O that is in our supplement to the FSA  
17 go forward, and I think that once we take a look  
18 at it and realize that there are some options to  
19 compliance here that the Applicant will hopefully  
20 be more comfortable with it.

21 COMMISSIONER PERNELL: A question -- is  
22 ARB and EPA certified standards the same thing?

23 MR. BIRDSALL: For the heavy diesel  
24 equipment, yes. This is equipment that EPA and  
25 ARB have together developed standards for.

1 COMMISSIONER PERNELL: Okay.

2 MR. KRAMER: Are you familiar with the  
3 air district's rule, I believe it was 403, the  
4 fugitive dust rule?

5 MR. BIRDSALL: Yes.

6 MR. KRAMER: It was suggested that that  
7 rule would be adequate by itself to properly  
8 control dust during construction. Do you agree  
9 with that suggestion?

10 MR. BIRDSALL: Well, I guess -- I don't  
11 agree with that suggestion. Under CEQA I'm  
12 obligated to develop the most feasible and, how do  
13 I say, not most feasible but all feasible  
14 mitigation measures as recommendations for  
15 mitigations of a project impact.

16 When looking at what is feasible for  
17 dust control, certainly the measures that are put  
18 forth in rule 403 are within the scope of  
19 feasible. But it's reasonable for me, as a CEQA  
20 analyst, to go beyond rule 403 to determine what  
21 is all feasible mitigation measure.

22 MR. KRAMER: So could you cull out the  
23 measures that are in the staff recommendation that  
24 go beyond what the air district rule requires?

25 MR. BIRDSALL: Well, it's hard to

1 compare because the air district rule has a couple  
2 of different criteria. And the air district rule  
3 does require fence line monitoring, similar to  
4 what we've recommended in AQSC5. But it only  
5 requires it in cases when the project developer  
6 does not have a rigorous dust control plan.

7           So in the case where a project does have  
8 a rigorous dust control plan the requirement to  
9 monitor at the fence line would be waived. And  
10 so, in sort of a very crude way, I would say that  
11 our recommendations for AQSC 1 through 4 are  
12 pretty similar and are definitely more stringent  
13 because we address some other topics especially  
14 related to equipment emissions.

15           But they would be sort of consistent  
16 with the south coast district rule 403. And our  
17 recommendation in SC5 for fence line monitoring  
18 would be above and beyond the district rule.

19           MR. KRAMER: Okay. You said the  
20 district rule doesn't cover equipment emissions.  
21 What are you including in that list today? Do you  
22 have any requirements regarding the diesel fuel to  
23 be used?

24           MR. BIRDSALL: That's what I'm  
25 regarding. The district rule 403 deals only with

1 fugitive dust during construction and does not  
2 deal with tailpipe emissions from diesel fired  
3 equipment.

4 MR. KRAMER: And are diesel tailpipe  
5 emissions of special concern?

6 MR. BIRDSALL: Well, yes, they are.  
7 Diesel tailpipe emissions, especially of  
8 particulate matter, are a concern because it's a  
9 carcinogen, and we've been trying to recommend,  
10 and the Commission has been adopting measures for  
11 diesel particulate control. This is an ongoing  
12 effort of staff to recommend that clean diesel  
13 fuel and clean diesel engines be used to manage  
14 the tailpipe emissions.

15 MR. KRAMER: And is dust from soils  
16 considered a carcinogen?

17 MR. BIRDSALL: I would say no.

18 MR. KRAMER: The Applicant proposed  
19 extending the operating hours under AQSC6 to a 12-  
20 hour period. Have you considered that request and  
21 what is your response?

22 MR. BIRDSALL: Yes, I have. Moving on  
23 to AQSC6. The Applicant has provided information  
24 tonight in the form of isopleth concentrations,  
25 and also in the form of modeled output table, that

1 demonstrate construction -- earth moving  
2 activities especially -- on a 12-hour per day  
3 schedule would not cause any new violations.

4           This was something that we discussed at  
5 the workshop in early July, and I've looked at it  
6 independently, and can say that moving to a 12-  
7 hour schedule would not change the project impacts  
8 beyond what is already demonstrated in the record,  
9 and I think that we should follow through on that  
10 recommendation.

11           COMMISSIONER PERNELL: Staff  
12 recommendation?

13           MR. BIRDSALL: Follow through on the  
14 Applicant's --

15           COMMISSIONER PERNELL: I'm sorry, on the  
16 Applicant's recommendation?

17           MR. BIRDSALL: On the Applicant's  
18 request to move to a 12-hour schedule, similar to  
19 what is required by the noise requirements.

20           MR. KRAMER: Could that be achieved  
21 simply by changing the ten to 12 in AQSC6?

22           MR. BIRDSALL: It seems like it could,  
23 yes.

24           MR. KRAMER: I need to return to AQSC5  
25 for just a couple more closing questions. I don't

1 see any way to avoid comparison with other  
2 projects. The Applicant has suggested that this  
3 is a failed experiment in one other case. And I  
4 believe that was the Los Esteros case.

5 First of all, are you aware of this  
6 requirement being imposed in any other cases  
7 beside Los Esteros?

8 MR. BIRDSALL: The requirement for  
9 ambient monitoring has been recommended in the  
10 past on a couple of cases that I'm familiar with  
11 peripherally. It was recommended of course on the  
12 Los Esteros that you've mentioned, and it went  
13 forward, the Commission adopted it as a  
14 demonstration program.

15 It was also recommended by staff on a  
16 project in the Central Valley that has nearby  
17 receptors recently. And another project from year  
18 2002 in the Bay Area that I believe also has some  
19 nearby receptors. So it's been recommended by  
20 staff on a couple of select cases in the past year  
21 or year and a half.

22 MR. KRAMER: Do you know if it was  
23 recommended in the Vernon project?

24 MR. BIRDSALL: I believe it was.

25 MR. KRAMER: Do you have an

1 understanding with what actually happened with the  
2 monitoring in Los Esteros?

3 MR. BIRDSALL: Well, it's interesting to  
4 me to hear the Applicant portray the demonstration  
5 project as a failure. I have not seen any formal  
6 staff assessment or staff analysis on the Los  
7 Esteros demonstration project. I do know, though,  
8 from my work on the cases, that there were  
9 difficulties during that monitoring exercise.

10 And I think some of those difficulties  
11 were related to how the monitors were operated,  
12 and whether or not the monitors were rigorously  
13 maintained during the course of their operation.

14 I think that if a demonstration project  
15 is a failure then it must reveal ways to either  
16 improve the demonstration project or possibly make  
17 changes to it, but I don't know that necessarily  
18 it means that the demonstration project was  
19 worthless.

20 MR. KRAMER: Did you see any reason,  
21 based on what you know about that project, to  
22 avoid using the monitoring in the future?

23 MR. BIRDSALL: No, I didn't recognize  
24 any clear reason to abandon my proposal for  
25 ambient monitoring. The data that was shared with

1 me indicated that there were wide swings in the  
2 ambient PM-10 concentrations, and I think that  
3 some of that happened to be due to how the  
4 monitoring equipment was operated.

5 But because there were such wide  
6 swings -- and when I say wide, certainly more than  
7 50 micrograms per cubic meter -- that really I  
8 couldn't draw any conclusions that indeed I should  
9 abandon my recommendation for this case.

10 MR. KRAMER: And are you recommending  
11 that requirement in this case because it was  
12 recommended in other cases? Or for some other  
13 reason?

14 MR. BIRDSALL: Well, I'm recommending it  
15 in this case because of the proximity of the  
16 receptors -- the elementary school, the residences  
17 -- and it is consistent with staff's trends to  
18 recommend this on some of these recent cases. So  
19 I do take that into consideration.

20 MR. KRAMER: But it has to do with the  
21 specifics of the site, and not what happened in  
22 some other case?

23 MR. BIRDSALL: I am working on another  
24 case where I have not recommended this, and the  
25 reason being because there are not sensitive

1 receptors in such close proximity.

2 MR. KRAMER: Thank you. No further  
3 questions.

4 COMMISSIONER PERNELL: I just have a  
5 couple of clarifying questions. Getting back to  
6 the construction dust. The monitors you're  
7 talking about, you're talking about attaching them  
8 to the fence line?

9 MR. BIRDSALL: Well, I think the details  
10 would be worked out in the plan that is requested  
11 by SC5, but they would generally be located one  
12 upwind and one downwind of the development site,  
13 which would be pretty close to the fence line,  
14 yes. One on each end.

15 COMMISSIONER PERNELL: Okay, so would  
16 that be north/south?

17 MR. BIRDSALL: That would be north/south  
18 in this case.

19 COMMISSIONER PERNELL: And you mentioned  
20 earlier that there could be, one of the reasons  
21 that Applicant has suggested that the monitors  
22 failed is perhaps it wasn't maintained? Was that  
23 a, kind of your statement?

24 MR. BIRDSALL: Yes, that's my  
25 understanding of what happened there, but --

1           COMMISSIONER PERNELL: Well, how often  
2 do they have to be maintained? I mean, does  
3 somebody check them every day, or --?

4           MR. BIRDSALL: I think that, yes, every  
5 day would probably be the amount of effort  
6 involved to maintain the equipment. But I think,  
7 again, that depends on the specific plan that's  
8 prepared by the project owner, and they may find  
9 that less maintenance is necessary.

10          COMMISSIONER PERNELL: Who normally  
11 does, is that the construction compliance manager  
12 that maintains the monitors?

13          MR. BIRDSALL: I think that would be a  
14 good recommendation, or if that were in the plan  
15 that staff would look at that favorably, yes.

16          COMMISSIONER PERNELL: How is it done  
17 now?

18          MR. BIRDSALL: Well, this recommendation  
19 for ambient monitoring has only gone forward on  
20 that one case, the Los Esteros case.

21          COMMISSIONER PERNELL: And was it, so  
22 how was it done on that one case?

23          MR. BIRDSALL: I do not know personally  
24 who operated the monitors.

25          COMMISSIONER PERNELL: Okay. And what

1 happens if there's a violation? I didn't see  
2 any -- is there a fine, do you stop construction?  
3 If there is a violation, you know, if somebody  
4 checks the monitors and, you know, it's jumping  
5 off the fence, what happens?

6 MR. BIRDSALL: Well, that's a good  
7 question. Well, how the monitors would be used is  
8 also part of the plan. In our condition of  
9 certification that we recommend we ask the project  
10 Applicant, in their plan, to describe how they  
11 would use the monitors to either double-check or  
12 provide feedback to their dust control strategy  
13 that is happening.

14 Meaning, in the plan, if they look at  
15 the two monitors, and they find that yes, oh,  
16 they're off the charts, and that's a big concern,  
17 or they were off the charts for yesterday, then --

18 COMMISSIONER PERNELL: So they're  
19 checked daily?

20 MR. BIRDSALL: Well, I'm suggesting if  
21 they're checked daily, and they look at them on  
22 Thursday and realize that Wednesday was a bad day,  
23 then what the staff would look for in the plan, in  
24 the ambient air monitoring plan, would be some  
25 kind of feedback that says, well maybe we'll close

1 the pace of grading down in this area on Friday,  
2 on Thursday and Friday of this week, in order to  
3 see if we can keep the monitors from jumping off  
4 the charts.

5 Or we'll increase the watering, or we  
6 will keep the vehicle speeds down. Something  
7 else.

8 COMMISSIONER PERNELL: Right. Have some  
9 type of mitigation plan because they are in  
10 violation?

11 MR. BIRDSALL: Some kind of feedback.  
12 And we're not setting any number as a strict  
13 violation. In fact, that would be also laid out  
14 in the monitoring plan. How far off the chart is  
15 off the chart? Meaning, if we see five, ten, 50,  
16 100? When do we start to double-check? That  
17 would all be resolved in the plan.

18 COMMISSIONER PERNELL: Now, so who  
19 creates the plan? Is that something that the  
20 Applicant does or --?

21 MR. BIRDSALL: That's the  
22 recommendation, right, that the project owner  
23 would create the plan and submit it for approval  
24 to the compliance project manager.

25 COMMISSIONER PERNELL: And the

1 Applicant's responsibility to check the monitors  
2 and to call somebody if they're jumping off the  
3 hook?

4 MR. BIRDSALL: I think something like  
5 that would be, yes, anticipated in the plan. If  
6 some kind of excursion or some kind of wild data  
7 point is observed that some feedback would be  
8 provided to the air quality construction  
9 mitigation manager.

10 COMMISSIONER PERNELL: All right, but  
11 there's no independent check from either the  
12 construction compliance monitor or someone else.  
13 It's just a good faith effort on behalf of the  
14 Applicant, any Applicant that does compliance --  
15 so I'm not saying anything negative about this  
16 Applicant, I'm just trying to find out if we've  
17 got a watering plan for construction for PM-10,  
18 and now I'm understanding that there is something  
19 that you can't even see, so you want to put  
20 monitors on the fence.

21 And I'm just trying to understand how we  
22 double-check. It seems like there's a lot of  
23 checks and balances going because you want to make  
24 sure that all of this is correct. And yet, when  
25 you get to the end, in terms of checking the

1 monitors and whether there's a violation, what  
2 happens, who checks them, and all of those.

3 So that's what I'm questioning, and I  
4 think what you're saying is that it would be in  
5 the plan that the Applicant would create?

6 MR. BIRDSALL: That's correct  
7 interpretation in that we would look for -- when  
8 we review the plan -- we would look for what  
9 feedback is proposed by the plan.

10 COMMISSIONER PERNELL: So if there's a  
11 violation there is no consequences, other than  
12 change the plan?

13 MR. BIRDSALL: Other than -- not so much  
14 change the plan, but change the practices of dust  
15 control. Meaning change the construction just  
16 enough to better manage the emissions of the dust.

17 COMMISSIONER PERNELL: Okay, let me give  
18 you another scenario, and then I'm done with this.  
19 What happens if we don't get a call, and last day  
20 of grading you just decide to go out there, and  
21 the monitors are indicating that there's gross  
22 violation. Too late to change the plan?

23 MR. BIRDSALL: Well, that's a drawback  
24 to monitoring that is only checked once a day.  
25 And I see that that would be a real drawback. But

1 as you've pointed out, there are a number of  
2 checks and balances along the way. There are  
3 requirements in AQSC 1 through 4 to help avoid a  
4 situation like that occurring.

5           And before we close out the topic I'd  
6 like to just point out -- it was handed to me here  
7 -- the records of the monitoring data, and a  
8 report of what activity is taking place, those are  
9 all submitted as part of the monthly compliance  
10 report, to the compliance project manager.

11           HEARING OFFICER WILLIS: Just to  
12 clarify, on AQSC6, at this point in time would you  
13 be willing to delete that condition totally, or  
14 just make it consistent with noise, the noise  
15 condition?

16           MR. KRAMER: My concern, from a legal  
17 policy standpoint, would be that if we just delete  
18 it, then we no longer have a reminder to the  
19 future participants in the process that operating  
20 hours had an air quality impact as well as a noise  
21 component. So I think it would be better to leave  
22 it in the air quality section.

23           We could state the hours would be seven  
24 to seven, or whatever it was in the noise section,  
25 but I'd hate to delete that reminder that there

1 was an air quality aspect to it as well as a noise  
2 aspect.

3 MR. ELLISON: If I could just weigh in  
4 on this. Can I suggest that perhaps the way of  
5 addressing Mr. Kramer's concern would be to have  
6 an air quality condition that just made reference  
7 to Noise 8, and it would be something like "for  
8 the purposes of air quality the Applicant will  
9 comply," you know, "with Noise 8."

10 The concern we have is that if you have  
11 two different conditions people might interpret  
12 them to mean two different things, when in fact  
13 that's not the intention. The intention is that  
14 the requirement be the same.

15 So I don't have a concern with  
16 addressing Mr. Kramer's issue of placing something  
17 on air quality, but I'd rather just cross-  
18 reference Noise 8.

19 HEARING OFFICER WILLIS: If you wouldn't  
20 mind, maybe we can get together before the breaks  
21 are due and see if there is some language we could  
22 agree upon?

23 MR. KRAMER: Certainly.

24 HEARING OFFICER WILLIS: I have some  
25 questions regarding the reclaimed trading credits,

1 and the other cases that have been before the  
2 Energy Commission that fall into this air  
3 district. Are you familiar with those projects?

4 MR. BIRDSALL: I'll say peripherally. I  
5 haven't worked on them directly, though.

6 HEARING OFFICER WILLIS: But you're  
7 familiar with their requirements?

8 MR. BIRDSALL: Yes.

9 HEARING OFFICER WILLIS: Now on page  
10 five of the supplemental testimony, there are I  
11 think three cases -- the Magnolio power plant  
12 case. It said that the Applicant had agreements  
13 to purchase all the necessary RTC's -- you're  
14 familiar with that one?

15 MR. BIRDSALL: Right.

16 HEARING OFFICER WILLIS: Do you know the  
17 nature of the agreements, or do you know any --?

18 MR. BIRDSALL: I can't say exactly what  
19 the nature of the agreements looked like, because  
20 I did not see them myself.

21 HEARING OFFICER WILLIS: And then  
22 further down it says "the Malburg Generating  
23 Station/Vernon project had obtained all offsets  
24 prior to the Commission decision." Did that also  
25 include RTC's?

1           MR. BIRDSALL: That's correct. It would  
2 have included RTC's, and in a case like  
3 Vernon/Malburg, I believe that this is an existing  
4 facility, and I'll speculate for just a moment  
5 that they may have had an account of RTC's already  
6 running.

7           HEARING OFFICER WILLIS: ANd then,  
8 further down it says El Segundo power  
9 redevelopment project identified approximately 90  
10 percent of the required RTC's before the final  
11 staff assessment. Can you elaborate on how those  
12 were identified?

13           MR. BIRDSALL: I guess I can. I can't  
14 say exactly what form the identification comes in,  
15 and whether the identification came in the form of  
16 a letter from the south coast district or the  
17 final determination of compliance, for example  
18 showing that the RTC's had been obtained. But  
19 those would be possible ways of showing that they  
20 were identified.

21           HEARING OFFICER WILLIS: All right. Are  
22 you familiar with any case that has come before  
23 the Energy Commission in recent years in this air  
24 district that is in a similar situation as this  
25 Applicant is, where staff believes they have not

1 identified the RTC's prior to either the FSA or  
2 license?

3 MR. BIRDSALL: No. I do not believe  
4 that there has been any case in recent years in  
5 the south coast air district where the project  
6 Applicant has come forward with a small fraction  
7 of the RTC's being identified. This, I believe,  
8 is a new and unique situation. And this is why we  
9 are treating it very tentatively.

10 MR. GARCIA: If I could have a couple of  
11 questions regarding the monitoring implementation.  
12 And it's been, actually, quite a few years since  
13 I've messed around with those things, but are the  
14 current crop instantaneous reading or do they  
15 require the vacuum pumps to operate for a long  
16 period of time before they register?

17 MR. BIRDSALL: I believe that either  
18 kind will be available in a portable format, and  
19 there are portable monitors and analyzers that can  
20 provide instantaneous readings, and there are some  
21 also that would require a longer term average and  
22 pump operation.

23 MR. GARCIA: The reason for my question  
24 is that if it requires a long period of time to  
25 register then it would be kind of pointless for

1 the compliance monitor to go out there and read  
2 the darn thing and say, "oh well we're going to  
3 change our practices."

4 By the time they've registered, the  
5 windstorm or whatever activity is long gone.

6 MR. BIRDSALL: Well, I can certainly  
7 sympathize with that, and you're right. If it's a  
8 very long averaging period that the monitor  
9 operates on or a very long response time that the  
10 monitor needs in order to generate a data point  
11 then that information might be less useful than  
12 instantaneous.

13 But at the same time, some kind of  
14 averaging might be useful, because the wind  
15 directions are variable, and you'll want to smooth  
16 out a little bit of the variability of wind.

17 MR. GARCIA: You're fairly certain that  
18 those instantaneous reading instruments are  
19 commercially available?

20 MR. BIRDSALL: Yes.

21 MR. GARCIA: All right. Thanks.

22 COMMISSIONER PERNELL: I've got another  
23 question on this, but I'm going to need the  
24 assistance of the Applicant's slides. And I  
25 really need this one right here. Can someone put

1 that up for me? You've got to dig them out? It  
2 is the slide that dealt with site description.

3 Can we go off the record for a minute,  
4 until we get that?

5 (Off the record.)

6 COMMISSIONER PERNELL: Okay, we're on  
7 the record. Okay, I'm looking at the Inland  
8 Empire Energy Center linear route, and for the  
9 Applicant, this is the site, the green, is that  
10 the site?

11 MR. RUBENSTEIN: Yes, that's correct.

12 COMMISSIONER PERNELL: What is this area  
13 right here, asphalt plant, correct?

14 MR. RUBENSTEIN: Yes, that's correct,  
15 that's the asphalt plant.

16 COMMISSIONER PERNELL: And according to  
17 this picture, that's at the north end of the site?

18 MR. RUBENSTEIN: That's correct.

19 COMMISSIONER PERNELL: And now to staff,  
20 if we're going to put monitors on the north end  
21 and south end for PM-10 and dust, will that  
22 asphalt plant interrupt the monitoring readings?

23 MR. BIRDSALL: It won't interrupt the  
24 monitor readings. It may --

25 COMMISSIONER PERNELL: Will it give a

1 false positive or false negative?

2 MR. BIRDSALL: Well, I think that the  
3 upwind and downwind monitoring that is recommended  
4 would -- if the plume from the asphalt plant  
5 travels across the site, it would show up in both  
6 the upwind and downwind and not upset the  
7 monitoring. But certainly the monitors could pick  
8 up the asphalt plant.

9 MR. RUBENSTEIN: Commissioner Pernel,  
10 do I get an answer too?

11 COMMISSIONER PERNELL: Sure, this is  
12 information.

13 MR. RUBENSTEIN: I think the answer to  
14 your question depends on -- harkening back to an  
15 earlier workshop -- which way the wind is  
16 blowing --

17 COMMISSIONER PERNELL: That was my next  
18 question.

19 MR. RUBENSTEIN: -- and how strong it's  
20 blowing. If the wind is blowing predominately  
21 from the south to the north, from the bottom to  
22 the top, then if it's blowing at a reasonably fast  
23 rate of speed -- and I'm not sure what that would  
24 be -- but if it's blowing reasonably fast from the  
25 bottom to the top, then the asphalt batch plant

1 would not likely give you either a false positive  
2 or a false negative reading.

3           If the wind is blowing generally from  
4 the north to the south, which as I recall is the  
5 predominate wind direction here, then the reading  
6 at the northern monitor, the one that's right at  
7 the boundary between Inland Empire and the batch  
8 plant, would be heavily influenced by the batch  
9 plant, and would be in the anomalous position of  
10 likely having lower concentrations at the southern  
11 end of the Inland side.

12           And so you'd show that the Inland side  
13 was reducing emissions, which of course isn't the  
14 case. But you'd get that kind of absurd reading.  
15 If the winds are relatively calm, then if you've  
16 got activity at the batch plant that's close to  
17 the fence line and close to the monitor, that  
18 could influence the monitor and in fact give you a  
19 false positive, suggesting that there was  
20 excessive dust being caused by Inland when in fact  
21 that dust was coming from the batch plant, and  
22 there wouldn't be any good way to distinguish one  
23 source of the dust from the other.

24           COMMISSIONER PERNELL: Well, which is  
25 more important. Does the wind always blow from

1 the north to the south? Does anyone know? Who  
2 said that?

3 MR. BIRDSALL: The audience says no.  
4 And as an example, in the summertime the  
5 prevailing marine seabreeze would generally push  
6 the wind from the north to the south, but that's  
7 not a rule. And we've seen over the past couple  
8 of days -- I think this is a monsoon kind of  
9 pattern that drives wind out of the valley.

10 MR. GREENBERG: Commissioner Pernell,  
11 Alvin Greenberg speaking. Because this is a  
12 public health issue I'm part of the answer to your  
13 question, so here's the third response.

14 It's highly unlikely that you would get  
15 any interference from the asphalt plant if the  
16 monitors are sited appropriately. There is USEPA  
17 guidance on how to do this precise type of  
18 monitoring, not for excavation for a power plant  
19 site, but it's for a hazardous waste site.

20 But the principle remains the same, and  
21 that is you're looking at the difference between  
22 upwind and downwind. So it really doesn't matter  
23 what's coming from the upwind side, whether it's  
24 ambient PM-10 or its ambient plus what's coming  
25 from the asphalt plant, if you position your

1 upwind and downwind monitors.

2           And you may have to have more than one.  
3 That's addressed in the proposed condition of  
4 certification, where you might want to have two  
5 upwind and two downwind, and you might not want to  
6 have them just at your fence lines, but rather  
7 within the site just upwind of the area being  
8 excavated, and just downwind of the area being  
9 excavated.

10           So if it's done right you really  
11 minimize the potential for offsite interferences.  
12 And the Applicant had previously been given the  
13 references at that unnamed siting case for those  
14 EPA documents, so I'm sure they're very well aware  
15 of those.

16           Staff is not just making this up as we  
17 go along. There is ample precedent, there are  
18 ample guidance documents available for doing  
19 upwind and downwind monitoring with continuous  
20 monitors, real-time continuous monitors, handheld  
21 instruments, which I myself have used personally,  
22 and have developed sampling and analysis plans for  
23 personally.

24           And they work. The USEPA uses them.  
25 There are numerous references in the scientific

1 journals about use of these real-time PM-10  
2 monitoring instruments.

3 COMMISSIONER PERNELL: All right.  
4 Here's where I'm going. Is what's proposed the  
5 most effective way to monitor the site. You just  
6 mentioned handheld monitors, which is a little bit  
7 different than what was proposed, correct?

8 MR. GREENBERG: Yes, and that is an  
9 option. I think the condition of certification as  
10 proposed talks about continuous real-time  
11 monitoring, and I'm trying to give you a flavor  
12 that there are real-time monitors that give  
13 instantaneous readings that are both handheld and  
14 very portable, and others that aren't.

15 My response is yes, this is a very  
16 reasonable and good program that will give you an  
17 answer to your question of whether or not your  
18 dust suppression and mitigation measures affecting  
19 diesel particulate exhausts -- which I'm concerned  
20 with also -- are indeed effective.

21 COMMISSIONER PERNELL: Well, you know,  
22 it still, I mean, you're the experts and I'm not  
23 doubting that. My question is whether or not this  
24 is the most effective way to monitor the site, and  
25 we're monitoring diesel emissions and dust which,

1 you know, small PM-10 particles that you can't  
2 even see, but if this is an asphalt plant that  
3 means that diesel is over there as well.

4 And so, you know, the strategy I'm  
5 looking for is not to not monitor, but the most  
6 effective way to monitor this site. Now I'm not  
7 saying that that particular strategy that's being  
8 proposed by staff is inadequate, I'm simply saying  
9 that, as we all know, each site has its own unique  
10 characteristics.

11 And this one happens to be in the  
12 industrial area that has an asphalt plant, and if  
13 you put -- just from a layman's perspective -- if  
14 you put a monitor on that fence and you got dust  
15 on the asphalt plant, and you got diesel trucks  
16 running there being filled and not filled, I don't  
17 know whether you're going to get an accurate  
18 reading.

19 Is there another way or another position  
20 that you can put the monitors on? Because if  
21 we're going to have monitoring -- first of all,  
22 there needs to be a compliance, somebody needs to  
23 be checking it, and there needs to be something  
24 happening there, because if it's out of compliance  
25 we want it back in, but more importantly, the

1 uniqueness of the site, and what's around it --  
2 unless you go in there and monitor all that stuff  
3 ahead of time and then begin to monitor the site  
4 -- I don't know how it's done, but the Committee  
5 would want to see an effective way to monitor the  
6 site for the pollutants that we're talking about.

7 MR. GREENBERG: The answer to your  
8 question is yes, there are ways other than putting  
9 them on the fence line, and that's why there needs  
10 to be a site specific plan developed, and that's  
11 why the condition of certification requires that  
12 site specific plan, to address the varying wind  
13 conditions and this specific surrounding.

14 MR. RUBENSTEIN: Commissioner Pernel,  
15 may I --?

16 COMMISSIONER PERNELL: You've got to  
17 state your name, I think, again.

18 MR. RUBENSTEIN: Gary Rubinstein. My  
19 firm as well has experience in designing and  
20 implementing these monitoring programs, and I  
21 respectfully have to disagree with Dr. Greenberg's  
22 conclusion, as applied to this site.

23 In my experience, this type of  
24 monitoring program is only going to be effective  
25 and reliable if you're looking at a site which is

1 relatively isolated from other sources of the same  
2 type of pollutant.

3           The cases where we have most effectively  
4 used this type of upwind/downwind monitoring  
5 include things such as an asbestos monofill, where  
6 we can use asbestos as a tracer and we know  
7 exactly where the asbestos is coming from, it's  
8 between the monitors.

9           We've used it at a rock quarry which is  
10 surrounded on the one side by the ocean and the  
11 other side by housing development. So we know  
12 where the dust emissions are coming from. Looking  
13 at that photograph, you can see all the brown  
14 areas around there.

15           There are a lot of potential sources of  
16 dust in that area with the most obvious one being  
17 the batch plant immediately toward the north.  
18 It's going to be extremely difficult to have any  
19 kind of a monitoring program, especially at this  
20 site.

21           And if you were to take Dr. Greenberg's  
22 suggestion of moving the monitors away from the  
23 fence line you would address that one problem,  
24 which is to reduce the interference from other  
25 sources. But at the same time you're creating a

1 new standard.

2           The mitigation measures that we and the  
3 staff have agreed upon for controlling dust are  
4 not intended to eliminate dust. They're intended  
5 to prevent dust from crossing the property line.

6           And by moving the monitors away from the  
7 fence line you're tightening that standard and  
8 saying "well, we don't really want dust to get  
9 more than 20 feet closer to the property line" or  
10 however far you get away.

11           And finally, the idea that you can have  
12 monitors somewhere in the middle of the active  
13 construction site is, from a practical matter, I  
14 think, ludicrous.

15           COMMISSIONER PERNELL: Mr. Rubinstein,  
16 let me ask you this. What is your view on how you  
17 monitor the site?

18           MR. RUBENSTEIN: I think that AQSC4,  
19 which I negotiated with the staff on another  
20 project which I will not name, is in fact the most  
21 effective way to do it because it presents a real,  
22 quantifiable and observable standard, which is --

23           COMMISSIONER PERNELL: And what is that,  
24 for the benefit of the residents that don't know  
25 what that is?

1           MR. RUBENSTEIN: That's a standard, and  
2 it's also in south coast district rule 403, that  
3 says you can't have any visible dust crossing the  
4 property line. If you see it, you've got a  
5 violation. it's very simple. You don't need a  
6 monitor, and you don't need to have any kind of  
7 special training.

8           And it's something that can be  
9 implemented, and is implemented in the south  
10 coast, very effectively.

11           The staff has argued that there is  
12 invisible dust as well, because we're talking  
13 about PM-10. That's true, but you can't have  
14 invisible dust without having visible dust.

15           COMMISSIONER PERNELL: All right.  
16 Everybody, I'm weighing in on this. Ms. Willis --  
17 oh?

18           MS. SMITH: Just one more perspective on  
19 this, just to clarify for the record. As I recall  
20 the Applicant's testimony, it was that the Los  
21 Esteros project was used as a demonstration for  
22 the upwind/downwind monitoring.

23           That configuration was rejected on a  
24 subsequent siting case because staff declared it a  
25 failure, maybe not the exact words staff had used,

1 but very close. Did staff ever conclude Los  
2 Esteros project a failure?

3 MR. BIRDSALL: Not to my knowledge.

4 MS. SMITH: In putting together your  
5 mitigation plan, did you review any data from Los  
6 Esteros? Did you talk with people, staff,  
7 associated with the Los Esteros project? What did  
8 we learn from Los Esteros?

9 MR. BIRDSALL: Well, telling you what  
10 I've discussed with the staff, the other personnel  
11 in the air quality unit who have had more intimate  
12 involvement with how the Los Esteros demonstration  
13 project panned out, I will say that it appeared  
14 that the monitors were not calibrated the way that  
15 maybe they were intended to be calibrated.

16 They were not cleaned or purged the way  
17 that they should have been. The data that came  
18 from Los Esteros, if you looked at it on a real-  
19 time basis, meaning hour by hour, there were some  
20 hours where the upwind monitor would be above,  
21 would have a concentration above the downwind  
22 monitor, showing that perhaps the project site was  
23 cleaning the air.

24 Now that could certainly just be a  
25 reversal of wind direction for that moment, but

1 more curious than having the flip-flop in the  
2 concentrations were how the concentrations over  
3 time tended to accumulate, which indicates that  
4 the monitors were probably not cleaned and  
5 calibrated.

6           And so what I saw and what was explained  
7 to me was that, as the monitors went for a couple  
8 of days the concentrations would start in the  
9 fives and tens and would migrate up into the 50's,  
10 60's and 70's. And then maybe somebody would come  
11 along and fix things and then it'd go back to the  
12 fives and the tens.

13           So the consensus was there may be  
14 conditions that cause the fugitive dust to  
15 instantaneously cause more than a 50 microgram per  
16 cubic meter upwind and downwind. That's not to  
17 say that it caused any kind of a violation,  
18 because instantaneous is not the same as daily  
19 average.

20           But the general feeling from folks in  
21 the air quality unit was that the plan wasn't  
22 implemented properly.

23           MS. SMITH: So, putting together your  
24 plan, you took the lessons from that, and you feel  
25 the plan that you've put together reflects the

1     flaws of the Los Esteros plan?

2             MR. BIRDSALL: Well, we haven't put  
3     together a plan. And what we're recommending in  
4     the condition is that the Applicant prepare a  
5     plan. it's fortunate that the same personnel  
6     happen to be involved on the developer side, that  
7     they would have experience with this plan.

8             But if it were a different Applicant we  
9     could share the plan that was prepared in the Los  
10    Esteros program. And then share with them our  
11    insights.

12            And the idea is that, as the ambient air  
13    monitoring plan that's required under SC5 comes to  
14    the compliance project manager, we will use  
15    whatever experience that we have at this time and  
16    consult amongst ourselves and with all of the air  
17    quality and public health staff, to make sure that  
18    it's okay.

19            MS. SMITH: Just one other question. In  
20    the Los Esteros project, was the upwind/downwind  
21    monitoring married to a, or used in conjunction  
22    with, some sort of immediate feedback?

23            Was there an immediate feedback loop to  
24    the project site if dust was becoming a problem  
25    and dust was migrating across the property line,

1 there was immediate feedback to the site, and  
2 someone on the site would implement some immediate  
3 measures to dampen or mitigate the dust -- water  
4 that wet the dirt, etc. etc.

5 Is that how it was set up? Am I  
6 recalling correctly?

7 MR. BIRDSALL: Well, I'll say, I don't  
8 know personally, I'll pass the microphone here to  
9 my colleague here on the panel. I think that  
10 maybe what was intended by the staff in  
11 recommending the plan might not have been carried  
12 out the way that it was intended.

13 MR. GREENBERG: Yes, there were feedback  
14 loops. First there were criteria to reflect the  
15 accuracy of the sampling equipment, such that when  
16 you looked at upwind and downwind, if you had a  
17 delta greater than the accuracy of the equipment  
18 then you knew you had a real value.

19 So there was already something built  
20 into that particular plan that would account for  
21 accuracy. Now, let's assume that you're downwind  
22 of the construction activity has a greater value  
23 of PM-10 and it's statistically significant,  
24 greater than the upwind value.

25 So that means that you're now creating

1 some PM-10 in addition to what's coming from  
2 ambient or other sources across the site. There  
3 was a tiered approach. If there was a first  
4 violation of that there would be a review of the  
5 mitigation measures, the dust suppression  
6 measures.

7           Perhaps there would be additional  
8 measures added, perhaps there would be the same  
9 measures but increased frequency, such as  
10 watering, increased frequency, maintaining soil  
11 moisture, etc.

12           If there were subsequent or continued  
13 violations of the protocol then there would be a  
14 decision as to implement a combination -- more  
15 watering, different methods, maybe even shutting  
16 down for a time period.

17           If the winds are so great, and the dust  
18 is being stirred up and yet the watering truck  
19 can't keep up with it, perhaps a decision should  
20 be made to shut down.

21           But the protocol that was developed was  
22 not put in here as a condition of certification  
23 because one, it starts to get too cumbersome and  
24 starts to become a specification standard as  
25 opposed to a performance standard, and each site

1 is different.

2 MS. SMITH: Thank you.

3 COMMISSIONER PERNELL: One followup  
4 question in terms of what was learned from the  
5 previous monitoring. In all of this, when the  
6 readings were going up and down up and down, where  
7 was the AQCM? And let me just say that's the Air  
8 Quality Construction Monitoring Manager.

9 We have some community folks, so I'm  
10 trying to keep the academes at a minimum. But it  
11 appears to me that when you were evaluating the  
12 success, did that person get interviewed?

13 MR. BIRDSALL: I did not ask who the  
14 onsite construction mitigation manager was, and --  
15 okay. And so I did not interview them. I think  
16 that, if it is agreed upon, and I'm not certain  
17 that it is -- but if it is agreed that the Los  
18 Esteros demonstration project was a failure that  
19 probably failure could have been spread around  
20 with possibly the operators of the equipment as  
21 well as what was done with the data as it was  
22 being acquired by CEC staff or by the developer.  
23 I cannot say.

24 COMMISSIONER PERNELL: Okay. I think  
25 we've exhausted this topic. Do you have --?

1 HEARING OFFICER WILLIS: I believe we --  
2 are we at cross-examination? Have you cross-  
3 examined --  
4 (laughter)

5 Mr. Ellison, do you have any questions?

6 MR. ELLISON: Let me say that we have  
7 been surprised, actually, in a number of ways by  
8 your testimony today. At least in a couple of  
9 cases pleasantly surprised. And in other cases  
10 not so pleasantly surprised.

11 But first let me say thank you for one  
12 pleasant surprise, and that is the agreement on  
13 AQSC6 on the 12 hours, and of course that  
14 eliminates the --

15 COMMISSIONER PERNELL: Can't hear you.

16 MR. ELLISON: Pardon me? I was just  
17 expressing our appreciation for staff's agreement  
18 on AQSC6. Is that better? Got it, sorry.

19 I was expressing Calpine's appreciation  
20 for staff's agreement on AQSC6, the ten and 12-  
21 hour issue. And we of course have no cross-  
22 examination based on that.

23 Secondly, the little caucus that you saw  
24 over in the corner was our -- we were also  
25 surprised by staff's characterization on the soot

1 filter issue, and their interpretation of their  
2 condition was different than what we understood.

3 And we believe there may be a  
4 possibility of working this issue out, based upon  
5 the testimony that was provided. And I'm going to  
6 curtail my cross-examination with respect to that  
7 issue as well.

8 COMMISSIONER PERNELL: Just a caution --  
9 we need to know that it's worked out.

10 MR. ELLISON: I understand.

11 COMMISSIONER PERNELL: We don't want to  
12 be surprised either.

13 MR. ELLISON: And I understand, believe  
14 me, I understand. So let me turn to AQSC5, the  
15 monitoring issue that we've been discussing at  
16 length. And first of all, let me ask you some  
17 questions about your testimony regarding why you  
18 believe monitoring is justified in this case,  
19 whereas the staff has not felt it was required in  
20 other cases?

21 One reason that I understood you to give  
22 was the ambient air quality conditions at this  
23 site, is that correct?

24 MR. BIRDSALL: That's correct.

25 MR. ELLISON: And in the course of

1 saying that, one thing you pointed to was Mr.  
2 Rubinstein's Exhibits that were presented --  
3 Exhibits 72 through 76.

4 And I believe you testified that these  
5 Exhibits show that the maximum daily  
6 concentrations of particulate matter are in fact  
7 decreasing, but that the annual averages are  
8 relatively stable, I think was the wording you  
9 used. Do you recall that?

10 MR. BIRDSALL: That's correct.

11 MR. ELLISON: The monitoring, however,  
12 doesn't address the stable annual average issue,  
13 isn't that correct? The monitoring is designed to  
14 monitor over a 24-hour average period, correct?

15 MR. BIRDSALL: The fence line monitoring  
16 recommended in AQSC5?

17 MR. ELLISON: Yes.

18 MR. BIRDSALL: That's true. That would  
19 not be on an annual average basis, that would be  
20 day to day.

21 MR. ELLISON: So the declining maximum  
22 daily concentrations would be relevant to that  
23 monitoring requirement, would it not?

24 MR. BIRDSALL: This is true, but I would  
25 like to caution that the context for the ambient

1 monitoring is that the area is out of attainment,  
2 and it is dramatically out of attainment --  
3 dramatically in my relative terms -- and the  
4 persistency of the non-attainment I think is  
5 reflected in the annual average concentrations.

6 MR. ELLISON: Well, that's a good segue  
7 to my next question. Isn't that true for most of  
8 the state?

9 MR. BIRDSALL: Certainly for the  
10 California state standard. The -- I'll finish  
11 there. Certainly most of the state is out of  
12 attainment for the annual average, California  
13 state standard.

14 MR. ELLISON: And that is the standard  
15 that you were referring to earlier, correct?

16 MR. BIRDSALL: This is true.

17 MR. ELLISON: So this doesn't  
18 differentiate this site from most of California,  
19 does it?

20 MR. BIRDSALL: Well, I think the  
21 concentrations being two times the California  
22 standard would differentiate from most locations  
23 in the state, where annual average concentrations  
24 are not as extremely beyond the annual average  
25 standard.

1           MR. ELLISON: I believe you also  
2 testified on the issue of whether the project  
3 impacts were or were not overstated, do you recall  
4 that discussion?

5           MR. BIRDSALL: Yes, I do.

6           MR. ELLISON: And if I recall your  
7 testimony correctly, you felt that they might not  
8 be, although you agreed that they were very  
9 conservative, that they might not be overstated  
10 because model impacts of other projects that  
11 you're familiar with showed similar impacts. Is  
12 that a fair summary of what you said?

13           MR. BIRDSALL: Yes. I've seen  
14 Applicants come forward with a range of fence line  
15 impacts during construction, and one would think  
16 that -- well, given that there are an extreme  
17 variety of ambient conditions in terms of  
18 baseline, and also in terms of meteorology,  
19 somewhere between 50 micrograms per cubic meter  
20 and 150 micrograms per cubic meter on a 24-hour  
21 basis, this is roughly what I've seen in my  
22 experience.

23           And the fence lines shown on this  
24 project are at the low end of what I've seen. And  
25 so, in this regard, this is why I say that I don't

1 believe they're necessarily overstated.

2 MR. ELLISON: Am I correct though that  
3 the comparisons that you're making are to modeled  
4 predictions, in this case to modeled predictions  
5 in several other cases?

6 MR. BIRDSALL: Always modeled  
7 predictions, yes.

8 MR. ELLISON: So if all of those models  
9 used the same conservative protocols they might  
10 all be over-predicting, correct?

11 MR. BIRDSALL: This is true, they may.

12 MR. ELLISON: If I could ask you to  
13 refer to your supplemental testimony, at page two?  
14 And specifically the second paragraph, beginning  
15 with "staff disagrees with the Applicant's  
16 interpretation."

17 MR. BIRDSALL: Okay.

18 MR. ELLISON: You found it?

19 MR. BIRDSALL: Yes.

20 MR. ELLISON: In this paragraph -- and  
21 I'll just paraphrase -- I believe you say that the  
22 Applicant states that the project does not cause a  
23 new violation of the state 24-hour and annual  
24 average PM-10 standards. You then say there's  
25 evidence in air quality tables 9 and 13 to support

1 this claim for the main project site.

2 And then in the last sentence you say  
3 "staff, however, disagrees with the claim, because  
4 FSA air quality table ten shows that construction  
5 could cause a new localized and short-term  
6 violation of the 24-hour PM-10 standard at the  
7 compressor station site." Do you see that?

8 MR. BIRDSALL: Yes, this is true, and I  
9 stand by this language.

10 MR. ELLISON: The only question is do  
11 you see that?

12 MR. BIRDSALL: I see that, and I'll stop  
13 there.

14 MR. ELLISON: All right. Let me refer  
15 to the table ten in the FSA that you're referring  
16 to, and I believe it's at 5.1-23 of the staff's  
17 FSA. In the sentence I just read you said that  
18 here at the compressor station there is a new  
19 impact that does not occur now. Could you show me  
20 where on the table that impact occurs?

21 MR. BIRDSALL: Referring to the final  
22 staff assessment, air quality table ten -- which  
23 is a table generated based on the Applicant's  
24 response to data request early on in the process -  
25 - data request number 31.

1           The Applicant modeled ambient PM-10  
2 concentrations from construction activities at the  
3 compressor station site, which is at the Menafee  
4 Road compressor station. The Applicant modeled a  
5 92 microgram per cubic meter during one of the  
6 month's of site grading and site construction at  
7 that compressor station site.

8           A project impact of 92 micrograms per  
9 cubic meter on a 24-hour basis of PM-10 would  
10 exceed the state standard of 50 micrograms per  
11 cubic meter and indicate that a new violation  
12 could potentially be caused at that site for that  
13 short term of construction.

14           MR. ELLISON: If I can refer you to the  
15 same table, next to the 92 in the next column  
16 over, background, you see 139, is that correct?

17           MR. BIRDSALL: That's correct.

18           MR. ELLISON: That's the ambient  
19 background at the compressor station, or at least  
20 at the site for the 24-hour PM-10 standard. So  
21 we're in non-attainment for that standard now,  
22 according to that, correct?

23           MR. BIRDSALL: Correct.

24           MR. ELLISON: So the new violation that  
25 you're hypothesizing here assumes that that goes

1 away and that the project exists without the  
2 ambient concentration, is that what you're saying?

3 MR. BIRDSALL: Well, as Mr. Rubinstein  
4 pointed out earlier, a number of conservative  
5 assumptions go into the modeling assessment. One  
6 of those assumptions is that the background  
7 condition that's presented in air quality table  
8 ten, for example, the background condition is the  
9 worst background condition that can occur over the  
10 past three years of ambient monitoring data in the  
11 area.

12 And so we've presented the 139  
13 micrograms per cubic meter as the background  
14 condition on a 24-hour basis, but most days are  
15 not at that level. Most days would be below, in  
16 fact all days over the past three years of  
17 monitoring data are below 139. And that to me  
18 says there are some days where the background  
19 concentration will be below 139.

20 When I take a look at the project impact  
21 by itself, if the project by itself exceeds the  
22 state standards I say that the project itself may  
23 cause a new violation of the state standards.

24 Because taking away the background  
25 concentration and setting it at zero,

1 hypothetically, and putting the construction  
2 activity for the compressor station site at an  
3 increase of 92 micrograms per cubic meter would  
4 cause a new violation. So when I make that  
5 statement I disregard the background.

6 MR. ELLISON: Further down that same  
7 page, 5.1-23, in the middle paragraph, you make a  
8 comparison of what the 24-hour PM-10 impacts would  
9 be at the school site, relative to background  
10 conditions.

11 Specifically the sentence "the 24-hour  
12 PM-10 impacts of the school would be less than ten  
13 percent of the existing background conditions."  
14 Do you see that?

15 MR. BIRDSALL: Yes.

16 MR. ELLISON: And that's derived from  
17 table 9, that's the main project, correct?

18 MR. BIRDSALL: Correct.

19 MR. ELLISON: And the school site is how  
20 far away from the main project site?

21 MR. BIRDSALL: I've been calling it .34  
22 of a mile.

23 MR. ELLISON: And how far is it from the  
24 compressor site?

25 MR. BIRDSALL: I believe that the

1 project description would explain this better, but  
2 I believe the compressor station site is another  
3 mile or two south and east, more like two miles.

4 MR. ELLISON: Substantially farther  
5 away?

6 MR. BIRDSALL: Yes.

7 MR. ELLISON: What this seems to show is  
8 that the fence line impacts drop dramatically as  
9 you move away from the site. In the case of the  
10 main project site they appear to attenuate to -- I  
11 believe your testimony is they drop over that  
12 third of a mile distance such that they're only  
13 one tenth of the fence line impacts a third of a  
14 mile away, is that correct?

15 MR. BIRDSALL: That is correct, and they  
16 do attenuate dramatically with distance.

17 MR. ELLISON: So over the much greater  
18 distance from the compressor site to the school  
19 they would attenuate even more so, correct?

20 MR. BIRDSALL: That's correct.

21 MR. ELLISON: In fact, if you assumed  
22 the same rate of attenuation -- let's assume for a  
23 moment hypothetically, because I believe this is  
24 correct -- that the compressor site is roughly a  
25 mile from the school, or in other words about

1 three times further than the main project site.

2 With that assumption in mind, it would  
3 be one tenth of one tenth of one tenth, correct?

4 MR. BIRDSALL: I wouldn't necessarily  
5 say that it's a product relationship, but we will  
6 say that yes, it is certainly below one tenth.

7 MR. ELLISON: So isn't it fair to say  
8 that, even if hypothetically there were a "new"  
9 violation at the compressor site fence line that  
10 that doesn't say anything about a new violation at  
11 the sensitive receptor of the school site?

12 MR. BIRDSALL: That's correct. I have  
13 not looked at whether or not there would be a new  
14 violation at the sensitive receptors due to  
15 compressor station construction.

16 MR. ELLISON: Well, if you assume that  
17 the project impacts attenuate even by only the  
18 amount of one tenth, which is what you calculated  
19 for a third of a mile, then the 92 would become  
20 9.2, correct?

21 MR. BIRDSALL: Sure.

22 MR. ELLISON: And that would no longer  
23 create the new violation that you're talking  
24 about, correct?

25 MR. BIRDSALL: Well, the new violation

1 is created at the compressor station site. And  
2 that is the statement that I have made, and I  
3 agree, a new violation would not likely be caused  
4 at the school due to that activity, but it's there  
5 at the compressor station site.

6 MR. ELLISON: But there are no sensitive  
7 receptors at the compressor site, right?

8 MR. BIRDSALL: Not that I've analyzed.

9 MR. ELLISON: And I ask these questions  
10 because another of your criteria for applying the  
11 monitoring is the nearness of these sensitive  
12 receptors, correct?

13 MR. BIRDSALL: Correct.

14 MR. ELLISON: Okay. Let me ask you some  
15 questions about the RTC issue. And the first  
16 thing I want to do is clarify exactly what the  
17 staff's position is.

18 We did have a workshop in early July.  
19 And from that workshop, my understanding is that  
20 staff is saying that to identify the RTC's, that  
21 Calpine would need to enter into a legally  
22 enforceable purchase or option agreement for the  
23 first year for the RTC's, for 100 percent of the  
24 first year of the RTC's. Is that correct?

25 MR. BIRDSALL: I think that how Calpine

1 would negotiate with the RTC holders is up to the  
2 Applicant, and is not specified or predicated by  
3 our requirement to identify it.

4           Meaning if some more informal letter of  
5 agreement from a willing project seller were  
6 presented, then the RTC's would be identified.  
7 Entering into a binding agreement may protect  
8 Calpine or may enable the Applicant to fix a  
9 certain price, and thus may be advantageous to  
10 the developer.

11           MR. ELLISON: Okay. I want to pursue  
12 this because I believe it's different than what we  
13 understood coming out of workshop. Is it your  
14 testimony that we could meet staff's  
15 interpretation of identify without entering into,  
16 without making the financial commitment and  
17 entering into a legal acquisition either by option  
18 or direct purchase?

19           MR. BIRDSALL: I'll say that yes, I  
20 believe that there is a way to identify the  
21 willing sellers and possibly not enter into a  
22 binding agreement, but it may be -- you may  
23 determine that it's in your best interest to do  
24 so.

25           MR. ELLISON: Well, I'm not asking you

1 to speculate about Calpine's best interest, I'm  
2 trying to understand what staff would consider  
3 acceptable, given staff's interpretation of what's  
4 required.

5           And what I'm hearing is -- let me give  
6 you a specific example. If we were to come to  
7 staff with letters of intent with specific willing  
8 sellers that were not legally binding and simply  
9 said "the seller says that we intend to sell, and  
10 Calpine says we intend to buy" -- there's no  
11 legally binding aspect to them, and there's no  
12 financial compensation, would that satisfy the  
13 staff?

14           MR. BIRDSALL: I think I'm going to be  
15 hard-pressed to say what would satisfy staff  
16 requirements because I'm not presented with such a  
17 proposal yet, and we haven't been to date.

18           I'll back up by saying that certainly if  
19 Calpine acquired RTC's or RTC futures in their  
20 account that would be identified and that would be  
21 held. Clearly that would satisfy our concerns.  
22 If Calpine had binding letters of agreement and  
23 options with sellers, I think that would qualify  
24 as identified.

25           A letter that is from a seller that

1 informally says the seller intends to sell to  
2 Calpine, that may also pass, but I would have to  
3 see a letter like that and share it with my air  
4 quality unit and management to determine if that  
5 meets our interpretation of identify.

6 MR. ELLISON: Okay, well this is very  
7 important. I recall quite specifically from the  
8 July workshop and I believe it was Mr. Layton but  
9 it might have been yourself, saying that staff  
10 agreed that Calpine had done everything it could  
11 do to identify these RTC's short of a legally  
12 binding either option or purchase.

13 But that the legally binding option or  
14 purchase is what staff required. And I believe  
15 I'm hearing something different from you today  
16 about a possibility of something else.

17 MR. BIRDSALL: I want to be very careful  
18 about what I say, mainly because I don't have a  
19 specific proposal in front of me, and my decisions  
20 are usually based on consensus between my air  
21 quality seniors, Mr. Layton, and the management.

22 And the interpretation of identification  
23 has been especially difficult on this case, as you  
24 well know. And I think that any new proposal we  
25 would have to take time to consider.

1           MR. ELLISON: Okay, well, in the  
2 interest of time I'll move on. It's correct,  
3 however, that Public Resources Code 25523D2 speaks  
4 separately of identifying offsets and obtaining  
5 them, correct?

6           MR. BIRDSALL: I agree.

7           MR. ELLISON: And historically the  
8 Energy Commission has interpreted "obtaining" to  
9 mean entering into a legally enforceable  
10 acquisition agreement of some kind, correct?

11          MR. BIRDSALL: Certainly a legal  
12 enforceable agreement would indicate that the  
13 Applicant had taken the effort to obtain.

14          MR. ELLISON: So, if my recollection of  
15 what staff's position was at the workshop is  
16 correct, that staff is requiring a legally  
17 enforceable agreement, then staff is requiring  
18 that Calpine obtain these RTC's, correct?

19          MR. KRAMER: Object. Object to the  
20 extent it calls for a legal conclusion.

21          MR. ELLISON: Well, he just testified  
22 that the historic interpretation of the Commission  
23 is that a legally binding agreement qualifies as  
24 obtaining. Having testified to that, all I'm  
25 adding to the mix is if the staff requires such an

1 agreement it is requiring obtaining.

2 That's not a legal conclusion, that's  
3 just logic.

4 MR. BIRDSALL: Which is why I want to be  
5 careful --

6 HEARING OFFICER WILLIS: Wait. There's  
7 a legal objection out there, and I think we'd like  
8 to talk about it for just one second.

9 MR. BIRDSALL: Excuse me.

10 MR. KRAMER: Well, logic and the law  
11 don't necessarily put together two opposites.

12 MR. ELLISON: Well, that's right. In  
13 this case we're talking --

14 COMMISSIONER PERNELL: Uh, excuse me,  
15 excuse me.

16 HEARING OFFICER WILLIS: We're going to  
17 sustain your objection. We ask that Mr. Ellison  
18 re-ask the question without asking for a legal  
19 conclusion. Go ahead.

20 MR. ELLISON: I don't know that I can  
21 re-ask it without -- since I don't agree that  
22 there's a legal conclusion in it I don't know how  
23 to take it out. I'll just drop the question and  
24 keep moving.

25 Mr. Kramer, in his cross-examination of

1 Mr. Rubinstein, referred him to condition -- I  
2 believe it was AQSC9, which is at page 5.1-49 of  
3 Exhibit 67. Do you see that?

4 MR. BIRDSALL: Yes. I'm looking at the  
5 version in the supplemental testimony, which is on  
6 page 11 of staff's supplemental testimony. But,  
7 AQSC9, yes.

8 MR. ELLISON: Is there any difference  
9 between them?

10 MR. BIRDSALL: There is a slight  
11 difference in the text but not -- well, there are  
12 differences, yes.

13 MR. ELLISON: Okay, well let's refer to  
14 the most recent one then. It's page 12 of the one  
15 you're looking at, page 12 of Exhibit 68. Let me  
16 start by asking this.

17 If Calpine were to enter into an  
18 agreement for the purchase of -- actually, before  
19 we do this, let me clarify one other point back at  
20 the beginning of the testimony, the beginning of  
21 my cross-examination.

22 I understood from the workshop that the  
23 staff's position, leaving aside the nature of the  
24 agreement, was that what Calpine has to acquire is  
25 100 percent of the first year RTC's, is that your

1 understanding?

2 MR. BIRDSALL: I would say that's  
3 correct, yes.

4 MR. ELLISON: If Calpine did that with  
5 an agreement satisfactory to staff, would staff  
6 care about which RTC's Calpine acquires?

7 MR. BIRDSALL: Staff would verify either  
8 with the district or with the third party sellers  
9 the authenticity of the identification. If it is  
10 a credit that is held and in the district bank  
11 then staff would probably go to the district and  
12 ask the district does facility X have this many  
13 RTC's.

14 And in this way we would doublecheck or  
15 verify the listed sellers of the RTC's, that they  
16 indeed do have that quantity in their account to  
17 sell. And in that way, yes, we would treat RTC's  
18 differently, depending on which ones they are.

19 MR. ELLISON: Well, differently only as  
20 between authentic ones and illegitimate ones.

21 MR. BIRDSALL: Right. Differently  
22 meaning that we would doublecheck them.

23 MR. ELLISON: And you would doublecheck  
24 them by asking the district?

25 MR. BIRDSALL: Yes.

1           MR. ELLISON: Well, assuming that we're  
2 talking about authentic RTC's that the district  
3 recognizes as valid, would the selection of  
4 particular RTC's change staff's analysis or its  
5 conditions in any way?

6           MR. BIRDSALL: I don't believe so, no.

7           MR. ELLISON: Now that's not true for  
8 ERC's, correct?

9           MR. BIRDSALL: That's correct, it is not  
10 true for ERC's.

11          MR. ELLISON: And isn't it true that one  
12 of the reasons you need to identify ERC's is  
13 because it does potentially change the staff's  
14 analysis depending upon which ones are identified?

15          MR. BIRDSALL: I can't speculate why the  
16 Warren-Alquist Act requires identification of  
17 offsets, but indeed when staff analyzes an  
18 Applicant's offset package we take into  
19 consideration where the offset comes from, the  
20 quality of the offset, and if it is an ERC we'd  
21 look at it for the environmental constraints.

22                 Meaning is it located an approximal  
23 distance from the source, has the EPA blessed the  
24 authenticity of the ERC, and so on.

25          MR. ELLISON: But with respect to RTC's

1 that's not the case?

2 MR. BIRDSALL: With respect to the  
3 RTC's, no, we don't have geographic specific  
4 constraints, at least for this particular project  
5 we don't. And we don't question the authenticity  
6 of the credit or whether or not it's surplus, for  
7 example.

8 MR. ELLISON: Now I note here in looking  
9 at the table in AQSC10 that with respect to the  
10 priority reserve it simply says that  
11 identification is sufficient by saying through  
12 priority reserve, you see that?

13 MR. BIRDSALL: Yes.

14 MR. ELLISON: Why would the  
15 identification not be correct for it to simply say  
16 for NOx through the reclaim program?

17 MR. BIRDSALL: The south coast district  
18 handles -- as you are aware -- handles the  
19 priority reserve program in a completely different  
20 context than the reclaim program. The priority  
21 reserve program is a commitment from the district  
22 that emission reductions will occur.

23 And reclaimed credits, being not  
24 controlled by the district but rather being held  
25 by the third party and competitive interests

1 possibly, means that the reclaimed market for  
2 credits is much more volatile and much more  
3 difficult to gain access to than priority reserve,  
4 which is held by the district and guaranteed by  
5 the district.

6 In priority reserve the district  
7 guarantees the availability of the priority  
8 reserve credit, and they guarantee the price of  
9 that credit.

10 MR. ELLISON: Okay. I was really asking  
11 a different question, so let me rephrase it. I  
12 appreciate your answer, but I was really saying  
13 let's assume for the sake of argument that the  
14 Committee or the Commission were to agree with  
15 Calpine that it had in fact at this point in time  
16 sufficiently identified the RTC's, and therefore  
17 this table were simply a change to say through the  
18 reclaim program for the NOx RTC's.

19 Would staff have any difficulty  
20 implementing that condition?

21 MR. BIRDSALL: If the Commission adopted  
22 the condition, with the changes that you're  
23 recommending, I don't think that staff would  
24 analyze the project or would treat the project  
25 differently from that point forward.

1           MR. ELLISON: I want to ask you about  
2 the other cases where Applicants provided RTC's.  
3 You mentioned one case in which it was an existing  
4 facility that already had RTC's because it was an  
5 existing facility, and then you also mentioned I  
6 believe the El Segundo project.

7           El Segundo is also an existing facility  
8 which would have pre-existing RTC's, correct?

9           MR. BIRDSALL: That's correct. In fact,  
10 before you go further I should also add that there  
11 are existing sources at Magnolio, so that would  
12 make all three of them existing facilities.

13           MR. ELLISON: So the fact that they  
14 provide RTC's can be directly attributable to the  
15 fact that they already have them, as a function of  
16 being an existing facility. Whereas in this case  
17 we're talking about a new facility that does not  
18 have them, correct?

19           MR. BIRDSALL: Well, the fact that they  
20 held RTC's can be attributed to a number of things  
21 probably, and I'll speculate yes, they are  
22 operating with RTC and with reclaim accounts.

23           And B, that they did not sell them away  
24 to the competitive marketplace. They held them  
25 with the intent to use them for the development

1 that they were proposing through the CEC license.

2 MR. ELLISON: I recall from the July  
3 workshop a statement from staff that staff was not  
4 really questioning the availability of RTC's for  
5 this project, but rather that this was an issue of  
6 principal, and the principal was that other  
7 projects had provided them and that therefore this  
8 project should provide them. Do you recall that  
9 discussion?

10 MR. BIRDSALL: I recall that. And the  
11 principal applies partially to projects here in  
12 the south coast district, here, but it applies  
13 really to all of the projects that we treat.

14 And that is that when a project comes  
15 forward with an offset strategy, we look to the  
16 offset strategy to determine whether the credits  
17 have been identified, and this is a test that we  
18 apply uniformly to Applicant's throughout the  
19 state, regardless of whether they are subject to  
20 offsetting requirements through reclaim or through  
21 a more traditional ERC program.

22 MR. ELLISON: Okay, well I want to get  
23 back to the question of consistency in a minute,  
24 but first let me ask you then is the staff  
25 questioning the availability of RTC's for this

1 project as opposed to this issue of principal?

2 MR. BIRDSALL: I think that the answer  
3 is no, and that, for a price I do believe that the  
4 Applicant will be able to go forward and purchase  
5 parts he sees as required by the district and at  
6 the time required by the district prior to the  
7 district issuing its permit to operate, and that  
8 RTC's will probably be available.

9 MR. ELLISON: Then with respect to this  
10 issue of principal, in the El Segundo case, El  
11 Segundo only provided 90 percent of the RTC's that  
12 were necessary, correct?

13 MR. BIRDSALL: That's what the testimony  
14 says, yes.

15 MR. ELLISON: And staff supported that  
16 as being sufficient, correct?

17 MR. BIRDSALL: Yes.

18 MR. ELLISON: How did El Segundo  
19 identify the other ten percent?

20 MR. BIRDSALL: Well, in my review of the  
21 notes of the case they committed to securing the  
22 RTC's prior to securing their permit to operate.  
23 So they were identified in much the same way that  
24 90 percent of Inland Empire's RTC's are currently  
25 identified today.

1 MR. ELLISON: Is it the staff's position  
2 that the Commission licensed El Segundo illegally?

3 MR. KRAMER: That seems to call for a  
4 legal interpretation.

5 MR. ELLISON: I'll withdraw the  
6 question, I'll rephrase it, that's a fair  
7 objection. But the staff supported that as  
8 sufficient to meet the statute in that case,  
9 correct?

10 MR. BIRDSALL: I did not personally work  
11 on that case, but I would believe yes, staff  
12 supported that.

13 MR. ELLISON: Okay. Can you explain why  
14 the identification of some but not all RTC's meets  
15 the statute in El Segundo, but doesn't meet the  
16 statute here?

17 MR. BIRDSALL: I think that it's  
18 difficult to pretend that 90 percent of the RTC's  
19 being held should be ignored. When staff  
20 interprets the statute I can't say that staff has  
21 historically interpreted it consistently. It's  
22 possible that on El Segundo staff inconsistently  
23 interpreted the requirement for identification.

24 Inconsistent with what we are proposing  
25 here, and what we are recommending here for this

1 case.

2 MR. ELLISON: If a project Applicant, or  
3 two or three project Applicant's choose to exceed  
4 legal requirements, in other words choose to meet  
5 a legal requirement by doing more than is  
6 necessary, is it staff's position that all  
7 subsequent Applicants should be required to do the  
8 same thing?

9 MR. BIRDSALL: No, I would not say that.

10 MR. ELLISON: And in each of the three  
11 prior cases, the three existing projects provided  
12 these RTC's voluntarily as opposed to being  
13 ordered by the Commission over their objection to  
14 provide them, correct?

15 MR. BIRDSALL: Having not worked on  
16 those three cases I do not know if they were  
17 voluntarily provided, or if staff through  
18 workshops and data requests and the entire  
19 licensing process had requested that all along.

20 MR. ELLISON: Well, my question is --  
21 let me ask the question a little differently. The  
22 issue was not litigated and disputed in front of  
23 the Commission or the Committee, was it?

24 MR. BIRDSALL: Again, having not worked  
25 on the cases I don't know if the question got as

1 far as the Committee, because it's possible that  
2 it did or it was headed to the Committee and the  
3 Applicant may have adjusted their strategy as they  
4 got closer to being before the Committee. So I do  
5 not know, I cannot answer that question, I guess.

6 MR. ELLISON: Well, let me ask it a  
7 little differently then. Isn't it fair to say  
8 that this is the first case in which this issue  
9 about defining identification has been presented  
10 in dispute to the Commission?

11 MR. BIRDSALL: I believe that it is.

12 MR. ELLISON: Let me return to the issue  
13 of AQSC5 and the monitoring. I recall you -- and  
14 correct me if I'm wrong, I may not remember this  
15 correctly -- but I believe you testified that, as  
16 proposed by staff, at least at the present time,  
17 there is no performance number that would trigger  
18 a change in methods based on the monitoring, is  
19 that correct?

20 MR. BIRDSALL: Staff was careful not to  
21 write a specific performance number into AQSC5.  
22 So there is no specific performance number.

23 MR. ELLISON: But I thought I heard you  
24 testify as to 50 micrograms per cubic meter as  
25 being in your mind an appropriate threshold. Is

1 that also a fair statement?

2 MR. BIRDSALL: When I think of a fair  
3 threshold I think of some of the other  
4 regulations, for example, that are similar to  
5 AQSC5. In mind I have something like the south  
6 coast air district rule 403, which has a  
7 compliance target of 50 micrograms per cubic  
8 meter.

9 So I've used 50 micrograms per cubic  
10 meter in my mind as some kind of a threshold, but  
11 I was careful not to write it into the condition.

12 MR. ELLISON: So staff is reserving  
13 judgment, staff could make it one microgram per  
14 cubic meter if it wanted to, under the staff's  
15 proposal, is that what you're saying?

16 MR. BIRDSALL: No. I'm saying that the  
17 plan will have to identify what it does with the  
18 data, and having a one microgram per cubic meter  
19 difference would probably be within the margin of  
20 error or detectability of the devices and wouldn't  
21 mean a thing.

22 So I can't say that staff would look at  
23 a thing like that, and I think that this is all  
24 open to the plan.

25 MR. ELLISON: But open to the staff's

1 decision subsequent to licensing?

2 MR. BIRDSALL: Well, staff would require  
3 approval of the plan from the CPM in the condition  
4 the way its recommended currently.

5 MR. ELLISON: So whatever number the CPM  
6 thinks is appropriate?

7 MR. BIRDSALL: Yes, I guess. Let me  
8 clarify though that developing the plan would  
9 require negotiation and a little bit of  
10 consultation between the CPM and the Applicant,  
11 and I'm not entirely certain that one fixed number  
12 would be a trigger number. It may be a range.

13 MR. ELLISON: That's all. Thank you.

14 MR. BIRDSALL: Thank you.

15 HEARING OFFICER WILLIS: Mr. Kramer, are  
16 you going to have redirect?

17 MR. KRAMER: A very brief one.

18 HEARING OFFICER WILLIS: Okay, and then  
19 I think after that we'll take a quick few minutes  
20 break before we go on to public health.

21 MR. KRAMER: Mr. Birdsall, is staff  
22 intending to require upwind/downwind monitoring at  
23 the compressor station site?

24 MR. BIRDSALL: No. We haven't  
25 recommended upwind/downwind monitoring at the

1 compressor station site primarily because that  
2 would be a very short construction schedule there,  
3 but also the location of the sensitive receptors  
4 around the compressor station site is not what it  
5 is at the project site.

6 MR. KRAMER: And Mr. Ellison  
7 characterized the issue regarding the  
8 identification of RTC's as -- he used the term  
9 principal in several of his questions. And I  
10 wanted to ask you, for staff is this an issue of  
11 principal or statutory requirement, in your mind?

12 MR. BIRDSALL: Well, I do believe that  
13 this is a statutory requirement.

14 MR. ELLISON: I really do have to make  
15 the same objection that Mr. Kramer's been making  
16 on the very same basis, it's a legal conclusion.  
17 Your asking him whether it's required by law.

18 MR. KRAMER: No, I'm asking him if he  
19 believes that staff is making the requirement  
20 because, due to a requirement of the law or  
21 whether it's just a matter of principal regardless  
22 of the law.

23 I'm not asking him to interpret the law.  
24 I'm not suggesting that his -- or not meaning to  
25 suggest anyway -- that he's either right or wrong

1 that the law requires this. I'm just asking him  
2 what his motivation is.

3 MR. ELLISON: Okay.

4 MR. KRAMER: And then, finally, was it  
5 staff's intent in creating condition SC5 to have  
6 the Applicant just try to meet a numeric target,  
7 whatever it might be, or was the purpose to have  
8 them use the monitoring as a tool to monitor and  
9 adjust their mitigation strategies to be as  
10 effective as possible?

11 MR. BIRDSALL: The thought that went  
12 into AQSC5, and resulted in the condition being  
13 worded the way it is, is an indication that there  
14 will probably be a variety of interpretable  
15 conclusions, or a variety of conclusions that can  
16 be interpreted from whatever data is gleaned from  
17 the monitors, and we were careful to not specify a  
18 certain target range or a certain target  
19 concentration because certainly setting that  
20 target concentration would be something that would  
21 be disputed throughout the process.

22 And it may provide a false sense of  
23 security if perhaps we are shooting for a certain  
24 number. I think that the AQSC5 is worded in such  
25 a way that it allows for the data to be

1 interpreted as it comes in, in whatever form it  
2 comes in, as long as it's interpreted according to  
3 the way the plan specifies.

4 MR. KRAMER: And those interpretations,  
5 the immediate ones, would be conducted by the  
6 AQCM?

7 MR. BIRDSALL: I believe that the  
8 condition, the way that it's written, allows for  
9 the plan to -- excuse me, the ambient air  
10 monitoring plan, and I'll read from the  
11 verification of AQSC5, "the verification says that  
12 the ambient air monitoring plan shall be included  
13 as part of the construction mitigation plan  
14 required under SC2."

15 And SC2, yes, would be monitored by the  
16 AQ construction mitigation manager.

17 MR. KRAMER: So are you expecting the  
18 CPM to be looking at this data on a daily basis  
19 and giving feedback?

20 MR. BIRDSALL: No, the CPM would not be  
21 involved on a daily basis.

22 MR. KRAMER: Okay. Would they see the  
23 monitoring information at all, the CPM?

24 MR. BIRDSALL: The compliance project  
25 manager would see the data -- well, upon CPM

1 request, as it says in verification of AQSC5. And  
2 then the data would be submitted in the monthly  
3 compliance report.

4 MR. KRAMER: Thank you. No further  
5 questions.

6 HEARING OFFICER WILLIS: Mr. Ellison, do  
7 you have any recross?

8 MR. ELLISON: No.

9 HEARING OFFICER WILLIS: Mr. Kramer,  
10 would you like to move your documents?

11 MR. KRAMER: Yes. The air quality  
12 portions of the FSA, that's Exhibit 67,  
13 supplemental testimony Exhibit 68, and --

14 HEARING OFFICER WILLIS: I believe you  
15 also need to move the FDOC.

16 MR. KRAMER: Right. That's Exhibit 69,  
17 and I've forgotten where the others -- 48 and 52.  
18 And the staff errata Exhibit 70.

19 HEARING OFFICER WILLIS: Any objections?

20 MR. ELLISON: No.

21 HEARING OFFICER WILLIS: So moved. We  
22 do have one speaker?

23 COMMISSIONER PERNELL: Yes, Mr.  
24 Lunstrum, come forward please.

25 MR. LUNSTRUM: Well, I'll get my voice -

1 - can everybody hear me? I've got my voice in the  
2 right position.

3 COMMISSIONER PERNELL: We just need your  
4 name for the record.

5 MR. LUNSTRUM: My name is Ralph  
6 Lunstrum, I live in Homeland, four miles up the  
7 road. A big discussion here has taken place on  
8 this dust problem, and you triggered my thought on  
9 this to try and get on record.

10 Your question was to the protocol was  
11 that, evidently, you don't have too much  
12 confidence in having a person on board to check  
13 this dust problem. I'm going to take, and just  
14 tell you a little story in Homeland. Riverside  
15 County put in a flood control basin right across a  
16 40 foot street from my house.

17 And we had problems with dust from the  
18 day one on that project. So when it really got  
19 bad is when they started running 13 double thin  
20 buggys down in the hole, then out, and in comes  
21 another one. And the dust got so bad -- I'm  
22 talking about dust clouds 40 foot to 60 foot high.

23 And it only had to travel about 60 feet  
24 and it covered my house. That's a pretty bad  
25 sandstorm, just from the daily activity.

1           So I got to thinking I'm going to call  
2 -- help me on what I'm going to say, AQMD? Is  
3 that all the letters?

4           COMMISSIONER PERNELL: Yes.

5           MR. LUNSTRUM: Okay. I got ahold of  
6 their phone number and gave them a call. And it  
7 happened to be the person who answered the phone  
8 is the man that takes care, or it could have been  
9 a woman, takes care of all this territory out here  
10 by the Hemet area.

11           He came to my house in one hour and 50  
12 minutes from the time I got off the phone with  
13 him. He came all the way from Diamond Bar. And  
14 I'm talking now to the people who want to put this  
15 plant in here, this power plant.

16           He came out, came right to my door, and  
17 across the street the tractors never paid a bit of  
18 attention, they kept on working. He asked me a  
19 question or two. His first thing to do was to go  
20 across the street and go over there and look at  
21 the sand -- there was no, hey it was sand, it was  
22 powdered dust.

23           And that's where we had the problem. So  
24 I talked to him awhile, and he finally left. But  
25 I had a question, I said what will you do, will

1 you come out again if I give you another call if  
2 this continues. He says I'll be there in a  
3 heartbeat.

4 And I'm just trying to throw out to  
5 everybody behind me now as to how this works. I  
6 have a couple of answers to your questions, and  
7 they'll be coming up.

8 He came out the second time. The first  
9 time he didn't talk to them, he only checked the  
10 condition of the soil to verify that it was a  
11 sandy condition. The second time I called him he  
12 came out and I just watched him. He went across  
13 the street and he talked to the head man on the  
14 job site for the contractor.

15 And he had that discussion, so now he  
16 comes back, his car is right in front of my house.  
17 And I went out and I whistled at him as he started  
18 driving away. I said I have another question. I  
19 said what is going to come of this if it  
20 continues. He said with the second call they are  
21 notified of a \$100,000 fine. And we're only  
22 talking about me as a Joe Blow civilian. That's  
23 all it took was one phone call.

24 So then I ask him, I said if they don't  
25 quit now what are you going to do? Is there

1 anything in the law that has responsibility  
2 connected to this activity? He said oh, yeah.  
3 The next step was, if you call again, which will  
4 be time number three, they will come in and shut  
5 the project down, just like that, no questions  
6 asked.

7 And when they shut the project down that  
8 project is shut down until the day that all things  
9 have been, the correction has taken place to their  
10 satisfaction. Then the job site can come onboard  
11 again and start working.

12 Now that I think is an answer here to  
13 this big long discussion as to what it only takes.  
14 One civilian can shut a project down, that is if  
15 the contractor doesn't have enough brains to do  
16 what he's got to do.

17 Now they were running water sprinklers,  
18 but they were down ten foot in the ground. Now  
19 when you get down there it's dry, so they could  
20 not put enough water in it to take and hold it.

21 But that's just what I wanted to tell  
22 the whole Committee here, how simple it can be.  
23 And the electric developer, they have to pay  
24 attention, otherwise it really gets serious.

25 What does it cost them if he shuts down.

1 Because number one, if the project can't be  
2 completed in daytime now lots of money comes into  
3 play again. So that's all I'd like to leave with  
4 you, but that's as of exactly one year ago. And I  
5 got that information by calling AQMD.

6 COMMISSIONER PERNELL: Well, thank you  
7 sir for your testimony.

8 MR. LUNSTRUM: And then I did take --  
9 when I called back the next time I talked to a  
10 supervisor and I told him about the field man, I  
11 said this is what he told me. I said can you  
12 verify that there is any fact or truth to what he  
13 told me. He said it's all truth.

14 COMMISSIONER PERNELL: Thank you.

15 HEARING OFFICER WILLIS: Thank you, sir,  
16 for waiting so long. Mr. Puentes, I know you've  
17 waited a long time also.

18 MR. PUENTES: Thank you, I appreciate  
19 it. Do I need to give my name and all that stuff  
20 again? John Puentes, 26851 Dawson Road, Romoland.  
21 I just have a couple questions. I'm not really  
22 familiar with a lot of the vernacular that was  
23 thrown about.

24 RTC's, ERC's, that kind of stuff -- I  
25 suppose it's just another word for pollution

1 credits, so they can buy and sell and let people  
2 have more pollution than they should.

3 My question is how much pollution will  
4 the plant produce, because I know they're talking  
5 about they're going to produce this level and that  
6 level, but can they just tell me how many tons of  
7 the stuff are they going to put into the air on a  
8 daily and annual basis in accordance with the NOx,  
9 the carbon monoxide, and any other carcinogen that  
10 they might be aware of?

11 COMMISSIONER PERNELL: Yes, that's a  
12 question for you, Mr. Rubinstein, I do believe.  
13 Or someone on your team.

14 MR. RUBENSTEIN: Thank you. I was just  
15 waiting to see if Mr. Birdsall was going to answer  
16 it. I'm going to -- Mr. Puentes, the answer to  
17 your question is contained in the staff's  
18 analysis. I'm going to read from their analysis,  
19 and I can make sure you get a copy of this page so  
20 you don't have to copy the numbers down.

21 But for the record it's on page 5.1-19,  
22 air quality table seven. And it shows the maximum  
23 daily emissions and maximum annual emissions in  
24 tons per year from the project. And probably the  
25 easiest thing to do would be for me to give you a

1 copy of this, so you don't have to copy all ten of  
2 the numbers down. But that information's in  
3 there.

4 MR. PUENTES: All right. Just in a  
5 round nutshell, just give me the NOx, so I can get  
6 a --

7 MR. RUBENSTEIN: Okay. For example, for  
8 the NOx, the maximum daily NOx emissions are 1511  
9 pounds per day, and the maximum annual NOx  
10 emissions are 169 tons per year.

11 MR. PUENTES: Okay. And I have a few  
12 other questions, and I'll try to make it as quick  
13 as I can.

14 COMMISSIONER PERNELL: Will you still  
15 like a copy of the document?

16 MR. PUENTES: Yes, please. And since  
17 Calpine presents the plan as being a low pollution  
18 generator, it says "clean" in the little pamphlet.  
19 Will Calpine's plant operations enable higher  
20 pollution rate generators, other people, to  
21 produce additional pollution credits, since I'm  
22 going to assume they're going to underproduce what  
23 they're allowed, and then sell that.

24 Is that what they're possibly going to  
25 do?

1           COMMISSIONER PERNELL: Well, this will  
2 be a new facility, they're not shutting down an  
3 old facility and using those credits. This is a  
4 new facility, so I don't think that applies, but  
5 that's my interpretation.

6           MR. PUENTES: Well, what I'm saying is,  
7 in the future, say when they're running, and  
8 they're running at that clean whatever --

9           COMMISSIONER PERNELL: Right. But we're  
10 requiring them to run by best available control  
11 technology, which is BACT. So they don't get  
12 extra credit for doing something that they're  
13 required to do in the first place.

14          MR. PUENTES: Okay. That's a good  
15 thing. I was confused, they were talking about  
16 all these credits, and I thought well maybe --

17          COMMISSIONER PERNELL: Well, I was  
18 confused too.

19          MR. PUENTES: And then I guess this  
20 question wouldn't be -- well, I'm going to ask it  
21 anyway. Can this board prohibit Calpine from  
22 purchasing and selling pollution credits after,  
23 once they're done starting up their plant there?

24                 Say for example they change the rules  
25 later on and they lower them, and all of a sudden

1 they got surpluses and so then they go around --

2 COMMISSIONER PERNELL: Well, what this  
3 board is doing is hearing testimony for them  
4 licensing the facility. And once that's done, and  
5 the construction's done -- because we also monitor  
6 the construction activity -- then they're dealing  
7 with the air quality management district, which  
8 the gentleman was talking about earlier, AQMD.

9 MR. PUENTES: Okay, now if I understand  
10 correctly, do most of the pollution standards that  
11 we have right now in this area, they already  
12 exceed -- when I say exceed it's too high for the  
13 California standards to begin with?

14 COMMISSIONER PERNELL: There was some  
15 testimony this evening -- if someone could clarify  
16 -- I think they were talking about background --

17 MR. PUENTES: Well, just our regular,  
18 the pollution in the air right now as we speak, is  
19 it above California standards or is it --?

20 COMMISSIONER PERNELL: Okay, let me  
21 refer you to someone from staff.

22 MR. BIRDSALL: Hi, this is Brewster  
23 Birdsall, a consultant with the staff. It's true,  
24 the ambient air quality here in this part of the  
25 Inland Empire does exceed the state and federal

1 goals or standards for a couple of pollutants.  
2 Most substantially particulate matter and ozone.

3 MR. PUENTES: Okay. And we'll just be  
4 adding to it with this plant, correct?

5 MR. BIRDSALL: Well, this plant would  
6 add particulate matter and it would add pollutants  
7 that are precursors to ozone, or smog. But, this  
8 whole talk about credits is all about finding  
9 other facilities in the south coast air district  
10 that are either shutting down or are for whatever  
11 reason are liberating themselves of credits to  
12 pollute.

13 And this is the only way that the Inland  
14 Empire power plant will come online is once  
15 they've secured these credits. Which means that  
16 reductions in the same or greater amounts have  
17 occurred elsewhere.

18 MR. PUENTES: Oh, so you're going to  
19 substitute this pollution for what's already out  
20 there, so there's not going to be a net increase?

21 MR. BIRDSALL: Exactly.

22 MR. PUENTES: Is there an abatement  
23 program in place to control the pollution from the  
24 stacks when there's wind going around? Because  
25 sometimes we have around here it'll get about 40,

1 50 mile an hour winds.

2 And considering the school is up north  
3 of there and I'm to the south of it, I'm wondering  
4 what's the odds of me getting a cloud of exhaust  
5 pipe fumes in my neck of the woods?

6 COMMISSIONER PERNELL: I do believe it's  
7 Mr. Rubinstein's turn.

8 MR. RUBENSTEIN: Thank you, Commissioner  
9 Pernell. Under those kinds of conditions, no,  
10 you're not going to get a cloud of fumes coming  
11 down to the ground. The requirements for cleaning  
12 up this plant make the pollution levels in the  
13 stack so clean that, for some pollutants it's  
14 actually cleaner than what's out here in the air.

15 But for two of the five pollutants,  
16 what's inside the stack has less pollution in it  
17 than what's inside this room right now. For the  
18 other pollutants it's higher, but not a whole lot  
19 higher.

20 And by the time the pollution comes out  
21 of the stack, under the worst case weather  
22 conditions, and comes down, it's not going to  
23 create any unhealthful situations, it's not going  
24 to create the kind of plume you're thinking of.

25 COMMISSIONER PERNELL: And how tall is

1 the stack? We think it's about 160 feet tall?  
2 I've heard four different numbers here.

3 MR. RUBENSTEIN: I think it's 195 feet,  
4 but let me check just to be sure.

5 MR. PUENTES: And is the fact that the  
6 wind is going to be fairly warm, or hot sometimes,  
7 affect the quality of the exhaust? Because we  
8 really don't get cold wind out here.

9 MR. RUBENSTEIN: We have to analyze the  
10 project and look at all the different winds that  
11 might come through the area for an entire year.  
12 So we looked at 8,760 different wind conditions,  
13 and then had to make sure that under the worst of  
14 those that we're not going to cause any problems.

15 The kinds of winds you're talking about  
16 are actually not likely to be the worst case in  
17 terms of causing high pollution levels down at the  
18 ground. But they were included under all the  
19 different kinds of wind conditions we have to look  
20 at.

21 MR. KRAMER: Isn't it calm conditions  
22 that are the worse? I mean, the winds help clean  
23 up pollution, right?

24 MR. RUBENSTEIN: There are some wind  
25 conditions that can create -- and I don't want to

1 get too technical, it's way too late for that, but  
2 that can bring the plume down fairly quickly. So  
3 we had to look at those, some of those high wind  
4 conditions.

5           The worst case impacts from this plant  
6 are actually in the hills to the southeast of the  
7 plant, and those -- and the kinds of weather  
8 conditions that cause those highest pollution  
9 levels is actually a fairly gradual wind, not a  
10 complete calm condition, but a light wind hitting  
11 towards the south. And that's the worst case for  
12 this plant.

13           And we had to show that the plant was  
14 safe even under those kinds of conditions.

15           MR. PUENTES: And then part of these,  
16 the monitoring and stuff that's going to be going  
17 around during the construction and those types of  
18 things, will there be some kind of, will the  
19 surrounding community be informed when they exceed  
20 their safe limits, or whatever standard limit  
21 that's set for the particulate matter?

22           For example, like you talked about, say  
23 it goes above whatever it is, the bells and  
24 whistles go off over at the construcion site. Is  
25 anybody ever going to know besides whoever they

1 report to and they say hey, you know, we did this?

2 COMMISSIONER PERNELL: Yes, part of that  
3 discussion was what is the most effective  
4 monitoring plan to have, that is what the  
5 Committee was concerned about. So I'm not -- I  
6 guess your question is whether or not, if there is  
7 a health violation will the community know that  
8 it's there.

9 And that is something that the Committee  
10 will consider, I can't sit here and answer that,  
11 we're still going through the process. But that's  
12 a very good question.

13 MR. PUENTES: All right. I'm almost  
14 winding down here. I notice that there's been  
15 talk about the plant here bringing all kinds of  
16 improvements to the area, and I wanted to know, in  
17 order to mitigate the blight factor because no  
18 matter how you say it, having an electric plant in  
19 your back yard is not the most attractive thing to  
20 have in your neighborhood.

21 And I wanted to find out what their  
22 plans are, and what kind of commitment they plan  
23 on, in order to -- specifically, what type of  
24 immediate and future improvements to the community  
25 of Romoland, which is where I live, will they

1     commit to invest in, such as parks, road  
2     improvements, landscaping -- especially around the  
3     plant, you know, maybe beautifying the plant to  
4     make it look a little bit more presentable.

5             And I wanted to know what their plans  
6     were about that.

7             COMMISSIONER PERNELL: Well, I know that  
8     there's a landscaping plan, and keep it in mind  
9     that the plant will be located in a industrial  
10    area, so I'm not sure of any criteria for fixing  
11    the parks or any of that. I would suggest that  
12    you contact your local representative and have him  
13    do those types.

14            But in terms of visual for the project  
15    there is a landscaping plan where -- at least from  
16    what I see -- they have trees and etc. around the  
17    plant to help with some of the visual blight of  
18    the facility.

19            I don't know if I'd call it blight, but  
20    there is a landscaping plant, and if someone from  
21    the Applicant side want to add to that, you can.

22            MR. PUENTES: And actually it is kind of  
23    close to the --

24            COMMISSIONER PERNELL: Perhaps we can do  
25    this, because we're getting ready to take a break,

1 and if you guys can talk to him about the plan,  
2 maybe show him a picture, and that'll help me  
3 leave the podium for a minute.

4 MR. PUENTES: And I'll also let them  
5 work on another question, please, and I'll just  
6 throw that out right now?

7 COMMISSIONER PERNELL: You can throw it  
8 out, but if you would get with them offline then.

9 MR. PUENTES: What kind of employment  
10 opportunities were they going to offer, say, some  
11 of the residents of Romoland -- in particular  
12 entry-level -- and maybe some kind of application  
13 program for qualified applicants to have. like, a  
14 jump on say, the first hirings and stuff for  
15 whatever openings they're going to have at the  
16 plant.

17 COMMISSIONER PERNELL: All right. Mr.  
18 Rubenstein, can you identify someone that can talk  
19 to the residents about the future employment as  
20 well as his other question on the landscaping?

21 MR. RUBENSTEIN: Yes, we'll do that.

22 COMMISSIONER PERNELL: Okay, with that  
23 -- thank you very much for waiting by the way.

24 HEARING OFFICER WILLIS: Okay. If there  
25 aren't any other comments on air quality then

1 let's close the record. And we will take, let's  
2 try a ten minute break and let's try to keep it at  
3 ten minutes, and then we'll try and finish up.

4 COMMISSIONER PERNELL: And then we have  
5 one more section. I think we can get through it  
6 this this evening, or tonight. So we're off the  
7 record.

8 (Off the record.)

9 COMMISSIONER PERNELL: Back on the  
10 record. Ms. Willis?

11 HEARING OFFICER WILLIS: Okay. At this  
12 time we're going to move on to public health, and  
13 I believe staff is going to call their witness  
14 first?

15 MR. KRAMER: Yes. Dr. Greenberg has  
16 already been sworn. Can we stipulate to his  
17 qualifications on public health?

18 (laughter)

19 COMMISSIONER PERNELL: We learned our  
20 lesson earlier.

21 MR. KRAMER: Okay. Dr. Greenberg, this  
22 subject area is not in dispute among the parties,  
23 but for the benefit of the public and community  
24 we'd like you to summarize your testimony briefly,  
25 if you could?

1           MR. GREENBERG: I'll try and keep it to  
2 under ten minutes. Staff's expert, Gary  
3 Rubenstein, gave a very eloquent and accurate  
4 summary of the public health testimony that was  
5 prepared, and I won't reiterate that, other than  
6 to state that staff conducted our own review and  
7 evaluation and concurs with the Applicant's  
8 experts testimony that the health risks are below  
9 a level of significance.

10           What staff does is looks at the release  
11 to the atmosphere of toxic air contaminants from  
12 various sources at the facility. Now the  
13 Committee is aware, but for the benefit of the  
14 public who are present tonight, the reason that  
15 there is a difference or a differentiation between  
16 air quality as an issue and public health as an  
17 issue is not due to the fact that they don't all  
18 impact on public health -- because they do --  
19 but because of the state and federal regulatory  
20 approach to what we call criteria pollutants.

21           These are pollutants for which there are  
22 national and state air quality standards, and  
23 those are addressed in the air quality section.  
24 And for what we call the non-criteria pollutants,  
25 the toxic air contaminants which are addressed in

1 the public health section, for which there are no  
2 air quality standards but instead a human health  
3 risk assessment must be performed to address  
4 additively, in an additive manner, all the toxic  
5 air contaminants and the risk of cancer and the  
6 hazard of non-cancer adverse health risk impacts  
7 must be below a level of significance before the  
8 facility can be permitted.

9           So it's because of the state and federal  
10 regulatory apparatus that staff address these in  
11 separate matters.

12           If you turn to staff's testimony in the  
13 public health section on page 5.7-13, looking at  
14 public health table two, the hazards and the risk  
15 due to the operation of the facility, you'll see  
16 the summary where staff has indicated for acute  
17 non-cancer impacts, for chronic non-cancer impacts  
18 -- and these non-cancer impacts could be adverse  
19 impacts on the respiratory system or the heart or  
20 the liver -- that the hazard index, which is a  
21 measure of the airborne concentrations and hence  
22 exposure to a person, are well below the level of  
23 significance.

24           And the maximum theoretical individual  
25 cancer risk is also well below the significance

1 level. These hazard indices and individual cancer  
2 risks are also considered to be very conservative,  
3 that is health protective in nature, because they  
4 assume that an individual would live 70 years at  
5 the spot predicted -- the spot or location -- of  
6 predicted maximum impact of the facility.

7           And this location is a few miles, or  
8 several miles, south of the project, on the side  
9 of one of the hills or mountains in the area. To  
10 do that is consistent with state and federal risk  
11 assessment guidelines and allows us to state that  
12 any other individual located at any other  
13 location, including children at the school or a  
14 person living 600 or 800 feet south of the  
15 project, would have a risk or a hazard even less  
16 than depicted in table two.

17           That means that because the risk of  
18 cancer and the hazard of non-cancer diseases is  
19 less than the level of significance at the point  
20 of maximum impact, it would be even lower for any  
21 person living in the community, or for an  
22 individual working in a community, or for a  
23 sensitive receptor such as a young child attending  
24 school.

25           That way staff can state with great

1 confidence that there will not be significant  
2 impacts to public health as a result of emissions  
3 during the operations.

4 Staff also looked at impacts during  
5 construction. One of the concerns that staff has  
6 is due to the emissions of particulates during the  
7 construction phase. We've already discussed the  
8 reasons why there is the recommendation by staff,  
9 the air quality staff, for a PM-10 mitigation  
10 monitoring program.

11 Because of the sensitive nature of  
12 children to the effects of air pollutants, and the  
13 ability of particulate matter to exacerbate  
14 childhood asthma, and the ability of particulate  
15 matter that contain hazardous air pollutants or  
16 toxic air contaminants, such as diesel exhaust, to  
17 actually cause asthma, staff looked at this  
18 particular location and considered the distance of  
19 the project site to the school.

20 And that's why I support the  
21 recommendation for mitigation monitoring of PM-10  
22 mitigation steps as an added measure and a viable  
23 and realistic measure to ensure that the children  
24 at the school are indeed protected from PM-10  
25 emissions during construction activities.

1           I think that this is particularly  
2 important when you review the fact that I have  
3 worked for the California Energy Commission since  
4 1993 on 38 different power plant siting projects,  
5 and staff has made the recommendation on only five  
6 of those for this type of monitoring. That's five  
7 out of 38.

8           For the unnamed project, the East  
9 Altamount project, there is a school that's one  
10 mile away and I did not make a recommendation for  
11 PM-10 mitigation monitoring at that location. So  
12 there are specific site considerations that lend  
13 itself to supporting the need for that type of  
14 monitoring.

15           With that monitoring, and with -- oh,  
16 I'd like to bring up one other thing. There is  
17 another source of potential impacts to human  
18 health that was evaluated ,and that is the cooling  
19 tower. There is a low yet definite possibility  
20 that the bacteria known as Legionella could grow  
21 in a cooling tower.

22           Towards that, in order to reduce the  
23 likelihood to a level of insignificance that  
24 Legionella could grow and then be dispersed either  
25 onsite or offsite such that onsite workers and the

1 offsite public could be exposed to the Legionella  
2 bacteria, staff has proposed condition of  
3 certification public health one that would require  
4 a biocide use and Legionella monitoring program.

5           This program would be consistent either  
6 with -- or should be consistent -- either with CEC  
7 staff guidelines or the Cooling Technology  
8 Institute guidelines, both of which I believe the  
9 Applicant has in their possession and has  
10 reviewed. The monitoring program would be  
11 reviewed and approved by the CPM.

12           To conclude, then, the health risk  
13 assessment prepared by the Applicant demonstrating  
14 that emissions during operations from all sources  
15 of emitting, including the stack and even  
16 including the diesel operated fire water pump --  
17 that's an emergency pump that has to be tested on  
18 a certain basis each year -- so even including  
19 those emissions the Applicant's health risk  
20 assessment has demonstrated that the project will  
21 pose an insignificant risk to the public.

22           With staff's proposed mitigation of  
23 condition of certification public health one we  
24 believe the risk of the cooling tower causing or  
25 releasing Legionella, and therefore potentially

1 causing disease either to onsite workers or  
2 offsite public, would also be reduced to a level  
3 of insignificance.

4 HEARING OFFICER WILLIS: Does that  
5 conclude your testimony?

6 MR. GREENBERG: Yes.

7 COMMISSIONER PERNELL: Thank you.

8 HEARING OFFICER WILLIS: Mr. Wheatland,  
9 do you have any cross-examination?

10 MR. WHEATLAND: No, we don't.

11 HEARING OFFICER WILLIS: Staff, would  
12 you like to move your documents into the record?

13 MR. KRAMER: Yes, the public health  
14 portions of Exhibit 67 and 68.

15 HEARING OFFICER WILLIS: Any objections?

16 MR. WHEATLAND: None.

17 HEARING OFFICER WILLIS: So moved.

18 MR. KRAMER: I'd just like to note for  
19 the record, and perhaps as a heads up to the  
20 Applicant, there's some discussions among staff  
21 about requesting that the Committee make the  
22 public health condition a precedential condition.

23 In other words make the decision  
24 precedential as to just that condition. If we  
25 decide to make that request we'll probably make it

1 in our opening brief.

2 MR. WHEATLAND: Just as a matter of  
3 procedure, it's my understanding that that sort of  
4 request would generally come after the Commission  
5 had made a final decision. That then, staff --  
6 after the full Commission has decided something --  
7 can make up, or the Applicant for that matter  
8 could ask that some or all of it be made a  
9 precedent. With that comment, I don't know what  
10 else to say.

11 MR. KRAMER: Yes, I just wanted to offer  
12 it, so you'd know in advance.

13 MR. WHEATLAND: Well, I appreciate the  
14 heads up.

15 HEARING OFFICER WILLIS: Will you be  
16 drawing other items into the record for public  
17 health?

18 MR. KRAMER: Yes, just those two.

19 HEARING OFFICER WILLIS: Are there any  
20 other comments on public health? If you could,  
21 please, state your name?

22 MS. PUENTES: Melinda Puentes, 26851  
23 Dawson Road, Romoland. I just want to ask if any  
24 of you have lived next to a power plant, or if you  
25 do? I didn't think so.

1           So you can't guarantee that myself or my  
2 family, basically from what I've heard you say is  
3 that you can't guarantee that I'm not going to get  
4 cancer from the toxins being placed in the air  
5 from this plant?

6           MR. GREENBERG: First of all, let me  
7 answer your first question about living near a  
8 power plant.

9           MS. PUENTES: Very close. As close as  
10 my husband and I are going to be living.

11          MR. GREENBERG: Whether or not I live  
12 close to a power plant, or might in the near  
13 future because there is one that has been in the  
14 headlines of my local county newspaper --

15          MS. PUENTES: I'm sure you would have  
16 the opportunity to move, I'm sure you could afford  
17 to move.

18          MR. GREENBERG: If I may continue?

19          MS. PUENTES: Okay.

20          MR. GREENBERG: Whether or not I do or  
21 don't quite frankly should not influence your  
22 decision and your information. You should base  
23 your decision on information that you receive. I  
24 have specialized training, and I don't expect that  
25 everybody is a toxicologist and has that type of

1 experience and training.

2           And so, what I would or would not do for  
3 my family really shouldn't influence you. If you  
4 want my answer after that caveat I'd be happy to  
5 give you my honest answer as to whether or not it  
6 would bother me to live that close to a power  
7 plant.

8           But in all honesty, I would encourage  
9 you to make your own decision, not on what I would  
10 do personally.

11           MS. PUENTES: And I have made my  
12 decision, and I really would rather not have the  
13 power plant near my home.

14           MR. GREENBERG: Okay. To answer your  
15 second question, about guarantees that you won't  
16 get cancer. I think you understand that nobody  
17 can guarantee that we're not going to get hit by  
18 lightning tonight, or that anything can or cannot  
19 injure you.

20           However, we do talk about what we call a  
21 risk, which is essentially a chance or a  
22 probability, and these probabilities of getting  
23 cancer or not getting cancer are indeed based upon  
24 very sound scientific principles.

25           We're not just rolling the dice here,

1 but rather we are looking at the cause and effect  
2 relationship between the toxic air contaminants  
3 that are emitted from the stack, and what your  
4 exposure can be.

5           The EPA-approved air dispersion models  
6 tend to over-estimate your exposure to what would  
7 come out of the power plant. The cancer potency  
8 values tend to be what we call on the high side.  
9 In other words, they're not an average value, but  
10 rather they're an upper-bound value. Your  
11 exposure duration, how long you'd be exposed to  
12 these emitted substances, are also on the upper  
13 end.

14           When you add all those upper end values  
15 together that gives me a great deal of information  
16 and a great deal of confidence to be able to say  
17 to you that you have less of a chance -- let's say  
18 this, you have a greater chance from driving your  
19 automobile and inhaling the fumes that spews out  
20 from its tailpipe than you would from what's  
21 coming out of the power plant.

22           The reason for that is because you are  
23 closer to the source, the tailpipe is right at the  
24 ground. And the automobile exhaust isn't  
25 dispersed as much as is the contaminants coming

1 out of the stack get blown away by the wind and  
2 they're dispersed to the point that we couldn't  
3 even measure, as scientists, as analytical  
4 chemists, we couldn't even measure the  
5 concentration of contaminants that would come out  
6 of the stack and be at your house.

7 We could measure the concentration that  
8 comes out of your automobile that would be at your  
9 house. And so if that's helpful in any way, if  
10 that can reassure you in any way, then that's my  
11 explanation.

12 MS. PUENTES: Well, thanks for your  
13 insight, it doesn't reassure me, but thank you.

14 COMMISSIONER PERNELL: Excuse me, ma'am,  
15 are you -- since you're on the record, are you in  
16 favor or opposed?

17 MS. PUENTES: I am opposed.

18 COMMISSIONER PERNELL: Okay. Thank you.

19 HEARING OFFICER WILLIS: Any other  
20 comments? Okay -- on public health? Okay.

21 MR. LUNSTRUM: Here I am again. My name  
22 is Ralph Lunstrum, I live in Homeland, been there  
23 42 years. For Calpine, you're hearing this, and  
24 we have this here contaminant possibility, what  
25 was it, the bugs in the water in that cooling

1 tower?

2 MR. GREENBERG: Legionella. It's a  
3 possibility, however very small.

4 MR. LUNSTRUM: Just for Calpine's  
5 benefit, it probably concerns nobody else. But I  
6 can tell you of some water, a water machine that  
7 is made by a man in New York state. But that  
8 water can take care of Legionella. And that's all  
9 I gotta say on that. Thank you.

10 COMMISSIONER PERNELL: Thank you, sir.

11 HEARING OFFICER WILLIS: Thank you. I  
12 think with that we'll close the topic of public  
13 health.

14 MR. WHEATLAND: Oh, I'm sorry, but I  
15 believe you'll need to just briefly introduce the  
16 staff Exhibits on public health?

17 HEARING OFFICER WILLIS: I thought we  
18 just did that?

19 MR. WHEATLAND: I'm sorry, the  
20 Applicant's Exhibits, I'm sorry.

21 HEARING OFFICER WILLIS: Oh, I'm sorry,  
22 we didn't do that. Okay.

23 MR. WHEATLAND: We can do it in one  
24 minute.

25 HEARING OFFICER WILLIS: No, that's

1 fine, I'm sorry. We've reopened that record, and  
2 can hear you submit.

3 MR. WHEATLAND: Just very briefly. Mr.  
4 Rubinstein, as one of the witnesses for the  
5 Applicant on the subject of public health, are you  
6 sponsoring Chapter 5.2 of Exhibit Two and the  
7 other documents referenced therein?

8 MR. RUBENSTEIN: Yes, I am.

9 MR. WHEATLAND: And Dr. Greenberg has  
10 testified that there would not be a significant  
11 impact to public health as a result of the  
12 construction and operation of the Inland Empire  
13 Energy Center. Do you agree with that statement?

14 MR. RUBENSTEIN: Yes, I do.

15 MR. WHEATLAND: Dr. Greenberg also  
16 cleverly inserted further discussion on the PM-10  
17 monitoring issue that I thought had been closed,  
18 into his public health testimony. Can you comment  
19 briefly on that please?

20 MR. RUBENSTEIN: In 30 seconds. I did  
21 not find any reference to that in his written  
22 testimony. The only reference I found to the  
23 fugitive dust issue in his testimony is on page  
24 5.7-9, in which he refers to the extensive  
25 fugitive dust control measures required by south

1 coast district rule 403, and I believe those are  
2 adequate as well. That concludes my comment.

3 HEARING OFFICER WILLIS: Staff, do you  
4 have any cross-examination?

5 MR. KRAMER: No.

6 MR. WHEATLAND: I'd like to move into  
7 evidence Chapter 5-2 of Exhibit Two, and the other  
8 documents referenced therein.

9 HEARING OFFICER WILLIS: Are there any  
10 objections?

11 MR. KRAMER: No.

12 HEARING OFFICER WILLIS: Okay, now I  
13 think with that we'll close public health. And  
14 we're going to try and go quickly through the list  
15 of topics to be submitted by declaration, with the  
16 addition of Mitchell Resources.

17 We'll start with alternatives. And I  
18 think what we'll do is we'll start with Applicant,  
19 and maybe you can identify your Exhibits and we'll  
20 move them into the record.

21 MR. WHEATLAND: Since we are dealing  
22 with this by declaration I haven't identified the  
23 specific Exhibits that are associated with each  
24 subject area. We have identified the declarants,  
25 and what I would propose to do for all of the

1 undisputed areas is to move the testimony in  
2 wholesale as opposed to item by item, if that  
3 would be --

4 HEARING OFFICER WILLIS: So you mean  
5 take every topic on the list, go through each  
6 topic and then move it all in as one?

7 MR. WHEATLAND: Yes, please, if we could  
8 do so. We have no objection to the introduction  
9 of any Exhibits that are on the tentative Exhibit  
10 List, which would include all of the staff's  
11 Exhibits on these undisputed areas, if they feel  
12 similarly that we could do this as a single  
13 function.

14 HEARING OFFICER WILLIS: That'll  
15 certainly move it faster. Do you have any  
16 objections?

17 MR. KRAMER: No.

18 HEARING OFFICER WILLIS: I do want to  
19 add that, while we were at the break we did mark  
20 one more Exhibit, the determination of no hazard  
21 to air navigation dated 6-15-2003, and that's been  
22 marked as Exhibit 77.

23 Okay, so at this time would you like to  
24 go ahead and identify and all of the subject  
25 matters?

1 MR. WHEATLAND: Yes, if I could.

2 HEARING OFFICER WILLIS: And please add  
3 visual?

4 MR. WHEATLAND: Yes. In the area of  
5 alternatives, the Applicant's witnesses are Jim  
6 McLucas and Jenifer Morris. In the area of  
7 biological resources, the Applicant's witnesses  
8 are set forth in the list that was prepared by the  
9 Committee.

10 On this subject we have a very brief  
11 statement of 30 seconds that we'd like to make,  
12 reflecting one of our understandings. It doesn't  
13 in any way change or affect the conditions, but  
14 we'd like to add the statement just to clarify the  
15 record, and we've previously advised the staff of  
16 our interest in making the statement.

17 HEARING OFFICER WILLIS: And is there  
18 any objection from the staff?

19 MR. KRAMER: I've heard several  
20 different things, so I'm not sure which one he's  
21 referring to. If he's going to repeat it, then  
22 I'll let you know.

23 MR. WHEATLAND: All right, Jenifer, if  
24 you could please?

25 HEARING OFFICER WILLIS: And have you

1     been sworn in?

2                   MS. MORRIS:  I have not.

3                   HEARING OFFICER WILLIS:  Okay.  Why  
4     don't we do that real fast?

5     Whereupon,

6                   JENIFER MORRIS

7     was called as a witness herein, and after first  
8     having been duly sworn, was examined and testified  
9     as follows:

10                  MR. WHEATLAND:  State your name for the  
11     record, please?

12                  MS. MORRIS:  My name is Jenifer Morris.  
13     And our statement in biology is, in the biology  
14     conditions of certification staff and Applicant  
15     have agreed to shorten some of the time periods  
16     originally proposed in the FSA for review of  
17     compliance documents.

18                  As stated in staff's supplemental  
19     testimony, these changes were made with the  
20     understanding that any underlying requirement that  
21     the approval be granted before a particular action  
22     can take place, i.e., site mobilization,  
23     construction or operation, is unaffected by the  
24     change.

25                  The parties also understand that, as is

1 currently the practice, the staff will use best  
2 efforts to complete compliance procedures in the  
3 time frames specified in the decision. Indeed,  
4 staff often completes its review and approval long  
5 before the specified time limits.

6           However, in the event that a deadline is  
7 not met, despite the best efforts of all parties  
8 involved, the Applicant bears the risk that the  
9 review and approval cannot be accomplished within  
10 the specified time period, especially where the  
11 review process requires resubmittal of the  
12 required information.

13           MR. KRAMER: I think that would go for  
14 all the topic areas in our mind, frankly.

15           MR. WHEATLAND: Yes, and I was just  
16 going to say that that would apply to all the  
17 places where we've made that change.

18           MR. KRAMER: I think we have a specific  
19 statement in visual about the treatment of some of  
20 the equipment.

21           MR. WHEATLAND: Yes.

22           HEARING OFFICER WILLIS: So there's no  
23 objection to that statement?

24           MR. KRAMER: No, just make it broader.

25           HEARING OFFICER WILLIS: Okay.

1           MR. WHEATLAND: Thank you. In the area  
2 of cultural resources our witness is Doug Davy.  
3 In the area of facility design our witness is Jim  
4 McLucas. In the area of geology and paleo --  
5 which wasn't on the Committee's list and I think  
6 we should indicate both geology and paleo -- our  
7 witness is Thomas Stewart.

8           In the area of -- oh, and also in the  
9 area of land use our witness is Jenifer Morris.  
10 In the area of noise our witnesses are Tom Adams  
11 and Jim McLucas.

12           And there I would just like to state for  
13 the record, that while the Applicant staff are in  
14 complete agreement with respect to the conditions  
15 of certification we differed in the methodologies  
16 by which we reached the result that there would  
17 not be a significant noise impact.

18           So we've agreed to disagree on the  
19 methodology, but we both reached the same ultimate  
20 conclusion, and we concur on the conditions of  
21 certification.

22           In the area of power plant efficiency  
23 our witness is Jim McLucas, as well as power plant  
24 reliability. In socio-economics our witnesses are  
25 Doug Davy and Jenifer Morris. In traffic and

1 transportation our witnesses are Doug Davy, Jim  
2 McLucas and Jenifer Morris.

3 In transmission line safety and nuisance  
4 our witnesses are Jim McLucas, Alan Roth, and Ali  
5 Amirali. In transmission system engineering our  
6 witnesses are Jim McLucas, Alan Roth, and Ali  
7 Amirali. In waste management our witness is Jim  
8 McLucas. In water and soils are witnesses are  
9 Kris Helm and Jim McLucas. And Jim McLucas is our  
10 witness in worker safety and fire.

11 In addition, visual, our witnesses are  
12 Tom Priestly, Jim McLucas and Ian Davidson was  
13 identified as a witness, but we have not provided  
14 a declaration for him.

15 So that, then, is a complete summary of  
16 the Applicant showing on all the undisputed areas.  
17 i'd also like to add, just for the record, in the  
18 area of visual resources, that there is a  
19 condition that requires the submission of a visual  
20 simulation, that's condition vis 3. It requires a  
21 simulation of the project of landscaping at five  
22 years after start of construction.

23 And while the Applicant has agreed to  
24 that as a condition we understand that that  
25 condition would not prohibit us from submitting

1 simulations depicting additional time periods if  
2 the project owners believe that such additional  
3 information would be relevant to review by the  
4 staff.

5 We'll certainly provide the five year  
6 requirement, but we'd ask leave to submit  
7 additional information, if that's appropriate.

8 HEARING OFFICER WILLIS: Staff, is that  
9 your understanding?

10 MR. KRAMER: Well, I guess the reply  
11 understanding is that it's staff's position that  
12 only the results at five years matter and anything  
13 beyond that is irrelevant because that's what we  
14 consider to be a period of temporary disturbance.

15 So what we don't want to see is this  
16 interpreted to allow the standard to creep beyond  
17 five years, at which we require adequate  
18 mitigation.

19 HEARING OFFICER WILLIS: Thank you.  
20 Does that identify all of your witnesses?

21 MR. WHEATLAND: Yes, it does. Thank you  
22 very much.

23 HEARING OFFICER WILLIS: At this point,  
24 would you like to move the remaining portions of  
25 your documents?

1           MR. WHEATLAND: Yes, for those items  
2 that are on the tentative Exhibit list that have  
3 not been previously introduced into evidence as  
4 Applicant's witnesses, I'd like to move then into  
5 evidence at this time.

6           HEARING OFFICER WILLIS: Are there any  
7 objections?

8           MR. KRAMER: No.

9           HEARING OFFICER WILLIS: So moved.  
10 Staff?

11           MR. KRAMER: In alternatives our witness  
12 is Sue Walker. In biological resources Shari  
13 Koslowsky and Natasha Nelson. Cultural resources  
14 Roger Mason and Gary Reinoehl. Facility design is  
15 Brian Payne. Geology and paleontology is Dale  
16 Hunter. Land use is Negar Vahidi. Noise is Ron  
17 Brown.

18           Power plant efficiency, Brian Payne.  
19 Power plant reliability is Brian Payne as well.  
20 Socioeconomics, our witness is Sue Walker.  
21 Traffic and transportation, Paul Taylor.  
22 Transmission line safety, Obed Obemelam. And  
23 transmission systems engineering, Mark Hesters and  
24 Al McCuen. Dr. Alvin Greenberg for waste  
25 management. Water and soils is John Kessler.

1           Worker safety and fire protection is Dr.  
2 Alvin Greenberg and Rick Tyler. And finally, our  
3 visual witnesses are Michael Clayton and Will  
4 Walters. We'd move into evidence those portions  
5 of Exhibits 67, 68 and where appropriate, 70.

6           And I believe we've moved in all the  
7 other Exhibits we had, which were basically the  
8 pieces of the final determination of compliance.  
9 I think that covers it all.

10           HEARING OFFICER WILLIS: Are there any  
11 objections?

12           MR. WHEATLAND: No objections.

13           HEARING OFFICER WILLIS: so moved. I  
14 just want to clarify, on Exhibit 70 -- I believe  
15 that's the latest finding by staff. Just to make  
16 sure Applicant was in agreement with the changes  
17 that were made on those conditions?

18           MR. WHEATLAND: Yes we are. And I  
19 think, if we haven't done so already, I'd like to  
20 move into evidence Exhibit 77, the last one we  
21 just identified.

22           HEARING OFFICER WILLIS: Is there any  
23 final public comment on this project before we  
24 close the hearing? Okay, at this time we've  
25 established a briefing schedule and an evidentiary

1 hearing order.

2 We would like to close the record on all  
3 topics, and that included the ones that we had  
4 oral testimony on earlier tonight and all the  
5 topics that have been taken in by declaration.

6 Opening briefs will be due on August  
7 22nd. We appreciate the parties focusing on the  
8 legal issues that we believe are surrounding the  
9 area of identification of the reclaimed trading  
10 credits.

11 Also, on staff's condition air quality  
12 SC5, and any other areas that you think would be  
13 important, but primarily we are very much  
14 interested in the air quality, and also the  
15 compliance issues.

16 MR. KRAMER: And we'll propose some  
17 language for AQSC6 as well.

18 HEARING OFFICER WILLIS: And that would  
19 be most helpful, otherwise the Committee will  
20 determine the language ourselves. Reply briefs  
21 are going to be due on September 3rd, if that date  
22 works for everyone. And are there any comments or  
23 other questions?

24 COMMISSIONER PERNELL: I'd just like to  
25 thank, on behalf of the Committee thank everyone

1 who stayed here and stuck it out who didn't have  
2 to, and those that had to I want to thank you for  
3 your cooperation and certainly thank our Reporter.

4           And thank whomever provided the  
5 refreshments. So with that, and if there's  
6 nothing else to come before this Committee -- the  
7 Committee seeing that there is no other business,  
8 this Committee is adjourned. We're off the  
9 record.

10 (Off the record.)

11 (Whereupon, at 9:56 p.m., the hearing was  
12 adjourned)

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## CERTIFICATE OF REPORTER

I, James Ramos, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Resources Conservation and Development Commission; 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 meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of August, 2003.

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:

Application for Certification for )  
Inland Empire Energy Center by ) Docket No.  
Inland Empire Energy Center, ) 01-AFC-17  
(IEEC) LLC )  
)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

EASTERN MUNICIPAL WATER DISTRICT

BOARD ROOM

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PERRIS, CALIFORNIA 92570

WEDNESDAY, JULY 30, 2003

1:05 p.m.

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James Ramos

Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Commissioner Robert Pernell, Presiding Member

HEARING OFFICER AND ADVISORS PRESENT

Kerry Willis, Hearing Officer

E. V. (Al) Garcia, Advisor to Commissioner Pernell

Michael Smith, Advisor to Commissioner Boyd

STAFF AND CONSULTANTS PRESENT

Paul Kramer, Staff Counsel

James Bartridge, Siting Project Manager

STAFF WITNESSES

Alvin Greenberg, Hazardous Materials expert

Brewster Birdsall, Aspen Environmental Group

PUBLIC ADVISOR

Kenneth Graff, Riverside County Board of

Supervisors (representing Public Advisor)

APPLICANT

Greggory L. Wheatland, Esq.

Christopher Ellison, Esq.

Ellison, Schneider & Harris, L.L.P.

Jim McLucas, P.E.

Michael A. Hatfield

Calpine

APPLICANT WITNESSES

Gary S. Rubinstein, Sierra Research

Jenifer Morris, JJR Resources, LLC

INTERVENORS

Glen E. Daniels, President,

Romoland Community Council

AGENCIES

John Yee

Danny Luong

South Coast Air Quality Management District

PUBLIC COMMENT

Bradley Hudson, Riverside County

George Rackstrau, resident of Romoland

John Puentes, resident of Romoland

Nancy Dean, resident of Romoland

Bob Gibbons, Harvest Valley Community Council

Ralph Lunstrum, Harvest Valley Community Council

Melinda Puentes, resident of Romoland

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

2 1:05 p.m.

3 COMMISSIONER PERNELL: Good afternoon,  
4 I'd like to welcome everyone. Let me just ask,  
5 are the Applicants ready?

6 MR. MCLUCAS: Yes, we are.

7 COMMISSIONER PERNELL: Staff ready?

8 HEARING OFFICER WILLIS: Yes.

9 COMMISSIONER PERNELL: Any Intervenors?  
10 Okay, be ready to speak. Okay. This is the  
11 Committee's formal Evidentiary Hearing on the  
12 Inland Empire Energy Center, LLC's Application for  
13 Certification of the Inland Empire Energy Center.

14 We will first introduce the parties,  
15 starting with the Committee and the Applicant,  
16 Intervenors, Agencies, and we will hear from our  
17 Public Advisor or her representative.

18 Starting with the Committee, my name is  
19 Commissioner Robert Pernel. I'm the Presiding  
20 Member of the Committee. Commissioner Jim Boyd is  
21 the Associate Member and couldn't be in attendance  
22 today. However, his Advisor, to my far right, is  
23 Michael Smith, who is with us today representing  
24 Commissioner Boyd.

25 Al Garcia, seated to my left, is my

1 Advisor, and Kerry Willis is our Hearing Officer  
2 for the Committee. At this time I'd like the  
3 Applicant to introduce himself and his team.

4 MR. WHEATLAND: Good Afternoon. My name  
5 is Gregg Wheatland, and I am one of the attorneys  
6 for the Applicant. And I would like to, in a  
7 moment, ask the others at this table to introduce  
8 themselves.

9 We also will have one or two additional  
10 witnesses who will introduce themselves later  
11 today at the appropriate time in the hearing, but  
12 for now I'd like those at the table to introduce  
13 themselves please.

14 MR. ELLISON: Good Afternoon, my name is  
15 Christopher Ellison. I'm also an attorney  
16 representing the Applicant in this proceeding.

17 MR. MCLUCAS: I'm Jim McLucas, engineer  
18 with Calpine.

19 MS. MORRIS: I'm Jenifer Morris, the  
20 Applicant's Environmental Project Manager.

21 MR. HATFIELD: My name is Mike Hatfield,  
22 and I'm the Development Manager for the project,  
23 with Calpine.

24 COMMISSIONER PERNELL: Okay, welcome Mr.  
25 Wheatland and your team. Staff, please.

1           MR. KRAMER: Good afternoon, I'm Paul  
2 Kramer, the Staff Counsel for this project. With  
3 me is Jim Bartridge, the Project Manager, and we  
4 have several witnesses here today that we will  
5 introduce later.

6           COMMISSIONER PERNELL: All right. We  
7 want to welcome you, Mr. Kramer, and your team.  
8 Now, Intervenors.

9           MR. DANIELS: I'm Glen Daniels,  
10 President of the Romoland Community Council.

11          COMMISSIONER PERNELL: Okay, is there --

12          MR. DANIELS: I don't think we're  
13 formally an Intervenor, we may have misunderstood  
14 what that means. I might add, though, that a  
15 letter was sent to this Commission, and it's in  
16 doubt, so that's what I want to clarify. It was  
17 sent last January, a year ago.

18          COMMISSIONER PERNELL: Okay. We will  
19 clear that up before we leave today. Okay, are  
20 there any other Intervenors? Anyone from the  
21 school district? Agencies? Please, into the  
22 mike.

23          MR. YEE: Good afternoon, my name is  
24 John Yee, with the South Coast Air Quality  
25 Management District. Today I have with me Danny

1 Luong, and he's an Air Quality Analysis  
2 Supervisor, and Li Chen, one of my engineers.

3 COMMISSIONER PERNELL: All right.  
4 Welcome, South Coast, and your team, John. Our  
5 Public Advisor is not here at this time. However,  
6 anyone who -- I'm sorry, you represent the Public  
7 Advisor?

8 MR. GRAFF: Yes. Good afternoon, my  
9 name is Ken Graff. I'm a Legislative Assistant to  
10 County Supervisor Jim Venable, Riverside County  
11 Third District, in which district the plant is  
12 being proposed.

13 COMMISSIONER PERNELL: Okay. Are there  
14 any other, anyone representing public officials?  
15 Okay. The Public Advisor's office is being  
16 represented today by myself.

17 And I would just say if anyone wants to  
18 address the Committee please fill out a white card  
19 that Mr. Garcia has, and we will call you at the  
20 appropriate time to address the Committee.

21 And finally, from the Public Advisors --  
22 I'm wearing the Public Advisors hat here --  
23 members of the public may offer comments after the  
24 presentation of evidence on all the topics. So  
25 you don't have to wait until the end.

1           Once we get done with a topic, if you  
2 have some questions or want to make comments, you  
3 can do it at that time. Once the topics are  
4 closed, then the topics are closed. So, we don't  
5 want to go back and be redundant in that regard.

6           At this time, I would like to turn the  
7 hearing over to our Hearing Officer, Ms. Willis.

8           HEARING OFFICER WILLIS: Thank you. The  
9 purpose of this Hearing is to receive evidence,  
10 including sworn, written and oral testimony, as  
11 well as Exhibits, to establish the factual record  
12 necessary to reach a decision on this AFC.

13           This is a formal Evidentiary Hearing.  
14 Witnesses will testify under oath or affirmation,  
15 and are subject to cross-examination. The  
16 Reporter will administer the oath. Applicant and  
17 Staff have submitted sworn witness declarations  
18 for topics that are not in dispute.

19           We discussed these topics at the  
20 prehearing conference on June 24th, and based on  
21 the second prehearing statements filed by both  
22 parties on July 18th, 2003, the parties have  
23 agreed to waive cross-examination and oral  
24 testimony, and will submit testimony by  
25 declaration on the following areas that were

1 listed on the handout that starts with page two  
2 and three, starting with Alternatives and going  
3 through Worker Safety and Fire Protection.

4 A party sponsoring a witness shall  
5 briefly establish the witnesses' qualifications,  
6 and ask the witness to orally summarize his or her  
7 prepared testimony before requesting the testimony  
8 be moved into evidence. Relevant Exhibits may be  
9 offered into evidence at that time as well.

10 Multiple witnesses may testify as a  
11 panel if necessary, and I think we've listed Air  
12 Quality and Public Health together as a panel, and  
13 if that works for both parties then that usually  
14 works for the public.

15 At the conclusion of the Witnesses'  
16 direct testimony the Committee will provide the  
17 other parties who have so requested an opportunity  
18 for cross-examination, followed by redirect and  
19 recross-examination as appropriate. The Committee  
20 may also question the Witness.

21 At the conclusion of each topic area we  
22 will provide an opportunity for public comment on  
23 that topic. If there's any reason -- we had  
24 planned on taking the uncontested topics at the  
25 end.

1           If there's any member of the public who  
2 cannot stay until the end and would like to  
3 comment prior to that time, let us know early on  
4 and we'll make sure you have that opportunity  
5 before you need to leave.

6           We have distributed a tentative Exhibit  
7 List. There are copies in the middle on the back  
8 of that table. Please identify the Exhibits  
9 relevant to each topic as it is presented, and  
10 move the pertinent Exhibits into evidence as  
11 appropriate.

12           We will follow the schedule shown on the  
13 Evidentiary Hearing topic and Witness schedule,  
14 beginning with Project Description, and work our  
15 way through the remaining topics. At the end of  
16 oral testimony we will take the remaining topics  
17 by declaration.

18           We'll take periodic breaks, and probably  
19 a dinner break around 5:00 p.m. depending on how  
20 we're moving through the schedule. We will  
21 continue into this evening and return tomorrow if  
22 necessary.

23           We would like to remind the parties that  
24 the findings made in this case will be based  
25 wholly on the written and oral evidence presented

1 during these proceedings. We discourage  
2 discussion of agreements, positions advanced, or  
3 decisions made in other recent proceedings. None  
4 of these are precedential or binding in these  
5 proceedings.

6 And so, if there are any questions  
7 before we begin? So let's start with the  
8 Applicant, and they will be giving some testimony  
9 on project description. Mr. Wheatland?

10 MR. WHEATLAND: Thank you. May we go  
11 off the record for one moment please?

12 HEARING OFFICER WILLIS: Sure.  
13 (Off the record.)

14 HEARING OFFICER WILLIS: Back on the  
15 record.

16 MR. WHEATLAND: May we have Mr. McLucas  
17 sworn in as a witness please?  
18 Whereupon,

19 JIM MCLUCAS  
20 was called as a witness herein, and after first  
21 having been duly sworn, was examined and testified  
22 as follows:

23 MR. WHEATLAND: Would you please state  
24 your name for the record?

25 MR. MCLUCAS: My name is Jim McLucas.

1           MR. WHEATLAND: And do you have before  
2 you Chapter One of Exhibit Two, Project  
3 Description?

4           MR. MCLUCAS: Yes, I do.

5           MR. WHEATLAND: And for the purposes of  
6 your testimony on Project Description are you also  
7 sponsoring Sections 1, 2, 3, 4 and 6, of Exhibit  
8 One, which is the AFC?

9           MR. MCLUCAS: Yes, I am.

10          MR. WHEATLAND: And are you also  
11 sponsoring Exhibit 3, the Data Adequacy Supplement  
12 to the AFC?

13          MR. MCLUCAS: Yes, I am.

14          MR. WHEATLAND: Would you please briefly  
15 state your qualifications?

16          MR. MCLUCAS: I'm a registered  
17 Mechanical Engineer in California, 21 years of  
18 experience in the design of power generation  
19 facilities, water and wastewater treatment  
20 facilities.

21                 Currently I'm the Western Region and  
22 Canada Regional Engineering Manager for Calpine,  
23 and on this particular project functioned as the  
24 Project Engineer for the development.

25          MR. WHEATLAND: Thank you. Is the

1 testimony that you are sponsoring and the facts  
2 contained therein true to the best of your  
3 knowledge?

4 MR. MCLUCAS: Yes.

5 MR. WHEATLAND: And do the opinions in  
6 this testimony represent your best professional  
7 judgment?

8 MR. MCLUCAS: Yes.

9 MR. WHEATLAND: And do you adopt the  
10 documents that we previously described as your  
11 testimony in your proceeding?

12 MR. MCLUCAS: Yes.

13 MR. WHEATLAND: At this time, then, Mr.  
14 McLucas, could you please provide for the  
15 Committee and for the audience a description of  
16 the project?

17 MR. MCLUCAS: Okay. I'd like to do that  
18 in the form of a Powerpoint presentation, just to  
19 give an overall picture of the project for the  
20 benefit of everybody here. And much of this was  
21 discussed during the informational hearing at the  
22 very beginning of the process, but I realize that  
23 not everybody was in attendance.

24 This first slide is the main cycle  
25 diagram --

1           COMMISSIONER PERNELL: Excuse me, can  
2 you -- that's a hand-held mike, can you just take  
3 it off of the stand and get it a little closer?  
4 Great.

5           MR. WHEATLAND: Oh, and before you  
6 begin, I think you have some hard copies of the  
7 presentation as well?

8           MR. MCLUCAS: Yes, I do. At what point  
9 would you like me to distribute those?

10          MR. WHEATLAND: I think if we could  
11 distribute those now, please.

12          MR. MCLUCAS: Okay.

13          MR. KRAMER: Does this need a new  
14 Exhibit number then?

15          MR. WHEATLAND: This is a hard copy of  
16 the slides that we'll be viewing here.

17          MR. KRAMER: Okay, but is this going to  
18 be entered into the record?

19          MR. WHEATLAND: If the Committee so  
20 desires.

21          MR. KRAMER: Okay, I'm just -- it's not  
22 on the list right now, though?

23          MR. WHEATLAND: No, it's not. It's not.  
24 We're just offering a hard copy for the ease of  
25 following the presentation, but we certainly can

1 identify it as an Exhibit if the Committee so  
2 desires.

3 HEARING OFFICER WILLIS: I don't think  
4 we need to.

5 COMMISSIONER PERNELL: All right, you  
6 may continue.

7 MR. MCLUCAS: Okay. This first diagram  
8 is the cycle diagram for the project. Starting in  
9 the upper left corner there is the combustion  
10 turbine. In this particular project we'll use  
11 two combustion turbines. One is shown in the  
12 figure there.

13 They're very much like an engine hanging  
14 off the wing of a jet, only much larger. They use  
15 clean natural gas, just like the fuel that's used  
16 for many of your homes for hot water and space  
17 heating.

18 In the far left hand there, air is  
19 coming in the top and is compressed, and the  
20 natural gas is entered and combusted, and then the  
21 hot, expanding gases then drive the power turbine,  
22 which is on the right hand of the machine there.  
23 And that in turn drives the shaft that turns the  
24 generator, and also the compressor.

25 The hot exhaust gases then exit the left

1 side there, and come into the heat recovery steam  
2 generators, or HRSG's or Hersigs, and those are  
3 the large boxy things that you'll see later on in  
4 a simulation.

5 In those, the hot exhaust gas, which is  
6 entering about 1,165 degrees, is used to generate  
7 steam at three pressures, recovering all the  
8 energy feasible out of that waste heat, and then  
9 exiting the stack is warm exhaust at approximately  
10 190 degrees.

11 Steam from the acute recovery steam  
12 generator then -- shown in the red line -- is then  
13 injected into the steam turbine. It's actually  
14 three different pressures that enters the steam  
15 turbine at three different points.

16 And, similar to the combustion turbine,  
17 that steam comes in at a high pressure, expands  
18 through the steam turbine, driving the shaft which  
19 then turns a second generator -- and a third  
20 generator in this case.

21 The steam then exhausting out of the  
22 steam turbine is discharged into a condenser, and  
23 it's exiting the steam turbine at sub-atmospheric  
24 pressure. And because of that the temperature is  
25 only about 85 degrees.

1           And then that condenser is a shell and  
2 tube heat exchanger, where the steam is on the  
3 shell side, and then there's water flowing through  
4 the tube side that is used to condense the steam  
5 back down to condensate.

6           And then you see the line leaving the  
7 top of the condenser is the condensed steam that  
8 is then recycled right back to the HRSG. So that  
9 flow is essentially an enclosed loop.

10           The heat from the condenser then is  
11 dissipated to the atmosphere through the cooling  
12 tower through an evaporative process. And the  
13 majority of the water makeup for the project is to  
14 replace that water that's lost to evaporation.

15           And then, because the water that's  
16 leaving the cooling tower is pure, it leaves  
17 behind the dissolved solids. And then to control  
18 the water chemistry a portion of the cooling tower  
19 flow needs to be discharged to control the  
20 dissolved solids.

21           Then the power generated from the  
22 combustion turbines is produced at 18 to 23  
23 kilovolts, and stepped up through transformers to  
24 500 kilovolts in the switchyard, and from there  
25 transmitted to the Southern California Edison

1 substation.

2           So, the major equipment. Two GE,  
3 General Electric, 7FB combustion turbine  
4 generators -- and those are the most current  
5 offering from GE in that size. And they're  
6 provided with dry low NOX, which is oxides of  
7 nitrogen combusters, which is the first stage of  
8 emissions control for this project.

9           Following that, the two heat recovery  
10 steam generators will be provided with duct  
11 burners, which is another place where natural gas  
12 is entered into the process. And those are used  
13 to provide peaking power, where they add  
14 additional heat to the exhaust gases to produce  
15 additional steam that can then make energy in the  
16 steam turbine.

17           Also in the heat recovery steam  
18 generators are two other components of the mission  
19 control system. And the first is a selective  
20 catalyst reduction system, and that's used to  
21 reduce the oxides of nitrogen.

22           And in that process ammonia is injected  
23 into the stream to react with the NOX. And then  
24 also there is an oxidation catalyst to reduce the  
25 carbon monoxide emissions. The cooling tower

1 proposed for this project is 14 cell, and again  
2 the 500 KV switchyard.

3 The generation capability for this  
4 project, it's nominally a 670 megawatt plant, and  
5 that's the peak output. At base load conditions,  
6 which is with no duct firing on an average ambient  
7 day, it's projected to put out 538 megawatts.

8 And at that 538 megawatts it comes in at  
9 an efficiency of about 51 percent, which is a heat  
10 rate of 6,700 BTU's per kilowatt hour on a higher  
11 heating value basis. The peak capacity, as I  
12 said, is 670 megawatts, and that is on a hot day,  
13 with 100 percent duct firing and combustion  
14 turbine power augmentation.

15 And that's another feature of peaking  
16 capacity, where steam is entered into the  
17 combustion turbine to produce additional energy  
18 out of the combustion turbine. And that steam is  
19 produced in part by the duct firing.

20 The incremental heat rate for the  
21 peaking capacity, which is the duct firing and  
22 power augmentation, is approximately 8,100 to  
23 9,000 BTU's per kilowatt hour on a higher heating  
24 value basis, and that's 38 to 42 percent  
25 efficient.

1           And so, while that's not as efficient as  
2 the baseload combined cycle capacity of the plant,  
3 it is more efficient than the comparable simple  
4 cycle combustion turbines which are typically used  
5 to provide peaking power in the state, which have  
6 an efficiency of 37 to 38 percent.

7           This next figure shows the vicinity of  
8 the project, and goes into a little bit as to why  
9 we located the project here. Typically, when we  
10 look to site these projects we look for locations  
11 where the power, water, gas and electricity  
12 infrastructure all, you know, cross one another or  
13 come very close. And this is another very prime  
14 site from that standpoint.

15           In the middle there you see the yellow  
16 boxes pointing to kind of a greenish area, that's  
17 the power plant site. It will occupy 35 acres of  
18 a 46 acre parcel, bounded by Antelope Road to the  
19 west, San Jacinto Road to the east, Southern  
20 California Edison's existing 500 KV transmission  
21 corridor to the south, and then an asphalt plant  
22 to the north -- which is a familiar landmark for  
23 most people in the Romoland area.

24           In addition, it's one of California's  
25 largest growing regions. Lots of homes being

1 built every day in this area, and because of that  
2 the electrical demand is increasing, so this goes  
3 along with our philosophy of trying to locate the  
4 generation close to where it's being used.

5           And in fact the Valley Substation --  
6 which is to the far right of the figure there --  
7 is a major substation for Southern California  
8 Edison and in demonstration of the growth that's  
9 going on here there's a large 115 KV load center  
10 that's just been recently added there.

11           So much of the power that's being  
12 generated from this plant will get consumed right  
13 through that 115 KV load center. Natural gas is  
14 nearby, it's in Menafee Road. There's several  
15 large natural gas transmission lines that are  
16 running north and south.

17           And then water supply is a real  
18 important aspect. We always try to first go with  
19 a water-cooled facility, and then once we've got  
20 that hurdle then we look for recycled water as our  
21 preferred source of water.

22           And Eastern Municipal Water District,  
23 which is the water supplier in the area, has one  
24 of the most mature recycled water systems that  
25 we've come across.

1           Wastewater disposal is another factor.  
2   And there is a sanitary sewer immediately adjacent  
3   to the site. There's non-reclaimable wastewater  
4   disposal through Eastern's system, which is, we  
5   can therefore avoid the need for an expensive ZLD  
6   process.

7           And then lastly some other factors is  
8   that it's a heavily zoned industrial area. That  
9   whole corridor, for the most part bounded by  
10  Efenac (sp) Road to the north and McLaughlin Road  
11  to the south, is zoned for heavy industrial.

12           This next figure shows Eastern Municipal  
13  Water District System in yellow, which is over 500  
14  square miles in area. They provide potable  
15  water -- both wholesale and resale -- recycled  
16  water, and raw water. And they dispose of  
17  sanitary wastewater and non-reclaimable high TDS  
18  wastewater.

19           Potable water in their system is  
20  provided by two large water treatment plant  
21  facilities that are treating surface water in  
22  addition to some groundwater supplies.

23           Recycled water is produced by five  
24  treatment plants throughout their system. And  
25  the pink lines there show the recycled water

1 network. And so all the backbone pipelines for  
2 their recycled water distribution system are  
3 already in place.

4 As part of this project the water that  
5 would go to the Inland Empire Energy Center would  
6 come primarily from the Perris Valley Regional  
7 Water Reclamation Facility, which is in the middle  
8 of the picture there, and then also from the  
9 north, the Moreno Valley plant, which is the far  
10 north green box there.

11 And at the Moreno Valley plant part of  
12 the project would involve adding a pump station  
13 there to boost the pressure of that recycled water  
14 to get it all the way down to the project site.  
15 And those facilities would be located within the  
16 existing treatment plant.

17 Raw water is another important aspect of  
18 this project in that Eastern has the Colorado  
19 River Aqueduct running right through their  
20 district here just to the south of Lake Perris and  
21 to the north of the Perris Water Treatment Plant,  
22 which is that blue shaded box.

23 And that's running east-west across  
24 their district. Raw water would be used in the  
25 event that recycled water is not available. And

1 based on predictions they're showing that there  
2 may be periods of time in the early years of the  
3 project when they would have to supplement with  
4 raw water.

5           And it would be drawn from an existing  
6 turnout, discharged into a new pump station that  
7 would then inject it into the recycled water  
8 system. So the recycled water structure would be  
9 used to convey the raw water towards the project  
10 site, although most of that water would get  
11 consumed before it would ever make it to the site.  
12 And that pump station would be constructed at  
13 their Perris water treatment plant.

14           Sanitary sewer -- as I said before --  
15 there's a large sanitary sewer trunk line just to  
16 the south of the site that discharges to their  
17 Perris Valley Wastewater Treatment Plant. And  
18 then non-reclaimable wastewater -- this is a real  
19 important aspect of this project.

20           Eastern presently owns capacity in the  
21 Temesco Valley regional interceptor and the Santa  
22 Ana regional interceptor. And then they recently  
23 extended a line from the terminus of the Temesco  
24 Valley interceptor to their Sun City Regional  
25 Water Reclamation Facility. And that's the bottom

1 green box there.

2           And then as part of this project we  
3 would then run a new 4.7 mile pipeline to connect  
4 the Inland Empire Energy Center's discharge to the  
5 Sun City plant. And then from there that water  
6 would flow all the way through the Tevere (sp)  
7 line, the Santa Ana line, to Orange County  
8 Sanitation District's plant, where it would then  
9 be treated before discharge into the ocean.

10           The next figure just shows the linear  
11 facilities associated with the project. The  
12 purple line there is the 500 KV transmission line  
13 that would come south out of the Energy Center and  
14 then run east, paralleling the existing 500 KV  
15 transmission that Edison has, and then run north  
16 up into the Valley Substation.

17           The natural gas pipeline is the orange  
18 line there which would parallel the transmission  
19 line but would run to the south side of McLaughlin  
20 Road, and then it would turn south -- and I'll  
21 pick that up on another figure.

22           The blue is the potable water line. As  
23 part of the improvements for the project we would  
24 run a potable water line down the Antelope Road,  
25 between Efenac (sp) and McLaughlin, which would

1 essentially loop two existing potable water  
2 pipelines.

3 Sanitary sewer would exit the project  
4 along Antelope Road, and tie in to the existing  
5 main on McLaughlin Road. Recycled water is also a  
6 short linear, running along Antelope Road and  
7 tying into a 48 inch main in McLaughlin Road.

8 And then the bright green there is the  
9 non-reclaimable waste line, and that would come  
10 also down Antelope Road and then turn west along  
11 McLaughlin Road, and I'll pick that up on the next  
12 slide.

13 So the plant here -- the Energy Center  
14 is up there in the yellow shaded box, and you can  
15 see the orange line is the natural gas pipeline,  
16 and it runs down -- from McLaughlin it turns and  
17 runs down Junipero Road, and then there's another  
18 yellow-shaded box there, and that is a gas  
19 compressor site.

20 Pipelines coming from Menafee (sp) Road  
21 would run over to that compressor site where the  
22 pressure would be boosted to maintain the pressure  
23 in the pipeline so that gas reaches San Diego  
24 under pressure.

25 The gas that's actually going to the

1 project site would be under sufficient pressure  
2 where it would not require compression. So this  
3 is just mainly to make up for pressure losses  
4 associated with the use of the gas at this  
5 project.

6 The non-reclaimable wastewater line is  
7 the green line, which runs along McLaughlin Road,  
8 under I-215, over to Murrieta Road, and from there  
9 runs south to the Sun City Regional Plant.

10 This next figure is a rendering that was  
11 prepared early on in the project of the project  
12 site. It's basically looking to the southeast  
13 from a helicopter view. At the bottom right is  
14 Antelope Road. San Jacinto Road is to the top  
15 left.

16 And I want to note that this is not a  
17 current view, in that it shows landscaping along  
18 the north edge or the bottom edge of the site  
19 there, and as part of the evolution of this  
20 project staff suggested that we move that  
21 landscaping further to the north to the property  
22 line in order to put the screening closer to the  
23 viewers, which benefits in that it provides more  
24 screening at an earlier date. And so we've agreed  
25 to do that -- I just wanted to point that out.

1           The switchyard, the 500 KV switchyard,  
2 is to the left. The cooling tower is towards the  
3 top of the screen, the 14 cells. And the tank  
4 right next to that is recycled water storage tank.  
5 Below that is the admin control maintenance  
6 warehouse building.

7           And then in the middle of the plant,  
8 starting from the switchyard side there, are the  
9 combustion turbines, discharging into the heat  
10 recovery steam generators, which are the kind of  
11 dark shapes, which then have the stacks associated  
12 with them.

13           In summary, Inland Empire Energy Centers  
14 is a clean, reliable energy solution for the  
15 Inland Empire area. It's environmentally  
16 responsible, using natural gas as the fuel supply,  
17 and efficient combined-cycle technology, which  
18 makes the best use of that supply.

19           It's going to provide 670 megawatts on a  
20 hot day, which is much-needed capacity for one of  
21 California's fastest-growing regions. And it's a  
22 325 to 400 million dollar privately financed  
23 investment on the Applicant's part. That  
24 concludes my description of the project.

25           MR. WHEATLAND: When would you like us

1 to move our Exhibits into evidence?

2 HEARING OFFICER WILLIS: Just a moment.  
3 I have one question. I'm going to ask the  
4 Commissioner if he has any questions?

5 COMMISSIONER PERNELL: I don't have any  
6 questions. Mr. Garcia?

7 MR. GARCIA: Yes, thank you. Referring  
8 to your drawing that has the linear routes, I just  
9 want to make sure that the light green line is the  
10 proposed recycle pipeline, and that it connects  
11 with an existing recycle line that runs east and  
12 west along McLaughlin? Is that accurate?

13 MR. MCLUCAS: That's accurate, yes.

14 MR. GARCIA: Okay. The other thing that  
15 I wanted to ask -- and I don't know if you're the  
16 person to answer that, but the owner of the  
17 recycled water is?

18 MR. MCLUCAS: Eastern Municipal Water  
19 District.

20 MR. GARCIA: And is there an existing  
21 recycled water purchase agreement?

22 MR. MCLUCAS: They have a structure for  
23 that already for all of their customers.

24 MR. GARCIA: Is there an existing  
25 agreement between the project and the Eastern

1 Water District?

2 MR. MCLUCAS: We have a Memorandum Of  
3 Understanding that covers a variety of different  
4 areas, and I believe that's -- we're getting into  
5 water, but I believe that's part of the Exhibits  
6 that have been filed.

7 MR. GARCIA: Is that part of the record?

8 MR. MCLUCAS: Yes. But the recycled  
9 water is something that they have a rate structure  
10 for that created project, so that's not  
11 something -- the intent was more to cover the  
12 supplemental raw water supply which was going to  
13 require some additional facilities, and also the  
14 non-reclaimable waste system.

15 MR. GARCIA: Okay. But the MOU between  
16 the Project and Eastern is part of the evidentiary  
17 record?

18 MR. MCLUCAS: Yes it is.

19 MR. GARCIA: Thank you.

20 MR. WHEATLAND: We actually have our  
21 water specialist here today if you have more  
22 questions on water. He'd be glad to come up and  
23 answer them for you.

24 MR. GARCIA: Not right now, thank you.

25 HEARING OFFICER WILLIS: I have a

1 question. I didn't notice in the recent testimony  
2 any date change of when you think operations will  
3 begin?

4 MR. HATFIELD: We haven't put in any  
5 date change as to when we think operations will  
6 begin.

7 HEARING OFFICER WILLIS: Well, this is  
8 from the AFC that was filed in 2001, so I'm  
9 assuming there's been a change in the date from  
10 when you believe construction will begin and  
11 operations will begin?

12 MR. HATFIELD: There will be, but we  
13 haven't published any such date at this time.

14 HEARING OFFICER WILLIS: Do you have a  
15 date anticipated when you believe that  
16 construction will begin, and the length of  
17 construction?

18 MR. HATFIELD: We expect the length of  
19 construction to be two years. And we anticipate  
20 that the project could begin, could be on line as  
21 early as 2006, subject to market conditions.

22 HEARING OFFICER WILLIS: Thank you.  
23 Staff, do you have any questions for this witness?

24 MR. KRAMER: No.

25 HEARING OFFICER WILLIS: Would you like

1 to move your documents?

2 MR. WHEATLAND: Yes. I'd like to move  
3 into evidence Exhibit One, Sections 1, 2, 3, 4,  
4 and 6. Exhibit Two, Chapter 1. And Exhibit  
5 Three.

6 HEARING OFFICER WILLIS: Any objections?

7 MR. KRAMER: No.

8 HEARING OFFICER WILLIS: So moved. Mr.  
9 Kramer, would you please have Mr. Bartridge sworn  
10 in, and then we'll enter his testimony by  
11 declaration.

12 Whereupon,

13 JAMES BARTRIDGE

14 was called as a witness herein, and after first  
15 having been duly sworn, was examined and testified  
16 as follows:

17 MR. KRAMER: Now if this testimony is  
18 coming in by declaration, normally I would just  
19 offer that without him --.

20 HEARING OFFICER WILLIS: I'm only having  
21 him sworn in because there might be other issues  
22 that come up during the proceeding.

23 MR. KRAMER: Okay, for the future, sure.  
24 So we should just offer the Project Description  
25 portion of the final staff assessment. I've

1 forgotten the Exhibit number on that.

2 HEARING OFFICER WILLIS: Is there any  
3 objection?

4 MR. WHEATLAND: No objection.

5 HEARING OFFICER WILLIS: So moved. At  
6 this time we have a few cards for public comment.  
7 Mr. Graff?

8 MR. GRAFF: Again, my name is Ken Graff,  
9 Legislative Assistant to Supervisor Jim Venable,  
10 Riverside County's Third District. I'm just here  
11 this afternoon to reaffirm the Board of  
12 Supervisor's support for this, and a resolution  
13 that they had submitted as a part of this project  
14 several months ago into the public record.

15 And also that the Supervisor has  
16 requested that Mr. Bradley Hudson from our  
17 Economic Development Agency would also come this  
18 afternoon and speak more in detail to how this  
19 will be of benefit to the county. Thank you.

20 COMMISSIONER PERNELL: Thank you. And  
21 on behalf of the Committee thank the Supervisor  
22 for us. Is Brad here?

23 MR. HUDSON: Thank you very much for  
24 letting me speak to you. Brad Hudson, I'm the  
25 Assistant CEO for Riverside County. And I'm

1 representing both Riverside County and Riverside  
2 County Redevelopment Agency.

3 This project, as you well know, is  
4 within Riverside County. It's also within the  
5 I-215 corridor redevelopment project area that is  
6 a redevelopment project area of the county of  
7 Riverside. And I've been asked to convey to you  
8 the Board's support for this project on a number  
9 of fronts.

10 Particularly on the jobs and investment  
11 front, and the amount of tax resource that will be  
12 available for the local community around the  
13 project area, including the local schools.

14 We anticipate, as a result of this  
15 project and other projects that will come  
16 subsequent, that we will have a variety of  
17 resources to invest in public facilities,  
18 including schools and parks, roads, business  
19 assistance -- it's a heavy industrial area, we  
20 have a lot of space available to entice local job  
21 opportunities to what amounts to basically a  
22 commuting community right now.

23 And then we have significant affordable  
24 housing issues, that resources generated by this  
25 project will be able to be utilized to provide

1 affordable housing opportunities for residents of  
2 the local community.

3           It's important to note that, of the  
4 resources the redevelopment agency gets, a  
5 significant portion of that, pursuant to AB 1290,  
6 is conveyed on to other taxing entities. So we'll  
7 be providing financial assistance not only to the  
8 water districts and park districts but also to the  
9 local school district.

10           We have a long history of support to the  
11 local school district, including providing  
12 financing for their capital facilities as well as  
13 cooperative partnerships in terms of parks and  
14 recreation.

15           I think this is a great location for  
16 this particular plant. It's consistent with our  
17 general plan, in a manufacturing area. It's also  
18 consistent with our recently adopted multi-species  
19 habitat conversation plan.

20           So the project can move forward without  
21 the inconsistencies or incompatibilities that you  
22 often see with a project like this, or impacts to  
23 wildlife resources which, in this case, we don't  
24 believe they'll be anything significant.

25           The infrastructure obviously is there.

1 That's what makes this viable as well, in terms of  
2 the distribution as well as the fuel available to  
3 fire the plant. And I think generally it serves a  
4 need for probably, arguably, the fastest-growing  
5 large county -- maybe in the world, I don't know -  
6 - this side of Calcutta, I think we're the fastest  
7 growing large county.

8           So we need the resources, southern  
9 California needs the resource, and this is a good  
10 location. It has a lot of community support and  
11 local government support, and so we would ask --  
12 and also it's much cleaner and efficient than some  
13 of the older plants from the 50's and 60's and  
14 70's that we see online.

15           And hopefully, if a few of these can get  
16 fired up maybe some of those older ones could be,  
17 if not shut down, maybe retooled to be more  
18 environmentally friendly.

19           So for all those reasons the Board of  
20 Supervisors and the Board of Directors of the  
21 redevelopment agency support this project. Thank  
22 you.

23           COMMISSIONER PERNELL: Thank you, thank  
24 you for being here. Just to, before I hand this  
25 off, I'm going to call out some names. What we're

1 taking is comments on the project description.

2 After each topic we'll have public comment.

3 And if you don't have any comment on the  
4 project description then we'll move on, but  
5 somewhere down the line we'll get to you and what  
6 your comments or issues are.

7 HEARING OFFICER WILLIS: Mr. Rackstrau?

8 MR. RACKSTRAU: Yes, ma'am.

9 HEARING OFFICER WILLIS: And what topic  
10 were you intending on speaking about?

11 MR. RACKSTRAU: I'd like to address the  
12 issue of the leach line. The green line.

13 COMMISSIONER PERNELL: Okay, come  
14 forward please. That is on the project  
15 description?

16 MR. RACKSTRAU: Yes. I'd like to  
17 know --

18 COMMISSIONER PERNELL: We need your name  
19 for the record.

20 MR. RACKSTRAU: Oh, my name is George  
21 Rackstrau. I'm a resident of Romoland. Do you  
22 need my address?

23 HEARING OFFICER WILLIS: Please.

24 MR. RACKSTRAU: 25270 Tradewinds Drive  
25 in Romoland. Some of the notifications that the

1 citizens of Romoland have not received are a  
2 concern to me.

3 But also, yes sir, that leach line --  
4 I'd like to know, because of its proximity to  
5 other undeveloped land in the area, are there  
6 going to be, or is there the opportunity for,  
7 other entities coming in to the area to tap into  
8 that leach line and what type of industry will  
9 that leach line attract?

10 COMMISSIONER PERNELL: Applicant, he's  
11 referring to -- on your slide?

12 MR. MCLUCAS: Yes. As I said, the  
13 interceptor that accepts the high TDS waste  
14 presently terminates at the Sun City Regional  
15 Water Reclamation Facility. As part of this  
16 project the Applicant would be paying for adding  
17 4.7 mile extension of that up to the project site.

18 But that pipeline would be owned by  
19 Eastern Municipal Water District for their use,  
20 however they choose to use it in the future. In  
21 terms of other types of industries that could make  
22 use of that source, it's typically going to be  
23 industries that would use pure water.

24 A lot of electricity industries, where  
25 they have to make pure water and from that they

1 take the TDS out of the water, those are the types  
2 of industries that would like to discharge to a  
3 similar type facility.

4 COMMISSIONER PERNELL: To your knowledge  
5 there is no prohibition on that line? First of  
6 all, it's not going to be your line so maybe we're  
7 asking the wrong person here, but --

8 MR. MCLUCAS: Right. It's not our line,  
9 but there are standards as to the quality of water  
10 that can be discharged into that. And the  
11 limitations are such that if they want high TDS  
12 waste to go in there, salty type water, but they  
13 do not want hazardous materials to go in that  
14 line.

15 And basically what Eastern has done is  
16 adopted the standards that Orange County  
17 Sanitation District has for receiving that water  
18 at the final location. They are the ones  
19 responsible for treating it before it goes into  
20 the ocean.

21 So the water ultimately is discharged  
22 from the Orange County plant, so they're very  
23 concerned about what goes into that line, and have  
24 some very specific limits as to the quality of  
25 that water.

1 COMMISSIONER PERNELL: Okay.

2 MR. RACKSTRAU: Okay, sir, can I ask one  
3 more question? I, if I may, originally I was a  
4 first Vice-Chair of the Romoland Community  
5 Council. And I was dismissed from that position  
6 after attending a board meeting.

7 I'm not a NIMBY, but I want to have more  
8 information from Calpine about infrastructure and  
9 how this is going to affect air quality in the  
10 area.

11 COMMISSIONER PERNELL: Okay. We're  
12 going to get to air quality, so that's a different  
13 topic.

14 MR. RACKSTRAU: Well, on this leach  
15 line, why I'm concerned about it is if I  
16 understand the man's comments correctly, Eastern  
17 Municipal is going to install that leach line to  
18 your premises?

19 MR. MCLUCAS: We haven't worked out the  
20 details as to who is going to be --

21 MR. RACKSTRAU: And see, that's my  
22 point. The people in Romoland don't know what's  
23 going on other than just this plant plopping down  
24 in the middle here. There's infrastructure  
25 issues, access issues, all these various issues

1 that are going to affect the quality of life here.

2 And so, when we talk about the plant we  
3 can't just talk about it in pure antiseptic terms.  
4 It's going into our community. And we want to  
5 know what we can expect, not only after the plant  
6 goes in, what type of industries are going to be  
7 drawn to this area, because leach lines are not  
8 available in all areas.

9 So industries that need those leach  
10 lines would be coming here and locating here  
11 because of the access to that leach line. So I'm  
12 trying to get some information for the residents  
13 of Romoland so that we can understand the impact  
14 that this plant is going to have on our total area  
15 and our quality of life.

16 So it's not just an air issue, it's an  
17 infrastructure issue, it's a quality of life  
18 issue. And I don't know how to address this  
19 Committee in any other way than to express my  
20 concerns about how much information we have not  
21 been given about what happens afterwards or as a  
22 result of this plant going in. Thank you.

23 COMMISSIONER PERNELL: All right, sir.

24 Thank you.

25 MR. MCLUCAS: Can I make one

1 clarification?

2 COMMISSIONER PERNELL: Yes.

3 MR. MCLUCAS: He's referring to it as a  
4 leach line. It's a non-reclaimable waste line, or  
5 a high TDS wastewater line, and a lot of people  
6 refer to it as a brine line, meaning salty water.

7 Leach -- I'm not sure that term is what,  
8 you know, applies to this line. That's more  
9 designed to dispose of sanitary waste in a septic  
10 system. So this is not leaching anything into the  
11 soil. It's collecting high TDS water and taking  
12 it all the way down to the Orange County plant --  
13 sealed system.

14 COMMISSIONER PERNELL: Okay. Thank you  
15 for the clarification.

16 HEARING OFFICER WILLIS: I also have a  
17 card from John and Melinda Puentes. What topic  
18 area were you interested in?

19 MR. PUENTES: I was going to ask a  
20 couple of questions that deal with -- since they  
21 described the whole plant, --?

22 COMMISSIONER PERNELL: All right. Come  
23 to the plant, please, if it's under plant  
24 description. Ask the question and we'll tell you  
25 whether -- we need your name for the record,

1 please.

2 MR. PUENTES: John Puentes, 26851 Dawson  
3 Road, Romoland. They described where it was going  
4 to be built, and I was wondering -- the way they  
5 described the area, and they described bringing  
6 all these jobs and stuff over to Romoland, which  
7 happens to be a low-income, minority area,  
8 especially where they're picking to go build it.

9 I was curious how they came up with this  
10 -- was it just the luck of the draw, they threw a  
11 little arrow in the air and it plopped down on  
12 this one little area here that I guess they don't  
13 see too much complaints about?

14 Because they're talking about all this  
15 electricity that people need, all this electricity  
16 Temecula needs maybe, but not Romoland, and  
17 certainly not the little retirement communities  
18 that are around this area here.

19 They said they're going to build it near  
20 a school, and they were going to build another  
21 school -- they were going to anyhow -- which is  
22 another reason I have a problem with it. Because  
23 if they're going to have a school move and not be  
24 built because they're going to be here, I'd rather  
25 have the school here than the plant.

1           They described the whole plant, and they  
2   said how it operates, what the exhaust is, but  
3   they don't tell you how many tons is going to go  
4   back up in the air.

5           COMMISSIONER PERNELL: We're going to  
6   get to that on the Air quality.

7           MR. PUENTES: Yes, I understand that.  
8   But it really doesn't take much to look outside  
9   here and try to see that mountain that you can't  
10  really see. Right now you've got a good shot at  
11  seeing it because the sun isn't out, but when the  
12  sun's out you can't see Mt. San Jacinto, which is  
13  the south side of Palm Springs.

14          The reason is because there's enough  
15  pollution here already. So I guess adding to it  
16  isn't going to make our allergies, smog and things  
17  like that -- the problems that the kids and stuff  
18  have around here already -- not going to help that  
19  out any time soon.

20          And they said they were going to bring  
21  all these jobs to this area, but anybody in  
22  Romoland going to get a job?

23          COMMISSIONER PERNELL: Okay, well, we  
24  need to stay on project description.

25          MR. PUENTES: Well, that's what they

1 described. They described this whole thing and  
2 what it was going to do for everybody.

3 COMMISSIONER PERNELL: Well, but we're  
4 describing the facility, and the effects of the  
5 facility in terms of air quality, in terms of  
6 public health and all of that, will be dealt with  
7 as we go through this process.

8 MR. PUENTES: Well, all right, then  
9 that's all I had. I just need an answer to the --

10 COMMISSIONER PERNELL: To how they  
11 picked the place for the site. And my  
12 understanding is -- and I'll let them comment --  
13 is that it was close to some infrastructure  
14 natural gas pipeline that's already running  
15 through.

16 So perhaps someone on the Applicant's  
17 team can give a comment on what's the  
18 justification for that particular site?

19 MR. PUENTES: Thank you.

20 MR. MCLUCAS: Yes, this is Jim McLucas  
21 again. I covered that in the presentation. It's  
22 the convergence of transmission, natural gas line,  
23 recycled water line, sewer, non-reclaimable waste,  
24 all those things, you know, in the proximity of  
25 this area that really led us to this site.

1           The most important of which is the  
2 transmission. It's a major transmission  
3 distribution system that's going in there at the  
4 Valley Substation. And powerflow studies  
5 performed for this project show that most of the  
6 time the generation produced by this facility  
7 doesn't leave that substation except for in the  
8 distribution system.

9           MR. PUENTES: You're saying that's the  
10 only place -- are they saying that that's the only  
11 place that has this kind of setup is over here in  
12 Romoland and not in Temecula, not in Moreno  
13 Valley, not in Canyon Lake, not in any of those  
14 areas?

15           They don't have any of these sewer  
16 lines, they don't have any of these gas lines,  
17 they don't have any of this stuff anywhere else?

18           COMMISSIONER PERNELL: Well, I'm not  
19 sure they're saying that. They're just giving you  
20 an explanation as to why they picked this site.

21           MR. PUENTES: Well, they're saying that  
22 those are the reasons why.

23           COMMISSIONER PERNELL: Right. But they  
24 didn't say that they don't have anywhere else but  
25 that spot. And I think -- you asked for an

1 explanation as to why they picked that site, and  
2 they gave that to you.

3           There's natural gas, there's water,  
4 there's transmission, and I don't know what else I  
5 can --?

6           MR. PUENTES: Well, there's got to be  
7 another factor. Well, what factor's missing out  
8 of the equation. If there's a whole bunch of  
9 places they could pick with the same type of  
10 factor what other factor on top of that leaned it  
11 towards Romoland?

12           COMMISSIONER PERNELL: I couldn't answer  
13 that for you. But I don't know that every other  
14 site has the same infrastructure proximity. So,  
15 you know, you mentioned other areas that I'm not  
16 familiar with.

17           MR. PUENTES: All right. Well, Temecula  
18 is probably the biggest city around here. It's  
19 the biggest growing one, and much more affluent I  
20 guess you'd say. And they have plenty of open  
21 areas with power and sewer and all that stuff.

22           Because they have, what, I guess it's  
23 well over 100,000 people right now, and I'm sure  
24 that's a big draw around here for the power and  
25 the services and things like that.

1           COMMISSIONER PERNELL: Let me ask you,  
2 are you in favor or opposed to the project?

3           MR. PUENTES: I'm opposed to the  
4 project.

5           COMMISSIONER PERNELL: Okay.

6           HEARING OFFICER WILLIS: Mr. Daniels, if  
7 you could just tell us what you'd planned on  
8 asking? What question, or what you're --

9           COMMISSIONER PERNELL: Project  
10 description?

11          MR. DANIELS: To do with the description  
12 of the location, the trends that are going into  
13 this location, and then my viewpoint of failure to  
14 notify the people of Romoland, and also to correct  
15 the letter that was sent to this commission back  
16 in January of 2002.

17          COMMISSIONER PERNELL: Okay, come up  
18 here.

19          MR. DANIELS: Thank you. I'm Glen  
20 Daniels, 28675 Watson Road, Romoland. I'm  
21 President of the Romoland Community Council since  
22 January of 2003.

23                 In January of 2002 Mr. Aaron Knox and a  
24 gentleman who identified himself as an attorney  
25 gave a presentation to the Romoland Community

1 Council. At that time a lady named Pat Bernadine  
2 was the president.

3 They encouraged the Council to support  
4 this project, that was there reason for being  
5 there. The question was asked, the vote was  
6 taken, and there were positive and there were  
7 negative responses from the Council itself, the  
8 general assembly.

9 Shortly thereafter, without the  
10 authority of the Council, Pat Bernadine wrote a  
11 letter to the Commission stating that the Romoland  
12 Community Council supported the Calpine project in  
13 Romoland. This is not true because she cannot do  
14 that without the authority of the Council.

15 It's my feeling, as President of the  
16 Council now, that we need to correct this. And if  
17 the Community Council and the community members  
18 wish to support this Commission in a full-blown  
19 attitude, then I will issue the letter and do it  
20 properly by the bylaws of our Council. Right now,  
21 it was not done properly.

22 That -- I think it's important that they  
23 know that the President at that time, I better be  
24 careful, was easily led into doing things without  
25 the consent and authority of the Council. You do

1 not have the authority to make these commitments.

2           And I'm concerned that the  
3 misrepresentation that, now as President of the  
4 Council I'm being looked at -- in fact in the  
5 newspaper -- I have done these things, according  
6 to the way the story comes out, which is not true.

7           Not that I have to back up to anything,  
8 but I want to make sure that the Commission and  
9 everyone involved knows the position of the  
10 Council, and that is I do not have the authority  
11 to approve of or disapprove of this program. They  
12 have not given me that authority.

13           I think it needs to be done for the sake  
14 of what's happened in the past. And a description  
15 of the area of the program. If you look at the  
16 trend -- and I know why -- if you look at the  
17 trend in Romoland, we have sewer plants, we have  
18 asphalt plants, now we're having a power plant.  
19 All out of sight, out of mind of all the new  
20 housing that's going into this area.

21           Kind of coincidental perhaps, but what  
22 they're doing, they're keeping everything in old  
23 town Romoland, old community Romoland, that would  
24 be not-in-my-backyard projects, that they don't  
25 want to be seen when the new buyers come in to buy

1 homes.

2 I think it's an unfortunate thing,  
3 because basically this community is a equestrian-  
4 oriented lifestyle. And what they're doing to us  
5 is destroying that. I know there's going to be  
6 new houses, and there's going to be progress and  
7 all these things, but the trend is not for the  
8 benefit of the community.

9 One other factor and then I'll leave  
10 you. The failure of the community to be  
11 notified -- I learned about this project on the  
12 28th of June, last month. The first I knew of  
13 this project.

14 I immediately called Sacramento, the  
15 Energy Commission, asked for information packets  
16 so that I could intelligently review this program.  
17 I've yet to receive anything from them. In fact,  
18 I made two calls. It happens, I know, it's  
19 nobody's fault, I don't mean it that way, but it  
20 does happen.

21 But we knew nothing about this program  
22 until all of a sudden hey, we're ready to start  
23 building this plant. I think it's wrong, I think  
24 it should be corrected in the future for any other  
25 communities.

1           COMMISSIONER PERNELL: Thank you. Just  
2 a couple of quick notes. We're not ready to start  
3 building the plant. The plant has to get through  
4 this licensing process. And if your Board has  
5 changed officers or membership or whatever, I  
6 mean, you're free to write the Commission with  
7 whatever.

8           I would encourage you to have your  
9 Board's permission to do so, so you won't find  
10 yourself in the same position. But that's  
11 certainly something you can do.

12          MR. DANIELS: Yes. That will be  
13 corrected, from our level here that will be  
14 corrected. But I want to make it clear, for the  
15 record, how this came about and that we are not  
16 going outside of our bylaws to do these things.  
17 We don't have that authority, either the President  
18 or anybody else on the Council.

19          I personally, as a citizen and a  
20 resident of Romoland, don't approve of the  
21 program. For several reasons, and I won't go into  
22 that. But as a personal individual, not as the  
23 President of the Council, I don't approve of the  
24 program, mostly because of the way it's been  
25 handled. I thank you, sir.

1           COMMISSIONER PERNELL: Thank you. Ms.  
2 Dean, would you like to come up now, because I  
3 don't think we're going to be able to get to you  
4 once we get back into the flow of the  
5 presentations. Your name for the record, please?

6           MS. DEAN: Yes. I'm Nancy Dean, I'm a  
7 property owner at 29723 Gretchen Lane, Romoland.  
8 I have lived adjacent to the transmission lines  
9 for 14 years. I have questions on hazardous  
10 materials as well as air quality.

11           I'm wondering if Edison is still in all  
12 deniability that this has any adverse affects on  
13 the people that live anywhere near these lines,  
14 because I know they do. I've butted heads with  
15 Edison before.

16           I almost lost two horses and a small  
17 barn that was adjacent to the power lines, that  
18 had no electricity to it, but they were  
19 electrocuted nonetheless, verified by  
20 veterinarians.

21           And Edison came out and found that there  
22 was 500 watts of electricity in a two-inch metal  
23 stripping around that barn. Insisted that I had  
24 electricity to it, but I did not. They shut the  
25 whole area down, still 500 watts went around that.

1           Five people in seven years, that lived a  
2 little bit closer to these lines than I do, have  
3 died of cancer. Within a square block. Two  
4 people in the property directly behind me died of  
5 cancer within two years of each other.

6           The man that lived in the property next  
7 to me got cancer so bad he committed suicide. And  
8 two people on the other side of him also died of  
9 cancer.

10           They can say that these lines are not  
11 detrimental. I can tell you for a fact -- my  
12 horses won't even eat green grass underneath those  
13 lines if it's damp because there is so much  
14 electricity bleeding off them.

15           We can't park a truck or a car back  
16 there and go up and touch it without having  
17 sparks. I can take you out and take two  
18 fluorescent bulbs and put it like this together  
19 and they will light up.

20           And yet Edison insists that they are not  
21 bleeding off. Okay, I had an electrician come up.  
22 He says, look we can take and run copper wire down  
23 your lines, down your fence roads, and I can build  
24 you a generating plant just off of what's bleeding  
25 off of those lines.

1           Well, I thought about it, and my lawyer  
2   said Edison will be all over you if you do. Which  
3   I'm sure they would. However, it's in the air.  
4   To me, if it's out there in the air it's free.

5           I want to know -- okay, it shows the  
6   transmission lines going from the plant to the  
7   existing plant on Menafee, where it is there.  
8   Where are those transmission lines going from  
9   there? South, I hope.

10           COMMISSIONER PERNELL: Can someone  
11   answer the question on the Applicant's team?

12           MR. MCLUCAS: The question of where the  
13   transmission lines are going?

14           MS. DEAN: Are going from there, yes.

15           MR. MCLUCAS: They're going to the  
16   Valley Substation, and that's the end of the  
17   transmission lines to the project. And from there  
18   existing transmission lines that go out of Valley  
19   Substation would be used to convey that  
20   electricity to wherever it would be used.

21           MS. DEAN: Okay. So there will be no  
22   more 500,000 lines put up?

23           MR. MCLUCAS: For the benefit of this  
24   project there will be no additional 500 KV lines  
25   put in, other than the one we've identified.

1 MS. DEAN: So everything is going into  
2 there. Where is it going to there? Just over  
3 little lines?

4 MR. MCLUCAS: Yes. Well, there are 500  
5 KV lines that come in and out of Valley Substation  
6 right now. There's a powerflow study that was  
7 prepared as part of this project that shows how  
8 the power from this facility then gets distributed  
9 amongst Edison's system. And so those existing  
10 lines are sufficient to convey that energy to the  
11 end use.

12 MS. DEAN: The existing lines, there  
13 will not be another set of towers put up all the  
14 way back through there?

15 MR. MCLUCAS: Okay, now, what Edison  
16 puts in for other benefits unrelated to this  
17 project we don't have any control over. It's not  
18 anything that's as a result of this project.  
19 There's a Valley Rainbow Project that's been  
20 discussed and --

21 MS. DEAN: And they're fighting it, I  
22 realize that.

23 MR. MCLUCAS: -- and our interest in  
24 this, and we actually had Edison prepare, at the  
25 request of the staff, prepare a second system

1 impact study showing how this project works if  
2 that project were never built. Since that project  
3 was assumed in the base case.

4 And the impacts were very similar to  
5 this project with and without that project.  
6 Currently, Edison is building a 115 KV load center  
7 at Valley Substation to support all the growth in  
8 the area from a distribution standpoint. So those  
9 are new lines that would come into Valley  
10 Substation. But, again, they're not as a result  
11 of this project.

12 MS. DEAN: Okay. I find it hard to  
13 believe that they're going to put this whole  
14 project in and not transmit this electricity  
15 through some pretty fair-sized lines somewhere.

16 Okay, my question to Edison and to these  
17 people is what have you done in the last 14 years  
18 that I know of to try and protect the people that  
19 are anywhere near this power line? I have enough  
20 paper from PUC, from electric companies all over  
21 for 14 years, to paper this room with.

22 A lot of it is adverse as to what  
23 happens to people who live, but there is not  
24 proof, okay. I can only say that it's pretty  
25 strange that five people within a ten-acre plot

1 have died within seven years of cancer. Five  
2 people -- you think about that, that's a pretty  
3 big percentage.

4 And I want to know what they're doing to  
5 protect the people. If this big plant is going to  
6 be down here, I find it really hard to believe  
7 that there's not going to be some bleedoff. I've  
8 sat in my home in the morning when it's a damp day  
9 and listened to those lines scream at me.

10 COMMISSIONER PERNELL: Perhaps we can  
11 get a copy of the study that was done for this  
12 project. If you have a copy of the study you can  
13 provide that, and I don't know if that's going to  
14 satisfy your concerns or not, but this Committee  
15 cannot address what's bleeding off on Edison's  
16 lines for this particular project.

17 And so what I'm trying to do is get you  
18 additional information, if in fact there's a copy  
19 available, or we can get one sent to you, as it  
20 relates to this particular project.

21 MS. DEAN: I would like to hear what  
22 they have to say. I will keep that right  
23 alongside of me as it comes in. Like I said, it's  
24 on record, and you are aware it's happening.  
25 Whether they want to admit it or not it is

1 happening.

2 COMMISSIONER PERNELL: All right. Well  
3 let me -- do we have a copy of that study  
4 available? Or if not -- Al, would you make sure  
5 we get the name and address so we can send a copy  
6 of the study that you're referring to, as it  
7 relates to this project?

8 All right. Mr. Wheatland, can you make  
9 sure that happens?

10 MR. WHEATLAND: We will make a copy  
11 available and send it to her. That's a system  
12 impact study, and we will make it available.

13 COMMISSIONER PERNELL: Yes, a system  
14 impact study.

15 MR. WHEATLAND: Yes, we can make it  
16 available.

17 MS. DEAN: Is there someone here from  
18 Edison?

19 COMMISSIONER PERNELL: We don't have  
20 anyone who identified themselves from Edison,  
21 Ma'am. But you might want to ask the question.  
22 Is there anyone here from Edison? I don't think  
23 so. But thank you.

24 HEARING OFFICER WILLIS: Before we close  
25 project description, are there any more comments

1 on project description?

2           Hearing none, we'll close that topic for  
3 this hearing and move on to hazardous materials,  
4 and my understanding from the Applicant is that  
5 the staff is going to make their presentation  
6 first. Mr. Kramer?

7           MR. KRAMER: We're certainly willing to.  
8 We need to have Dr. Greenberg sworn.

9           HEARING OFFICER WILLIS: All right.  
10 Whereupon,

11                   ALVIN GREENBERG  
12 was called as a witness herein, and after first  
13 having been duly sworn, was examined and testified  
14 as follows:

15           COMMISSIONER PERNELL: All right. We  
16 are now on hazardous material. Mr. Greenberg?

17           MR. GREENBERG: Is this on?

18           MR. KRAMER: Yes. Could you please  
19 summarize -- let me go back. You prepared the  
20 hazardous materials section of the final staff  
21 assessment, is that correct?

22           MR. GREENBERG: Yes, I did.

23           MR. KRAMER: Could you summarize, in  
24 about five minutes or so, your findings and  
25 conclusions for everyone here?

1           MR. GREENBERG: I'd be happy to. The  
2 fact that a power plant will use hazardous  
3 material is not surprising at all. In fact, all  
4 power plants throughout the country, indeed  
5 throughout the world, must use some hazardous  
6 materials during the construction and operation  
7 phases.

8           In fact, one hazardous material, aqueous  
9 ammonia, is required to be used in order to  
10 control certain releases of air pollutants from  
11 the stack.

12           So the question that staff looked at is  
13 not so much are hazardous materials being used,  
14 but are they being stored and are they being  
15 transported in a safe manner, so as to reduce any  
16 risk to an insignificant level of an offsite  
17 impact, such that it would impact the general  
18 public?

19           Worker Safety and Fire Protection  
20 section addresses the safety of the workers on the  
21 site, and hazardous materials, therefore, it  
22 addresses the management of hazardous materials,  
23 looking to see whether or not the Applicant is  
24 proposing to use them, store them, and transport  
25 them in a safe manner so as to not impact the

1 offsite public.

2           Staff looked at all the aspects, in  
3 great detail, of hazardous materials management.  
4 We looked at engineering controls and  
5 administrative controls that are proposed by the  
6 Applicant to ensure the safe handling of hazardous  
7 material.

8           We also looked during the construction  
9 phase, during the operations phase, we looked at  
10 what the Applicant is proposing to do in so far as  
11 preventing a release of hazardous materials. And  
12 then, should a release occur, what the Applicant  
13 is proposing to do to contain and minimize that  
14 release so that there are no offsite impacts.

15           Some of the hazardous materials, by  
16 virtue of their physical state, such as they are  
17 solid, pose no risk of an offsite impact should  
18 there be a spill on the site. It's not going to  
19 spread offsite and thus endanger the public.

20           Some materials, by virtue of their  
21 volume, they're used in such small amounts and  
22 stored in such small amounts, likewise would not  
23 pose any risk of offsite impact.

24           And some of the hazardous materials, by  
25 virtue of their very low volatility, would not

1 pose an offsite risk to the public. That is, even  
2 if there were to be a spill that would be  
3 contained onsite, there would be no drift or  
4 migration offsite.

5 So staff looked at all of the hazardous  
6 materials and looked at those that could  
7 potentially pose a risk to the offsite public.  
8 One of those in particular that we analyzed in  
9 great detail was the use of aqueous ammonia, which  
10 is required in the use of selected catalytic  
11 reduction to control emissions of pollutants from  
12 the stack.

13 There will be two 16,000 gallon storage  
14 containers of aqueous ammonia onsite. And staff  
15 looked at the engineering and administrative  
16 controls, as well as the Applicant's analysis of  
17 an offsite consequence analysis.

18 That is an analysis that doesn't ask the  
19 question "what are the odds of their being an  
20 accidental release?" Instead, it assumes that an  
21 accidental release will occur, and an analysis is  
22 then conducted to see whether there would be any  
23 impacts offsite.

24 But not only did we look at the  
25 Applicant's analysis, we conducted our own air

1 dispersion modeling to make sure that there were  
2 no impacts offsite.

3 Staff also took into account the siting  
4 location. We are very much aware of the  
5 surrounding community, and the fact that there is  
6 the Romoland school nearby.

7 We're cognizant of state law which  
8 impacts on a school district wanting to site a  
9 school near an industrial facility, and even  
10 though this doesn't apply to an industrial  
11 facility wanting to locate near a school we took  
12 that into consideration as well.

13 And we believe we performed the  
14 necessary analysis as required by that state  
15 statute.

16 What we found is that the Applicant is  
17 proposing to use engineering and administrative  
18 controls that are adequate to ensure that there is  
19 a minimal risk to public health of the use,  
20 storage, and transportation of hazardous  
21 materials.

22 We have proposed 12 additional  
23 conditions of certification which we recommend  
24 that you adopt that will further enhance safety  
25 and ensure minimal impact. Six of these address

1 the handling, the storage, and the transportation  
2 of aqueous ammonia.

3 One of them in particular would require  
4 that there is a specific transportation route to  
5 be used by the vendor transporting a tanker of  
6 aqueous ammonia to the facility.

7 Another addresses the time of day of  
8 that delivery, to ensure that a tanker truck would  
9 not be delivering aqueous ammonia to a facility  
10 during times when children are going to and from  
11 the school.

12 These proposed conditions of  
13 certification therefore are in addition to the  
14 Applicant's own voluntary and stated mitigations  
15 that would ensure safety at the project.

16 And staff finds that, if the Commission  
17 adopts these proposed conditions of certification,  
18 that the Applicant can indeed handle, transport,  
19 and store hazardous materials with an  
20 insignificant risk to the public.

21 MR. KRAMER: Thank you.

22 COMMISSIONER PERNELL: Thank you.

23 HEARING OFFICER WILLIS: Mr. Wheatland,  
24 do you have any questions?

25 MR. WHEATLAND: No, we have no

1 questions. Thank you.

2 HEARING OFFICER WILLIS: Mr. Kramer,  
3 would you like to move that section into the  
4 record?

5 MR. KRAMER: Yes, move the --

6 COMMISSIONER PERNELL: I'm sorry. I do  
7 have one question here. Mr. Greenberg, when you  
8 said all of the analysis show that there was a  
9 minimal risk, is that less than significant?  
10 What's your definition of a minimal risk?

11 MR. GREENBERG: The CEC staff considers  
12 a certain threshold of airborne aqueous ammonia to  
13 be a level of insignificant risk. Any exposure  
14 below that level in an acute or short-term period  
15 would be an insignificant risk.

16 When I was referring to minimal risk I  
17 was also really using that as a term for  
18 insignificant risk, and should have really kept  
19 with the term insignificant risk as opposed to  
20 minimal.

21 COMMISSIONER PERNELL: Thank you.

22 HEARING OFFICER WILLIS: Mr. Kramer?

23 MR. KRAMER: We move the hazardous  
24 materials portion of the final staff assessment,  
25 including the supplements subsequent to that --

1 that would be Exhibits 67, 68 and 69.

2 HEARING OFFICER WILLIS: Any objection?

3 MR. WHEATLAND: No objection.

4 HEARING OFFICER WILLIS: Okay, so moved.

5 Mr. Wheatland?

6 MR. WHEATLAND: Yes, before I introduce

7 Mr. McLucas, do you want to have Dr. Greenberg

8 sworn as well?

9 HEARING OFFICER WILLIS: He was sworn.

10 MR. WHEATLAND: He was sworn, excuse me.

11 COMMISSIONER PERNELL: We've sworn one

12 person in on your team, Mr. Wheatland?

13 MR. WHEATLAND: Yes, Mr. McLucas has  
14 been sworn in, I just -- sorry. Okay, very good.

15 COMMISSIONER PERNELL: At the next  
16 opportunity, what we'll do is swear in the whole  
17 team, and then we won't have to --

18 MR. WHEATLAND: All right. Mr. McLucas  
19 has been previously sworn, and has previously  
20 stated his qualifications. Mr. McLucas, we just  
21 heard the testimony of Dr. Greenberg. Do you  
22 agree with that testimony?

23 MR. MCLUCAS: Yes.

24 MR. WHEATLAND: And is there anything  
25 that you would like to add?

1           MR. MCLUCAS: Yes, I would. With  
2 respect to the proposed licensing conditions,  
3 could --

4           COMMISSIONER PERNELL: Could you grab  
5 the mike, please?

6           MR. MCLUCAS: With respect to the  
7 proposed licensing conditions the Applicant agrees  
8 with all that are indicated in staff's  
9 supplemental testimony and addendum to the final  
10 staff assessment related to hazardous materials.  
11 And then I would like to make several corrections  
12 in my own written testimony.

13           And I have these in handouts, so I'll  
14 just summarize right now, and if you'd like to  
15 hand these --

16           MR. WHEATLAND: Wait just one moment and  
17 then I'll pass them out. These are purely erratic  
18 typographical corrections to the prepared  
19 testimony.

20           COMMISSIONER PERNELL: Does staff have a  
21 copy of your corrections?

22           MR. WHEATLAND: We're just passing it  
23 out now.

24           MR. MCLUCAS: Okay. We have three  
25 corrections. The first is on the last sentence of

1 the last paragraph of page 5.3-2 of our testimony  
2 on hazardous materials. It should be replaced  
3 with "storage areas for various hazardous  
4 materials are identified in the revised figure,  
5 56-1, transmitted on April 15, 2002, as part of  
6 informal data response 1-2."

7 The previous reference was an out of  
8 date figure, and the difference between the two  
9 figures was part of the outcome of one of our  
10 workshops on hazardous materials. We relocated  
11 the storage location for hydrogen at staff's  
12 suggestion. And that's reflected on the revised  
13 figure.

14 The second bullet is in the second  
15 sentence of the second paragraph on page 5.3-6.  
16 The maximum quantity of hydrogen to be stored  
17 onsite should read 126,000 SCF, which is standard  
18 cubic feet, not 12,600. And then the following  
19 sentence, the reference to 1,260 standard cubic  
20 feet for individual tube should be deleted.

21 And 126,000 standard cubic feet of total  
22 hydrogen storage is consistent with what was in  
23 the AFC and what the staff evaluated for the  
24 project.

25 The fourth sentence of the second

1 paragraph on page 5.3-6 should be revised to read  
2 "the trailer will be parked immediately south of  
3 the steam turbine generator." Again, this is in  
4 reference to the location of the hydrogen trailer,  
5 which I discussed in figure 56-1.

6 MR. WHEATLAND: Does that complete your  
7 direct testimony?

8 MR. MCLUCAS: It does.

9 HEARING OFFICER WILLIS: Mr. Wheatland,  
10 on that Exhibit marked as Exhibit 71, marked as  
11 staff's errata to the supplemental testimony filed  
12 on July 28th as Exhibit 70 to keep staff's  
13 Exhibits together. Mr. Kramer, do you have any  
14 questions for Mr. McLucas?

15 MR. KRAMER: No. I would, however, like  
16 Dr. Greenberg to confirm for the record whether or  
17 not Mr. McLucas's corrections change any of his  
18 findings or conclusions?

19 MR. GREENBERG: No, they do not. They  
20 are consistent with my understanding of the  
21 finding.

22 HEARING OFFICER WILLIS: Mr. Wheatland,  
23 would you like to move your documents into  
24 evidence?

25 MR. WHEATLAND: Yes, I'd like to move

1 into evidence the Exhibits that are sponsored by  
2 Mr. McLucas regarding hazardous materials. And  
3 those are Exhibit Two, Chapter 5.3, Exhibit One,  
4 Sections 1, 3, 5.12, 6, and Appendix H of the AFC.  
5 Exhibit Three, data adequacy response 27. Exhibit  
6 Four, Applicant's responses 53 through 56. And  
7 Exhibit 55, workshop responses 1-2, 1-3, 1-4, and  
8 Exhibit 71.

9 HEARING OFFICER WILLIS: Any objection?

10 MR. KRAMER: No.

11 HEARING OFFICER WILLIS: So moved. Are  
12 there any public comments on hazardous materials,  
13 just that topic? Okay, that being done, I'd like  
14 to close the topic of hazardous materials. The  
15 record is now closed, and move on to general  
16 conditions and compliance.

17 MR. WHEATLAND: Thank you. Mr. McLucas  
18 has been previously sworn and has previously  
19 stated his qualifications. Mr. McLucas, do you  
20 have before you a copy of Exhibit Two, the  
21 Applicant's testimony for the Inland Empire Energy  
22 Center?

23 MR. MCLUCAS: Yes, I do.

24 MR. WHEATLAND: And was Chapter Three of  
25 Exhibit Two, General Conditions, Compliance, and

1 Closure, prepared by you or at your direction?

2 MR. MCLUCAS: Yes, it was. Jenifer  
3 Morris and I co-sponsored this testimony.

4 MR. WHEATLAND: And are you also  
5 sponsoring Exhibit One, Section 3.9 of the AFC?

6 MR. MCLUCAS: Yes.

7 MR. WHEATLAND: Is the testimony that  
8 you are sponsoring and the facts contained therein  
9 true to the best of your knowledge?

10 MR. MCLUCAS: Yes.

11 MR. WHEATLAND: And do the opinions in  
12 this testimony represent your best professional  
13 judgment?

14 MR. MCLUCAS: Yes.

15 MR. WHEATLAND: And do you adopt Chapter  
16 Three of Exhibit Two as your testimony?

17 MR. MCLUCAS: Yes.

18 MR. WHEATLAND: Please summarize your  
19 testimony for the Committee.

20 MR. MCLUCAS: The staff has proposed  
21 conditions of certification pertaining to general  
22 conditions, compliance and closure in the FSA and  
23 its supplemental testimony. And essentially the  
24 Applicant agrees with all of these proposed  
25 conditions, with the exception of two, and that is

1 com 8 and com 15.

2 HEARING OFFICER WILLIS: I'm sorry, Mr.  
3 McLucas, can you use the microphone. We're just  
4 having a hard time hearing you.

5 MR. MCLUCAS: Okay, we essentially agree  
6 with all of those, with the exception of com 8 and  
7 com 15. First, let me talk about com 8. Com 8 is  
8 a recently proposed condition that would require  
9 the Applicant to prepare a site-specific plan and  
10 vulnerability assessment.

11 And while the Applicant recognizes the  
12 need to provide security for all its facilities,  
13 we believe that the specific provisions of com 8  
14 are flawed.

15 As Commissioner Pernell will recall,  
16 this issue was litigated in the East Altamount  
17 proceeding, and after hearing all of the  
18 testimony, the Committee in that case proposed  
19 provisions to com 8 in the errata to the revised  
20 PMPD.

21 And the Applicant supports the  
22 Committee's proposed resolution to this issue in  
23 the East Altamount --

24 HEARING OFFICER WILLIS: I'd like to  
25 keep the topic on this particular case, as I

1 talked about before. First of all, that decision  
2 hasn't been finalized, and second of all, that  
3 does not pertain to this particular case.

4 So if you could stick to your comments  
5 on this case, not on East Altamount.

6 MR. MCLUCAS: Well, okay. I guess the  
7 reason that we feel that it's important here is  
8 that we did not choose to go through all the  
9 individual objections that we have to com 9, in  
10 this particular case, because it was our belief  
11 that it would be acceptable to everybody.

12 And staff, in that case, didn't have a  
13 problem with com 9, and we have essentially the  
14 same witness in this area for staff. We were  
15 understanding that that would be acceptable for  
16 this project as well.

17 So in our testimony, what we did is  
18 recommend the changes to com 9 that were  
19 consistent with what was decided in that other  
20 case. We recognize that's not a --

21 HEARING OFFICER WILLIS: You're talking  
22 about com 8?

23 MR. MCLUCAS: I'm sorry. It was com 9  
24 in that case -- com 8, yes. So, I guess that's  
25 that. I can go through what the differences are

1 from what we recommended and what's been accepted  
2 thus far, and what we'd still like to see changed?

3 And then if you'd like to get into the  
4 specifics of the issues we have with that  
5 condition we can talk about it.

6 MR. WHEATLAND: If I could, at this  
7 point, Mr. McLucas, ask you whether or not --  
8 you've stated previously the language we proposed  
9 is consistent with the language that is under  
10 consideration by the Commission in a different  
11 proceeding.

12 Whether or not that language is adopted  
13 by the Commission in another docket, would you  
14 still recommend that language to the Committee in  
15 this proceeding?

16 MR. MCLUCAS: Yes, I would, and that's  
17 what we've done in our testimony. Well, we've  
18 recommended a number of changes in our testimony,  
19 and some of those have been accepted by staff.  
20 First, staff proposes that com 8 be replaced or  
21 terminated pursuant to Commission's rulemaking or  
22 other action.

23 And it's the term "or other action" that  
24 we object to being added here, as we feel it's  
25 unnecessarily vague. It's not clear whether this

1 means an action by the full Commission following a  
2 notice and hearing to all affected parties, in  
3 which case we would have no objection.

4 Or, on the other hand, is it an action  
5 by staff such that informal rules or guidelines  
6 issued by staff without input from affected  
7 parties could be making this determination? In  
8 that case we'd object to that.

9 Secondly, the language from the East  
10 Altamount case would suspend the condition in the  
11 event the Commission's rulemaking had not taken  
12 place by January 1st, 2005. And it was our  
13 understanding that staff was working on an overall  
14 program that would apply to all power plants, not  
15 just the ones that are being licensed since the  
16 East Altamount project.

17 And to be consistent we felt that that  
18 language should be preserved here. Which  
19 basically suspends this condition in the event  
20 that the rulemaking process is not taking place by  
21 January 1st, 2005. And that was a very generous  
22 time period, given that staff had indicated in  
23 that other proceeding that they expected to get  
24 that all approved this year.

25 COMMISSIONER PERNELL: Are you still on

1 com 8?

2 MR. MCLUCAS: Yes, I am.

3 COMMISSIONER PERNELL: Okay.

4 MR. MCLUCAS: So, in summary, we believe  
5 the simplest and fairest solution is not to  
6 litigate the details of com 8, but to simply adopt  
7 the language that was used in that other case,  
8 which is what we've proposed in our testimony.

9 MR. WHEATLAND: Would you turn now  
10 please to com 15?

11 MR. MCLUCAS: Concerning com 15, we  
12 appreciate the revisions to com 15 that have been  
13 incorporated by staff on page 121 of their  
14 supplemental testimony and addendum, but we  
15 request that additional revisions be incorporated  
16 into the first paragraph as follows.

17 In the second sentence of the first  
18 paragraph, which starts "if priority reserve  
19 emission credits are used, milestones and methods  
20 of verifications must be established and agreed  
21 upon by the project owner and the CPM no later  
22 than sixty days after" and it currently reads  
23 "project approval, the date of docketing."

24 And we request that, after "project  
25 approval, the date of docketing" be replaced with

1 "the Applicant has received a permit to construct  
2 from the South Coast Air Quality Management  
3 District or California Energy Commission  
4 certification, whichever is later."

5 The last sentence, which reads --

6 COMMISSIONER PERNELL: I'm sorry, did  
7 you agree with the 60 days?

8 MR. MCLUCAS: We agree with the 60 days  
9 after.

10 COMMISSIONER PERNELL: All right.

11 MR. MCLUCAS: And then the final  
12 sentence, which reads "if the deadline is not met,  
13 the CPM will establish the milestones," we're  
14 requesting that that sentence be stricken.

15 Now, understanding that the intent of  
16 com 15 is that it's to require that the project  
17 owner provide assurance that in the event that the  
18 priority reserve is used that the project is  
19 constructed in the timeframes that meets the  
20 requirements of South Coast Air Quality Management  
21 District rule 1309.1. And we have copies of that  
22 rule available for distribution, if interested.

23 Rule 1309.1 specifically requires that  
24 the facility has the new sources fully -- this is  
25 a quote -- "has the new sources fully and legally

1 operational at the rate of capacity within three  
2 years following issuance of a permit to construct  
3 or California Energy Commission certification,  
4 whichever is later, subject to an extension by the  
5 Executive Officer consistent with South Coast Air  
6 Quality Management District rule 205."

7           So the conditions proposed by staff  
8 would require that the Applicant file milestones  
9 within 60 days after the project is approved by  
10 the Commission. Which would be premature, because  
11 it could be before the Applicant has determined  
12 whether or not to even use the priority reserve.

13           And we believe that a more logical  
14 timeframe for filing the milestones would be  
15 promptly after the Applicant has received a permit  
16 to construct, which in the either/or obviously is  
17 going to be the latter here.

18           And since the Applicant has indicated  
19 that the Inland Empire Energy Center will take  
20 approximately two years to construct, a milestone  
21 schedule that is submitted no later than 60 days  
22 after the permit to construct, which is the start  
23 of the three year clock, would allow ample time  
24 for the CPM to review and approve the milestone  
25 schedule.

1 MR. WHEATLAND: That completes your  
2 direct testimony?

3 MR. MCLUCAS: Yes, it does.

4 HEARING OFFICER WILLIS: I had one  
5 question. Kind of back to my earlier question on  
6 operation date, and that's what I was trying to  
7 get to, of 2006.

8 In your com 8 you have a sunset clause  
9 of 2005, so a year basically before the project  
10 would be completed. So I was a little bit  
11 confused. If you could explain the relevance of  
12 2005?

13 MR. MCLUCAS: 2005, we were just taking  
14 the date that was used in that other case. There  
15 is no significance other than -- I think in that  
16 case it was believed that that allowed plenty of  
17 time for this issue to get worked out on a  
18 programmatic level that would apply to all plants.

19 But that was the date that was inserted  
20 by the Committee on that project, and it wasn't  
21 our suggestion.

22 HEARING OFFICER WILLIS: Staff?

23 MR. KRAMER: Yes. I hope I can keep  
24 this within the 15 minutes, I'll do my best.

25 Turning back to com 8, Mr. McLucas, I gather from

1 your testimony -- and I'm sure you'll correct me  
2 if I mis-characterize it -- you feel the current  
3 provisions of com 8 are defective in some sort of  
4 way and do not wish to be bound by them, but hope  
5 to be bound by some future rulemaking or different  
6 rules that will be adopted by the Commission, is  
7 that correct?

8 MR. MCLUCAS: Yes.

9 MR. KRAMER: Please turn to com 8, then,  
10 as it exists, in Exhibit 68. That's the  
11 supplemental testimony and addendum.

12 MR. WHEATLAND: What page are you on  
13 please?

14 MR. KRAMER: 20 -- I'm sorry, 120.

15 MR. MCLUCAS: I'm there.

16 MR. KRAMER: Okay. The condition  
17 requires a construction security plan that must  
18 address site fencing and enclosing the  
19 construction area, the use of security guards, a  
20 check-in procedure or tag system for construction  
21 personnel and visitors, protocol for contacting  
22 law enforcement in the event of suspicious  
23 activity or emergency, and evacuation procedures.  
24 What's unreasonable about that?

25 MR. MCLUCAS: Under construction

1 security plan it just says that it must address  
2 all of those issues --

3 COMMISSIONER PERNELL: I'm sorry, you're  
4 going to have to -- I don't know what it's going  
5 to take to keep that mike in your hand. Yes, move  
6 the stand, we'll try that.

7 HEARING OFFICER WILLIS: Yes, try that.

8 MR. MCLUCAS: It doesn't reach. It says  
9 that the construction security plan must address  
10 each of those issues. One way that that could be  
11 interpreted is that each of those things are  
12 absolutely required, --

13 COMMISSIONER PERNELL: If it was  
14 absolutely required it would say "shall."

15 MR. MCLUCAS: Okay.

16 COMMISSIONER PERNELL: In my opinion.

17 MR. MCLUCAS: Use of security guards is  
18 one of those things that we evaluate on a project  
19 by project basis, and do not, you know,  
20 unilaterally have security guards at every one of  
21 our facilities.

22 MR. KRAMER: In this day and age you  
23 don't think security guards are pretty much  
24 mandatory at a facility as important as this, and  
25 containing hazardous materials?

1 MR. MCLUCAS: Not as a rule, no.

2 MR. KRAMER: Okay. Then it also  
3 requires an operation security plan to address  
4 permanent site fencing in the security gate.  
5 Again, the use of security guards. Security alarm  
6 for critical structures.

7 Another repeat of the protocol for  
8 contacting law enforcement and the Energy  
9 Commission's construction project manager in the  
10 event of suspicious activity or an emergency.  
11 Evacuation procedures. Perimeter breach detectors  
12 and onsite motion detectors. Video or still  
13 camera monitoring system.

14 Fire alarm monitoring system. Site  
15 personal background checks, and site access for  
16 vendors and for hazardous materials vendors to  
17 conduct personnel background security checks.  
18 Which of those requirements do you believe are  
19 unreasonable?

20 MR. MCLUCAS: This gets in to where  
21 we've objected to this wording in the past. And  
22 one through eight we've not commented on in the  
23 past, those all seem reasonable things to address  
24 in the plan.

25 And it's nine, ten and eleven that's --

1 oh, excuse me, it's nine, ten and then the  
2 paragraph following ten -- that we take issue to.  
3 And it's not relative to the intent of --

4 COMMISSIONER PERNELL: Excuse me, what  
5 document are you guys reading from?

6 MR. KRAMER: It's Exhibit 69, our  
7 supplemental testimony and addendum to the staff  
8 assessment that was filed on July 18th.

9 MR. WHEATLAND: I believe that's 68?

10 MR. KRAMER: I'm sorry, 68.

11 MR. WHEATLAND: So Exhibit 68, page 120.

12 HEARING OFFICER WILLIS: And just to  
13 clarify, because I'm looking at both your file  
14 testimony and Exhibit 68, I don't see anything  
15 marked changes on nine, ten, or the paragraph  
16 following. So are we missing some information?

17 MR. MCLUCAS: Yes, that's the point I  
18 was trying to make is that we were recommending  
19 that the condition be modified the way it appeared  
20 in the errata to the revised PMPD of the East  
21 Altamount case, and not get in to the issues that  
22 we had relative to the individual items, which was  
23 nine, ten and the paragraph following ten.

24 HEARING OFFICER WILLIS: I'm just  
25 looking at, though, comparing the two -- staff's

1 version and Applicant's version, and I don't see  
2 anything different. So I'm not sure why we're  
3 talking about what issues you have with nine and  
4 ten?

5 MR. WHEATLAND: The Applicant had  
6 proposed, rather than a line-by-line corrections  
7 to the staff's proposed Com 8, that the Committee  
8 instead keep this as a placeholder, but say that  
9 it would be superseded by new rules that will be  
10 adopted by the Commission later this year.

11 And now Mr. Kramer is asking our witness  
12 why we're proposing that, why can't this just be  
13 the permanent rules that would be adopted, without  
14 a placeholder.

15 HEARING OFFICER WILLIS: So we're not  
16 missing any information, there has not been any  
17 additional filing that shows some difference of  
18 opinion on those items?

19 MR. WHEATLAND: That's right.

20 MR. MCLUCAS: That's correct. So if I  
21 could just comment on those items. Number nine,  
22 which reads "site personnel, background checks"  
23 and our recommendation for language on that would  
24 be to delete "site personnel" and say "background  
25 checks for onsite employees of the project owner."

1           And we're just trying to clarify,  
2 really, who are we responsible for performing  
3 background checks on. The Applicant currently  
4 does background checks on our own employees. We  
5 do not do background checks on every single person  
6 that steps on to that site.

7           HEARING OFFICER WILLIS: Okay, now once  
8 again Mr. McLucas, I'm going to ask you, are you  
9 submitting new testimony right now? Because we  
10 don't have that information to say that you want  
11 changes to nine and ten.

12           MR. MCLUCAS: I'm answering staff  
13 counsel's question as to which of these conditions  
14 we feel are unreasonable.

15           HEARING OFFICER WILLIS: Well, that  
16 would be new information that the Committee does  
17 not have, in my view.

18           MR. WHEATLAND: Well, it's new  
19 information because the question is being asked of  
20 our witness for the first time. I didn't object  
21 to the question as being irrelevant, and so I'm  
22 allowing our witness to answer the question that  
23 is posed to him.

24           HEARING OFFICER WILLIS: With new  
25 changes.

1           MR. WHEATLAND: No, we're not proposing  
2 these as changes. We're not proposing that these  
3 items be deleted from the staff's recommendation.  
4 We're instead recommending that Com 8 be held as a  
5 placeholder until the --

6           HEARING OFFICER WILLIS: I understand  
7 that.

8           MR. KRAMER: You're basically proposing  
9 to nullify these rules with their automatic sunset  
10 provision. So I can see that they would have no  
11 reason to quibble about the language because they  
12 see it as already among the missing.

13           COMMISSIONER PERNELL: I'm sorry, I  
14 didn't -- your testimony is that these rules as  
15 written, that appears at least from up here that  
16 both parties have agreed to, is going to sunset at  
17 some point?

18           MR. KRAMER: The Applicant has proposed,  
19 and staff has rejected, including language from  
20 that other decision that we won't name, that would  
21 say that unless staff comes up with new rules,  
22 these rules are going to become ineffective -- I  
23 forgot the date.

24           MR. WHEATLAND: January 1st of 2005.

25           MR. KRAMER: Right. And since they

1 won't have the power plant on line before then,  
2 for sure, these rules won't apply to them. So I  
3 can see why they didn't want to offer specific  
4 corrections, they simply want to throw out the  
5 whole thing, whether or not the Commission  
6 actually comes up with something new.

7 COMMISSIONER PERNELL: Is that the  
8 intent?

9 MR. WHEATLAND: Well, we don't want to  
10 throw it out, but what the staff has previously  
11 testified to is that they will be proposing to the  
12 Commission new rules that will apply on a  
13 statewide basis.

14 COMMISSIONER PERNELL: Well, that  
15 doesn't -- a proposal, and whether or not we have  
16 staff and whether or not we have the budgetary  
17 means to get that done is a whole different  
18 question. If we have rules in place we want them  
19 to stay there until something else takes its  
20 place, not have it sunset and have nothing in  
21 place.

22 MR. WHEATLAND: Well, that would be one  
23 way to do it. But what the Applicant is  
24 proposing, since these are general conditions that  
25 are supposed to apply to each project, we are

1 asking the Committee to consider applying the same  
2 language in Com 8 that is being proposed by a  
3 committee in a different siting proceeding.

4 So what we're asking is that the  
5 condition apply equally to each project, using the  
6 same language.

7 COMMISSIONER PERNELL: I understand  
8 that. But what we have said at the outset is this  
9 is Inland Empire Energy Center. What this  
10 Committee is concerned about is what is the rules,  
11 how are they going to be applied for this project.  
12 Not what's happening somewhere else.

13 And so I'm trying to get a focus here,  
14 because admittedly, you guys have me confused.  
15 So, what I would like to see and what we're seeing  
16 up here is that the language is -- there is no  
17 discrepancies in staff proposal or the Applicant.

18 My understanding, as the Applicant was  
19 making its presentation on Com 8 there, one of the  
20 concerns was "or other actions" and you didn't  
21 know what the other actions were.

22 MR. WHEATLAND: That's correct.

23 COMMISSIONER PERNELL: So I thought that  
24 was the issue, and that was the issue only. Now  
25 we're getting into some other things. So was the

1 issue "or other actions?"

2 MR. WHEATLAND: Well, one issue is "or  
3 other actions," and the other issue is when this  
4 particular language of Com 8 would sunset.

5 COMMISSIONER PERNELL: Right. It's not  
6 going to sunset until something takes its place.

7 MR. WHEATLAND: And if that was the  
8 Committee's order we would be in complete  
9 agreement with it.

10 MR. KRAMER: And I can attempt to  
11 explain "what other actions" is. What other  
12 actions was supposed to allow for --

13 HEARING OFFICER WILLIS: Well, let's  
14 wait and your witness can testify to that. Why  
15 don't you continue with your cross?

16 MR. KRAMER: Okay, let's turn to Com 15  
17 now. It's on page 128 of that same document.

18 MR. MCLUCAS: Okay.

19 MR. KRAMER: Do you understand the --  
20 well, let me rephrase that. Is it your  
21 expectation that the air district's permit to  
22 construct will come at some point in time after  
23 the Energy Commission issues the license for the  
24 project?

25 MR. MCLUCAS: That would be my

1 expectation.

2 MR. KRAMER: Are you familiar with the  
3 1975 Memorandum of Understanding between the  
4 Energy Commission and the Air Resources Board that  
5 says, to paraphrase, that the Energy Commission's  
6 license is the permit to construct for any project  
7 that's subject to its jurisdiction?

8 MR. MCLUCAS: I'm not personally  
9 familiar with that, no.

10 MR. KRAMER: Okay, well then I can't ask  
11 you any more about it. Will the Applicant, at the  
12 time of issuance of the permit to construct, be  
13 ready to prepare a proposed schedule of milestones  
14 and submit it for showing the plan for  
15 constructing the project?

16 MR. MCLUCAS: Yes, we would, within 60  
17 days after that.

18 MR. KRAMER: Okay, is the time of the  
19 issuance of the air district's permit to construct  
20 that you expect to make your choice as to whether  
21 or not you're going to use the priority reserve?  
22 Or will it be at some other time?

23 MR. MCLUCAS: I don't know if I can  
24 answer that.

25 MR. KRAMER: Is there somebody else on

1 your team that can?

2 MR. WHEATLAND: Yes. Mr. Rubenstein is  
3 here, and he can answer that question if you like.

4 HEARING OFFICER WILLIS: Okay. You'll  
5 want to be sworn in.

6 Whereupon,

7 GARY RUBENSTEIN

8 was called as a witness herein, and after first  
9 having been duly sworn, was examined and testified  
10 as follows:

11 MR. KRAMER: Do I need to repeat the  
12 question?

13 MR. RUBENSTEIN: Yes, if you would  
14 please.

15 MR. KRAMER: At what point will the  
16 Applicant be determining whether or not to use the  
17 air district's priority reserve credits for those  
18 pollutants for which it can use it? Will it be at  
19 the time of the air district's issuance of its  
20 permit to construct, or some time before or after  
21 that?

22 MR. RUBENSTEIN: It will have to be just  
23 before issuance of the district's permit to  
24 construct, because the district will not issue the  
25 permit to construct unless that determination has

1     been made by the Applicant.

2             MR. KRAMER:   Okay.  Are you familiar  
3     with the Memorandum of Understanding I described a  
4     minute ago?

5             MR. RUBENSTEIN:  Yes, I was a co-author  
6     of that.

7             MR. KRAMER:  And in what capacity were  
8     you co-author?

9             MR. RUBENSTEIN:  I was a deputy  
10    executive officer of the California Air Resources  
11    Board at the time.

12            MR. KRAMER:  Okay.  What is your  
13    understanding of what that memorandum was supposed  
14    to say with regard to the need for an air district  
15    to issue a separate permit to construct from the  
16    license that the Energy Commission issues?

17            MR. RUBENSTEIN:  That agreement  
18    indicated, insofar as the Air Resources Board and  
19    the California Energy Commission were concerned,  
20    that a final determination of compliance issued by  
21    an air district would automatically become an  
22    authority to construct upon certification of the  
23    project by the Commission.

24            However, that has not been implemented  
25    by all the air districts in California.  And in

1 particular it has not been implemented in the  
2 south coast air basin.

3 MR. KRAMER: Right. They will sometimes  
4 make amendments after a license is issued and not  
5 even tell the Commission that they've done so,  
6 right?

7 MR. RUBENSTEIN: Well, it's actually  
8 more than that. The south coast district had  
9 adopted a rule that implemented the MOU quite  
10 specifically with exactly those terms, that the  
11 FDOC would become an authority to construct upon  
12 licensing by the commission.

13 However, the south coast district  
14 repealed that rule sometime in the 1980's or early  
15 1990's I believe. At the present time an  
16 Applicant cannot commence construction of a  
17 project in the south coast air basin without  
18 obtaining a separate permit to construct.

19 The south coast district considers the  
20 licensing decision by the Energy Commission as  
21 satisfying CEQA obligations. Consequently, the  
22 district will not issue the permit to construct  
23 until after the Commission completes its licensing  
24 process.

25 MR. KRAMER: Thank you. I have no

1 further cross-examination questions.

2 COMMISSIONER PERNELL: Yes, just one,  
3 Mr. Rubinstein. So is it your understanding, as  
4 it relates to Com 15, that the 60 days starts  
5 when?

6 MR. RUBENSTEIN: It only makes sense to  
7 me in Com 15 that the 60 day period would start  
8 upon issuance of the permit to construct by the  
9 south coast district.

10 COMMISSIONER PERNELL: Okay. And Mr.  
11 Kramer, you still object to that?

12 MR. KRAMER: Well, staff holds to its  
13 understanding -- staff wants to apply the MOU, and  
14 it's probably a bureaucratic turf battle, frankly.

15 COMMISSIONER PERNELL: Well, I think we  
16 need to know whether or not the MOU has been  
17 repealed by one party or the other.

18 MR. KRAMER: Oh, I don't believe it has.  
19 But it's one of those cases where probably the  
20 Commission and the district just agree to  
21 disagree, and even if things aren't done exactly  
22 according to the letter, I think life goes on and  
23 projects -- they're properly conditioned when  
24 things are done.

25 But we are reluctant to buy into if you

1 will this alternative universe by agreeing to a  
2 condition that specifically recognizes that.

3 COMMISSIONER PERNELL: Okay. Mr.  
4 Kramer, do you have another witness?

5 MR. KRAMER: Yes. When we're done with  
6 staff we have our direct witnesses.

7 COMMISSIONER PERNELL: All right. On  
8 Com 8, on the question "on other actions" there  
9 seems to be a hangup and you were going to get  
10 back to that. What was your intent in that  
11 phrase?

12 MR. KRAMER: I could describe it, but  
13 you'll probably prefer that our witness testify to  
14 that.

15 COMMISSIONER PERNELL: Okay, so he'll  
16 cover that?

17 MR. KRAMER: Yes.

18 HEARING OFFICER WILLIS: And you're done  
19 with your cross?

20 MR. KRAMER: Yes.

21 HEARING OFFICER WILLIS: Mr. Wheatland,  
22 would you like to have any re-direct?

23 MR. WHEATLAND: Yes, just one question  
24 on re-direct for Mr. Rubinstein. Once the  
25 Commission issues a decision on this application

1 for certification, is it your understanding that  
2 the district will in fact issue a permit to  
3 construct at a subsequent date?

4 Or would they be acting consistent with  
5 the MOU in accepting the Commission's decision as  
6 the final action?

7 MR. RUBENSTEIN: The south coast  
8 district absolutely will not allow construction  
9 without their issuance of a separate document,  
10 which will be a permit to construct, sometime  
11 after the Commission issues it's decision.

12 And that permit to construct will not be  
13 issued until certain additional requirements that  
14 the district has are satisfied, such as  
15 identification of the quantity, for example of  
16 priority reserve credits that will be obtained,  
17 and payment of the required mitigation fees.

18 So those actions have to occur at some  
19 period of time after the Commission decision, but  
20 before permit to construct is issued. And this  
21 Applicant absolutely cannot commence construction  
22 until that second document is issued.

23 COMMISSIONER PERNELL: All right. I  
24 think what we'll do is we'll hear from south coast  
25 at the appropriate time.

1 MR. WHEATLAND: Thank you. That's all  
2 the questions I have on redirect.

3 HEARING OFFICER WILLIS: Mr. Kramer, do  
4 you have any recross on that redirect?

5 MR. KRAMER: No.

6 HEARING OFFICER WILLIS: Okay. Would  
7 you like to move your documents?

8 MR. WHEATLAND: Yes, I'd like to move  
9 into evidence Exhibit One, Section 3.9 of the AFC.  
10 And the other document which I've set aside --  
11 which is Chapter Three of Exhibit Two.

12 HEARING OFFICER WILLIS: Any objections?

13 MR. KRAMER: No.

14 HEARING OFFICER WILLIS: Okay. At this  
15 time, before we have staff's witness, we're going  
16 to take a five minute break.

17 COMMISSIONER PERNELL: Five minutes. We  
18 are off the record.

19 (Off the record.)

20 COMMISSIONER PERNELL: Back on the  
21 record. Ms. Willis?

22 HEARING OFFICER WILLIS: Okay, if staff  
23 would like to call its witnesses?

24 MR. KRAMER: Yes. Dr. Greenberg has  
25 already been sworn. I don't think we asked him to

1 recite his qualifications the last time, but I  
2 would ask that the parties would stipulate to his  
3 qualifications with the caveat that I've never  
4 heard him do it in less than five minutes.

5 MR. WHEATLAND: Well, I would stipulate  
6 on his qualifications on all matters other than  
7 those that relate to security issues. And I would  
8 love to hear him briefly state his qualifications  
9 with respect to that issue.

10 MR. KRAMER: Dr. Greenberg, can you  
11 describe your current activities with the  
12 Commission, and any prior activities that are  
13 relevant to the security issues before us?

14 MR. GREENBERG: Am I limited to five  
15 minutes?

16 MR. KRAMER: Yes.

17 MR. GREENBERG: Okay. I think it begins  
18 in the year 2000 when the US EPA issued some  
19 warnings on potential terrorism and mischief  
20 thefts of anhydrous ammonia shipments to  
21 industrial users, including power plants,  
22 throughout the United States. That was in January  
23 of the year 2000.

24 Subsequent to that I began working with  
25 a firm in Israel called SB Security, which is

1 israel's oldest security firm, which has  
2 government contracts and private contracts for any  
3 number of industrial and infrastructure sites  
4 throughout the world. They are currently working  
5 with the country of Greece to establish security  
6 for the 2004 Olympics.

7           And after the events of September 11th  
8 of 2001 I started working with the California  
9 Energy Commission directly on power plant security  
10 measures, particularly in regards to vulnerability  
11 assessments because of the use of hazardous  
12 materials and the previous warnings from the US  
13 EPA.

14           I have, since January of this year,  
15 developed presently a confidential model plant  
16 security plan. I have conducted training with my  
17 Israeli partners of CEC staff. We have prepared a  
18 CEC staff training manual.

19           And we have also prepared a worker  
20 training manual for future provision to power  
21 plant operators so that they may educate their  
22 workers on the need for and the implementation of  
23 power plant security.

24           MR. KRAMER: Is that sufficient?

25           MR. WHEATLAND: Yes, thank you.

1           MR. KRAMER: Are you involved Dr.  
2 Greenberg, then, in Commission efforts to review  
3 its standard condition regarding security?

4           MR. GREENBERG: Yes. I assisted the  
5 compliance project manager/supervisor, Mr. Chuck  
6 Najarian, in developing the generic Com 8 for  
7 other power plants, and have testified now on five  
8 or six power plant -- on Com 8, the need for power  
9 plant security plans for that number of siting  
10 cases before the Commission.

11          MR. KRAMER: So you're familiar then  
12 with the version of Com 8 that's in the conditions  
13 for this project?

14          MR. GREENBERG: Yes.

15          MR. KRAMER: Is it possible that general  
16 condition will change at some point in the future?

17          MR. GREENBERG: Yes, it is possible.

18          MR. KRAMER: Until it does, is it  
19 acceptable to you to have no condition, or do you  
20 think some form of condition is necessary?

21          MR. GREENBERG: It is not acceptable to  
22 myself and the other staff of the Energy  
23 Commission to have no condition at all. This is a  
24 new era that we are in and I'm sure everyone in  
25 this room is aware of it.

1           What we want to do is have power plant  
2 owners and operators make it as difficult as  
3 possible for there to be any intentional act of  
4 either disrupting the power supply or of turning  
5 the hazardous materials at a power plant into a  
6 weapon against the public, much as what occurred  
7 on 9/11, taking airplanes and using them against  
8 the public.

9           There is no doubt that power plants have  
10 been targeted and mentioned by existing terrorist  
11 groups. As recently as yesterday's USA Today --  
12 I'm sorry, today's USA Today, July 30th, 2003 --  
13 the Office of Homeland Security had issued a  
14 warning of a 9/11 style plane attack.

15           And the article states similar warnings  
16 have been issued about the rail industry, power  
17 plants etc. since 9/11. it is important to have  
18 security that is commensurate with the risk of a  
19 particular specific site.

20           And that is why staff is developing  
21 these generic guidelines that will be applicable  
22 to all power plants, those that are in the siting  
23 process as well as existing power plants, that  
24 will have different levels of security, depending  
25 upon how that power plant fits in the

1 vulnerability assessment matrix. But something is  
2 indeed needed.

3 MR. KRAMER: The version of Com 8 that  
4 staff has currently proposed allows the  
5 construction project manager to authorize  
6 modifications to the measures that are required in  
7 the condition or require additional measures, is  
8 that correct?

9 MR. GREENBERG: That is correct.

10 MR. KRAMER: You've heard some of the  
11 Applicant's concerns today. In your opinion, does  
12 Com 8 offer enough flexibility for the staff to  
13 properly address the Applicant's concerns?

14 MR. GREENBERG: I believe it does. I  
15 realize that the Applicant's witness did not have  
16 an opportunity to go more fully into his reasons  
17 for objecting to some of the provisions of Com 8.  
18 But nevertheless I believe that all of those could  
19 be addressed very easily if the Committee desires  
20 to go into an in-depth discussion and answer on  
21 them, question and answer on them.

22 MR. KRAMER: Could they also be  
23 addressed during the compliance process, when  
24 these plans were submitted and reviewed?

25 MR. GREENBERG: Yes. Once again, as

1 you've pointed out, we are requesting in this  
2 condition of certification that any plan be  
3 reviewed and approved by CPM's. That is one  
4 reason why myself and my Israeli colleagues  
5 conducted two days of intensive training of the  
6 compliance project manager staff at the CEC just  
7 this month.

8           They will have the ability to go to a  
9 power plant, review their power plant security  
10 plan, and see whether it is implemented  
11 appropriately and make recommendations and give  
12 flexibility to power plant owners and operators in  
13 implementing these plans.

14           I also want to state that we are in the  
15 process of developing cost estimates. And I can  
16 tell right now that every power plant can prepare  
17 a power plant security plan and implement them by  
18 adding certain features above which they already  
19 are installing for in a very cost-effective manner  
20 -- in all cases it would be less than \$50,000.

21           MR. KRAMER: Could you explain the  
22 phrase that was added in staff's proposed  
23 revision, at the end of Com 8. It spoke about the  
24 replacement of the requirements pursuant to the  
25 Commission's future rulemaking.

1           And then the phrase that was added is  
2 "or other action" on security. What was the staff  
3 trying to achieve with the addition of that phrase  
4 "or other action?"

5           MR. GREENBERG: Well, staff was trying  
6 to give flexibility to the Commission in how the  
7 Commission wishes to go forward with guidelines or  
8 rulemaking or other methods of getting these  
9 suggested security plan matrix and guidelines out  
10 to power plant owners and operators.

11           We don't wish to hold the Commission to  
12 a formal rulemaking process if there is another  
13 more expedited process that will achieve the ends  
14 as well as getting input and participation from  
15 power plant owners and operators that may be more  
16 efficient.

17           MR. KRAMER: And perhaps more expedient?

18           MR. GREENBERG: And more expedient.

19           MR. KRAMER: Did you have anything else  
20 you wanted to tell the Committee with regards to  
21 condition Com 8 and the security issues?

22           MR. GREENBERG: I think that covers it  
23 for now. Thank you.

24           MR. KRAMER: Thank you.

25           HEARING OFFICER WILLIS: That concludes

1 your testimony?

2 MR. KRAMER: Yes. Mr. Garcia?

3 MR. GARCIA: Mr. Greenberg, if I  
4 understood you correctly, I think you said that  
5 any plant -- and I may be paraphrasing you here --  
6 any plant could implement the elements of Com 8 at  
7 a cost of about \$50,000, is that what you said?

8 MR. GREENBERG: More or less. And I'd  
9 be happy to elaborate on that. I certainly would  
10 not include ongoing costs of a guard, for example,  
11 If guards are required 24/7.

12 But the physical implementation, in  
13 other words, for example, a fence is already going  
14 to be built. To enhance that to meet certain  
15 security needs by making it electronic in nature,  
16 such as putting on trip-wires on the fence or  
17 passive infrared on the inside perimeter of the  
18 entire site, is actually very inexpensive.

19 There's a lot of competition in the  
20 market nowadays. Closed-circuit television, so as  
21 to be able to look at three or four points, such  
22 as your main entrance, your hazardous materials  
23 location of storage, your control room, is only  
24 \$5,000. Adding passive infrared is only another  
25 \$5,000.

1           MR. GARCIA: So would it be fair to  
2 characterize what you just now said, that  
3 basically the \$50,000 refers to the capital costs.  
4 And the cost of the guards and the other overhead  
5 are other ongoing costs that could substantially  
6 dwarf the capital cost?

7           MR. GREENBERG: I would say that's  
8 correct, except for the substantially dwarf. When  
9 Com 8 refers to addressing guards, we were very  
10 careful to make sure that we did not say  
11 everybody's going to have to have a guard 24 hours  
12 a day, seven days a week, 365 days a year.

13           And indeed, without going into too much  
14 detail in a confidential document right now, there  
15 are certainly power plants that exist now and that  
16 are planning to be built now, where guards 24/7  
17 are not at all necessary nor should they be  
18 required, and we recognized that.

19           We're not trying to go overboard here,  
20 but rather we do want to focus on a minimal level  
21 of security for all power plants, and then  
22 enhanced security for those power plants that are  
23 deemed to be more attractive targets in that those  
24 that might have greater offsite consequence should  
25 there be an attack and intentional release of

1 hazardous materials.

2 MR. GARCIA: Let me go back to the voir  
3 dire part. In the process of equipping yourself  
4 with the skills necessary to prepare something  
5 like this, did you consult with the security  
6 specialists that the utilities have?

7 MR. GREENBERG: Let me briefly answer  
8 that question by saying yes, and then I'll go into  
9 it in more detail. I have reviewed guidance from  
10 the U.S. Department of Justice, from the chemical  
11 manufacturing community, from the North American  
12 Electrical Reliability Institute.

13 They have specific guidelines, which by  
14 the way do incorporate all of our suggestions for  
15 Com 8, including background security checks for  
16 all personnel, including those that are directly  
17 employed by an electrical utility, contractors and  
18 vendors who come onsite.

19 And I have reviewed the security  
20 measures of five power plants, and spoken with  
21 their security and management teams. So the  
22 answer is yes, I have. And my Israeli colleagues  
23 have not only done so in other parts of the world  
24 -- not the United States yet -- but in other parts  
25 of the world, and have prepared and implemented

1 security plans at power plants.

2 MR. GARCIA: Okay. You said something  
3 that I want to kind of poke at. You said that you  
4 spoke with the facility security personnel, but  
5 the question that I specifically asked you was did  
6 you speak to the corporate security management  
7 team, which is a very different level of  
8 individuals?

9 MR. GREENBERG: No. And not too many  
10 have corporate security personnel, which is a  
11 problem.

12 MR. GARCIA: All right. Thank you.

13 HEARING OFFICER WILLIS: And that  
14 concludes your testimony?

15 MR. KRAMER: Yes.

16 HEARING OFFICER WILLIS: Mr. Wheatland?

17 MR. WHEATLAND: Yes. I have a few  
18 questions, thank you. Dr. Greenberg, in  
19 describing what the term "other actions" might  
20 mean, I think you testified that you had in mind  
21 some alternative procedures other than a  
22 rulemaking that might be more expeditious in  
23 developing a statewide security program, is that  
24 correct?

25 MR. GREENBERG: Yes.

1           MR. WHEATLAND:  Could you elaborate a  
2 little more on what you have in mind in terms of  
3 an alternative procedure that would be more  
4 expeditious?

5           MR. GREENBERG:  Well, I think that there  
6 are procedures that the California Energy  
7 Commission Commissioners may wish to avail of  
8 themselves, and we don't want to limit their  
9 flexibility in this.  I think it'd be pure  
10 speculation on my part for me to state what they  
11 may or may not want to do in this matter.

12           I have testified previously that I am  
13 not sure at this point what management wants to  
14 do, and I think it would be conjecture for me to  
15 state what management wants to do at this point.

16           MR. WHEATLAND:  In your opinion, should  
17 these other actions -- if they are implemented --  
18 include an opportunity to publish the proposed  
19 standards and allow other parties to comment on  
20 them before they are adopted?

21           MR. GREENBERG:  That's a very  
22 interesting question, sir, because it brings to  
23 mind the balance that we must strike in our  
24 country today between full 100 percent disclosure  
25 and public participation, and the need to keep

1 some things confidential and not broadcasting all  
2 over the Internet and the newspapers a security  
3 plan or generic security plan that some adversary  
4 might be able to follow and subsequently thwart.

5 So I, that is my personal and  
6 professional opinion, that that balance must be  
7 weighed, and I don't think management has made  
8 that decision as to how to weigh that yet.

9 MR. WHEATLAND: Well, let me ask it in a  
10 more limited way. Would this security plan, which  
11 owners would be required to implement, would that  
12 security plan be disclosed to the facility owners?

13 MR. GREENBERG: Absolutely.

14 MR. WHEATLAND: And would they have an  
15 opportunity to review and comment on that plan  
16 before it's implemented?

17 MR. GREENBERG: It would be my  
18 intention, yes, definitely.

19 MR. WHEATLAND: I believe you've also  
20 stated that you were in the process of developing  
21 a statewide procedure which you would like to --  
22 for existing power plants -- that you would like  
23 to bring forth to the Commission, is that correct?

24 MR. GREENBERG: Well, I -- I'm hinging  
25 on the words "that I would like to." I don't know

1 whether management will bring it to the Commission  
2 and in what form, but I am developing those, and  
3 they are currently under review by six or seven or  
4 so individuals within CEC management.

5 MR. WHEATLAND: And I believe you  
6 previously indicated that, while you can't speak  
7 for management, you would expect that that would  
8 occur sometime this year, is that correct?

9 MR. GREENBERG: Hopefully.

10 MR. WHEATLAND: Now I'd like to ask a  
11 couple more questions about Com 8, because I  
12 frankly just don't understand it. The first one,  
13 under the operation security plan, item number  
14 nine, where it refers to site personnel background  
15 checks. By the term "site personnel", are you  
16 intending to refer to employees of the project  
17 owner?

18 MR. GREENBERG: As I stated in my direct  
19 testimony, all site personnel, whether they be  
20 employees of the project owner, whether they be  
21 contract employees who are there but they are not  
22 directly employees of the power plant owner and  
23 operator, but rather they are under contract, but  
24 they are there and they need to have daily site  
25 access.

1           MR. WHEATLAND: Right. Now this  
2 condition doesn't state that. Where is your  
3 definition of site personnel set forth?

4           MR. GREENBERG: Well, it's not, because  
5 once again Com 8 is a performance-based standard  
6 and not a specification standard. We are working  
7 on the specifications. You will have access to  
8 those specifications.

9           But right now staff believes that this  
10 type of performance approach gives you the  
11 greatest flexibility and if you note that there  
12 still is the review and approval by the CEC  
13 compliance project manager. And so there's  
14 discussions and give and take in there, and some  
15 degree of flexibility given to you.

16          MR. WHEATLAND: Well, if I understand  
17 what you're proposing in Com 8, the facility owner  
18 will develop an operations security plan, and then  
19 the CPM will review that plan to determine whether  
20 or not it is adequate, is that correct?

21          MR. GREENBERG: That is correct.

22          MR. WHEATLAND: All right. Where in Com  
23 8 does it state the standards by which the CPM  
24 will determine that the plan is adequate?

25          MR. GREENBERG: It does not. Of course,

1 it doesn't state anywhere in any of the conditions  
2 of certifications, you know, the criteria by which  
3 the compliance project manager considers it to be  
4 adequate or inadequate. Whether it be hazardous  
5 materials or air quality.

6 MR. WHEATLAND: Well, I beg to differ  
7 with you on that, but I'm not going to ask you to  
8 testify under those matters because that's not  
9 what you're here for today. Under ten, you talk  
10 about site access for vendors and requirements for  
11 hazardous materials.

12 Now, you understand the difference  
13 between hazardous materials and acutely hazardous  
14 materials, do you not?

15 MR. GREENBERG: Yes, I do.

16 MR. WHEATLAND: And items such as paint  
17 or motor oil are hazardous materials, is that  
18 correct?

19 MR. GREENBERG: Yes, they can be.

20 MR. WHEATLAND: All right. And are you  
21 proposing that there be personnel background  
22 security checks of individuals who might deliver  
23 paint or motor oil to the site?

24 MR. GREENBERG: Well, there's where we  
25 get the flexibility in your plan. If you want to

1 try and dilute this plan by requesting the vendor  
2 to provide background checks for anything that may  
3 remotely be a hazardous material I would support  
4 you on that, but that's not something that a CPM  
5 would require.

6 If you just want to limit it to acutely  
7 hazardous materials, then something as explosive  
8 as hydrogen gas could be delivered by a driver  
9 without a background check, and that's what we're  
10 trying to avoid.

11 We're very serious about this, and we're  
12 not trying to be frivolous and include paint, but  
13 we are trying to include hydrogen, which is not an  
14 acutely hazardous material.

15 MR. WHEATLAND: But how does the  
16 facility owner know when to conduct such a check.  
17 For example, if they call up Kragen's and ask for  
18 four quarts of motor oil, how do they know whether  
19 or not to require a security background check,  
20 under the language of number ten?

21 MR. GREENBERG: Because you'll be  
22 writing a power plant security plan that will be  
23 reviewed and approved by a compliance project  
24 manager.

25 MR. WHEATLAND: Under standards that

1 have not yet been promulgated to determine whether  
2 or not the plan is adequate?

3 MR. GREENBERG: Yes.

4 MR. WHEATLAND: Now you also -- it would  
5 require in Com 8 that the project owner will  
6 prepare a vulnerability assessment, is that  
7 correct?

8 MR. GREENBERG: That's correct.

9 MR. WHEATLAND: Where is this term  
10 "vulnerability assessment" explained?

11 MR. GREENBERG: That would be on page  
12 5.4-16 of the staff assessment, under hazardous  
13 materials, site security.

14 MR. WHEATLAND: 5.4-16?

15 MR. GREENBERG: Correct. At the bottom  
16 of the page.

17 MR. WHEATLAND: Could you read for me  
18 the language explaining what a vulnerability  
19 assessment is?

20 MR. GREENBERG: "This facility proposes  
21 to use hazardous materials which have been  
22 identified by the USEPA as materials where special  
23 site security measures should be developed and  
24 implemented to ensure that unauthorized access is  
25 prevented."

1           "The EPA published a chemical accident  
2 prevention alert regarding site security, and the  
3 U.S. Department of Justice published a special  
4 report on chemical facility vulnerability  
5 assessment methodology."

6           "In order to ensure that this facility  
7 or a shipment of hazardous materials is not the  
8 target of unauthorized access, staff's proposed  
9 general condition of certification on construction  
10 and operation security plan Com 8 will require the  
11 preparation of a vulnerability assessment and the  
12 implementation of site security measures  
13 consistent with the above-referenced documents."

14           The next paragraph goes on to discuss  
15 the vulnerability assessment methodology, and Com  
16 8 says that the vulnerability assessment would be  
17 consistent with US EPA and U.S. Department of  
18 Justice guidelines.

19           MR. WHEATLAND: Good, and I'll ask you a  
20 question about the guidelines in just a minute.  
21 But with respect to the vulnerability assessment,  
22 now this is a -- the one that's mentioned her,  
23 published by the U.S. Department of Justice,  
24 applies to chemical facilities, not power plants,  
25 is that correct?

1           MR. GREENBERG: That's correct. And  
2 it's irrelevant, quite frankly, as to whether or  
3 not the site is specifically a power plant or a  
4 chemical facility. It addresses the nature of the  
5 chemical itself and the vulnerability assessment  
6 guidance is useful and generic in nature.

7           Now I submit to you, and I agree, that  
8 the U.S. Department of Justice guidelines are not  
9 specific for power plants. That's why we are  
10 writing specific ones for power plants.

11           MR. WHEATLAND: But if the Applicant or  
12 project owner, after the AFC is granted, were to  
13 sit down the next day and write a vulnerability  
14 assessment, you'd want them to write an assessment  
15 that was consistent with the ones that would be  
16 prepared for chemical facilities, is that right?

17           MR. GREENBERG: I emphasize the word  
18 "consistent." And I fear that your question is  
19 more precise than the word consistent is meant to  
20 be. I would hope that you would also follow -- if  
21 you were writing it today -- that you would follow  
22 the North American Electrical Reliability  
23 Institute guidelines as well.

24           MR. WHEATLAND: Can you give us a  
25 reference to those?

1           MR. GREENBERG: Forgive me, I would love  
2 to, but off the top of my head it's --

3           MR. WHEATLAND: After the hearing.

4           MR. GREENBERG: Okay. And it's 2002.

5           MR. WHEATLAND: And if the chemical  
6 facility vulnerability assessment methodology --  
7 is that a proposed methodology or is that a  
8 prescribed methodology for chemical facilities?

9           MR. GREENBERG: Recommended.

10          MR. WHEATLAND: And finally, you  
11 mentioned the USEPA guidelines. Can you give me a  
12 reference to those please?

13          MR. GREENBERG: No, I didn't mention  
14 that these are specific vulnerability assessment  
15 guidance, but rather, if you go back to page 5.4-  
16 16, the reference there is chemical accident  
17 prevention alert regarding site security, EPA  
18 2000A.

19           I'm sorry if it's confusing, but it  
20 looked pretty clear to me when I wrote it.

21          MR. WHEATLAND: And so those are the  
22 USEPA guidelines you're referring to. And the  
23 U.S. Department of Justice guidelines that you're  
24 referring to are those for chemical facilities  
25 that we've just referenced, is that right?

1 MR. GREENBERG: Correct.

2 MR. WHEATLAND: All right. A moment ago  
3 we were discussing the difference between acutely  
4 hazardous materials and hazardous materials.  
5 Would you be willing to consider stating under  
6 number ten and number 11 that it would apply to  
7 acutely hazardous materials and hydrogen?

8 HEARING OFFICER WILLIS: Excuse me, Mr.  
9 Wheatland, what number are you referring to, there  
10 is no 11?

11 MR. WHEATLAND: I apologize for that,  
12 it's the paragraph immediately following number  
13 ten. I apologize for the confusion.

14 HEARING OFFICER WILLIS: Thank you.

15 MR. GREENBERG: Excuse me, can you  
16 repeat that? I was looking for number 11 also.

17 MR. WHEATLAND: That paragraph, number  
18 ten, and the paragraph that immediately follows,  
19 both just address hazardous materials. And I'm  
20 asking if that language were modified to state  
21 "acutely hazardous materials and hydrogen" would  
22 that be an acceptable change to you?

23 MR. GREENBERG: Sir, if you'll give me a  
24 moment, let me look at your Table 3.4-7 from the  
25 AFC, which is the chemical inventory for project

1 operations. If you would agree to include the 93  
2 percent sulfuric acid I would agree with you.

3 MR. WHEATLAND: That's a change that we  
4 would agree to. And with that, that completes my  
5 cross-examination.

6 HEARING OFFICER WILLIS: Thank you. Any  
7 redirect?

8 MR. KRAMER: No. But does everybody but  
9 me understand what the change is, then? If so,  
10 that's fine.

11 MR. GREENBERG: I'll go over the change,  
12 so the staff counsel understands. Number ten  
13 would state "site access for vendors and  
14 requirements for hazardous materials vendors  
15 delivering acutely hazardous materials plus  
16 hydrogen and 93 percent sulfuric acid to conduct  
17 personnel background security checks."

18 MR. KRAMER: Okay. The same in the  
19 vulnerability assessment paragraph?

20 MR. GREENBERG: Correct. So that  
21 paragraph would read "in addition, the project  
22 owner shall prepare a vulnerability assessment and  
23 implement site security measures addressing  
24 acutely hazardous materials and hydrogen and 93  
25 percent sulfuric acid storage and transportation,

1 consistent with USEPA and U.S. Department of  
2 Justice guidelines."

3 MR. KRAMER: Thank you. No further  
4 questions.

5 COMMISSIONER PERNELL: Okay. I just  
6 have one for Mr. Wheatland. We're clear on the  
7 "on other actions" with security, we're clear on  
8 that issue?

9 MR. WHEATLAND: One moment please.  
10 Based on our understanding that other actions  
11 would include actions by the Commission in which  
12 facility owners would have an opportunity to  
13 review and comment upon any proposed guidelines  
14 before they are implemented, that language would  
15 be acceptable to the Applicant.

16 COMMISSIONER PERNELL: Okay. Mr.  
17 Kramer?

18 MR. KRAMER: We proposed it, we still  
19 like it.

20 COMMISSIONER PERNELL: Okay. Let's move  
21 on. Ms. Willis?

22 HEARING OFFICER WILLIS: You have some  
23 documents to move into evidence?

24 MR. KRAMER: Yes, the general conditions  
25 portion of the final staff assessment, which is

1 Exhibit 67, and Exhibit 68, and Exhibit 70 -- I  
2 can't recall if the errata affected those at all  
3 but if they did it wouldn't hurt to have that in  
4 there.

5 HEARING OFFICER WILLIS: Any objections?

6 MR. WHEATLAND: No objections.

7 HEARING OFFICER WILLIS: So moved. Are  
8 there any comments from the public on the topic of  
9 general conditions and compliance? Hearing none,  
10 we'll close that topic.

11 COMMISSIONER PERNELL: At this time,  
12 before we get into air quality, we do have two  
13 other requests to address the Committee. And I  
14 think we should accommodate them now before we get  
15 into the topic of air quality and public health.  
16 So Ms. Willis, will you call up the witnesses?

17 MR. GIBBONS: Thank you. I apologize  
18 for being late, but I had another meeting I had to  
19 go to. I'm Bob Gibbons, and I'm in charge of the  
20 Harvest Valley Citizen Patrol. Also I'm a member  
21 of the Harvest Valley Community Council.

22 I'm also the spokesperson for the  
23 members of the Harvest Valley Community Council,  
24 as well as a member of the Romoland School Board.  
25 So I'm here to speak on behalf of the Harvest

1 Valley Community Council.

2 We are in favor of the project. The  
3 project will bring jobs. It will bring the  
4 economy up to a standard that I believe it should  
5 be brought up to. And with this, I'm very much in  
6 favor of it, and I'm representing a lot of people.

7 Will they please stand up? I brought  
8 these people with me to verify that I'm here in  
9 favor of the program. And I urge you to please  
10 accept this project in our community. It's going  
11 to be an asset to all people here.

12 COMMISSIONER PERNELL: Thank you, Mr.  
13 Gibbons. It's always a pleasure to see you and  
14 members of your council.

15 HEARING OFFICER WILLIS: Thank you. Mr.  
16 Busch? Daryl Busch?

17 MR. BUSCH: Thank you. Hello, I'm Daryl  
18 Busch. I too have an excuse, jury duty, that's  
19 why I'm late. Okay. I'm here on behalf of the  
20 city of Perris.

21 Although this project is not in the city  
22 of Perris it borders on our city limits -- but you  
23 are presently in the city of Perris, and I do want  
24 to welcome you here.

25 The city of Perris has endorsed this.

1 We have a letter endorsement that's supported by  
2 our city council. We know the need for the power  
3 today, and what we're going to need in the future  
4 with our growth and development, and the city  
5 council supported that.

6 And I'm here on behalf of the council to  
7 again say we support this.

8 COMMISSIONER PERNELL: Thank you, Mr.  
9 Busch. And I certainly -- and the Committee --  
10 appreciates the hospitality that the council has  
11 shown us since we've been down here.

12 MR. BUSCH: Thank you.

13 HEARING OFFICER WILLIS: Can we go off  
14 the record for just one moment?

15 (Off the record.)

16 HEARING OFFICER WILLIS: Back on the  
17 record. At this time we'll go ahead with air  
18 quality and public health. And staff counsel, Mr.  
19 Kramer, will call the air district please.

20 MR. KRAMER: Did you want to try and  
21 swear everyone in at once, and get that out of the  
22 way?

23 HEARING OFFICER WILLIS: Why don't we do  
24 that? And who is -- Mr. Birdsall, why don't you  
25 go ahead and we'll have you sworn in. Does that

1 cover everybody?

2 Whereupon,

3 BREWSTER BIRDSALL, JOHN YEE, AND DANNY LUONG  
4 were called as witnesses herein, and after first  
5 having been duly sworn, were examined and  
6 testified as follows:

7 HEARING OFFICER WILLIS: If both Mr.  
8 Kramer and everybody could just hold the mikes,  
9 because we're having a little bit of a hard time  
10 hearing.

11 MR. KRAMER: Okay. If, one after the  
12 other, could you state your names for the record?

13 MR. YEE: Yes. My name is John Yee,  
14 Senior Air Quality Engineer with the South Coast  
15 AQMD.

16 MR. LUONG: I'm Danny Luong with the  
17 South Coast Air Quality. My title is Air Quality  
18 Analysis and Compliance Supervisor.

19 MR. KRAMER: Okay. Mr. Yee, you were  
20 involved in the preparation and the final  
21 determination of compliance for this project, is  
22 that correct?

23 MR. YEE: That's correct.

24 MR. KRAMER: And that is Exhibits --  
25 Jenifer, if you could help me out. It's in

1 several pieces, one is Exhibit 69, which are  
2 replacement pages. That's probably the last of  
3 the three or four documents.

4 Okay, Exhibit 48, the first part of the  
5 FDOC, and Exhibit 52 is a letter dated April 25th,  
6 2002, an amendment from Pang Mueller to Jim  
7 Bartridge.

8 Do those documents constitute the  
9 district's FDOC in this case?

10 MR. YEE: Yes, I believe so.

11 MR. KRAMER: And do those documents  
12 represent the air district's current position  
13 about the air quality aspects of this project?

14 MR. YEE: Yes, they do.

15 MR. KRAMER: Okay. As the FDOC really  
16 isn't in dispute by the parties, I have no further  
17 questions for these witnesses, except perhaps on  
18 redirect -- it's more in the order of cross. Mr.  
19 Luong was, his presence was requested I believe at  
20 the behest of the Applicant.

21 HEARING OFFICER WILLIS: Before -- I  
22 wanted to go ahead and ask -- did you have any  
23 questions for the air district? It probably would  
24 flow easier if we heard Mr. Rubinstein's testimony  
25 and then had followup questions for the district,

1 but it's up to you. How do you want to handle  
2 it?

3 MR. ELLISON: Well, if I'm following the  
4 procedure correctly -- first of all, let me  
5 introduce myself. I'm Christopher Ellison, I'm  
6 the attorney that's going to be handling air  
7 quality for the Applicant.

8 If I understood Mr. Kramer correctly,  
9 the staff has no questions for these witnesses,  
10 then we would have no questions for them either  
11 and we could just let them go.

12 HEARING OFFICER WILLIS: Well, I think  
13 the Committee will have some.

14 COMMISSIONER PERNELL: We can't just let  
15 them go.  
16 (laughter)

17 HEARING OFFICER WILLIS: They've been  
18 sitting here too long.

19 MR. ELLISON: Well, the Committee I'm  
20 sure will have questions for them. I didn't mean  
21 let them go in literally the physical sense, but  
22 I'm not sure what the procedure is. I got the  
23 feeling that Mr. Kramer may not be sure either,  
24 given that neither of us are sponsoring these  
25 witnesses technically.

1 HEARING OFFICER WILLIS: How long do you  
2 thing your direct testimony will be?

3 MR. ELLISON: Well, we've identified 45  
4 minutes. I think we can do it in less than that.

5 HEARING OFFICER WILLIS: I'd just like  
6 to get them out of here before 4:30, if that would  
7 work.

8 MR. ELLISON: I agree.

9 HEARING OFFICER WILLIS: I just have a  
10 feeling that, once your testimony is over, there  
11 might be some followup questions that the  
12 Committee might have for the air district folks.

13 MR. ELLISON: That's fine. Whatever the  
14 Committee's pleasure is, we're happy to cooperate.

15 COMMISSIONER PERNELL: We'll proceed  
16 with Mr. Rubinstein. That's fine.

17 MR. ELLISON: Mr. Rubinstein, you've  
18 been previously sworn. If you could state and  
19 spell your name for the record, please?

20 MR. RUBENSTEIN: Yes, my name is Gary  
21 Rubinstein, that's R-u-b-e-n-s-t-e-i-n.

22 MR. ELLISON: And do you have before you  
23 a copy of a portion of Exhibit Two, which is the  
24 Applicant's testimony addressing air quality,  
25 beginning on page 5.1-1?

1 MR. RUBENSTEIN: Yes, I do.

2 MR. ELLISON: And are you the person --  
3 was this prepared by you or at your direction?

4 MR. RUBENSTEIN: Yes, it was.

5 MR. ELLISON: This testimony  
6 incorporates by reference a number of Exhibits.  
7 Could you identify them at this point?

8 MR. RUBENSTEIN: Yes. As shown in the  
9 list beginning on page 5.1-17 of my testimony. It  
10 incorporates, by reference, specific portions of  
11 Exhibits 1, 3, 4 and 7 through 54. And the  
12 specific portions of those Exhibits are identified  
13 in the table beginning on page 5.1-17 of my  
14 testimony.

15 MR. ELLISON: Okay. At this time  
16 forward I'm going to refer to Section 5.1 of  
17 Exhibit Two and the Exhibits incorporated by  
18 reference therein, without naming all of them, as  
19 the Applicant's testimony.

20 Mr. Rubenstein, could you briefly  
21 summarize your qualifications for addressing the  
22 issues discussed in this testimony?

23 MR. RUBENSTEIN: Yes. I have a Bachelor  
24 of Science degree in Engineering from the  
25 California Institute of Technology. I worked from

1 1973 through 1981 with the California Air  
2 Resources Board, ending my career at ARB as the  
3 Deputy Executive Officer for Technical Programs.

4           When I left the Air Resources Board in  
5 1981 I co-founded Sierra Research and have been a  
6 senior partner with that firm since that time.

7           During my career both with the Air  
8 Resources Board and with Sierra Research I have  
9 participated in a large number of energy facility  
10 siting cases before this Commission as well as  
11 other bodies, and those are specifically  
12 identified in my testimony.

13           MR. ELLISON: Do you have any  
14 corrections or clarifications that you would like  
15 to make in your testimony at this time?

16           MR. RUBENSTEIN: Yes, I do, there's one  
17 correction that I need to make. At the bottom  
18 page 5.1-13 of my testimony is a citation and a  
19 quotation from Section 25523D2 of the Public  
20 Resources Code.

21           And I inadvertently placed into my  
22 testimony the old version of that Section as  
23 opposed to the current version of that Section. I  
24 had in fact reviewed the current version of the  
25 Section and my testimony is based on the correct

1 version.

2 I would simply ask that the current  
3 version of that Section of the Public Resources  
4 Code be inserted to replace the quotation that I  
5 have there now.

6 MR. ELLISON: And with that correction,  
7 are the facts contained in Section 5.1 of Exhibit  
8 Two and Exhibits incorporated by reference therein  
9 correct, to the best of your knowledge?

10 MR. RUBENSTEIN: Yes, they are.

11 MR. ELLISON: And do the opinions  
12 therein represent your best professional judgment?

13 MR. RUBENSTEIN: Yes, they do.

14 MR. ELLISON: And do you adopt this as  
15 your testimony in this proceeding?

16 MR. RUBENSTEIN: I do.

17 MR. ELLISON: Yesterday, in addition to  
18 these Exhibits, Calpine distributed certain tables  
19 regarding the historic ambient concentrations of  
20 particulate matter. Could you briefly describe  
21 those tables?

22 HEARING OFFICER WILLIS: We don't have  
23 those tables in front of us. I know they were  
24 sent out by e-mail yesterday, late, but I was not  
25 able to print them out.

1           MR. ELLISON: Okay, we will provide  
2 copies.

3           COMMISSIONER PERNELL: Mr. Yee, do you  
4 have copies of that?

5           MR. YEE: No, I don't.

6           COMMISSIONER PERNELL: As we're passing  
7 these out, Mr. Wheatland, can you inform the  
8 Committee of why we're getting this so late?

9           MR. ELLISON: Mr. Parnell, allow me to  
10 address your question. This information -- and I  
11 can have Mr. Rubinstein testify to this, in fact  
12 that was going to be my next question -- this  
13 information is information that is already in the  
14 record.

15           It's a graphic presentation of  
16 information that we've already presented, with the  
17 exception that it is updated to match an update  
18 that appeared of similar information in the  
19 staff's supplemental testimony.

20           We did not understand that the staff was  
21 going to update that analysis until we saw their  
22 supplemental testimony, and therefore we wouldn't  
23 have known to do this until we saw their  
24 supplemental testimony.

25           But with that exception of updating it

1 to be current and to match what the staff has  
2 presented, this is simply a collection of  
3 information that is already in the Applicant's  
4 testimony. I would also say --

5 COMMISSIONER PERNELL: So this is in  
6 response to staff's updated testimony?

7 MR. ELLISON: Well, the only thing  
8 that's new in this, that was not already in our  
9 prefile testimony, is the updating. And the  
10 updating was done in order to reflect the staff's  
11 updating in their supplemental testimony, so we  
12 would have an apples and apples comparison.

13 COMMISSIONER PERNELL: I see.

14 HEARING OFFICER WILLIS: Is there any  
15 objection from staff to include this data?

16 MR. KRAMER: I guess Mr. Birdsall has  
17 been able to review it, and he didn't find  
18 anything new or disturbing to him in there.

19 COMMISSIONER PERNELL: All right. You  
20 may proceed. Thank you.

21 MR. ELLISON: Mr. Rubinstein, could you  
22 briefly summarize -- actually, could I have these  
23 marked for identification?

24 HEARING OFFICER WILLIS: Sure. We each  
25 got the packets differently, so do you want to

1 mark each table or page or the whole group as  
2 a --?

3 MR. ELLISON: Well, whatever the  
4 Committee's pleasure is. However, I think  
5 probably, my suggestion would be that we mark each  
6 table separately.

7 HEARING OFFICER WILLIS: Okay. You're  
8 going to have to lead us through the tables,  
9 because we didn't get them in the same order.

10 MR. ELLISON: Okay, the first one is a  
11 two-page document, at the top of which is labeled  
12 "Table One, PM-10 levels in Perris, 1991 through  
13 2002." And I would ask that that two-page  
14 document consisting of that Table One plus Figures  
15 1, 2, and 3 be marked as the next Exhibit in  
16 order.

17 HEARING OFFICER WILLIS: That'll be  
18 Exhibit 72.

19 MR. ELLISON: Next is also a two-page  
20 document, at the of top which appears "Table Two,  
21 PM-2.5 levels in Riverside Rubidoux, 1988-2002."  
22 And that's followed by a Figure 4, Figure 5, and  
23 Figure 6. I would ask that that be marked as  
24 Exhibit 73.

25 HEARING OFFICER WILLIS: Okay, that will

1 be marked as Exhibit 73.

2 MR. ELLISON: Next is a two-page  
3 document, at the top of which appears "Table  
4 Three, PM-2.5 levels in Riverside Magnolia, 1988-  
5 2002," followed by Figure 7, Figure 8 and Figure  
6 9. I would ask that that be marked as Exhibit 74.

7 HEARING OFFICER WILLIS: So marked.

8 MR. ELLISON: Next is an isopleth map of  
9 the site, consisting of one page, the top of which  
10 appears "IEEC construction, 24-hour total PM-10,  
11 1981 Riverside Met." And I would ask that that be  
12 marked as Exhibit -- are we up to 75 now?

13 HEARING OFFICER WILLIS: Exhibit 75.

14 MR. ELLISON: And finally, a one-page  
15 Table, at the top of which appears "IEEC project  
16 construction, ambient impact analysis." I would  
17 ask that that be marked as Exhibit 76.

18 HEARING OFFICER WILLIS: So marked.

19 MR. ELLISON: Given that the staff, as I  
20 understand it, does not have an objection to the  
21 admission of these Exhibits, I'm not going to ask  
22 any further foundation questions or ask Mr.  
23 Rubinstein to summarize them separately from the  
24 summary of his overall testimony. Is that  
25 acceptable?

1 MR. KRAMER: That's fine.

2 MR. ELLISON: All right. Mr.  
3 Rubinstein, could you summarize your testimony  
4 regarding air quality in this proceeding?

5 MR. RUBENSTEIN: Yes. We reviewed the  
6 air quality impacts from the proposed Inland  
7 Empire Energy Center, and concluded that the  
8 project would comply with all applicable laws,  
9 ordinances, regulations and standards.

10 And further concluded that, with the  
11 implementation of the mitigation measures proposed  
12 by the Applicant, that the project would not have  
13 any significant un-mitigated air quality impacts.

14 With respect to compliance with  
15 applicable laws, ordinances, regulations and  
16 standards, we relied both on our review and the  
17 confirmation of that conclusion contained in the  
18 district's final determination of compliance.

19 It's my understanding that, in this  
20 case, there is no dispute among the parties, but  
21 that the project does in fact comply with the air  
22 district's requirements.

23 With respect to analysis on the  
24 California Environmental Quality Act, we took a  
25 look at both local and regional air quality

1 impacts. With respect to local impacts our  
2 analysis consisted of three parts.

3           The first part was ensuring that the  
4 project uses the best available pollution control  
5 technology, because minimizing the emissions at  
6 the source is the best way to minimize localized  
7 impacts.

8           In addition to that, we performed an air  
9 quality impact analysis. And that analysis  
10 concluded that the project would not cause any new  
11 violations of any state or federal air quality  
12 standards, although of course the project will  
13 contribute to existing violations of the state and  
14 federal air quality standards.

15           And the third element of our analysis,  
16 with respect to local air quality, was the  
17 performance of a screening level health risk  
18 assessment. And that health risk assessment  
19 demonstrated that the project's risks from toxic  
20 air contaminants would not be significant at any  
21 location under any operating conditions.

22           Each of those analyses were  
23 conservative, in that they looked at worst-case  
24 emissions from the project based on worst-case  
25 operating conditions, combined that with worst-

1 case meteorological conditions, and on top of that  
2 added worst-case existing air quality levels, even  
3 if all three of those could not physically occur  
4 at the same time.

5 So our analysis and our conclusions, we  
6 believe, are properly conservative. With respect  
7 to regional air quality our analysis also included  
8 three components.

9 That analysis again included a  
10 determination of best available control  
11 technology, because without BACT you can't be  
12 certain that you've properly minimized the  
13 regional contribution of the project to existing  
14 air quality problems.

15 In addition, we prepared cumulative air  
16 quality impact analysis, taking a look at the  
17 project in combination with air concentrations  
18 from other sources in the area, and again  
19 concluded that the project would not cause any new  
20 violations of any air quality standards, although  
21 again, of course, the project would contribute to  
22 existing violations.

23 The third element of our regional  
24 analysis was to ensure that all of the project's  
25 impacts are in fact properly mitigated to make

1 sure that that contribution to existing air  
2 quality problems is addressed.

3 And the mitigation for this project  
4 comes in the form of satisfying the south coast  
5 district's emission offset requirements and  
6 reclaim requirements, and the conditions proposed  
7 both in the final determination of compliance and  
8 in the staff's testimony ensure that that  
9 mitigation will be provided.

10 In summary, I believe -- as I said --  
11 that the project will satisfy all laws,  
12 ordinances, regulations and standards, and with  
13 the implementation of mitigation measures that the  
14 Applicant has proposed, will not result in any  
15 significant un-mitigated air quality impacts.

16 There are four issues that remain, in my  
17 testimony, of dispute with the staff regarding --  
18 or actually three issues regarding proposed issues  
19 of certification -- and a fourth issue as well.  
20 Subsequent to publication of the staff's  
21 supplemental testimony. Let me briefly touch on  
22 those four issues.

23 The first issue relates to the staff's  
24 proposed condition AQSC5. That is a condition  
25 that would establish an ambient air quality

1 monitoring requirement for PM-10 during earth  
2 moving activities associated with project  
3 construction.

4           The staff's supplemental testimony  
5 suggests that this condition is required because  
6 our analysis suggests that there may be a new  
7 violation of an ambient air quality standard.  
8 However, I think it's important to note that the  
9 impacts associated with the project construction  
10 are in fact lower now than they were when the  
11 preliminary staff assessment was prepared.

12           This particular condition, however, in  
13 recommendation, has not substantively changed. We  
14 believe that ambient monitoring for PM-10 is not  
15 necessary. it is certainly not typical for  
16 Commission projects.

17           We believe that our analysis of PM-10  
18 impacts -- and we're talking about construction,  
19 we're principally talking about fugitive dust --  
20 we believe that those impacts are extremely  
21 conservatively overstated.

22           The information that we had previously  
23 submitted to the staff in support of our analysis  
24 of construction impacts indicates that, for  
25 example, for the basic project site, five large

1 pieces of large earth-moving equipment would be  
2 operating for eight hours a day.

3 Even at a relatively slow speed of three  
4 miles an hour for those eight hours of operation,  
5 for the main project site, that would suggest that  
6 every square inch of soil on that site would be  
7 disturbed nine times during a single day. That's  
8 the extent of the overestimate that's built into  
9 the analysis that we've already provided.

10 With respect to the compressor site,  
11 which the staff's supplemental testimony also  
12 cites. The degree of conservatism is even  
13 greater, and the assumptions we used were  
14 equivalent to assuming that every square inch of  
15 soil at the compressor station is disturbed 20  
16 times a day.

17 We believe that that degree of  
18 conservatism in the basic analysis is sufficient  
19 to ensure that we have overstated impacts, and  
20 that ambient monitoring should not be required.

21 In addition, we believe that ambient  
22 monitoring should not be required because this  
23 plant will also be subject to rule 403 of the  
24 South Coast Air Quality Management District.

25 This rule specifically governs fugitive

1 dust from construction activities. It is one of  
2 the most stringent dust control rules in the  
3 country.

4 And that rule contains a number of  
5 provisions, but it does not include an ambient  
6 monitoring requirement unless you fail to  
7 implement recommended mitigation measures in the  
8 rule, which are similar to the mitigation measures  
9 that the staff is proposing, and that we have  
10 accepted with respect to dust control.

11 We believe that the basic provisions of  
12 AQSC4, which limit dust generating activities to  
13 make sure that there are no visible dust that  
14 leaves the project site, is sufficient in  
15 combination with the dust mitigation plan that's  
16 required to ensure that dust levels will be  
17 managed.

18 That is the same basic philosophy that's  
19 used in district rule 403. We see no reason for  
20 ambient monitoring in addition to that.

21 One of the things that I would point out  
22 -- looking particularly now at Exhibit 75, which  
23 is an isopleth. That document actually comes from  
24 one of the data responses we filed with the  
25 Commission.

1           And it shows 24 hour average PM-10  
2 concentrations based on these extremely  
3 conservative worst-case assumptions associated  
4 with construction activities. And as you can see,  
5 by the time you get to route 74, by the time you  
6 get to the nearest houses, the construction  
7 impacts are predicted to be less than ten  
8 micrograms per cubic meter.

9           And at that concentration it becomes  
10 extremely difficult to measure, particularly if  
11 you're looking at background concentrations that  
12 are anywhere from 50 to 120 or 130 micrograms per  
13 cubic meter. Consequently, we believe that the  
14 monitoring requirement is superfluous, and is not  
15 necessary.

16           It is not routinely required by the  
17 Commission. In fact, to the best of my knowledge  
18 it has been required by the Commission in only one  
19 prior proceeding, and that was as a demonstration  
20 project.

21           And that demonstration project was  
22 declared to be a failure by the Commission staff  
23 in a subsequent proceeding. Consequently, I see  
24 no reason to continuing pursuing this. And we  
25 recommend that AQSC5 not be adopted by the

1 Committee.

2           The second issue relates to condition  
3 AQSC6. And that is a condition that the staff has  
4 proposed to limit dust generating activities to  
5 not more than ten hours in a particular day. The  
6 staff proposes that because that is consistent  
7 with the assumption that we made in our modeling  
8 analysis.

9           My understanding of CEQA, and all of the  
10 analyses we've prepared in the past, especially  
11 for construction impacts, have been based on the  
12 principle of reasonably foreseeable impacts and  
13 reasonably worst-case assumptions.

14           We believed at the time we did the  
15 analysis, and we believe now, that an assumption  
16 that construction activities that generate dust  
17 will take ten hours per day or less is a  
18 reasonable worst-case assumption.

19           However, in this particular case the  
20 staff has suggested that that reasonable worst-  
21 case assumption become an absolute maximum under  
22 all conditions, and I don't believe that's  
23 appropriate.

24           Had we known at the time that the staff  
25 was going to take the position that whatever

1 assumption we used would become an absolute limit,  
2 we would have modeled something that's more  
3 consistent with limitations that are being imposed  
4 in other disciplines, such as noise, which is for  
5 a 12-hour maximum construction day.

6           If you take a look at Exhibit 76, which  
7 is a summary table, and that summary table does  
8 include two columns of new information, and those  
9 are the columns labeled "July 22nd '03 analysis"  
10 -- but this was provided to staff I believe about  
11 a week ago -- this indicates that, even if we were  
12 to spread the construction emissions out over 12  
13 hours instead of ten hours, meaning we're dealing  
14 with potentially more adverse weather conditions,  
15 that the impacts are not significantly greater,  
16 and that the conclusions regarding project impacts  
17 would not change.

18           As a result, with respect to AQSC6, we  
19 recommend that that condition be deleted, or in  
20 the alternative that it simply be made to cross-  
21 reference with condition Noise 8, which already  
22 contains a restriction on construction activities  
23 between 7:00 a.m. and 7:00 p.m. weekdays, and a  
24 slightly shorter duration on weekends.

25           The third issue that remains, with

1 respect to air quality, between the Applicant and  
2 the staff, deals with condition AQSC3, Paragraph O  
3 like in Oscar. That is the condition that deals  
4 with the application of soot filters to diesel  
5 construction equipment.

6 We have proposed, in our testimony, that  
7 this Committee adopt the same compromise on this  
8 issue that was suggested by the Committee and the  
9 Presiding Members proposed decision for the East  
10 Altamount case. This exact same issue was  
11 litigated in that case, and the Committee in the  
12 East Altamount case struck a balance between the  
13 position of the staff and Applicant.

14 The proposed decision for East  
15 Altamount, which my understanding is no longer  
16 disputed in that proceeding by the Commission  
17 staff was in fact a compromise, because the  
18 Applicant's position -- both in this case and in  
19 the East Altamount case -- was that either EPA  
20 certified engines or soot filters, either/or,  
21 should be used for large equipment.

22 And the compromise established by the  
23 Committee in the East Altamount case said that  
24 both should be used, but only under specified  
25 conditions. It's interesting to note that, in the

1 Inland Empire case, the preliminary staff  
2 assessment did not contain a requirement to use  
3 soot filters in conjunction with certified  
4 engines. It contained language that the Applicant  
5 had found acceptable.

6 The final staff assessment in the Inland  
7 Empire case contains more stringent requirements,  
8 which we disagreed with and responded to in our  
9 testimony. And staff's supplemental testimony  
10 provides yet more stringent requirements still.  
11 More stringent than was in the staff assessment.

12 Requiring soot filters to be used on  
13 even more engines, and adding additional  
14 requirements on construction equipment. This  
15 comes despite the fact that when you follow the  
16 same train from the preliminary staff assessment  
17 to final staff assessment to the supplement, the  
18 air quality impacts associated with construction  
19 are going down, they're not going up, as we  
20 further define the analyses.

21 There's no logical connection between  
22 the mitigation measures and the impacts. The  
23 issue about how to apply soot filters and when to  
24 apply soot filters to construction equipment was  
25 debated extensively in the East Altamont hearing.

1 I believe that the Committee in that  
2 case rendered a reasoned, compromised decision.  
3 And, as I said, we recommend that that same  
4 approach be taken here.

5 I believe that one of the reasons why  
6 such a compromise is necessary is because the  
7 California Air Resources Board has raised  
8 substantial concerns about the introduction of  
9 soot filters on too-rapid a basis.

10 This is part of a statewide program,  
11 construction of power plants is only a very small  
12 part of it. And the Air Resources Board wants to  
13 make sure that soot filters are implemented in a  
14 technically rational manner that will not upset  
15 their plan for putting this equipment on a wide  
16 range of equipment throughout the state.

17 MR. KRAMER: I object to that last  
18 testimony as hearsay. He's putting words in the  
19 mouth of the Air Resources Board now.

20 MR. ELLISON: Mr. Rubinstein is a  
21 qualified expert on, among other things, the  
22 California Air Resources Board, and he's entitled  
23 to give his opinion as to what their position on  
24 this issue is.

25 COMMISSIONER PERNELL: Mr. Kramer, are

1 you objecting, was that an objection?

2 MR. KRAMER: Yes.

3 MR. ELLISON: He is not giving testimony  
4 as to what the Air Resources Board has said per se  
5 in the nature of hearsay, he's giving his expert  
6 opinion as to what the Air Resources Board policy  
7 is, as occurs frequently in Energy Commission  
8 hearings.

9 COMMISSIONER PERNELL: Mr. Rubinstein,  
10 you want to restate that as your opinion? Keep it  
11 in mind that you are not a member of the Air  
12 Resources Board.

13 MR. RUBENSTEIN: Based on meetings that  
14 I have had with the staff of the Air Resources  
15 Board, specifically on this issue of the Energy  
16 Commission's requirement of -- excuse me, the  
17 staff's requirement -- of accelerating the use of  
18 soot filters on construction equipment, it is my  
19 opinion that the Air Resources Board is concerned  
20 about such an approach because it could tend to  
21 create problems in the field which could  
22 jeopardize implementation of the broader statewide  
23 program.

24 COMMISSIONER PERNELL: And were those  
25 meetings with staff or Board members?

1           MR. RUBENSTEIN: With staff members up  
2 to and including the Executive Officer.

3           COMMISSIONER PERNELL: Thank you.  
4 Please continue.

5           MR. RUBENSTEIN: I believe that the  
6 language adopted by the Committee in the East  
7 Altamount proceeding adequately and properly  
8 addresses those concerns and makes sure that soot  
9 filters are required only in cases where they're  
10 clearly going to be effective.

11           IN summary, my recommendation on  
12 condition AQSC3, Paragraph O, is consistent with  
13 what's contained in my testimony, which represents  
14 a restatement of what is contained in the proposed  
15 decision for East Altamount.

16           The last issue that remains between  
17 Applicant and staff relates to the question of  
18 reclaimed trading credits. As I indicated in my  
19 written testimony, in the south coast air basin  
20 projects have to satisfy two different types of  
21 requirements for regulatory mitigation.

22           One relates to emission reduction  
23 credits, which applies to certain pollutants, and  
24 the second type relates to reclaimed trading  
25 credits. Reclaimed trading credits are a

1 fundamentally different type of mitigation  
2 currency, if you will, and the only disagreement  
3 in this proceeding that I'm aware of relates to  
4 reclaimed trading credits, which is something that  
5 is unique to Nox emissions in the south coast air  
6 basin.

7           It's important for me to emphasize that  
8 we do not disagree with the staff's proposed  
9 conditions on this point. Rather, we disagree  
10 with the staff's recommendation or conclusion that  
11 they cannot recommend certification of the project  
12 because of this issue.

13           The staff has agreed, in their  
14 supplemental testimony, that the Inland Empire  
15 project fully complies with all south coast  
16 district requirements with respect to reclaimed  
17 trading credits. In addition, the staff's  
18 supplemental testimony contains conditions  
19 ensuring that the district's requirements will be  
20 met, and we have no objections to those conditions  
21 as well.

22           The staff has argued, however, both at  
23 workshops and in their testimony, that the  
24 Applicant has not done enough on the issue of  
25 reclaimed trading credits. And in particular, the

1 staff has argued that, at a minimum, a purchase  
2 option agreement has to be executed in order to  
3 ensure that the credits have been identified to  
4 the staff's satisfaction.

5 I believe that that goes beyond the  
6 requirement -- it certainly goes beyond the  
7 district's requirements, and I think there's no  
8 dispute about that -- and I think it also goes  
9 beyond the Commission's requirements as well,  
10 which is that the credits have to be identified  
11 and some confirmation provided that they will be  
12 obtained.

13 I believe that those requirements are  
14 satisfied in combination by the final  
15 determination of compliance and information  
16 contained in my testimony.

17 I believe that Inland has done all that  
18 can be done short of actually purchasing credits  
19 or purchasing an option on credits to identify  
20 reclaimed trading credits that will be used for  
21 this project.

22 Included with my testimony is a letter  
23 from an emission credit broker specifically  
24 listing ten real -- not hypothetical -- but real  
25 emission credit sales opportunities, or purchase

1 opportunities for Inland in a quantity that in  
2 total would exceed the project's needs.

3           The only thing that the project could do  
4 beyond that would be to actually execute an option  
5 agreement, and I believe that is what goes beyond  
6 the requirements that the Commission has  
7 identified.

8           Again, it's important to understand  
9 that, unlike emission reduction credits, where  
10 there can be significant shortages or even a  
11 wipeout of a market, reclaimed trading credits are  
12 much more of a fungible commodity. It is almost  
13 analogous to going to a store and buying ears of  
14 corn.

15           If we went to a grocery store and we saw  
16 that there was a bushel of corn sitting on the  
17 rack, and we needed five ears of corn, we could  
18 say unequivocally "there are five ears there."  
19 The staff has indicated that's not sufficient  
20 because we haven't identified the credits that  
21 we'll be purchasing.

22           We have gone, in my testimony with the  
23 letter from Cantor Fitzgerald, we've gone further  
24 and said "in that store, on that rack, here are  
25 five ears of corn." And we've specifically

1 identified them. The names have been protected by  
2 Cantor Fitzgerald because of confidentiality  
3 requests, but we've specifically identified the  
4 five ears of corn.

5 The staff is indicating that is still  
6 not sufficient, and suggests that the only thing  
7 we can do to satisfy the requirements is to either  
8 buy those ears of corn or to pay some money to the  
9 market owner and say "I want you to set those ears  
10 of corn aside from me." And that's where we cross  
11 the line, in my opinion, beyond identification to  
12 actual obtaining of the credits.

13 COMMISSIONER PERNELL: Mr. Rubinstein,  
14 what can you, in your analogy -- what can you say  
15 that will guarantee that that same five ears of  
16 corn will be there when you come back to pick them  
17 up?

18 MR. RUBENSTEIN: The only thing that I  
19 can do is point to the other portion of the letter  
20 from Cantor Fitzgerald, or, using that analogy to  
21 the interview with the supermarket manager, saying  
22 that I've had corn here all the time, I expect to  
23 have corn here now, I can't guarantee you what  
24 price that corn's going to be, but I can be pretty  
25 darn certain that corn's going to be here when you

1     come back.

2                   COMMISSIONER PERNELL:  And is that what  
3     the letter says?

4                   MR. RUBENSTEIN:  In short form, I  
5     believe it does, yes.

6                   COMMISSIONER PERNELL:  Okay, anything  
7     else?

8                   MR. RUBENSTEIN:  Well, let me just  
9     conclude by saying that, with respect to this  
10    issue, we have done everything an Applicant can do  
11    short of spending money to either purchase the  
12    credits or purchase an option for the credits, to  
13    identify them.

14                   And the only thing to go beyond that is  
15    to cross that line that I don't think the  
16    Commission's requirements intended that an  
17    Applicant had to cross.  And that concludes my  
18    testimony.

19                   MR. ELLISON:  Let me ask just a couple  
20    of followup questions.  Before I do that, by way  
21    of explanation, and partly in response to the  
22    Commissioner's question, when Mr. Rubinstein  
23    refers to the line between identifying the  
24    credits, which we believe we've done, and legally  
25    obtaining them, I want you to know that we believe

1 that line exists in the Energy Commission's  
2 statute, and we will be briefing to you in our  
3 brief the legal issues, not so much the factual  
4 issues.

5 So we may touch upon it at various  
6 points today, but fundamentally we're going to  
7 address it in the brief and not get into it today.  
8 But it's not just a line of his own invention.

9 We will be briefing to you specific  
10 authority in the Energy Commission statute that  
11 makes that distinction, and makes I think very  
12 clear to you that not only is the Applicant not  
13 required to obtain offsets prior to licensing, but  
14 that the Energy Commission is required to adopt  
15 provisions that say that they will be obtained  
16 consistent with the district's timetable.

17 And the district's timetable, there's no  
18 dispute in this proceeding, is that the RTC's need  
19 to be obtained prior to operation, and not prior  
20 to licensing.

21 With that explanation, though, let me  
22 ask a couple of followup questions, one of which  
23 gets to a practical problem as opposed to a legal  
24 problem, with obtaining versus identifying. And  
25 let me start with that.

1           Mr. Rubinstein, the reclaim program,  
2 among its differences from traditional offsets, is  
3 that reclaimed credits are purchased for specific  
4 years, is that correct?

5           MR. RUBENSTEIN: That is correct. We  
6 think credits only have a life of one year, 12  
7 months.

8           MR. ELLISON: And if you purchase  
9 reclaimed credits for let's say the year 2005 for  
10 a plant that's supposed to begin operation in  
11 2005, but that plant is delayed by litigation or  
12 some other thing beyond your control, you cannot  
13 use the reclaimed credits you've purchased for  
14 2005 in a subsequent year, correct?

15          MR. RUBENSTEIN: No, you cannot.

16          MR. ELLISON: The second question  
17 relates to something you said about condition  
18 AQSC5. This is the ambient monitoring issue. You  
19 mentioned that in only one prior case has the  
20 commission required an Applicant to engage in this  
21 kind of monitoring. That case was the Los Esteros  
22 case, is that correct?

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

24          MR. ELLISON: And you testified that  
25 that was a demonstration effort that the staff

1 later concluded was a failure, do you recall that?

2 MR. RUBENSTEIN: Yes, I do.

3 MR. ELLISON: Isn't it the case that, in  
4 Los Esteros the Applicant was proposing to use  
5 essentially double shifts of construction activity  
6 because of an urgent need to bring that plant  
7 online?

8 MR. RUBENSTEIN: Yes, it was. And that's  
9 specifically the reason that was cited by the  
10 staff as wanting ambient monitoring at that time.  
11 It's because dispersion conditions during  
12 nighttime hours are significantly worse than they  
13 are during the day, and as a result there was  
14 concern that if these dust generating activities  
15 occurred at night there would be significantly  
16 higher concentrations over the course of a 24-hour  
17 period.

18 It was very specific to that double  
19 shift construction schedule that the demonstration  
20 project was proposed and agreed to.

21 MR. KRAMER: I would object to further  
22 journeying down this line of questioning, as it  
23 does nothing to explain whether this monitoring is  
24 appropriate in this particular case.

25 MR. ELLISON: I would just have to

1 disagree. It explains why this case is different  
2 from the one circumstance in which the Commission  
3 has ordered these things previously, and that's  
4 certainly relevant as to why it's not appropriate  
5 here.

6 COMMISSIONER PERNELL: All right. I'll  
7 allow you to continue.

8 MR. ELLISON: There was basically only  
9 one more question anyway, which is in this case,  
10 in the Inland Empire case, you've testified  
11 earlier that there are noise restrictions that  
12 would prevent the same kind of construction  
13 activity at night as you were just discussing with  
14 respect to Los Esteros, is that correct?

15 MR. RUBENSTEIN: That's right. Those  
16 restrictions are condition Noise 8.

17 MR. ELLISON: That's all I have. Mr.  
18 Rubinstein is available for examination.

19 COMMISSIONER PERNELL: Okay. We're  
20 trying to accommodate our sister agency here, and  
21 I know that we're running a little bit behind. Of  
22 course, it's always informational to listen to Mr.  
23 Rubinstein. Why don't we ask some questions to  
24 the air district?

25 HEARING OFFICER WILLIS: Mr. Yee, I kept

1 one question for you. Just to clarify on the  
2 FDOC. I believe that a letter that was attached  
3 stated that the air permit, or the authority to  
4 construct, is not issued unless the Energy  
5 Commission has issued a license, is that correct?

6 MR. YEE: That's correct.

7 HEARING OFFICER WILLIS: So the order is  
8 that we would issue the license first, and then  
9 you issue the air permit?

10 MR. YEE: That's correct.

11 HEARING OFFICER WILLIS: And somewhere  
12 in between times, for the district's purposes,  
13 then the reclaimed trading credits need to be  
14 purchased, before the permit is issued?

15 MR. YEE: The reclaimed trading credits,  
16 according to our condition, would need to be  
17 demonstrated or purchased prior to the year of  
18 operation that they start.

19 HEARING OFFICER WILLIS: So it could be  
20 like 2006, if that was their beginning operation  
21 date?

22 MR. YEE: Yes, that's correct.

23 HEARING OFFICER WILLIS: Now, as far as  
24 the authority to construct -- we'll go back. You  
25 were here earlier for testimony on Com 15, I

1 believe, and you're aware of the MOU between the  
2 Energy Commission and the ARB?

3 MR. YEE: I've heard about it today.

4 HEARING OFFICER WILLIS: Okay, so that's  
5 not something that you're familiar with?

6 MR. YEE: No, it's not something that  
7 I'm familiar with.

8 HEARING OFFICER WILLIS: And so the air  
9 district still issues ATC's?

10 MR. YEE: That's correct. We would  
11 require that the district first issue the ATC  
12 prior to construction, beginning by the Applicant.

13 HEARING OFFICER WILLIS: And I'm not  
14 sure which --?

15 COMMISSIONER PERNELL: Well, I guess my  
16 question is, how long after certification does it  
17 take for you to issue the -- and this is going  
18 back to the Com 15 question -- how long after the  
19 Commission issues a certification before you issue  
20 a permit?

21 MR. YEE: We can issue the permit  
22 immediately after the decision is rendered,  
23 because it functions as a CEQA equivalent document  
24 for our permit.

25 The only thing that I have encountered

1 in the past is that projects such as this will  
2 require the submittal of, well actually they'll  
3 require the full submittal of offsets for the  
4 criterion pollutants prior to our issuance of the  
5 permit.

6 So there are sometimes that the  
7 Applicant will, after they receive certification,  
8 they'll file for their fees for the priority  
9 reserve, and that does take some time.

10 COMMISSIONER PERNELL: So when you say  
11 projects such as this you're referring to the fact  
12 they might file for the priority reserves?

13 MR. YEE: In order to receive priority  
14 reserve they need to file a request and pay a non-  
15 refundable fee to the district. Many of the  
16 proponents that have received priority reserve do  
17 wait for the decision from the California Energy  
18 Commission before they submit that request to the  
19 district because they understand it's not  
20 refundable.

21 HEARING OFFICER WILLIS: And when you  
22 say it takes awhile, do you know approximately, is  
23 that months or --?

24 MR. YEE: Oh, no. It may take an entity  
25 -- we had one entity which was a utility which

1 first needed to secure funds through their  
2 ratepayers, but we've had other facilities the day  
3 after they received certification sent us a  
4 request for that with a non-refundable check.

5 HEARING OFFICER WILLIS: Now have there  
6 been other projects, that you're aware of, before  
7 the Energy Commission in your district that have  
8 also been required to purchase RTC's?

9 MR. YEE: In the sense of our rules for  
10 the project, no. When you say purchase RTC's --  
11 prior to operation or prior to construction?

12 HEARING OFFICER WILLIS: Have they been  
13 required just to purchase them in general for the  
14 project -- let me step back. Are they required to  
15 purchase, is this Applicant required to purchase  
16 reclaimed trading credits, or can they use ERC's  
17 or something else?

18 MR. YEE: If a facility is in reclaim,  
19 such as a facility like this who's opted in to  
20 reclaim, they are required to purchase RTC's or  
21 demonstrate that they possess enough RTC's for the  
22 following compliance year after they, from when  
23 they operate.

24 HEARING OFFICER WILLIS: Now I believe  
25 this Applicant also has -- do they have ERC's for

1 some of the Nox?

2 MR. YEE: They do not have any ERC's for  
3 NOx. They have ERC's for the other criterion  
4 pollutants.

5 HEARING OFFICER WILLIS: So it would be  
6 totally reclaimed credits for NOx?

7 MR. YEE: Correct. In our program we do  
8 not allow the intermixing of ERC's and RTC's once  
9 you're in reclaim.

10 HEARING OFFICER WILLIS: So, in other  
11 cases of Energy Commission projects, when do they  
12 generally purchase their reclaimed trading credits  
13 then, if they are required also to have an Energy  
14 Commission license?

15 MR. YEE: The requirement in our rule  
16 and in our condition says that they have to  
17 demonstrate that they hold enough reclaimed  
18 trading credits for the compliance year that they  
19 enter into. Other facilities, which have been  
20 longstanding reclaim facilities, may hold credits.

21 And the other facilities may elect to  
22 purchase credits beforehand, but that's their  
23 option.

24 HEARING OFFICER WILLIS: I guess my  
25 question was do they generally purchase them prior

1 to receiving a Commission license, or just right  
2 before -- as this Applicant is proposing -- some  
3 time after the Commission issues their license?

4 MR. YEE: I don't think there's -- the  
5 district doesn't require them to purchase them  
6 before the license.

7 HEARING OFFICER WILLIS: I understand  
8 that. I was just wondering if you knew what the  
9 practice had been in the past? And if you don't  
10 know, that's fine.

11 MR. YEE: Um --

12 MR. KRAMER: If I might, I think muni's,  
13 for instance, are not in the reclaim program,  
14 correct?

15 MR. YEE: No, muni's are -- well, it  
16 depends. Anybody who emits over four tons of NOx  
17 a year is in the reclaim program.

18 MR. KRAMER: Okay. I thought I'd read  
19 in the rules that some of those --

20 MR. YEE: The POTW's are not in the  
21 reclaim program.

22 MR. KRAMER: Okay. So the bigger  
23 utility plans.

24 COMMISSIONER PERNELL: Just a followup  
25 question. When you say they have to purchase or

1 demonstrate either the ability or that they are  
2 available. In your definition of demonstrate,  
3 what does that entail?

4 I mean, a letter from somebody saying "I  
5 got some?" Or is it something more concrete?

6 MR. YEE: For that I'd like to have  
7 Danny Luong answer that, because he is our  
8 supervisor of reclaimed admin, who oversees that  
9 area.

10 COMMISSIONER PERNELL: Mr. Luong?

11 MR. LUONG: Hi. On the subject of  
12 holding when the requirement sets in, the  
13 requirement sets in when the operation starts.  
14 Demonstration of holding means they have to have  
15 it in their possession.

16 The timing is such that it's not  
17 required at the time the ATC is issued. It's only  
18 when they start operation. I think what it is is  
19 that our requirement is we will issue a permit to  
20 construct with the condition that they have to --  
21 prior to the start of operation -- demonstrate  
22 that they have adequate RTC to cover the first  
23 year of operation.

24 So the timing can be that the permit for  
25 construction is issued, then they purchase the

1 credit for the year they anticipate to operate  
2 first.

3 COMMISSIONER PERNELL: Let me ask you,  
4 that's the RTC's only?

5 MR. LUONG: Right.

6 COMMISSIONER PERNELL: So the other  
7 credits that they need, --?

8 MR. LUONG: The RTC's are required to be  
9 secured prior to issuing of permit.

10 COMMISSIONER PERNELL: Prior to  
11 certification from us?

12 MR. LUONG: No, prior to us issuing the  
13 permit to construct.

14 COMMISSIONER PERNELL: The permit to  
15 construct.

16 MR. LUONG: Right. Those are our  
17 permits, and not the certification from the CEC.

18 COMMISSIONER PERNELL: Right. Now, as I  
19 understand it, the Applicant has kind of a multi-  
20 mix, either RTC's or other credits in order to  
21 qualify? Let me rephrase. Is there anything else  
22 they need besides the RTC's and additional credits  
23 in order for you to issue the FDOC?

24 MR. YEE: I'll answer that. No, the  
25 only thing that they need to do is to -- if they

1 have enough ERC's or VOC's, they have partial  
2 ERC's --

3 COMMISSIONER PERNELL: Say that again,  
4 VOC's?

5 MR. YEE: For voluntary organic  
6 compounds. And they have -- let me get my notes  
7 here. Let's put it this way. Prior to us issuing  
8 the permits the only thing that we are going to  
9 require is that if they are going to purchase  
10 offsets, priority reserve offsets, then they'll  
11 need to request from the district a certain amount  
12 of priority reserve offsets to complete their  
13 offset package.

14 That's the only thing that would be  
15 required at this point, other than the  
16 certification through the CEC.

17 COMMISSIONER PERNELL: Okay, in order to  
18 complete their offset package. I guess my  
19 question is -- and forgive me for lack of  
20 knowledge here -- but it's included in the  
21 package?

22 MR. YEE: Included in the package, well,  
23 the offset package for the priority reserve?

24 COMMISSIONER PERNELL: The offset  
25 package for this Applicant in order for you to

1 issue the FDOC.

2 MR. YEE: In order for us to issue --  
3 excuse me, I think it's the permit to construct --

4 COMMISSIONER PERNELL: The permit.

5 MR. YEE: The permit to construct --

6 COMMISSIONER PERNELL: Right.

7 MR. YEE: We would have to verify that  
8 they currently hold enough ERC's for the criterion  
9 pollutants, and/or a combination of ERC's and  
10 requested priority reserve credits for the entire  
11 project minus the RTC for NOx, which would have to  
12 be obtained as described earlier.

13 COMMISSIONER PERNELL: Okay. Now -- let  
14 me just ask all my questions and then pass it on.  
15 On your south coast rule 403, that deals with  
16 construction?

17 MR. YEE: Yes, it does.

18 COMMISSIONER PERNELL: Staff is  
19 recommending something different than what your  
20 rule is?

21 MR. YEE: That might be, I'm not well-  
22 versed in that as --

23 COMMISSIONER PERNELL: So let me ask you  
24 this. Your rule 403 is, in terms of your air  
25 district, sufficient to deal with construction

1 dust?

2 MR. YEE: To the degree that the rule  
3 was promulgated, yes.

4 COMMISSIONER PERNELL: Has it changed,  
5 or has south coast required anything else, to your  
6 knowledge?

7 MR. YEE: I'm sorry, could you repeat  
8 the question? I was conferring with my colleague.

9 COMMISSIONER PERNELL: That's okay. I'm  
10 not an attorney, so -- in your rule 403, which  
11 deals with construction dust, has the south coast  
12 air quality district changed their rule or  
13 required additional mitigation to that rule, in  
14 your knowledge?

15 MR. YEE: To my knowledge we have not  
16 amended it since 1998. We have not added any  
17 additional requirements since that time.

18 COMMISSIONER PERNELL: Okay.

19 MR. GARCIA: Mr. Yee, I have a couple of  
20 short questions. With regards to the district's  
21 rule 2005 that requires the Applicant to identify  
22 the RTC's, I don't know if you've seen the letter  
23 that Applicant has provided from Cantor  
24 Fitzgerald? Do you have that handy?

25 MR. YEE: Yes.

1           MR. GARCIA: Would you consider that  
2 sufficient showing that that, for your purposes,  
3 determines that they have identified the credits?

4           MR. LUONG: I'll answer that. At the  
5 time of the requirement to meet the 2005  
6 requirement, that statement would not be  
7 sufficient. But again, we're dealing with timing.  
8 At the time 2005 is going to be implemented, it  
9 will be at the time of operation, and they would  
10 have to have it in their possession, the amount of  
11 RTC required for the project, for the first year  
12 of operation.

13           MR. GARCIA: Okay. But I'm going back  
14 to the rule that says "the executive officer shall  
15 not approve the application" blablabla, "unless  
16 the Applicant demonstrates the facility holds  
17 sufficient trading credits to" -- oh, that's  
18 holds, that's not identify. Okay.

19           MR. LUONG: It may not be, the key  
20 wording in there is that we may not approve an  
21 application for operation versus operation to  
22 construct. So the distinguish in that part, in  
23 that particular segment of the rule that you're  
24 reading, the active word is operation, not  
25 construction.

1           So that's how we see it, the requirement  
2 to be the first year of operation, not when we  
3 issue the permit to construct.

4           MR. GARCIA: All right. My second  
5 question has to do -- let's look at a hypothetical  
6 scenario, where the Energy Commission has issued  
7 its certificate, and the district has not yet  
8 because the Applicant has not, for whatever  
9 reason, obtained the RTC's.

10           Is there a period of time, a maximum  
11 period of time that might elapse before -- at  
12 least for the district's purposes -- you have to  
13 start all over again? In other words, could they  
14 wait 18 months, 24 months?

15           MR. YEE: I believe the -- we go by what  
16 we call the permit streamlining act. And to my  
17 knowledge the district has up to 12 months to act  
18 after a CEQA document is finalized, actually an  
19 EIR type of document. And that would be the  
20 timeframe that we would have to act within.

21           If it went beyond that period of time I  
22 don't know what we would do necessarily. I'd  
23 probably have to talk to our counsel to determine  
24 what action the district would take, and whether  
25 or not we would request an extension of CEQA

1 through your agency or we would just at that point  
2 say well, it's over and you have to reopen the  
3 case.

4 MR. GARCIA: Thank you very much.

5 MS. SMITH: Mr. Yee, one point of  
6 clarification. You said 12 months from the point  
7 that a CEQA document is filed?

8 MR. YEE: Actually it's the point where  
9 the CEQA document is certified, excuse me.

10 MS. SMITH: So, in this case the Energy  
11 Commission's permit?

12 MR. YEE: That's correct, because the  
13 AFC functions as a CEQA equivalent.

14 MS. SMITH: Okay. I just wanted to  
15 clarify that language.

16 COMMISSIONER PERNELL: Could we go off  
17 the record a minute please?

18 (Off the record.)

19 COMMISSIONER PERNELL: Back on the  
20 record. The Committee has no further questions  
21 for Mr. Yee or Mr. Luong -- I'm sorry, staff has  
22 some questions?

23 MR. KRAMER: At least a couple.

24 HEARING OFFICER WILLIS: Actually, you  
25 already had your opportunity to ask questions.

1           MR. KRAMER: Well, these would be by the  
2 way of rebuttal to clarify, and also, one of the  
3 questions is just to clarify a point that was left  
4 unclear from the Committee's questions. It would  
5 be taking them out of order, but it also may allow  
6 them to leave sooner than making them wait until  
7 after I cross-examine Mr. Rubinstein.

8           HEARING OFFICER WILLIS: Is there any  
9 objection from the Applicant?

10          MR. ELLISON: It's hard to know without  
11 knowing what the questions are going to be.

12          HEARING OFFICER WILLIS: He's trying to  
13 ask -- they'd have to ask the question then in  
14 order to --

15          MR. ELLISON: Is the Committee planning  
16 to break at five, is that --?

17          HEARING OFFICER WILLIS: We're actually  
18 trying to get them out, and then I thought we can  
19 go ahead and continue until the dinner break.

20          MR. ELLISON: My concern would be that I  
21 may have followup questions to Mr. Kramer's  
22 questions, so I wouldn't want to be put in a  
23 position where he's able to ask the questions but  
24 we're not. We would be willing to stop here and  
25 not ask any questions, but if Mr. Kramer is

1 allowed to ask questions I may have some too.

2 COMMISSIONER PERNELL: Mr. Kramer, how  
3 long is your --?

4 MR. KRAMER: No more than five minutes.

5 COMMISSIONER PERNELL: Proceed, please.

6 MR. KRAMER: Mr. Luong, as far as  
7 reclaimed credits go, is my understanding correct  
8 that the district maintains an official record of  
9 who owns each credit?

10 MR. LUONG: Yes.

11 MR. KRAMER: So is this demonstration  
12 then that somebody possesses the credits the fact  
13 that you show them as the owner on your books?

14 MR. LUONG: The ownership, yes. Not  
15 until they register with us.

16 MR. KRAMER: Okay. So if somebody's  
17 going to buy a credit they have to get it  
18 registered on your records before they have any  
19 effective ability to use it?

20 MR. LUONG: Yes, that's the usage of it.  
21 However, I just want to bring up one more point.  
22 Since 2001 the market has developed to have  
23 futures, options and future purchases, which are  
24 certainly recognized as a demonstration of  
25 availability. However, it's not good enough for

1 demonstration of the rule 2005 paragraph that  
2 we've talked about.

3 MR. KRAMER: Are those options in future  
4 also tracked on your official records?

5 MR. LUONG: They are required to report  
6 to us. We maintain a record that's not a part of  
7 the official RTC listing.

8 MR. KRAMER: Okay. About how many  
9 facilities are currently participating in the  
10 reclaim program?

11 MR. LUONG: Currently around 300.

12 MR. KRAMER: And do those facilities  
13 ever have their emissions exceed the amount of  
14 RTC's that they hold?

15 MR. LUONG: Yes, individual facilities,  
16 on the average, I would say about five percent of  
17 facilities each year exceed their allocation.

18 MR. KRAMER: Okay. And is that  
19 considered a problem for the district if  
20 facilities are exceeding their allocated credits?

21 MR. LUONG: Certainly. That carries  
22 quite a bit of fines with it.

23 MR. KRAMER: Thank you, that's less than  
24 five minutes.

25 COMMISSIONER PERNELL: Thank you, Mr.

1 Kramer.

2 HEARING OFFICER WILLIS: Mr. Ellison?

3 MR. ELLISON: I think I can do this in  
4 two questions. First, I'll address this to either  
5 of you. At the present time, recognizing you  
6 don't have a crystal ball, but at the present time  
7 is there any shortage of reclaimed credits?

8 MR. LUONG: No, there is not currently  
9 an indication of shortage.

10 MR. ELLISON: And my second question is,  
11 I want to read you a portion of the Energy  
12 Commission statute, and then ask you a question  
13 about it. But I want to be very clear that you  
14 understand what I'm reading, so if you don't  
15 understand what I'm reading ask me to repeat it.

16 And I'm reading from 25523D2, and the  
17 sentence I'm interested in says as follows, "the  
18 Commission shall require, as a condition of  
19 certification, that the Applicant obtain any  
20 required emission offsets within the time required  
21 by the applicable district rules." And then it  
22 goes on.

23 Do you have that in mind? Let me read  
24 it one more time, "the Commission shall require,  
25 as a condition of certification, that the

1 Applicant obtain any required emission offsets  
2 within the time required by the applicable  
3 district rules."

4 With that law in mind, and with the  
5 issue of RTC's in mind for NOx, when do your  
6 rules --

7 HEARING OFFICER WILLIS: Mr. Ellison,  
8 where are you reading from? Mine says "identify."

9 MR. ELLISON: I'm reading from a portion  
10 of 25523D2, the second sentence, the last  
11 sentence.

12 HEARING OFFICER WILLIS: And is  
13 identified in that sentence?

14 MR. ELLISON: No. Identify appears  
15 earlier --

16 HEARING OFFICER WILLIS: Okay, so you're  
17 paraphrasing --?

18 MR. ELLISON: No, I'm not paraphrasing,  
19 I'm reading exactly. And let me be clear what's  
20 going on here. The statute discusses  
21 identification and obtaining offsets as separate  
22 concepts.

23 COMMISSIONER PERNELL: Well, one of the  
24 things we have to have is what you have, and we  
25 don't have it yet, so I'm not --

1 HEARING OFFICER WILLIS: If you're  
2 reading it straight through --

3 MR. ELLISON: I'm reading it straight  
4 from the statute. I believe the staff has quoted  
5 in their AFC testimony as well, if I can find it.  
6 Well, I'm -- D as in dog 2.

7 COMMISSIONER PERNELL: Could we go off  
8 the record until we --  
9 (Off the record.)

10 COMMISSIONER PERNELL: Back on the  
11 record. Ms. Willis?

12 HEARING OFFICER WILLIS: Mr. Ellison?

13 MR. ELLISON: Thank you. Before we went  
14 off the record I was reading from Section 25523D2,  
15 which I believe is accurately quoted by the staff  
16 at Exhibit 68, the bottom of page three and the  
17 top of page four.

18 And the provision that I am calling to  
19 your attention says "the Commission shall require,  
20 as a condition of certification, that the  
21 Applicant obtain any required emission offsets  
22 within the time required by the applicable  
23 district rules."

24 Do you have that in mind or see it in  
25 front of you? With that in mind, when do your

1 rules require that Calpine obtain RTC's for this  
2 project?

3 MR. LUONG: Prior to start of operation.

4 MR. ELLISON: Thank you.

5 COMMISSIONER PERNELL: Prior to start of  
6 operation?

7 MR. LUONG: Yes.

8 HEARING OFFICER WILLIS: Thank you very  
9 much.

10 MR. ELLISON: That's all I have, thank  
11 you.

12 HEARING OFFICER WILLIS: Mr. Garcia?

13 MR. GARCIA: All right, and this is back  
14 to Mr. Yee, I think. I apologize for my earlier  
15 question, I was reading the wrong section. And I  
16 want you to take a look at the section that's on  
17 the bottom of staff supplemental testimony, page  
18 three, that the counsel just read.

19 MR. YEE: I see it.

20 MR. GARCIA: And my question is  
21 basically the same, does the letter from Cantor  
22 Fitzgerald, does that satisfy the district with  
23 regards to the identification of the RTC's so that  
24 it can certify that that portion of the  
25 requirement has been met?

1           MR. LUONG: Again, the district's  
2 requirement is to obtain and not to identify, so  
3 at the time that they need to purchase, outright  
4 purchase the RTC, so --

5           MR. GARCIA: I understand that. This  
6 question has to do with regards to the Energy  
7 Commission's requirement, and the requirement says  
8 that -- it says two things.

9           It says that the district has to certify  
10 that the Applicant has been able to identify and  
11 purchase the RTC's, and I'm just asking you to  
12 look at the identification part. Does the letter  
13 give you the comfort that you can certify that the  
14 RTC's have been identified?

15          MR. KRAMER: I really hate to object to  
16 a Committee question, but I don't know that it's  
17 been established that this letter has been offered  
18 to the district for purposes of making  
19 certification to the Commission.

20          So I don't even know if they'd consider  
21 that as a foundational issue, and I'm also not  
22 sure --

23          COMMISSIONER PERNELL: All right, we're  
24 going to sustain this objection. What's next?

25          MR. KRAMER: We're done.

1 HEARING OFFICER WILLIS: Now thank you  
2 very much. I appreciate your spending the extra  
3 time.

4 COMMISSIONER PERNELL: Thank you. Tell  
5 my friends over there hello.

6 HEARING OFFICER WILLIS: Okay, before we  
7 continue with Mr. Rubinstein we'll go ahead and  
8 take a break, until 5:45. And there's food out in  
9 the lobby.

10 (Off the record.)

11 COMMISSIONER PERNELL: Back on the  
12 record. Ms. Willis?

13 HEARING OFFICER WILLIS: Okay, why don't  
14 we have staff cross-examine Mr. Rubinstein? Oh,  
15 before we do that, why don't we ask Mr. Ellison  
16 if there are documents to be put into evidence?

17 MR. ELLISON: Would you like me to do  
18 that now?

19 HEARING OFFICER WILLIS: Yes, why don't  
20 you go ahead and do that.

21 MR. ELLISON: All right. At this time  
22 the Applicant would like to move its air quality  
23 testimony consisting of Section 5.1 of Exhibit  
24 Two, and the Exhibits that were identified earlier  
25 by Mr. Rubinstein as being incorporated by

1 reference therein. As well as Exhibits 72, 73,  
2 74, 75, and 76.

3 HEARING OFFICER WILLIS: You said that  
4 you had previously identified, have they been  
5 assigned specific numbers?

6 MR. ELLISON: They are on your list, and  
7 they were identified by Mr. Rubinstein, by number,  
8 as part of his testimony today.

9 HEARING OFFICER WILLIS: Is there any  
10 objection?

11 MR. KRAMER: No.

12 HEARING OFFICER WILLIS: All right, so  
13 moved. Staff?

14 MR. KRAMER: Okay. Mr. Rubinstein, do  
15 you have a copy of the Cantor Fitzgerald letter in  
16 front of you?

17 MR. RUBENSTEIN: Yes, I do.

18 MR. KRAMER: And for the record --  
19 Jenifer, what's the Exhibit number on that one?

20 MR. RUBENSTEIN: Well, it's attachment  
21 three to Exhibit Two in my testimony.

22 MR. KRAMER: Okay.

23 MR. RUBENSTEIN: And it's also  
24 separately Exhibit 54.

25 MR. KRAMER: 54, okay. Was this letter

1 obtained at your request or someone else's?

2 MR. RUBENSTEIN: It was obtained at  
3 Calpine's request.

4 MR. KRAMER: Were you a participant in  
5 the conversation in which the request was made, or  
6 the communication?

7 MR. RUBENSTEIN: Yes, I was.

8 MR. KRAMER: And can you describe the  
9 question as it was framed to Cantor Fitzgerald  
10 that resulted in this reply?

11 MR. RUBENSTEIN: Yes. Cantor was asked  
12 whether they could provide a letter indicating  
13 whether reclaimed trading credits in the  
14 approximate amounts of 500,000 pounds in calendar  
15 year 2006, and 340,000 pounds in calendar years  
16 2007 and later could be available and could be  
17 obtained on the market.

18 And also they were asked to  
19 specifically, as best they could, identify current  
20 sellers on the market who would be able to satisfy  
21 a purchase request if one was made today.

22 MR. KRAMER: Okay, so the second page is  
23 a table, if you will. And it looks like there's  
24 ten different orders. Is it your understanding  
25 that each one of those is a different seller?

1           MR. RUBENSTEIN: They are not  
2 specifically identified as such, but I believe,  
3 based on my discussions with representatives of  
4 Cantor, that they are ten different sellers.

5           MR. KRAMER: Do you know, are there more  
6 sellers than this available, or was this the  
7 entirety of the RTC's that are available at this  
8 time?

9           MR. RUBENSTEIN: I don't know. We had  
10 simply asked Cantor to identify enough to meet the  
11 quantities that we had specified.

12          MR. KRAMER: Okay, so there might be  
13 more than 504,700 credits available. You just  
14 don't know?

15          MR. RUBENSTEIN: Well, I'm certain in an  
16 absolute sense there are more, because I have a  
17 client who is currently in the selling position  
18 and they're not one of the ten listed. So I don't  
19 know how many more there are, but I know in an  
20 absolute perspective there are more than 504,700.

21          MR. KRAMER: How do you know if your  
22 client is not one of the ten if you don't -- well,  
23 let me back up. Do you know the identity of any  
24 of these sellers?

25          MR. RUBENSTEIN: No, I do not.

1 MR. KRAMER: So how can you tell whether  
2 or not your client is in this list or not?

3 MR. RUBENSTEIN: Because I specifically  
4 asked Cantor the question as to whether that  
5 client was, because they are a mutual client.

6 MR. KRAMER: So you don't know who these  
7 people are then?

8 MR. RUBENSTEIN: That's correct, I do  
9 not.

10 MR. KRAMER: It wasn't clear to me from  
11 your testimony today whether you were offering  
12 this list and this letter as an identification of  
13 specific RTC's for purposes of the Warren-Alquist  
14 Act, Section 25523D2, or if you were just offering  
15 them as an example of a sample package of credits  
16 that could be put together to meet the  
17 requirements. Could you clarify that for me?

18 MR. RUBENSTEIN: I think the answer is  
19 that it was intended to address both of those  
20 issues, both to address the specific requirements  
21 of 25523D2 and to provide a real indication of  
22 actual sellers of credits in the quantities  
23 necessary.

24 MR. KRAMER: So then you're saying this  
25 is your "identification" that you think is

1 required by the Warren-Alquist Act?

2 MR. RUBENSTEIN: My testimony was that  
3 this letter, in combination with a final  
4 determination of compliance, I believe satisfies  
5 that requirement.

6 MR. KRAMER: So are you saying then that  
7 Calpine intends to purchase these specific  
8 credits, or use these specific credits when it  
9 comes time to operate the plant?

10 MR. RUBENSTEIN: They might, or they  
11 might purchase other reclaimed trading credits at  
12 that time if they were available and less  
13 expensive.

14 MR. KRAMER: So then, there's an air  
15 quality condition, I believe it's SC 10, that has  
16 a table of various credits -- it's SC 9, pardon  
17 me, on page 12 of the Exhibit 68. In that list  
18 NOx credits, CO credits, VOC, PM-10, SOx credits.

19 And for instance, for CO there are  
20 several different credits listed, and the ERC  
21 number is identified. Would it be appropriate for  
22 the Commission to amend this table and include  
23 those ten RTC credits that are shown in the Cantor  
24 Fitzgerald letter in here as credits that you plan  
25 to use for this project?

1 MR. RUBENSTEIN: I don't know what you  
2 mean by appropriate. Appropriate for what  
3 purpose?

4 MR. KRAMER: Well, to make the condition  
5 complete. You purchased the -- Calpine plans to  
6 use, for example, the CO credits that are listed  
7 in that table, right?

8 MR. RUBENSTEIN: Calpine intends to  
9 specifically use those CO credits, not example  
10 credits.

11 MR. KRAMER: Okay. Then I gather they  
12 do not specifically intend to use the credits that  
13 are shown in the Cantor Fitzgerald letter, that's  
14 up in the air at this point. Is that a fair  
15 statement?

16 MR. RUBENSTEIN: I don't know that  
17 they've made any intention or stated any intention  
18 one way or another. They're no comparable way in  
19 the reclaim program that you can identify reclaim  
20 trading credits analogous to the ERC certificate  
21 numbers that you have listed there.

22 Just like you can't identify specific  
23 certificate numbers for the PM-10 or the SOx  
24 credits coming from the priority reserve.

25 MR. KRAMER: Right.

1           MR. RUBENSTEIN: I think this condition  
2 is complete.

3           MR. KRAMER: You understand staff  
4 doesn't, though, correct?

5           MR. RUBENSTEIN: No, I don't understand  
6 that. I understand staff has indicated that they  
7 can't recommend certification, but I did not  
8 understand that staff believes this condition is  
9 incomplete.

10          MR. KRAMER: Well, I want to make sure.  
11 I'm just trying to understand what you mean by  
12 identifying the context of RTC's. Did I hear you  
13 a minute ago say that Calpine may or may not use  
14 the RTC's -- some or all of them -- that are  
15 listed in the Cantor Fitzgerald letter?

16          MR. RUBENSTEIN: Yes. Going back to the  
17 analogy I gave during my testimony regarding years  
18 of corn. At the time that Calpine actually goes  
19 to purchase RTC's, these ten ears of corn may no  
20 longer be on the market, or they may no longer be  
21 the cheapest ears of corn on the market, and they  
22 may purchase some others, or they may purchase  
23 these ten.

24          MR. KRAMER: At this point in time you  
25 wouldn't want to make a commitment to purchase

1 those ten?

2 MR. RUBENSTEIN: At the risk of  
3 overusing this phrase, it depends on what you mean  
4 by make a commitment. Certainly, Calpine and  
5 Inland Empire is not in the position to expend  
6 funds to ensure that these specific RTC's can be  
7 purchased at a later day.

8 MR. KRAMER: Okay, if this project were  
9 in some other air district that did not have a  
10 program like the reclaim program, but just used if  
11 you will generic offsets, would you be able to  
12 simply point to a list of available credits and  
13 say we're going to be able to pick some from this  
14 list or maybe some others, whichever are cheaper,  
15 and say that you had satisfied the requirement in  
16 the Warren-Alquist Act to identify credits?

17 MR. ELLISON: I'm going to object to  
18 that question on two grounds. One, it calls for a  
19 legal conclusion. But secondly, it's a  
20 hypothetical involving a project in a different  
21 district and is irrelevant to the project here.  
22 We are in the south coast district, we do have a  
23 reclaim program.

24 HEARING OFFICER WILLIS: We're going to  
25 overrule that. We've been allowing your testimony

1 on various East Altamount issues and that is  
2 definitely in a different air district, so Mr.  
3 Kramer, proceed.

4 MR. RUBENSTEIN: No, I don't believe  
5 that would be sufficient because that would not be  
6 allowed under any of the district regulations that  
7 I'm familiar with. All of the district  
8 regulations in those other cases specifically  
9 require the identification by certificate number  
10 of emission reduction credits before a final  
11 determination of compliance is issued.

12 MR. KRAMER: Central to your argument is  
13 your assertion that RTC's are different than ERC's  
14 in various ways. Would you agree with that  
15 characterization of your argument?

16 MR. RUBENSTEIN: Yes.

17 MR. KRAMER: Isn't it true though that  
18 in both cases, RTC's and ERC's, that if somebody  
19 obtains either of them from a source, or the  
20 seller rather, has had to curtail his own  
21 emissions in order to allow that transaction to  
22 take place?

23 MR. RUBENSTEIN: No. They're  
24 fundamentally different in that regard. As I  
25 indicated in my written testimony, the initial

1 supply of reclaimed trading credits was issued by  
2 the south coast district. They're not created by  
3 any individual sources.

4           And the quantity of credits that was  
5 issued by the district was pre-ordained to decline  
6 from one calendar year to the next, and  
7 consequently, whether a particular company chooses  
8 to buy or sell credits can have ultimately nothing  
9 to do with whether they choose to curtail  
10 operations or install retrofits or they just  
11 happen to have a surplus.

12           MR. KRAMER: Okay, but how were those  
13 credits issued? Were they just issued randomly to  
14 the people in the community, or what?

15           MR. RUBENSTEIN: They were issued based  
16 on a negotiated baseline, which I believe was a  
17 two or three year period at the end of the 1980's,  
18 and the quantity was deliberately set higher in  
19 the initial years of the program, beginning I  
20 think in 1996, deliberately set higher than actual  
21 NOx emissions within the air basin.

22           And then the quantity that was issued  
23 declined over time such that, around 2000 or 2001,  
24 if there were no emission controls retrofit in the  
25 exact same universe of sources remaining in

1 operation, that demand would have started to  
2 exceed supply.

3           And the purpose of that structure was to  
4 initially get the universe of sources familiar  
5 with how the market would operate, allow them to  
6 engage in long-term planning that would help them  
7 manage what their individual demand for RTC's  
8 might be, and then make individual judgment as to  
9 whether they would purchase RTC's or whether they  
10 would sell RTC's, or whether they would retrofit  
11 emission controls in order to generate an  
12 additional supply.

13           But it's fundamentally different than  
14 emission reduction credits.

15           MR. KRAMER: Okay, but the credits, the  
16 RTC's, were issued to businesses that at the time  
17 were currently emitting NOx, correct?

18           MR. RUBENSTEIN: That's correct.

19           MR. KRAMER: And in some rough  
20 proportion to the amount of emissions they were  
21 creating, is that correct?

22           MR. RUBENSTEIN: No, it was in rough  
23 proportion to the amount of emissions emitted in  
24 the negotiated baseline, which was at least five  
25 years before the start of the baseline program.

1           MR. KRAMER: Okay, but emitted by each  
2 particular source, or each location or business?

3           MR. RUBENSTEIN: Yes.

4           MR. KRAMER: So if I were a small  
5 emitter, I would get -- it was a guess as to what  
6 I was doing five years previous, an educated  
7 estimate of that was the basis for what I would  
8 receive, and a larger emitter like a refinery  
9 would receive more, but again it was related to  
10 what they had been doing prior to the assignment?

11          MR. RUBENSTEIN: That's correct.

12          MR. KRAMER: And then over time you  
13 indicated that the amounts were ratcheted down.  
14 Was that to encourage people to reduce their  
15 emissions?

16          MR. RUBENSTEIN: The purpose of the  
17 ratcheting -- and let me be clear, the ratcheting  
18 occurred at the start of the program, there is not  
19 an ongoing ratcheting effort. The quantity of  
20 credits issued for 1997 -- and these are  
21 hypothetical numbers -- were only 95 percent of  
22 the credits that were issued for 1996.

23                 The quantity of credits issued for 1998  
24 were only 95 percent of the credits issued for  
25 1997. And so the entire scheme was laid out in

1 advance, with a declining quantity of credits  
2 available.

3           And the purpose of the declining value  
4 of credits, or the declining quantity of credits  
5 rather, was to ensure that NOx emissions from this  
6 universe of sources was reduced in a manner  
7 consistent with the air quality plan.

8           And the expectation was that the  
9 reductions would occur at a lower cost than under  
10 a traditional command and control approach where  
11 individual industries were required to retrofit  
12 controls on a prescribed schedule, and also in  
13 contrast to the system where new sources were  
14 required to purchase emission reduction credits.

15           This was intended to replace both  
16 elements of the south coast district's regulatory  
17 program for NOx.

18           MR. KRAMER: Okay, and then it was up to  
19 the sources as to how they reduced their emissions  
20 then, right? They could either -- for one thing,  
21 they could choose which equipment to retrofit if  
22 that was their choice.

23           Or they had the option of buying RTC's  
24 from somebody else who could more economically  
25 reduce his own emissions, correct?

1           MR. RUBENSTEIN: Correct, or they could  
2 buy RTC's from a source that was shutting down and  
3 moving out of the basin.

4           MR. KRAMER: Okay. And in this  
5 particular case, if Calpine is going to buy RTC's  
6 from someone, it's going to be because they are  
7 going to be available because that someone doesn't  
8 need them anymore, right?

9           MR. RUBENSTEIN: That's correct.

10          MR. KRAMER: And they won't need them,  
11 as you said a minute ago, or less than a minute  
12 ago, because they've shut down or they have excess  
13 credits that they don't require?

14          MR. RUBENSTEIN: That's right. They  
15 have excess credits that they don't require for  
16 the specific year when they're making a sale.

17          MR. KRAMER: And that's another aspect  
18 of the flexibility, I gather, because if somebody  
19 has to shut down let's say for retrofit for a  
20 year, in any other air district they would just  
21 have that credit sitting there that they paid for,  
22 and there'd be no way to get any value back out of  
23 it.

24          But in the south coast system they could  
25 in effect sell it for a year, in effect lease it

1 out to somebody else and get some financial  
2 return, right?

3 MR. RUBENSTEIN: Conceptually, that's  
4 correct. The terms are very different, because  
5 they wouldn't be leasing, they would be selling.

6 MR. KRAMER: Right.

7 MR. RUBENSTEIN: But the concept is  
8 right.

9 MR. KRAMER: Selling a years' worth, as  
10 opposed to -- in other districts all you can sell  
11 is the perpetual right?

12 MR. RUBENSTEIN: That's correct.

13 MR. KRAMER: So having said all that,  
14 how is an RTC really different, for the purposes  
15 of offsetting emissions, from an ERC? Both appear  
16 to involve somebody else either presently or in  
17 the past having curtailed operations, correct?

18 MR. RUBENSTEIN: No, not quite. Because  
19 for an ERC the curtailment would have to be  
20 permanent and enforceable and the curtailment  
21 would have to result in emission reductions lower  
22 than what would be achievable either with  
23 reasonable available or best available control  
24 technology, depending on the district.

25 There would be, if you will, a haircut

1 or a discount, on what the credit would be that  
2 would be issued.

3 And in contrast, for a reclaimed trading  
4 credit, the reduction doesn't have to be  
5 permanent, doesn't have to be enforceable, doesn't  
6 have to be in excess of anything, can occur for  
7 absolutely any reason. And that's why they're  
8 fundamentally different.

9 MR. KRAMER: But during the time that  
10 the credit is in use, in the case of an RTC it's a  
11 yearly period, in the case of an ERC it's  
12 perpetual, somebody has curtailed their emissions?

13 MR. RUBENSTEIN: No, I guess I disagree  
14 with that characterization, because it implies  
15 that they are consciously or deliberately  
16 curtailing their emissions to generate a credit.

17 As an example, you indicated earlier, if  
18 they had to take a piece of their plant and shut  
19 it down for six months for maintenance, if they  
20 chose to do that then that would reduce their  
21 demand for reclaimed trading credits during that  
22 year, and they might choose to sell some credits.

23 If they had an inadvertent shutdown that  
24 they hadn't planned on that put them out of  
25 commission for a month, that would enable them to

1 sell some quantity of reclaimed credits if they  
2 chose to do so.

3 MR. KRAMER: Your counsel asked you what  
4 happened if you retained an RTC during a  
5 particular year and for some reason you couldn't  
6 operate, whether you could carry the RTC over to  
7 another year, and you said no, you couldn't, it  
8 would be lost.

9 But isn't it true that you would have  
10 had the option during that year to sell it to  
11 someone else?

12 MR. RUBENSTEIN: Yes, certainly.

13 MR. KRAMER: During the energy crisis of  
14 2001, what happened to the price and availability  
15 of reclaimed credits?

16 MR. RUBENSTEIN: The price of credits  
17 went high, and there's a disagreement on the  
18 reason. I was extensively involved in the  
19 regulatory proceedings as well as strategic  
20 planning with some of my clients on the south  
21 coast, and the reasons had to do with unexpected  
22 increases for demand for electricity produced by  
23 power plants in the south coast air basin,  
24 combined with delays by the south coast district  
25 in processing permit applications for emission

1 controls systems for those same power plants.

2 The result being that there was a period  
3 of probably six to ten months when there was  
4 increased power generation, and where the  
5 companies -- even though they wanted to retrofit  
6 emission controls -- were legally prohibited from  
7 doing that because they did not have permits from  
8 the south coast district.

9 Once that imbalance was corrected,  
10 approximately a year later, the prices began to  
11 stabilize quite substantially, and now the  
12 market -- my understanding -- is operating at a  
13 near normal level.

14 MR. KRAMER: Did the south coast split  
15 the reclaimed program into two separate tiers?

16 MR. RUBENSTEIN: Yes, they did. And  
17 that split was also a source of controversy.  
18 There were a number of people who were arguing  
19 that the split was not necessary because the  
20 market was correcting itself.

21 MR. KRAMER: Okay. Who were in the two  
22 different tiers?

23 MR. RUBENSTEIN: One group consisted of  
24 operators of then-existing power plants, and the  
25 other group consisted of everyone else.

1           MR. KRAMER: So which tier would this  
2 project fall into?

3           MR. RUBENSTEIN: If the market were not  
4 to be recombined, this project would fall into the  
5 everyone else category. However, the district has  
6 announced its intention to recombine the market, I  
7 believe later this year.

8           MR. KRAMER: Can the air district force  
9 somebody to sell you an RTC?

10          MR. RUBENSTEIN: No, they cannot.

11          MR. KRAMER: So if there are no willing  
12 sellers you're up a creek without a paddle?

13          MR. RUBENSTEIN: Under that  
14 hypothetical, yes.

15          MR. KRAMER: Calpine does have a  
16 relatively small amount of NOx RTC's already in  
17 its possession, I guess would be the term. Is  
18 that correct?

19          MR. RUBENSTEIN: They have credits in  
20 their possession, as indicated in both FDOC and in  
21 the staff testimony. I'm not sure I'd categorize  
22 it as small in this context. it's about ten  
23 percent of their needs for any individual year,  
24 but it is a perpetual stream.

25                 And in total number of pounds it's

1 actually comparable to the total number of pounds  
2 required for one years' worth of operation.

3 MR. KRAMER: But you couldn't use it for  
4 one year?

5 MR. RUBENSTEIN: That's correct.

6 MR. KRAMER: So you just compared apples  
7 and oranges, didn't you?

8 MR. RUBENSTEIN: In terms of pounds,  
9 yes. In terms of financial commitment, no, it's  
10 apples to apples.

11 MR. KRAMER: Big apples. No further  
12 questions. Thank you.

13 HEARING OFFICER WILLIS: Before I ask  
14 for redirect, I had a question. You just  
15 mentioned a perpetual stream, how does that work?  
16 Maybe you could explain that a little more?

17 MR. RUBENSTEIN: In the reclaimed  
18 marketplace companies can either purchase a  
19 certain number of credits for a very specific  
20 calendar year or reclaim year, or they can  
21 purchase it for multiple years, or they can  
22 purchase what's referred to as a perpetual stream,  
23 which means that they purchase, for example as  
24 Calpine did, a certain number of credits for  
25 calendar year 2004, the same number for 2005, the

1 same number for 2006, etc., with the final year  
2 referred to as after 2010, which means the company  
3 has the right to those same reclaim credits for  
4 every reclaim trading year after 2010.

5 And so, in quantity, Calpine has  
6 purchased credits that cover, I think it's roughly  
7 38,000 pounds, roughly ten percent of a year's  
8 needs, for calendar years 2004, 2005, 2006, etc.  
9 for a total of eight reclaim years.

10 And so, eight reclaim years times  
11 roughly 38,000 pounds is roughly 300,000 pounds  
12 total they have purchased. As Mr. Kramer  
13 indicated, they can only use them at 38,000 pounds  
14 per year, but in terms of the total financial  
15 commitment it is in fact comparable roughly to one  
16 year of routine operation.

17 HEARING OFFICER WILLIS: So it would  
18 also be possible to purchase the other 90 percent  
19 in that manner as well?

20 MR. RUBENSTEIN: Yes, and in fact it  
21 would be likely, based upon my experience with  
22 reclaimed purchasers, that they would purchase a  
23 larger amount for the first year only, because  
24 there is an increase due to commissioning  
25 activities and a lot higher NOx emissions.

1           And they would likely purchase one or  
2 more perpetual streams for the subsequent years to  
3 fill out the remainder of their needs. It is also  
4 possible that they could just purchase them a year  
5 at a time. But from a practical matter a company  
6 is unlikely to get financing if they're planning  
7 on satisfying the reclaim requirements in that  
8 manner.

9           HEARING OFFICER WILLIS: Is it your  
10 testimony then tonight that Calpine is not  
11 planning on purchasing or agreeing to purchase or  
12 an option to buy any more reclaimed credits for  
13 NOx prior to the Energy Commission's license?

14           MR. RUBENSTEIN: At this point Calpine  
15 doesn't believe that it needs to purchase or  
16 option any additional reclaim credits to satisfy  
17 the Commission's requirements. And because they  
18 believe they are not required to do so they are  
19 not planning on doing so.

20           HEARING OFFICER WILLIS: Mr. Ellison, do  
21 you have any redirect?

22           MR. ELLISON: No.

23           MR. GARCIA: I have a couple of  
24 questions. Mr. Rubenstein, have you considered  
25 requesting the air district to provide the

1 certification based on the Cantor letter?

2 MR. RUBENSTEIN: No, Mr. Garcia, we  
3 haven't. And part of the reason why is that, in  
4 my experience in projects since this legislation  
5 was passed, I have I think in only one case  
6 actually seen a district letter formally providing  
7 that certification.

8 Normally the certification is subsumed  
9 or implied within the final determination of  
10 compliance, which I believe is the case here as  
11 well. And so we had not planned on formally  
12 asking the district to provide a separate  
13 certification here.

14 MR. GARCIA: But isn't that the crux of  
15 the disagreement between Calpine and staff? And  
16 if you did that, wouldn't that resolve it?

17 MR. RUBENSTEIN: To be honest, even if  
18 we had a letter from the district, no, I'm not  
19 certain that that would resolve it. And I don't  
20 know whether the district would in fact provide  
21 such a letter because it all hinges on the term  
22 identification and what it means to different  
23 people. And I'm not sure that the district would  
24 necessarily weigh in on that dispute.

25 MR. GARCIA: But in the event that they

1 did, that would resolve the disagreement?

2 MR. RUBENSTEIN: I think that perhaps is  
3 a question better put to the staff than to me as  
4 to whether a letter from the district would in  
5 fact resolve the disagreement.

6 COMMISSIONER PERNELL: Are you proposing  
7 that to Mr. Kramer?

8 MR. KRAMER: Unless the facts changed  
9 I'm not sure we'd put much stock in such a letter  
10 from the district.

11 MR. GARCIA: All right. Thanks.

12 COMMISSIONER PERNELL: I do have a  
13 followup on your explanation as to the perpetual  
14 stream. Who monitors that, is that the air  
15 district?

16 MR. RUBENSTEIN: Yes. The air district  
17 has a registry. You can think of it like they are  
18 a banker and they maintain bank accounts, and  
19 every facility operator, every reclaim credit  
20 holder in the south coast air basin, has one  
21 account which has separate sub-accounts for each  
22 reclaim year.

23 And in fact it gets a little more  
24 complicated because we've been talking about  
25 reclaim years and there are actually four

1 subsets -- no, I'm sorry -- two subsets to each  
2 year, referred to as cycle one and cycle two.

3 And actually there are two variations on  
4 that, whether they're inland or coastal. So for  
5 each calendar year each account holder would have  
6 four separate sub-accounts.

7 And the district's registry keeps track  
8 of all of that, and every permit holder gets a  
9 statement at the beginning of each calendar year,  
10 in their facility permit, telling them exactly how  
11 many credits they have of each type for each year,  
12 in perpetuity. And so the district tracks all of  
13 that.

14 COMMISSIONER PERNELL: Is that every  
15 district, or just south coast?

16 MR. RUBENSTEIN: This program is unique  
17 to the south coast.

18 HEARING OFFICER WILLIS: I believe  
19 you've moved in all your documents. Is there any  
20 other documents you need to move in at this time?

21 MR. ELLISON: No.

22 HEARING OFFICER WILLIS: Okay. Staff, I  
23 believe you've already sworn in your witnesses?

24 MR. KRAMER: And the plan is we're going  
25 to have public health separately after this, is

1 that correct? Okay. Mr. Birdsall, if you would  
2 identify yourself for the record?

3 MR. BIRDSALL: Hi, good evening, my name  
4 is Brewster Birdsall. I'm a contractor helping  
5 the Energy Commission on the topic of air quality.

6 MR. KRAMER: And did you prepare the air  
7 quality portion of the staff assessment in this  
8 case?

9 MR. BIRDSALL: I did.

10 MR. KRAMER: And does it represent your  
11 best professional judgment?

12 MR. BIRDSALL: Yes, it does.

13 MR. KRAMER: And that includes both the  
14 final staff assessment and the --

15 COMMISSIONER PERNELL: Mr. Birdsall, you  
16 really need to speak directly into the mike.

17 MR. BIRDSALL: Okay.

18 MR. KRAMER: That's better.

19 COMMISSIONER PERNELL: Thank you.

20 MR. KRAMER: And your testimony includes  
21 the supplemental testimony, that's Exhibit 68?

22 MR. BIRDSALL: Correct.

23 MR. KRAMER: Let's turn to the issue of  
24 AQSC5, the upwind and downwind monitoring  
25 requirements. Could you explain why staff

1 believes that it's important to provide that  
2 monitoring?

3 MR. BIRDSALL: AQSC5 addresses the  
4 ambient air concentrations of particulate matter  
5 upwind and downwind of the site during the heavy  
6 construction and earth work phase of the site  
7 development.

8 This is a monitoring recommendation that  
9 staff has created to provide some kind of  
10 assurance that the dust control measures that are  
11 specified by the previous conditions, conditions  
12 AQSC 1 through 4, are implemented effectively.

13 The reasoning behind AQSC5 is unique to  
14 this case, as is every staff assessment to every  
15 power plant site that we approach. When we look  
16 at the conditions that the Inland Empire plant is  
17 going to insert itself to, we take a look at the  
18 existing background conditions and the project  
19 surroundings.

20 The existing background conditions in  
21 terms of the ambient air quality have all been  
22 laid out in the AFC, originally, and then  
23 subsequently in the staff assessment and with  
24 updates in the addendum to the staff assessment.  
25 This is the Exhibit 68.

1           The Applicant has also provided some  
2 interesting and relevant information that is  
3 updated tonight in their Exhibits -- I believe 72,  
4 73, and 74. And these Exhibits all illustrate the  
5 background conditions here in this part of the  
6 Inland Empire with regard to PM-10 as being well  
7 in excess of the state and federal ambient air  
8 quality standards for PM-10, and there's no  
9 dispute about that from any of the parties  
10 involved.

11           The ambient conditions exceed the  
12 ambient air quality standards, and in this regard  
13 the Inland Empire isn't very much different from  
14 some of our other more-polluted basins for  
15 particulate matter -- like the Central Valley or  
16 -- well, really, the Central Valley.

17           What I've done is I've taken a look at  
18 the background conditions. Because the background  
19 conditions are indeed over the standards we feel  
20 that additional or, we feel that the dust control  
21 strategy needs to be very carefully implemented.

22           The Applicant has put forward some  
23 information tonight that says that the background  
24 conditions are improving in the south coast  
25 district, and this is part of the Applicant's

1 testimony submitted earlier in July.

2           Staff doesn't dispute that some great  
3 achievements have been made in the basin about  
4 reducing the background concentrations of PM-10.  
5 But the Applicant's table and graphs that were  
6 submitted tonight in the Exhibits 72 through 74  
7 reveal to us that, although on a day-by-day basis  
8 the worst days are better now than they used to  
9 be, on an annual basis the PM-10 concentrations  
10 tend to be more flat.

11           The trend, really, over the past five  
12 years or so, for the annual average concentrations  
13 of PM-10, is really quite stable. And the figures  
14 that were submitted tonight into evidence show  
15 that and confirm that.

16           Additionally, with the average annual  
17 concentrations being relatively stable over the  
18 past five years, the ambient air quality standards  
19 in the past five years have been reviewed and  
20 adjusted.

21           Both federally, early on in this sort of  
22 hypothetical five-year window, with revisions to  
23 the federal PM standard in 1997, but also  
24 recently, this summer -- the ARB actually proposed  
25 last summer and then finalized more stringent

1 standards for annual average PM-10 concentrations.

2           So what we have here is a case where the  
3 average concentrations are remaining relatively  
4 unchanged. And the standard by which they're  
5 measured is actually decreasing. I don't know if  
6 additional reductions in the standards will occur,  
7 that's beyond the scope of my work --

8           MR. KRAMER: Could you put some numbers  
9 on that? In other words, what's the average  
10 you're talking about and what's the standard, so  
11 we can understand how close or far apart they are?

12           MR. BIRDSALL: Sure. And I'll refer to  
13 the convenient figures that were provided tonight  
14 by the Applicant.

15           In the figure 2 there's a chart of  
16 annual PM-10 concentrations in -- let me see if  
17 I'm getting that right -- if there are annual PM-  
18 10 concentrations then I assume they are an annual  
19 average, not maximum annual, which maybe means  
20 that figure 2 is slightly mislabeled.

21           But this is the figure 2 of the handout  
22 from earlier tonight -- I believe it's called  
23 Exhibit 72. The California standard, this summer,  
24 became 20 micrograms per cubic meter on an annual  
25 basis. At the time that we started this case the

1 California annual standard was 30 micrograms per  
2 cubic meter.

3           The average concentrations around Perris  
4 are hovering roughly at 40 micrograms per cubic  
5 meter, and that has been the case since 1996. And  
6 prior to that it was declining, up to 1996, and up  
7 to about that 40 micrograms per cubic meter. Some  
8 years are higher, some years are lower.

9           But essentially the ambient conditions  
10 are two times the California standard. That's  
11 giving you an overview of the air quality  
12 conditions here in the Inland Empire, which are  
13 unique to this case, and, well, any other project  
14 that happens here in the Inland Empire.

15           But what is also especially unique about  
16 this case is the proximity of the receptors. We  
17 have sensitive land uses that are within -- and I  
18 say a rule of thumb for "close" is a quarter mile  
19 or a thousand feet -- we have homes that are  
20 within one thousand feet. We have a rural  
21 residence on Efenac which is about 600 feet to the  
22 north, and there is the Romoland elementary school  
23 which is .34 miles to the north.

24           The proximity of the receptors is a  
25 major factor in our considering what is

1 appropriate mitigation and what is feasible  
2 recommendation.

3 And we've got residents nearby, we've  
4 got the school nearby, we also have evidence and a  
5 chart of socioeconomic figures that show that  
6 there are pockets and clusters of minority census  
7 tracks in Romoland. This is also a concern.

8 We have, along with the two big picture  
9 items -- the ambient air quality and then the uses  
10 that surround the project site -- we have an  
11 Applicant assessment of dust impacts during  
12 construction that reveals that they are very close  
13 to the 24-hour state standard of 50 micrograms per  
14 cubic meter during their construction activities.

15 And the Applicant has provided  
16 information tonight, and testimony, that  
17 illustrates this is a conservative assessment,  
18 meaning the Applicant's assessment of property  
19 line impacts being 49 micrograms per cubic meter  
20 takes into account a number of very conservative  
21 assumptions, and I agree with that.

22 The Applicant does say tonight that the  
23 emissions are probably still overestimated, even  
24 though they have been reduced as this case has  
25 proceeded. I'm not sure that the impacts are

1 indeed overstated.

2 I do agree that there is conservatism  
3 built into the method of the analysis, but the  
4 impacts being illustrated at 49 micrograms per  
5 cubic meter on a 24-hour basis at the fence line  
6 to me seems that impacts are probably not  
7 overestimated based on my experience with other  
8 CEC projects that sometimes and commonly have a  
9 modeling analysis demonstrating more than a 50  
10 microgram per cubic meter fence line impact.

11 MR. KRAMER: And when you talk about 49  
12 micrograms per cubic meter, is that the total  
13 concentration that would be experienced at that  
14 place, or is that just what the power plant is  
15 adding to the background level?

16 MR. BIRDSALL: That's the amount that  
17 the construction activity is adding to the  
18 background level.

19 MR. KRAMER: And the background level is  
20 already above the standard, is that what you said?

21 MR. BIRDSALL: Right. Now I have to be  
22 careful not to mix 24-hours averages with annual  
23 averages. The background that I was talking about  
24 prior was on an annual average basis.

25 On a 24-hour basis the background

1 concentrations tend to be -- at least on a maximum  
2 basis -- the worst day is generally above 80  
3 micrograms per cubic meter. Recently there have  
4 been days up around 100 micrograms per cubic  
5 meter.

6 So that's a single worst maximum  
7 background concentration. And during the earth  
8 work activities the project could add as much as  
9 49 to that.

10 MR. KRAMER: So that would be half again  
11 as much?

12 MR. BIRDSALL: Right. Taking these  
13 factors into consideration we've created a  
14 mitigation scheme for construction that involves  
15 rigorous dust control, and these are included in  
16 the AQSC 1 through 4. And to those of you  
17 familiar with siting cases, they do appear on  
18 other cases quite commonly, and we try to  
19 implement these as a standard.

20 And because of the proximity of the  
21 receptors, and because of the background  
22 conditions here at this site, we've recommended an  
23 additional ambient air monitoring program to allow  
24 the Applicant to track the effectiveness of those  
25 first four measures.

1           Meaning if the monitoring data shows an  
2 extreme difference in concentrations -- something  
3 on a 24-hour basis that would be over 50  
4 micrograms per cubic meter would certainly be  
5 extreme -- but if the Applicant observes this with  
6 the fence line ambient monitoring that's  
7 recommended under AQSC5, then the Applicant would  
8 know or at least have an indication of how  
9 effective their dust control is to that point, and  
10 could adjust their dust control within the  
11 measures that are set forth in AQSC 1 through 4.

12           COMMISSIONER PERNELL: Excuse me, 1  
13 through 4, are you talking about air quality  
14 construction mitigation management requirements?  
15 Those construction mitigation plan requirements,  
16 is that what you're talking about, 1 through 4?

17           MR. BIRDSALL: That's what I'm talking  
18 about. And those are the recommendation to --

19           COMMISSIONER PERNELL: So we're putting  
20 these monitors up to ensure that they are being in  
21 compliance with 1 through 4?

22           MR. BIRDSALL: Essentially. It provides  
23 a measure of compliance assurance.

24           COMMISSIONER PERNELL: All right. Let  
25 me give you a break here and ask some other

1 questions. We're talking about construction dust,  
2 right?

3 MR. BIRDSALL: Correct.

4 COMMISSIONER PERNELL: And there's, I'm  
5 probably overlooking it, but I'll assume that  
6 there is a condition that allows watering on the  
7 site to control the dust?

8 MR. BIRDSALL: That's correct. There  
9 are conditions, mainly in AQSC3, which have  
10 essentially a recipe of management practices for  
11 dust. And in there is watering the site, among  
12 other things.

13 COMMISSIONER PERNELL: All right. So we  
14 have watering on the site to help control the  
15 dust. So the air monitors that you're  
16 recommending is only doing ground operations on  
17 the site? So what happens when the foundation and  
18 everything is poured? Do you request that it  
19 continue monitoring for dust?

20 MR. BIRDSALL: No, we're only  
21 recommending that they monitor during the  
22 excavation, earth moving, and grading activities.  
23 Mainly because once the site is paved and made  
24 impermeable that the ambient dust that's kicked up  
25 by activity on the site would be substantially

1 reduced and become less of a concern.

2 COMMISSIONER PERNELL: Okay, so, I guess  
3 final question and then I'll let you go on on this  
4 -- there is a compliance manager on site?

5 MR. BIRDSALL: That's correct. There is  
6 a recommendation in AQSC1 that the project owner  
7 fund a air quality construction mitigation  
8 manager, and that is somebody on site who helps to  
9 coordinate these mitigation activities.

10 COMMISSIONER PERNELL: And so they  
11 wouldn't -- I guess my question is if we have a  
12 monitor on site, and you have a water mitigation  
13 plan to keep the dust down, the monitor on site  
14 wouldn't, couldn't require a stop or, I mean -- I  
15 guess my question is the justification for having  
16 these monitors when you've got somebody on site,  
17 you have a watering plan, and it's only going to  
18 last until you're out of the ground, so to speak,  
19 so during the construction and grading period.

20 And so, I guess it leads me to believe  
21 that you don't have a lot of confidence in your  
22 monitor that's on site?

23 MR. KRAMER: Well, maybe I can ask a  
24 clarifying question. Can somebody see the levels  
25 of PM-10 in the air with their eyes that you're

1 concerned about?

2 MR. BIRDSALL: Well, this is, I think,  
3 the answer to your question. AQSC4 requires the  
4 monitoring personnel to look at the fence line,  
5 look at the dust clouds, to make sure that none  
6 are migrating off site, and to make sure that dust  
7 is visibly kept to a minimum.

8 The problem is that the particulate  
9 matter that's inhalable is not necessarily  
10 visible. And we're recommending the monitoring  
11 devices to track the fine particulate matter, the  
12 PM-10, that is inhalable but not necessarily  
13 visible.

14 I think that concludes my ideas on  
15 recommending AQSC5. The Applicant had some other  
16 questions about the construction conditions that I  
17 can get into, I suppose, if now is the right time.

18 MR. KRAMER: Yes. Turning your  
19 attention to the Applicant's continuing concerns  
20 about diesel equipment mitigation requirements.  
21 AQSC3, O I believe it was, you were able to hear  
22 the testimony, and could you provide your response  
23 to the Applicant's concerns?

24 MR. BIRDSALL: Yes, I sure can. The  
25 Applicant -- well, backing up. AQSC3, Paragraph

1 O, is regarding the tailpipe control of diesel  
2 particulate matter. And this is not the fugitive  
3 dust from the site, but rather the particulate  
4 matter that's emitted by the equipment while the  
5 equipment is operating and burning its diesel  
6 fuel.

7 Diesel particulate matter is a  
8 carcinogen and it's included in a health risk  
9 assessment. What is at issue here is how to  
10 ensure that the equipment that's used on site is  
11 really the best and cleanest that can be had. And  
12 there have been a lot of gyrations on how to  
13 achieve this in recent cases.

14 And the Applicant put forward the  
15 example of the East Altamount case that's still  
16 being worked on, and says that they've  
17 recommended --

18 COMMISSIONER PERNELL: We will try not  
19 to identify specific cases.

20 MR. BIRDSALL: Okay, we will not  
21 identify specific cases, but the Applicant has  
22 identified another case where this issue was  
23 litigated, and as a compromise they had come up  
24 with some language that is included in the  
25 Applicant's testimony from early July.

1           We had a workshop in early July to talk  
2 a little bit about this, and concluded that staff  
3 would go ahead and propose an independent  
4 recommendation. Some of the difficulties that the  
5 staff has with the Applicant's recommendations are  
6 based on the terminology that would be used in  
7 their version of AQSC3, Paragraph O.

8           The Applicant's version of AQSC O -- I  
9 guess, maybe I'll kind of backtrack and I won't  
10 try to explain the content of the Applicant's  
11 condition because it's the Applicant's --

12           COMMISSIONER PERNELL: I guess the  
13 bottom line is you don't agree with it?

14           MR. BIRDSALL: The bottom line is that I  
15 don't agree with it, thank you for getting me out  
16 of that. The Applicant has said that our  
17 recommendation forces the use of soot filters and  
18 certified engines simultaneously. Meaning we've  
19 gone into this highly stringent mode of requiring  
20 not only certified engines but use of soot filters  
21 and certified engines.

22           And I think that that's a  
23 misinterpretation of our version of Paragraph O.  
24 What we are recommending is that EPA and ARB  
25 certified engines, certified to the level of tier

1 one control, be used for all equipment. And I  
2 don't think that there is a dispute about that.

3           The second part of our recommendation in  
4 AQSC3, O, says that all large construction diesel  
5 engines which have a rating of 50 horsepower or  
6 more that do not have an EPA tier one particulate  
7 standard -- which is a very small class of  
8 engines, between 50 and 175 horsepower -- and do  
9 not meet tier two particulate standards, shall be  
10 equipped with catalyzed diesel particulate  
11 filters.

12           What I'm trying to illustrate here is  
13 that we only request catalyzed diesel particulate  
14 soot filters for a class of engines that has no  
15 other particulate standard. And if the engine  
16 does meet what is known as a tier two standard we  
17 don't mandate the soot filters.

18           Further, if the on site air quality  
19 construction mitigation manager, in consultation  
20 with the engine manufacturers -- and presumably by  
21 looking at the ARB publications on which soot  
22 filters are appropriate for which equipment -- if  
23 they make a determination that soot filters are  
24 not practical for certain engine types, then the  
25 air quality construction mitigation manager can,

1 on the site, waive this requirement for the soot  
2 filter.

3 So I don't think that our version of  
4 Paragraph O is as onerous as the Applicant  
5 portrays it to be, because it provides some room  
6 for negotiation, and it provides some room for the  
7 Applicant and the project owner at that time to  
8 demonstrate that, for a certain piece of equipment  
9 a soot filter is not practical.

10 And that determination would be made as  
11 they go, but it does provide the project owner  
12 with the assurance that, if there is something  
13 that is technically unfeasible, we aren't hanging  
14 around and mandating it.

15 Staff recommends that the version of  
16 Paragraph O that is in our supplement to the FSA  
17 go forward, and I think that once we take a look  
18 at it and realize that there are some options to  
19 compliance here that the Applicant will hopefully  
20 be more comfortable with it.

21 COMMISSIONER PERNELL: A question -- is  
22 ARB and EPA certified standards the same thing?

23 MR. BIRDSALL: For the heavy diesel  
24 equipment, yes. This is equipment that EPA and  
25 ARB have together developed standards for.

1 COMMISSIONER PERNELL: Okay.

2 MR. KRAMER: Are you familiar with the  
3 air district's rule, I believe it was 403, the  
4 fugitive dust rule?

5 MR. BIRDSALL: Yes.

6 MR. KRAMER: It was suggested that that  
7 rule would be adequate by itself to properly  
8 control dust during construction. Do you agree  
9 with that suggestion?

10 MR. BIRDSALL: Well, I guess -- I don't  
11 agree with that suggestion. Under CEQA I'm  
12 obligated to develop the most feasible and, how do  
13 I say, not most feasible but all feasible  
14 mitigation measures as recommendations for  
15 mitigations of a project impact.

16 When looking at what is feasible for  
17 dust control, certainly the measures that are put  
18 forth in rule 403 are within the scope of  
19 feasible. But it's reasonable for me, as a CEQA  
20 analyst, to go beyond rule 403 to determine what  
21 is all feasible mitigation measure.

22 MR. KRAMER: So could you cull out the  
23 measures that are in the staff recommendation that  
24 go beyond what the air district rule requires?

25 MR. BIRDSALL: Well, it's hard to

1 compare because the air district rule has a couple  
2 of different criteria. And the air district rule  
3 does require fence line monitoring, similar to  
4 what we've recommended in AQSC5. But it only  
5 requires it in cases when the project developer  
6 does not have a rigorous dust control plan.

7           So in the case where a project does have  
8 a rigorous dust control plan the requirement to  
9 monitor at the fence line would be waived. And  
10 so, in sort of a very crude way, I would say that  
11 our recommendations for AQSC 1 through 4 are  
12 pretty similar and are definitely more stringent  
13 because we address some other topics especially  
14 related to equipment emissions.

15           But they would be sort of consistent  
16 with the south coast district rule 403. And our  
17 recommendation in SC5 for fence line monitoring  
18 would be above and beyond the district rule.

19           MR. KRAMER: Okay. You said the  
20 district rule doesn't cover equipment emissions.  
21 What are you including in that list today? Do you  
22 have any requirements regarding the diesel fuel to  
23 be used?

24           MR. BIRDSALL: That's what I'm  
25 regarding. The district rule 403 deals only with

1 fugitive dust during construction and does not  
2 deal with tailpipe emissions from diesel fired  
3 equipment.

4 MR. KRAMER: And are diesel tailpipe  
5 emissions of special concern?

6 MR. BIRDSALL: Well, yes, they are.  
7 Diesel tailpipe emissions, especially of  
8 particulate matter, are a concern because it's a  
9 carcinogen, and we've been trying to recommend,  
10 and the Commission has been adopting measures for  
11 diesel particulate control. This is an ongoing  
12 effort of staff to recommend that clean diesel  
13 fuel and clean diesel engines be used to manage  
14 the tailpipe emissions.

15 MR. KRAMER: And is dust from soils  
16 considered a carcinogen?

17 MR. BIRDSALL: I would say no.

18 MR. KRAMER: The Applicant proposed  
19 extending the operating hours under AQSC6 to a 12-  
20 hour period. Have you considered that request and  
21 what is your response?

22 MR. BIRDSALL: Yes, I have. Moving on  
23 to AQSC6. The Applicant has provided information  
24 tonight in the form of isopleth concentrations,  
25 and also in the form of modeled output table, that

1 demonstrate construction -- earth moving  
2 activities especially -- on a 12-hour per day  
3 schedule would not cause any new violations.

4           This was something that we discussed at  
5 the workshop in early July, and I've looked at it  
6 independently, and can say that moving to a 12-  
7 hour schedule would not change the project impacts  
8 beyond what is already demonstrated in the record,  
9 and I think that we should follow through on that  
10 recommendation.

11           COMMISSIONER PERNELL: Staff  
12 recommendation?

13           MR. BIRDSALL: Follow through on the  
14 Applicant's --

15           COMMISSIONER PERNELL: I'm sorry, on the  
16 Applicant's recommendation?

17           MR. BIRDSALL: On the Applicant's  
18 request to move to a 12-hour schedule, similar to  
19 what is required by the noise requirements.

20           MR. KRAMER: Could that be achieved  
21 simply by changing the ten to 12 in AQSC6?

22           MR. BIRDSALL: It seems like it could,  
23 yes.

24           MR. KRAMER: I need to return to AQSC5  
25 for just a couple more closing questions. I don't

1 see any way to avoid comparison with other  
2 projects. The Applicant has suggested that this  
3 is a failed experiment in one other case. And I  
4 believe that was the Los Esteros case.

5 First of all, are you aware of this  
6 requirement being imposed in any other cases  
7 beside Los Esteros?

8 MR. BIRDSALL: The requirement for  
9 ambient monitoring has been recommended in the  
10 past on a couple of cases that I'm familiar with  
11 peripherally. It was recommended of course on the  
12 Los Esteros that you've mentioned, and it went  
13 forward, the Commission adopted it as a  
14 demonstration program.

15 It was also recommended by staff on a  
16 project in the Central Valley that has nearby  
17 receptors recently. And another project from year  
18 2002 in the Bay Area that I believe also has some  
19 nearby receptors. So it's been recommended by  
20 staff on a couple of select cases in the past year  
21 or year and a half.

22 MR. KRAMER: Do you know if it was  
23 recommended in the Vernon project?

24 MR. BIRDSALL: I believe it was.

25 MR. KRAMER: Do you have an

1 understanding with what actually happened with the  
2 monitoring in Los Esteros?

3 MR. BIRDSALL: Well, it's interesting to  
4 me to hear the Applicant portray the demonstration  
5 project as a failure. I have not seen any formal  
6 staff assessment or staff analysis on the Los  
7 Esteros demonstration project. I do know, though,  
8 from my work on the cases, that there were  
9 difficulties during that monitoring exercise.

10 And I think some of those difficulties  
11 were related to how the monitors were operated,  
12 and whether or not the monitors were rigorously  
13 maintained during the course of their operation.

14 I think that if a demonstration project  
15 is a failure then it must reveal ways to either  
16 improve the demonstration project or possibly make  
17 changes to it, but I don't know that necessarily  
18 it means that the demonstration project was  
19 worthless.

20 MR. KRAMER: Did you see any reason,  
21 based on what you know about that project, to  
22 avoid using the monitoring in the future?

23 MR. BIRDSALL: No, I didn't recognize  
24 any clear reason to abandon my proposal for  
25 ambient monitoring. The data that was shared with

1 me indicated that there were wide swings in the  
2 ambient PM-10 concentrations, and I think that  
3 some of that happened to be due to how the  
4 monitoring equipment was operated.

5 But because there were such wide  
6 swings -- and when I say wide, certainly more than  
7 50 micrograms per cubic meter -- that really I  
8 couldn't draw any conclusions that indeed I should  
9 abandon my recommendation for this case.

10 MR. KRAMER: And are you recommending  
11 that requirement in this case because it was  
12 recommended in other cases? Or for some other  
13 reason?

14 MR. BIRDSALL: Well, I'm recommending it  
15 in this case because of the proximity of the  
16 receptors -- the elementary school, the residences  
17 -- and it is consistent with staff's trends to  
18 recommend this on some of these recent cases. So  
19 I do take that into consideration.

20 MR. KRAMER: But it has to do with the  
21 specifics of the site, and not what happened in  
22 some other case?

23 MR. BIRDSALL: I am working on another  
24 case where I have not recommended this, and the  
25 reason being because there are not sensitive

1 receptors in such close proximity.

2 MR. KRAMER: Thank you. No further  
3 questions.

4 COMMISSIONER PERNELL: I just have a  
5 couple of clarifying questions. Getting back to  
6 the construction dust. The monitors you're  
7 talking about, you're talking about attaching them  
8 to the fence line?

9 MR. BIRDSALL: Well, I think the details  
10 would be worked out in the plan that is requested  
11 by SC5, but they would generally be located one  
12 upwind and one downwind of the development site,  
13 which would be pretty close to the fence line,  
14 yes. One on each end.

15 COMMISSIONER PERNELL: Okay, so would  
16 that be north/south?

17 MR. BIRDSALL: That would be north/south  
18 in this case.

19 COMMISSIONER PERNELL: And you mentioned  
20 earlier that there could be, one of the reasons  
21 that Applicant has suggested that the monitors  
22 failed is perhaps it wasn't maintained? Was that  
23 a, kind of your statement?

24 MR. BIRDSALL: Yes, that's my  
25 understanding of what happened there, but --

1           COMMISSIONER PERNELL: Well, how often  
2 do they have to be maintained? I mean, does  
3 somebody check them every day, or --?

4           MR. BIRDSALL: I think that, yes, every  
5 day would probably be the amount of effort  
6 involved to maintain the equipment. But I think,  
7 again, that depends on the specific plan that's  
8 prepared by the project owner, and they may find  
9 that less maintenance is necessary.

10          COMMISSIONER PERNELL: Who normally  
11 does, is that the construction compliance manager  
12 that maintains the monitors?

13          MR. BIRDSALL: I think that would be a  
14 good recommendation, or if that were in the plan  
15 that staff would look at that favorably, yes.

16          COMMISSIONER PERNELL: How is it done  
17 now?

18          MR. BIRDSALL: Well, this recommendation  
19 for ambient monitoring has only gone forward on  
20 that one case, the Los Esteros case.

21          COMMISSIONER PERNELL: And was it, so  
22 how was it done on that one case?

23          MR. BIRDSALL: I do not know personally  
24 who operated the monitors.

25          COMMISSIONER PERNELL: Okay. And what

1 happens if there's a violation? I didn't see  
2 any -- is there a fine, do you stop construction?  
3 If there is a violation, you know, if somebody  
4 checks the monitors and, you know, it's jumping  
5 off the fence, what happens?

6 MR. BIRDSALL: Well, that's a good  
7 question. Well, how the monitors would be used is  
8 also part of the plan. In our condition of  
9 certification that we recommend we ask the project  
10 Applicant, in their plan, to describe how they  
11 would use the monitors to either double-check or  
12 provide feedback to their dust control strategy  
13 that is happening.

14 Meaning, in the plan, if they look at  
15 the two monitors, and they find that yes, oh,  
16 they're off the charts, and that's a big concern,  
17 or they were off the charts for yesterday, then --

18 COMMISSIONER PERNELL: So they're  
19 checked daily?

20 MR. BIRDSALL: Well, I'm suggesting if  
21 they're checked daily, and they look at them on  
22 Thursday and realize that Wednesday was a bad day,  
23 then what the staff would look for in the plan, in  
24 the ambient air monitoring plan, would be some  
25 kind of feedback that says, well maybe we'll close

1 the pace of grading down in this area on Friday,  
2 on Thursday and Friday of this week, in order to  
3 see if we can keep the monitors from jumping off  
4 the charts.

5 Or we'll increase the watering, or we  
6 will keep the vehicle speeds down. Something  
7 else.

8 COMMISSIONER PERNELL: Right. Have some  
9 type of mitigation plan because they are in  
10 violation?

11 MR. BIRDSALL: Some kind of feedback.  
12 And we're not setting any number as a strict  
13 violation. In fact, that would be also laid out  
14 in the monitoring plan. How far off the chart is  
15 off the chart? Meaning, if we see five, ten, 50,  
16 100? When do we start to double-check? That  
17 would all be resolved in the plan.

18 COMMISSIONER PERNELL: Now, so who  
19 creates the plan? Is that something that the  
20 Applicant does or --?

21 MR. BIRDSALL: That's the  
22 recommendation, right, that the project owner  
23 would create the plan and submit it for approval  
24 to the compliance project manager.

25 COMMISSIONER PERNELL: And the

1 Applicant's responsibility to check the monitors  
2 and to call somebody if they're jumping off the  
3 hook?

4 MR. BIRDSALL: I think something like  
5 that would be, yes, anticipated in the plan. If  
6 some kind of excursion or some kind of wild data  
7 point is observed that some feedback would be  
8 provided to the air quality construction  
9 mitigation manager.

10 COMMISSIONER PERNELL: All right, but  
11 there's no independent check from either the  
12 construction compliance monitor or someone else.  
13 It's just a good faith effort on behalf of the  
14 Applicant, any Applicant that does compliance --  
15 so I'm not saying anything negative about this  
16 Applicant, I'm just trying to find out if we've  
17 got a watering plan for construction for PM-10,  
18 and now I'm understanding that there is something  
19 that you can't even see, so you want to put  
20 monitors on the fence.

21 And I'm just trying to understand how we  
22 double-check. It seems like there's a lot of  
23 checks and balances going because you want to make  
24 sure that all of this is correct. And yet, when  
25 you get to the end, in terms of checking the

1 monitors and whether there's a violation, what  
2 happens, who checks them, and all of those.

3 So that's what I'm questioning, and I  
4 think what you're saying is that it would be in  
5 the plan that the Applicant would create?

6 MR. BIRDSALL: That's correct  
7 interpretation in that we would look for -- when  
8 we review the plan -- we would look for what  
9 feedback is proposed by the plan.

10 COMMISSIONER PERNELL: So if there's a  
11 violation there is no consequences, other than  
12 change the plan?

13 MR. BIRDSALL: Other than -- not so much  
14 change the plan, but change the practices of dust  
15 control. Meaning change the construction just  
16 enough to better manage the emissions of the dust.

17 COMMISSIONER PERNELL: Okay, let me give  
18 you another scenario, and then I'm done with this.  
19 What happens if we don't get a call, and last day  
20 of grading you just decide to go out there, and  
21 the monitors are indicating that there's gross  
22 violation. Too late to change the plan?

23 MR. BIRDSALL: Well, that's a drawback  
24 to monitoring that is only checked once a day.  
25 And I see that that would be a real drawback. But

1 as you've pointed out, there are a number of  
2 checks and balances along the way. There are  
3 requirements in AQSC 1 through 4 to help avoid a  
4 situation like that occurring.

5           And before we close out the topic I'd  
6 like to just point out -- it was handed to me here  
7 -- the records of the monitoring data, and a  
8 report of what activity is taking place, those are  
9 all submitted as part of the monthly compliance  
10 report, to the compliance project manager.

11           HEARING OFFICER WILLIS: Just to  
12 clarify, on AQSC6, at this point in time would you  
13 be willing to delete that condition totally, or  
14 just make it consistent with noise, the noise  
15 condition?

16           MR. KRAMER: My concern, from a legal  
17 policy standpoint, would be that if we just delete  
18 it, then we no longer have a reminder to the  
19 future participants in the process that operating  
20 hours had an air quality impact as well as a noise  
21 component. So I think it would be better to leave  
22 it in the air quality section.

23           We could state the hours would be seven  
24 to seven, or whatever it was in the noise section,  
25 but I'd hate to delete that reminder that there

1 was an air quality aspect to it as well as a noise  
2 aspect.

3 MR. ELLISON: If I could just weigh in  
4 on this. Can I suggest that perhaps the way of  
5 addressing Mr. Kramer's concern would be to have  
6 an air quality condition that just made reference  
7 to Noise 8, and it would be something like "for  
8 the purposes of air quality the Applicant will  
9 comply," you know, "with Noise 8."

10 The concern we have is that if you have  
11 two different conditions people might interpret  
12 them to mean two different things, when in fact  
13 that's not the intention. The intention is that  
14 the requirement be the same.

15 So I don't have a concern with  
16 addressing Mr. Kramer's issue of placing something  
17 on air quality, but I'd rather just cross-  
18 reference Noise 8.

19 HEARING OFFICER WILLIS: If you wouldn't  
20 mind, maybe we can get together before the breaks  
21 are due and see if there is some language we could  
22 agree upon?

23 MR. KRAMER: Certainly.

24 HEARING OFFICER WILLIS: I have some  
25 questions regarding the reclaimed trading credits,

1 and the other cases that have been before the  
2 Energy Commission that fall into this air  
3 district. Are you familiar with those projects?

4 MR. BIRDSALL: I'll say peripherally. I  
5 haven't worked on them directly, though.

6 HEARING OFFICER WILLIS: But you're  
7 familiar with their requirements?

8 MR. BIRDSALL: Yes.

9 HEARING OFFICER WILLIS: Now on page  
10 five of the supplemental testimony, there are I  
11 think three cases -- the Magnolio power plant  
12 case. It said that the Applicant had agreements  
13 to purchase all the necessary RTC's -- you're  
14 familiar with that one?

15 MR. BIRDSALL: Right.

16 HEARING OFFICER WILLIS: Do you know the  
17 nature of the agreements, or do you know any --?

18 MR. BIRDSALL: I can't say exactly what  
19 the nature of the agreements looked like, because  
20 I did not see them myself.

21 HEARING OFFICER WILLIS: And then  
22 further down it says "the Malburg Generating  
23 Station/Vernon project had obtained all offsets  
24 prior to the Commission decision." Did that also  
25 include RTC's?

1           MR. BIRDSALL: That's correct. It would  
2 have included RTC's, and in a case like  
3 Vernon/Malburg, I believe that this is an existing  
4 facility, and I'll speculate for just a moment  
5 that they may have had an account of RTC's already  
6 running.

7           HEARING OFFICER WILLIS: ANd then,  
8 further down it says El Segundo power  
9 redevelopment project identified approximately 90  
10 percent of the required RTC's before the final  
11 staff assessment. Can you elaborate on how those  
12 were identified?

13           MR. BIRDSALL: I guess I can. I can't  
14 say exactly what form the identification comes in,  
15 and whether the identification came in the form of  
16 a letter from the south coast district or the  
17 final determination of compliance, for example  
18 showing that the RTC's had been obtained. But  
19 those would be possible ways of showing that they  
20 were identified.

21           HEARING OFFICER WILLIS: All right. Are  
22 you familiar with any case that has come before  
23 the Energy Commission in recent years in this air  
24 district that is in a similar situation as this  
25 Applicant is, where staff believes they have not

1 identified the RTC's prior to either the FSA or  
2 license?

3 MR. BIRDSALL: No. I do not believe  
4 that there has been any case in recent years in  
5 the south coast air district where the project  
6 Applicant has come forward with a small fraction  
7 of the RTC's being identified. This, I believe,  
8 is a new and unique situation. And this is why we  
9 are treating it very tentatively.

10 MR. GARCIA: If I could have a couple of  
11 questions regarding the monitoring implementation.  
12 And it's been, actually, quite a few years since  
13 I've messed around with those things, but are the  
14 current crop instantaneous reading or do they  
15 require the vacuum pumps to operate for a long  
16 period of time before they register?

17 MR. BIRDSALL: I believe that either  
18 kind will be available in a portable format, and  
19 there are portable monitors and analyzers that can  
20 provide instantaneous readings, and there are some  
21 also that would require a longer term average and  
22 pump operation.

23 MR. GARCIA: The reason for my question  
24 is that if it requires a long period of time to  
25 register then it would be kind of pointless for

1 the compliance monitor to go out there and read  
2 the darn thing and say, "oh well we're going to  
3 change our practices."

4 By the time they've registered, the  
5 windstorm or whatever activity is long gone.

6 MR. BIRDSALL: Well, I can certainly  
7 sympathize with that, and you're right. If it's a  
8 very long averaging period that the monitor  
9 operates on or a very long response time that the  
10 monitor needs in order to generate a data point  
11 then that information might be less useful than  
12 instantaneous.

13 But at the same time, some kind of  
14 averaging might be useful, because the wind  
15 directions are variable, and you'll want to smooth  
16 out a little bit of the variability of wind.

17 MR. GARCIA: You're fairly certain that  
18 those instantaneous reading instruments are  
19 commercially available?

20 MR. BIRDSALL: Yes.

21 MR. GARCIA: All right. Thanks.

22 COMMISSIONER PERNELL: I've got another  
23 question on this, but I'm going to need the  
24 assistance of the Applicant's slides. And I  
25 really need this one right here. Can someone put

1 that up for me? You've got to dig them out? It  
2 is the slide that dealt with site description.

3 Can we go off the record for a minute,  
4 until we get that?

5 (Off the record.)

6 COMMISSIONER PERNELL: Okay, we're on  
7 the record. Okay, I'm looking at the Inland  
8 Empire Energy Center linear route, and for the  
9 Applicant, this is the site, the green, is that  
10 the site?

11 MR. RUBENSTEIN: Yes, that's correct.

12 COMMISSIONER PERNELL: What is this area  
13 right here, asphalt plant, correct?

14 MR. RUBENSTEIN: Yes, that's correct,  
15 that's the asphalt plant.

16 COMMISSIONER PERNELL: And according to  
17 this picture, that's at the north end of the site?

18 MR. RUBENSTEIN: That's correct.

19 COMMISSIONER PERNELL: And now to staff,  
20 if we're going to put monitors on the north end  
21 and south end for PM-10 and dust, will that  
22 asphalt plant interrupt the monitoring readings?

23 MR. BIRDSALL: It won't interrupt the  
24 monitor readings. It may --

25 COMMISSIONER PERNELL: Will it give a

1 false positive or false negative?

2 MR. BIRDSALL: Well, I think that the  
3 upwind and downwind monitoring that is recommended  
4 would -- if the plume from the asphalt plant  
5 travels across the site, it would show up in both  
6 the upwind and downwind and not upset the  
7 monitoring. But certainly the monitors could pick  
8 up the asphalt plant.

9 MR. RUBENSTEIN: Commissioner Pernel,  
10 do I get an answer too?

11 COMMISSIONER PERNELL: Sure, this is  
12 information.

13 MR. RUBENSTEIN: I think the answer to  
14 your question depends on -- harkening back to an  
15 earlier workshop -- which way the wind is  
16 blowing --

17 COMMISSIONER PERNELL: That was my next  
18 question.

19 MR. RUBENSTEIN: -- and how strong it's  
20 blowing. If the wind is blowing predominately  
21 from the south to the north, from the bottom to  
22 the top, then if it's blowing at a reasonably fast  
23 rate of speed -- and I'm not sure what that would  
24 be -- but if it's blowing reasonably fast from the  
25 bottom to the top, then the asphalt batch plant

1 would not likely give you either a false positive  
2 or a false negative reading.

3           If the wind is blowing generally from  
4 the north to the south, which as I recall is the  
5 predominate wind direction here, then the reading  
6 at the northern monitor, the one that's right at  
7 the boundary between Inland Empire and the batch  
8 plant, would be heavily influenced by the batch  
9 plant, and would be in the anomalous position of  
10 likely having lower concentrations at the southern  
11 end of the Inland side.

12           And so you'd show that the Inland side  
13 was reducing emissions, which of course isn't the  
14 case. But you'd get that kind of absurd reading.  
15 If the winds are relatively calm, then if you've  
16 got activity at the batch plant that's close to  
17 the fence line and close to the monitor, that  
18 could influence the monitor and in fact give you a  
19 false positive, suggesting that there was  
20 excessive dust being caused by Inland when in fact  
21 that dust was coming from the batch plant, and  
22 there wouldn't be any good way to distinguish one  
23 source of the dust from the other.

24           COMMISSIONER PERNELL: Well, which is  
25 more important. Does the wind always blow from

1 the north to the south? Does anyone know? Who  
2 said that?

3 MR. BIRDSALL: The audience says no.  
4 And as an example, in the summertime the  
5 prevailing marine seabreeze would generally push  
6 the wind from the north to the south, but that's  
7 not a rule. And we've seen over the past couple  
8 of days -- I think this is a monsoon kind of  
9 pattern that drives wind out of the valley.

10 MR. GREENBERG: Commissioner Pernell,  
11 Alvin Greenberg speaking. Because this is a  
12 public health issue I'm part of the answer to your  
13 question, so here's the third response.

14 It's highly unlikely that you would get  
15 any interference from the asphalt plant if the  
16 monitors are sited appropriately. There is USEPA  
17 guidance on how to do this precise type of  
18 monitoring, not for excavation for a power plant  
19 site, but it's for a hazardous waste site.

20 But the principle remains the same, and  
21 that is you're looking at the difference between  
22 upwind and downwind. So it really doesn't matter  
23 what's coming from the upwind side, whether it's  
24 ambient PM-10 or its ambient plus what's coming  
25 from the asphalt plant, if you position your

1 upwind and downwind monitors.

2           And you may have to have more than one.  
3 That's addressed in the proposed condition of  
4 certification, where you might want to have two  
5 upwind and two downwind, and you might not want to  
6 have them just at your fence lines, but rather  
7 within the site just upwind of the area being  
8 excavated, and just downwind of the area being  
9 excavated.

10           So if it's done right you really  
11 minimize the potential for offsite interferences.  
12 And the Applicant had previously been given the  
13 references at that unnamed siting case for those  
14 EPA documents, so I'm sure they're very well aware  
15 of those.

16           Staff is not just making this up as we  
17 go along. There is ample precedent, there are  
18 ample guidance documents available for doing  
19 upwind and downwind monitoring with continuous  
20 monitors, real-time continuous monitors, handheld  
21 instruments, which I myself have used personally,  
22 and have developed sampling and analysis plans for  
23 personally.

24           And they work. The USEPA uses them.  
25 There are numerous references in the scientific

1 journals about use of these real-time PM-10  
2 monitoring instruments.

3 COMMISSIONER PERNELL: All right.  
4 Here's where I'm going. Is what's proposed the  
5 most effective way to monitor the site. You just  
6 mentioned handheld monitors, which is a little bit  
7 different than what was proposed, correct?

8 MR. GREENBERG: Yes, and that is an  
9 option. I think the condition of certification as  
10 proposed talks about continuous real-time  
11 monitoring, and I'm trying to give you a flavor  
12 that there are real-time monitors that give  
13 instantaneous readings that are both handheld and  
14 very portable, and others that aren't.

15 My response is yes, this is a very  
16 reasonable and good program that will give you an  
17 answer to your question of whether or not your  
18 dust suppression and mitigation measures affecting  
19 diesel particulate exhausts -- which I'm concerned  
20 with also -- are indeed effective.

21 COMMISSIONER PERNELL: Well, you know,  
22 it still, I mean, you're the experts and I'm not  
23 doubting that. My question is whether or not this  
24 is the most effective way to monitor the site, and  
25 we're monitoring diesel emissions and dust which,

1 you know, small PM-10 particles that you can't  
2 even see, but if this is an asphalt plant that  
3 means that diesel is over there as well.

4           And so, you know, the strategy I'm  
5 looking for is not to not monitor, but the most  
6 effective way to monitor this site. Now I'm not  
7 saying that that particular strategy that's being  
8 proposed by staff is inadequate, I'm simply saying  
9 that, as we all know, each site has its own unique  
10 characteristics.

11           And this one happens to be in the  
12 industrial area that has an asphalt plant, and if  
13 you put -- just from a layman's perspective -- if  
14 you put a monitor on that fence and you got dust  
15 on the asphalt plant, and you got diesel trucks  
16 running there being filled and not filled, I don't  
17 know whether you're going to get an accurate  
18 reading.

19           Is there another way or another position  
20 that you can put the monitors on? Because if  
21 we're going to have monitoring -- first of all,  
22 there needs to be a compliance, somebody needs to  
23 be checking it, and there needs to be something  
24 happening there, because if it's out of compliance  
25 we want it back in, but more importantly, the

1 uniqueness of the site, and what's around it --  
2 unless you go in there and monitor all that stuff  
3 ahead of time and then begin to monitor the site  
4 -- I don't know how it's done, but the Committee  
5 would want to see an effective way to monitor the  
6 site for the pollutants that we're talking about.

7 MR. GREENBERG: The answer to your  
8 question is yes, there are ways other than putting  
9 them on the fence line, and that's why there needs  
10 to be a site specific plan developed, and that's  
11 why the condition of certification requires that  
12 site specific plan, to address the varying wind  
13 conditions and this specific surrounding.

14 MR. RUBENSTEIN: Commissioner Pernel,  
15 may I --?

16 COMMISSIONER PERNELL: You've got to  
17 state your name, I think, again.

18 MR. RUBENSTEIN: Gary Rubinstein. My  
19 firm as well has experience in designing and  
20 implementing these monitoring programs, and I  
21 respectfully have to disagree with Dr. Greenberg's  
22 conclusion, as applied to this site.

23 In my experience, this type of  
24 monitoring program is only going to be effective  
25 and reliable if you're looking at a site which is

1 relatively isolated from other sources of the same  
2 type of pollutant.

3           The cases where we have most effectively  
4 used this type of upwind/downwind monitoring  
5 include things such as an asbestos monofill, where  
6 we can use asbestos as a tracer and we know  
7 exactly where the asbestos is coming from, it's  
8 between the monitors.

9           We've used it at a rock quarry which is  
10 surrounded on the one side by the ocean and the  
11 other side by housing development. So we know  
12 where the dust emissions are coming from. Looking  
13 at that photograph, you can see all the brown  
14 areas around there.

15           There are a lot of potential sources of  
16 dust in that area with the most obvious one being  
17 the batch plant immediately toward the north.  
18 It's going to be extremely difficult to have any  
19 kind of a monitoring program, especially at this  
20 site.

21           And if you were to take Dr. Greenberg's  
22 suggestion of moving the monitors away from the  
23 fence line you would address that one problem,  
24 which is to reduce the interference from other  
25 sources. But at the same time you're creating a

1 new standard.

2           The mitigation measures that we and the  
3 staff have agreed upon for controlling dust are  
4 not intended to eliminate dust. They're intended  
5 to prevent dust from crossing the property line.

6           And by moving the monitors away from the  
7 fence line you're tightening that standard and  
8 saying "well, we don't really want dust to get  
9 more than 20 feet closer to the property line" or  
10 however far you get away.

11           And finally, the idea that you can have  
12 monitors somewhere in the middle of the active  
13 construction site is, from a practical matter, I  
14 think, ludicrous.

15           COMMISSIONER PERNELL: Mr. Rubinstein,  
16 let me ask you this. What is your view on how you  
17 monitor the site?

18           MR. RUBENSTEIN: I think that AQSC4,  
19 which I negotiated with the staff on another  
20 project which I will not name, is in fact the most  
21 effective way to do it because it presents a real,  
22 quantifiable and observable standard, which is --

23           COMMISSIONER PERNELL: And what is that,  
24 for the benefit of the residents that don't know  
25 what that is?

1           MR. RUBENSTEIN: That's a standard, and  
2 it's also in south coast district rule 403, that  
3 says you can't have any visible dust crossing the  
4 property line. If you see it, you've got a  
5 violation. it's very simple. You don't need a  
6 monitor, and you don't need to have any kind of  
7 special training.

8           And it's something that can be  
9 implemented, and is implemented in the south  
10 coast, very effectively.

11           The staff has argued that there is  
12 invisible dust as well, because we're talking  
13 about PM-10. That's true, but you can't have  
14 invisible dust without having visible dust.

15           COMMISSIONER PERNELL: All right.  
16 Everybody, I'm weighing in on this. Ms. Willis --  
17 oh?

18           MS. SMITH: Just one more perspective on  
19 this, just to clarify for the record. As I recall  
20 the Applicant's testimony, it was that the Los  
21 Esteros project was used as a demonstration for  
22 the upwind/downwind monitoring.

23           That configuration was rejected on a  
24 subsequent siting case because staff declared it a  
25 failure, maybe not the exact words staff had used,

1 but very close. Did staff ever conclude Los  
2 Esteros project a failure?

3 MR. BIRDSALL: Not to my knowledge.

4 MS. SMITH: In putting together your  
5 mitigation plan, did you review any data from Los  
6 Esteros? Did you talk with people, staff,  
7 associated with the Los Esteros project? What did  
8 we learn from Los Esteros?

9 MR. BIRDSALL: Well, telling you what  
10 I've discussed with the staff, the other personnel  
11 in the air quality unit who have had more intimate  
12 involvement with how the Los Esteros demonstration  
13 project panned out, I will say that it appeared  
14 that the monitors were not calibrated the way that  
15 maybe they were intended to be calibrated.

16 They were not cleaned or purged the way  
17 that they should have been. The data that came  
18 from Los Esteros, if you looked at it on a real-  
19 time basis, meaning hour by hour, there were some  
20 hours where the upwind monitor would be above,  
21 would have a concentration above the downwind  
22 monitor, showing that perhaps the project site was  
23 cleaning the air.

24 Now that could certainly just be a  
25 reversal of wind direction for that moment, but

1 more curious than having the flip-flop in the  
2 concentrations were how the concentrations over  
3 time tended to accumulate, which indicates that  
4 the monitors were probably not cleaned and  
5 calibrated.

6           And so what I saw and what was explained  
7 to me was that, as the monitors went for a couple  
8 of days the concentrations would start in the  
9 fives and tens and would migrate up into the 50's,  
10 60's and 70's. And then maybe somebody would come  
11 along and fix things and then it'd go back to the  
12 fives and the tens.

13           So the consensus was there may be  
14 conditions that cause the fugitive dust to  
15 instantaneously cause more than a 50 microgram per  
16 cubic meter upwind and downwind. That's not to  
17 say that it caused any kind of a violation,  
18 because instantaneous is not the same as daily  
19 average.

20           But the general feeling from folks in  
21 the air quality unit was that the plan wasn't  
22 implemented properly.

23           MS. SMITH: So, putting together your  
24 plan, you took the lessons from that, and you feel  
25 the plan that you've put together reflects the

1     flaws of the Los Esteros plan?

2             MR. BIRDSALL: Well, we haven't put  
3     together a plan. And what we're recommending in  
4     the condition is that the Applicant prepare a  
5     plan. it's fortunate that the same personnel  
6     happen to be involved on the developer side, that  
7     they would have experience with this plan.

8             But if it were a different Applicant we  
9     could share the plan that was prepared in the Los  
10    Esteros program. And then share with them our  
11    insights.

12            And the idea is that, as the ambient air  
13    monitoring plan that's required under SC5 comes to  
14    the compliance project manager, we will use  
15    whatever experience that we have at this time and  
16    consult amongst ourselves and with all of the air  
17    quality and public health staff, to make sure that  
18    it's okay.

19            MS. SMITH: Just one other question. In  
20    the Los Esteros project, was the upwind/downwind  
21    monitoring married to a, or used in conjunction  
22    with, some sort of immediate feedback?

23            Was there an immediate feedback loop to  
24    the project site if dust was becoming a problem  
25    and dust was migrating across the property line,

1 there was immediate feedback to the site, and  
2 someone on the site would implement some immediate  
3 measures to dampen or mitigate the dust -- water  
4 that wet the dirt, etc. etc.

5 Is that how it was set up? Am I  
6 recalling correctly?

7 MR. BIRDSALL: Well, I'll say, I don't  
8 know personally, I'll pass the microphone here to  
9 my colleague here on the panel. I think that  
10 maybe what was intended by the staff in  
11 recommending the plan might not have been carried  
12 out the way that it was intended.

13 MR. GREENBERG: Yes, there were feedback  
14 loops. First there were criteria to reflect the  
15 accuracy of the sampling equipment, such that when  
16 you looked at upwind and downwind, if you had a  
17 delta greater than the accuracy of the equipment  
18 then you knew you had a real value.

19 So there was already something built  
20 into that particular plan that would account for  
21 accuracy. Now, let's assume that you're downwind  
22 of the construction activity has a greater value  
23 of PM-10 and it's statistically significant,  
24 greater than the upwind value.

25 So that means that you're now creating

1 some PM-10 in addition to what's coming from  
2 ambient or other sources across the site. There  
3 was a tiered approach. If there was a first  
4 violation of that there would be a review of the  
5 mitigation measures, the dust suppression  
6 measures.

7           Perhaps there would be additional  
8 measures added, perhaps there would be the same  
9 measures but increased frequency, such as  
10 watering, increased frequency, maintaining soil  
11 moisture, etc.

12           If there were subsequent or continued  
13 violations of the protocol then there would be a  
14 decision as to implement a combination -- more  
15 watering, different methods, maybe even shutting  
16 down for a time period.

17           If the winds are so great, and the dust  
18 is being stirred up and yet the watering truck  
19 can't keep up with it, perhaps a decision should  
20 be made to shut down.

21           But the protocol that was developed was  
22 not put in here as a condition of certification  
23 because one, it starts to get too cumbersome and  
24 starts to become a specification standard as  
25 opposed to a performance standard, and each site

1 is different.

2 MS. SMITH: Thank you.

3 COMMISSIONER PERNELL: One followup  
4 question in terms of what was learned from the  
5 previous monitoring. In all of this, when the  
6 readings were going up and down up and down, where  
7 was the AQCM? And let me just say that's the Air  
8 Quality Construction Monitoring Manager.

9 We have some community folks, so I'm  
10 trying to keep the academes at a minimum. But it  
11 appears to me that when you were evaluating the  
12 success, did that person get interviewed?

13 MR. BIRDSALL: I did not ask who the  
14 onsite construction mitigation manager was, and --  
15 okay. And so I did not interview them. I think  
16 that, if it is agreed upon, and I'm not certain  
17 that it is -- but if it is agreed that the Los  
18 Esteros demonstration project was a failure that  
19 probably failure could have been spread around  
20 with possibly the operators of the equipment as  
21 well as what was done with the data as it was  
22 being acquired by CEC staff or by the developer.  
23 I cannot say.

24 COMMISSIONER PERNELL: Okay. I think  
25 we've exhausted this topic. Do you have --?

1 HEARING OFFICER WILLIS: I believe we --  
2 are we at cross-examination? Have you cross-  
3 examined --  
4 (laughter)

5 Mr. Ellison, do you have any questions?

6 MR. ELLISON: Let me say that we have  
7 been surprised, actually, in a number of ways by  
8 your testimony today. At least in a couple of  
9 cases pleasantly surprised. And in other cases  
10 not so pleasantly surprised.

11 But first let me say thank you for one  
12 pleasant surprise, and that is the agreement on  
13 AQSC6 on the 12 hours, and of course that  
14 eliminates the --

15 COMMISSIONER PERNELL: Can't hear you.

16 MR. ELLISON: Pardon me? I was just  
17 expressing our appreciation for staff's agreement  
18 on AQSC6. Is that better? Got it, sorry.

19 I was expressing Calpine's appreciation  
20 for staff's agreement on AQSC6, the ten and 12-  
21 hour issue. And we of course have no cross-  
22 examination based on that.

23 Secondly, the little caucus that you saw  
24 over in the corner was our -- we were also  
25 surprised by staff's characterization on the soot

1 filter issue, and their interpretation of their  
2 condition was different than what we understood.

3 And we believe there may be a  
4 possibility of working this issue out, based upon  
5 the testimony that was provided. And I'm going to  
6 curtail my cross-examination with respect to that  
7 issue as well.

8 COMMISSIONER PERNELL: Just a caution --  
9 we need to know that it's worked out.

10 MR. ELLISON: I understand.

11 COMMISSIONER PERNELL: We don't want to  
12 be surprised either.

13 MR. ELLISON: And I understand, believe  
14 me, I understand. So let me turn to AQSC5, the  
15 monitoring issue that we've been discussing at  
16 length. And first of all, let me ask you some  
17 questions about your testimony regarding why you  
18 believe monitoring is justified in this case,  
19 whereas the staff has not felt it was required in  
20 other cases?

21 One reason that I understood you to give  
22 was the ambient air quality conditions at this  
23 site, is that correct?

24 MR. BIRDSALL: That's correct.

25 MR. ELLISON: And in the course of

1 saying that, one thing you pointed to was Mr.  
2 Rubinstein's Exhibits that were presented --  
3 Exhibits 72 through 76.

4 And I believe you testified that these  
5 Exhibits show that the maximum daily  
6 concentrations of particulate matter are in fact  
7 decreasing, but that the annual averages are  
8 relatively stable, I think was the wording you  
9 used. Do you recall that?

10 MR. BIRDSALL: That's correct.

11 MR. ELLISON: The monitoring, however,  
12 doesn't address the stable annual average issue,  
13 isn't that correct? The monitoring is designed to  
14 monitor over a 24-hour average period, correct?

15 MR. BIRDSALL: The fence line monitoring  
16 recommended in AQSC5?

17 MR. ELLISON: Yes.

18 MR. BIRDSALL: That's true. That would  
19 not be on an annual average basis, that would be  
20 day to day.

21 MR. ELLISON: So the declining maximum  
22 daily concentrations would be relevant to that  
23 monitoring requirement, would it not?

24 MR. BIRDSALL: This is true, but I would  
25 like to caution that the context for the ambient

1 monitoring is that the area is out of attainment,  
2 and it is dramatically out of attainment --  
3 dramatically in my relative terms -- and the  
4 persistency of the non-attainment I think is  
5 reflected in the annual average concentrations.

6 MR. ELLISON: Well, that's a good segue  
7 to my next question. Isn't that true for most of  
8 the state?

9 MR. BIRDSALL: Certainly for the  
10 California state standard. The -- I'll finish  
11 there. Certainly most of the state is out of  
12 attainment for the annual average, California  
13 state standard.

14 MR. ELLISON: And that is the standard  
15 that you were referring to earlier, correct?

16 MR. BIRDSALL: This is true.

17 MR. ELLISON: So this doesn't  
18 differentiate this site from most of California,  
19 does it?

20 MR. BIRDSALL: Well, I think the  
21 concentrations being two times the California  
22 standard would differentiate from most locations  
23 in the state, where annual average concentrations  
24 are not as extremely beyond the annual average  
25 standard.

1           MR. ELLISON: I believe you also  
2 testified on the issue of whether the project  
3 impacts were or were not overstated, do you recall  
4 that discussion?

5           MR. BIRDSALL: Yes, I do.

6           MR. ELLISON: And if I recall your  
7 testimony correctly, you felt that they might not  
8 be, although you agreed that they were very  
9 conservative, that they might not be overstated  
10 because model impacts of other projects that  
11 you're familiar with showed similar impacts. Is  
12 that a fair summary of what you said?

13          MR. BIRDSALL: Yes. I've seen  
14 Applicants come forward with a range of fence line  
15 impacts during construction, and one would think  
16 that -- well, given that there are an extreme  
17 variety of ambient conditions in terms of  
18 baseline, and also in terms of meteorology,  
19 somewhere between 50 micrograms per cubic meter  
20 and 150 micrograms per cubic meter on a 24-hour  
21 basis, this is roughly what I've seen in my  
22 experience.

23                   And the fence lines shown on this  
24 project are at the low end of what I've seen. And  
25 so, in this regard, this is why I say that I don't

1 believe they're necessarily overstated.

2 MR. ELLISON: Am I correct though that  
3 the comparisons that you're making are to modeled  
4 predictions, in this case to modeled predictions  
5 in several other cases?

6 MR. BIRDSALL: Always modeled  
7 predictions, yes.

8 MR. ELLISON: So if all of those models  
9 used the same conservative protocols they might  
10 all be over-predicting, correct?

11 MR. BIRDSALL: This is true, they may.

12 MR. ELLISON: If I could ask you to  
13 refer to your supplemental testimony, at page two?  
14 And specifically the second paragraph, beginning  
15 with "staff disagrees with the Applicant's  
16 interpretation."

17 MR. BIRDSALL: Okay.

18 MR. ELLISON: You found it?

19 MR. BIRDSALL: Yes.

20 MR. ELLISON: In this paragraph -- and  
21 I'll just paraphrase -- I believe you say that the  
22 Applicant states that the project does not cause a  
23 new violation of the state 24-hour and annual  
24 average PM-10 standards. You then say there's  
25 evidence in air quality tables 9 and 13 to support

1 this claim for the main project site.

2 And then in the last sentence you say  
3 "staff, however, disagrees with the claim, because  
4 FSA air quality table ten shows that construction  
5 could cause a new localized and short-term  
6 violation of the 24-hour PM-10 standard at the  
7 compressor station site." Do you see that?

8 MR. BIRDSALL: Yes, this is true, and I  
9 stand by this language.

10 MR. ELLISON: The only question is do  
11 you see that?

12 MR. BIRDSALL: I see that, and I'll stop  
13 there.

14 MR. ELLISON: All right. Let me refer  
15 to the table ten in the FSA that you're referring  
16 to, and I believe it's at 5.1-23 of the staff's  
17 FSA. In the sentence I just read you said that  
18 here at the compressor station there is a new  
19 impact that does not occur now. Could you show me  
20 where on the table that impact occurs?

21 MR. BIRDSALL: Referring to the final  
22 staff assessment, air quality table ten -- which  
23 is a table generated based on the Applicant's  
24 response to data request early on in the process -  
25 - data request number 31.

1           The Applicant modeled ambient PM-10  
2 concentrations from construction activities at the  
3 compressor station site, which is at the Menafee  
4 Road compressor station. The Applicant modeled a  
5 92 microgram per cubic meter during one of the  
6 month's of site grading and site construction at  
7 that compressor station site.

8           A project impact of 92 micrograms per  
9 cubic meter on a 24-hour basis of PM-10 would  
10 exceed the state standard of 50 micrograms per  
11 cubic meter and indicate that a new violation  
12 could potentially be caused at that site for that  
13 short term of construction.

14           MR. ELLISON: If I can refer you to the  
15 same table, next to the 92 in the next column  
16 over, background, you see 139, is that correct?

17           MR. BIRDSALL: That's correct.

18           MR. ELLISON: That's the ambient  
19 background at the compressor station, or at least  
20 at the site for the 24-hour PM-10 standard. So  
21 we're in non-attainment for that standard now,  
22 according to that, correct?

23           MR. BIRDSALL: Correct.

24           MR. ELLISON: So the new violation that  
25 you're hypothesizing here assumes that that goes

1 away and that the project exists without the  
2 ambient concentration, is that what you're saying?

3 MR. BIRDSALL: Well, as Mr. Rubinstein  
4 pointed out earlier, a number of conservative  
5 assumptions go into the modeling assessment. One  
6 of those assumptions is that the background  
7 condition that's presented in air quality table  
8 ten, for example, the background condition is the  
9 worst background condition that can occur over the  
10 past three years of ambient monitoring data in the  
11 area.

12 And so we've presented the 139  
13 micrograms per cubic meter as the background  
14 condition on a 24-hour basis, but most days are  
15 not at that level. Most days would be below, in  
16 fact all days over the past three years of  
17 monitoring data are below 139. And that to me  
18 says there are some days where the background  
19 concentration will be below 139.

20 When I take a look at the project impact  
21 by itself, if the project by itself exceeds the  
22 state standards I say that the project itself may  
23 cause a new violation of the state standards.

24 Because taking away the background  
25 concentration and setting it at zero,

1 hypothetically, and putting the construction  
2 activity for the compressor station site at an  
3 increase of 92 micrograms per cubic meter would  
4 cause a new violation. So when I make that  
5 statement I disregard the background.

6 MR. ELLISON: Further down that same  
7 page, 5.1-23, in the middle paragraph, you make a  
8 comparison of what the 24-hour PM-10 impacts would  
9 be at the school site, relative to background  
10 conditions.

11 Specifically the sentence "the 24-hour  
12 PM-10 impacts of the school would be less than ten  
13 percent of the existing background conditions."  
14 Do you see that?

15 MR. BIRDSALL: Yes.

16 MR. ELLISON: And that's derived from  
17 table 9, that's the main project, correct?

18 MR. BIRDSALL: Correct.

19 MR. ELLISON: And the school site is how  
20 far away from the main project site?

21 MR. BIRDSALL: I've been calling it .34  
22 of a mile.

23 MR. ELLISON: And how far is it from the  
24 compressor site?

25 MR. BIRDSALL: I believe that the

1 project description would explain this better, but  
2 I believe the compressor station site is another  
3 mile or two south and east, more like two miles.

4 MR. ELLISON: Substantially farther  
5 away?

6 MR. BIRDSALL: Yes.

7 MR. ELLISON: What this seems to show is  
8 that the fence line impacts drop dramatically as  
9 you move away from the site. In the case of the  
10 main project site they appear to attenuate to -- I  
11 believe your testimony is they drop over that  
12 third of a mile distance such that they're only  
13 one tenth of the fence line impacts a third of a  
14 mile away, is that correct?

15 MR. BIRDSALL: That is correct, and they  
16 do attenuate dramatically with distance.

17 MR. ELLISON: So over the much greater  
18 distance from the compressor site to the school  
19 they would attenuate even more so, correct?

20 MR. BIRDSALL: That's correct.

21 MR. ELLISON: In fact, if you assumed  
22 the same rate of attenuation -- let's assume for a  
23 moment hypothetically, because I believe this is  
24 correct -- that the compressor site is roughly a  
25 mile from the school, or in other words about

1 three times further than the main project site.

2 With that assumption in mind, it would  
3 be one tenth of one tenth of one tenth, correct?

4 MR. BIRDSALL: I wouldn't necessarily  
5 say that it's a product relationship, but we will  
6 say that yes, it is certainly below one tenth.

7 MR. ELLISON: So isn't it fair to say  
8 that, even if hypothetically there were a "new"  
9 violation at the compressor site fence line that  
10 that doesn't say anything about a new violation at  
11 the sensitive receptor of the school site?

12 MR. BIRDSALL: That's correct. I have  
13 not looked at whether or not there would be a new  
14 violation at the sensitive receptors due to  
15 compressor station construction.

16 MR. ELLISON: Well, if you assume that  
17 the project impacts attenuate even by only the  
18 amount of one tenth, which is what you calculated  
19 for a third of a mile, then the 92 would become  
20 9.2, correct?

21 MR. BIRDSALL: Sure.

22 MR. ELLISON: And that would no longer  
23 create the new violation that you're talking  
24 about, correct?

25 MR. BIRDSALL: Well, the new violation

1 is created at the compressor station site. And  
2 that is the statement that I have made, and I  
3 agree, a new violation would not likely be caused  
4 at the school due to that activity, but it's there  
5 at the compressor station site.

6 MR. ELLISON: But there are no sensitive  
7 receptors at the compressor site, right?

8 MR. BIRDSALL: Not that I've analyzed.

9 MR. ELLISON: And I ask these questions  
10 because another of your criteria for applying the  
11 monitoring is the nearness of these sensitive  
12 receptors, correct?

13 MR. BIRDSALL: Correct.

14 MR. ELLISON: Okay. Let me ask you some  
15 questions about the RTC issue. And the first  
16 thing I want to do is clarify exactly what the  
17 staff's position is.

18 We did have a workshop in early July.  
19 And from that workshop, my understanding is that  
20 staff is saying that to identify the RTC's, that  
21 Calpine would need to enter into a legally  
22 enforceable purchase or option agreement for the  
23 first year for the RTC's, for 100 percent of the  
24 first year of the RTC's. Is that correct?

25 MR. BIRDSALL: I think that how Calpine

1 would negotiate with the RTC holders is up to the  
2 Applicant, and is not specified or predicated by  
3 our requirement to identify it.

4           Meaning if some more informal letter of  
5 agreement from a willing project seller were  
6 presented, then the RTC's would be identified.  
7 Entering into a binding agreement may protect  
8 Calpine or may enable the Applicant to fix a  
9 certain price, and thus may be advantageous to  
10 the developer.

11           MR. ELLISON: Okay. I want to pursue  
12 this because I believe it's different than what we  
13 understood coming out of workshop. Is it your  
14 testimony that we could meet staff's  
15 interpretation of identify without entering into,  
16 without making the financial commitment and  
17 entering into a legal acquisition either by option  
18 or direct purchase?

19           MR. BIRDSALL: I'll say that yes, I  
20 believe that there is a way to identify the  
21 willing sellers and possibly not enter into a  
22 binding agreement, but it may be -- you may  
23 determine that it's in your best interest to do  
24 so.

25           MR. ELLISON: Well, I'm not asking you

1 to speculate about Calpine's best interest, I'm  
2 trying to understand what staff would consider  
3 acceptable, given staff's interpretation of what's  
4 required.

5           And what I'm hearing is -- let me give  
6 you a specific example. If we were to come to  
7 staff with letters of intent with specific willing  
8 sellers that were not legally binding and simply  
9 said "the seller says that we intend to sell, and  
10 Calpine says we intend to buy" -- there's no  
11 legally binding aspect to them, and there's no  
12 financial compensation, would that satisfy the  
13 staff?

14           MR. BIRDSALL: I think I'm going to be  
15 hard-pressed to say what would satisfy staff  
16 requirements because I'm not presented with such a  
17 proposal yet, and we haven't been to date.

18           I'll back up by saying that certainly if  
19 Calpine acquired RTC's or RTC futures in their  
20 account that would be identified and that would be  
21 held. Clearly that would satisfy our concerns.  
22 If Calpine had binding letters of agreement and  
23 options with sellers, I think that would qualify  
24 as identified.

25           A letter that is from a seller that

1 informally says the seller intends to sell to  
2 Calpine, that may also pass, but I would have to  
3 see a letter like that and share it with my air  
4 quality unit and management to determine if that  
5 meets our interpretation of identify.

6 MR. ELLISON: Okay, well this is very  
7 important. I recall quite specifically from the  
8 July workshop and I believe it was Mr. Layton but  
9 it might have been yourself, saying that staff  
10 agreed that Calpine had done everything it could  
11 do to identify these RTC's short of a legally  
12 binding either option or purchase.

13 But that the legally binding option or  
14 purchase is what staff required. And I believe  
15 I'm hearing something different from you today  
16 about a possibility of something else.

17 MR. BIRDSALL: I want to be very careful  
18 about what I say, mainly because I don't have a  
19 specific proposal in front of me, and my decisions  
20 are usually based on consensus between my air  
21 quality seniors, Mr. Layton, and the management.

22 And the interpretation of identification  
23 has been especially difficult on this case, as you  
24 well know. And I think that any new proposal we  
25 would have to take time to consider.

1           MR. ELLISON: Okay, well, in the  
2 interest of time I'll move on. It's correct,  
3 however, that Public Resources Code 25523D2 speaks  
4 separately of identifying offsets and obtaining  
5 them, correct?

6           MR. BIRDSALL: I agree.

7           MR. ELLISON: And historically the  
8 Energy Commission has interpreted "obtaining" to  
9 mean entering into a legally enforceable  
10 acquisition agreement of some kind, correct?

11          MR. BIRDSALL: Certainly a legal  
12 enforceable agreement would indicate that the  
13 Applicant had taken the effort to obtain.

14          MR. ELLISON: So, if my recollection of  
15 what staff's position was at the workshop is  
16 correct, that staff is requiring a legally  
17 enforceable agreement, then staff is requiring  
18 that Calpine obtain these RTC's, correct?

19          MR. KRAMER: Object. Object to the  
20 extent it calls for a legal conclusion.

21          MR. ELLISON: Well, he just testified  
22 that the historic interpretation of the Commission  
23 is that a legally binding agreement qualifies as  
24 obtaining. Having testified to that, all I'm  
25 adding to the mix is if the staff requires such an

1 agreement it is requiring obtaining.

2 That's not a legal conclusion, that's  
3 just logic.

4 MR. BIRDSALL: Which is why I want to be  
5 careful --

6 HEARING OFFICER WILLIS: Wait. There's  
7 a legal objection out there, and I think we'd like  
8 to talk about it for just one second.

9 MR. BIRDSALL: Excuse me.

10 MR. KRAMER: Well, logic and the law  
11 don't necessarily put together two opposites.

12 MR. ELLISON: Well, that's right. In  
13 this case we're talking --

14 COMMISSIONER PERNELL: Uh, excuse me,  
15 excuse me.

16 HEARING OFFICER WILLIS: We're going to  
17 sustain your objection. We ask that Mr. Ellison  
18 re-ask the question without asking for a legal  
19 conclusion. Go ahead.

20 MR. ELLISON: I don't know that I can  
21 re-ask it without -- since I don't agree that  
22 there's a legal conclusion in it I don't know how  
23 to take it out. I'll just drop the question and  
24 keep moving.

25 Mr. Kramer, in his cross-examination of

1 Mr. Rubinstein, referred him to condition -- I  
2 believe it was AQSC9, which is at page 5.1-49 of  
3 Exhibit 67. Do you see that?

4 MR. BIRDSALL: Yes. I'm looking at the  
5 version in the supplemental testimony, which is on  
6 page 11 of staff's supplemental testimony. But,  
7 AQSC9, yes.

8 MR. ELLISON: Is there any difference  
9 between them?

10 MR. BIRDSALL: There is a slight  
11 difference in the text but not -- well, there are  
12 differences, yes.

13 MR. ELLISON: Okay, well let's refer to  
14 the most recent one then. It's page 12 of the one  
15 you're looking at, page 12 of Exhibit 68. Let me  
16 start by asking this.

17 If Calpine were to enter into an  
18 agreement for the purchase of -- actually, before  
19 we do this, let me clarify one other point back at  
20 the beginning of the testimony, the beginning of  
21 my cross-examination.

22 I understood from the workshop that the  
23 staff's position, leaving aside the nature of the  
24 agreement, was that what Calpine has to acquire is  
25 100 percent of the first year RTC's, is that your

1 understanding?

2 MR. BIRDSALL: I would say that's  
3 correct, yes.

4 MR. ELLISON: If Calpine did that with  
5 an agreement satisfactory to staff, would staff  
6 care about which RTC's Calpine acquires?

7 MR. BIRDSALL: Staff would verify either  
8 with the district or with the third party sellers  
9 the authenticity of the identification. If it is  
10 a credit that is held and in the district bank  
11 then staff would probably go to the district and  
12 ask the district does facility X have this many  
13 RTC's.

14 And in this way we would doublecheck or  
15 verify the listed sellers of the RTC's, that they  
16 indeed do have that quantity in their account to  
17 sell. And in that way, yes, we would treat RTC's  
18 differently, depending on which ones they are.

19 MR. ELLISON: Well, differently only as  
20 between authentic ones and illegitimate ones.

21 MR. BIRDSALL: Right. Differently  
22 meaning that we would doublecheck them.

23 MR. ELLISON: And you would doublecheck  
24 them by asking the district?

25 MR. BIRDSALL: Yes.

1           MR. ELLISON: Well, assuming that we're  
2 talking about authentic RTC's that the district  
3 recognizes as valid, would the selection of  
4 particular RTC's change staff's analysis or its  
5 conditions in any way?

6           MR. BIRDSALL: I don't believe so, no.

7           MR. ELLISON: Now that's not true for  
8 ERC's, correct?

9           MR. BIRDSALL: That's correct, it is not  
10 true for ERC's.

11          MR. ELLISON: And isn't it true that one  
12 of the reasons you need to identify ERC's is  
13 because it does potentially change the staff's  
14 analysis depending upon which ones are identified?

15          MR. BIRDSALL: I can't speculate why the  
16 Warren-Alquist Act requires identification of  
17 offsets, but indeed when staff analyzes an  
18 Applicant's offset package we take into  
19 consideration where the offset comes from, the  
20 quality of the offset, and if it is an ERC we'd  
21 look at it for the environmental constraints.

22                 Meaning is it located an approximal  
23 distance from the source, has the EPA blessed the  
24 authenticity of the ERC, and so on.

25          MR. ELLISON: But with respect to RTC's

1 that's not the case?

2 MR. BIRDSALL: With respect to the  
3 RTC's, no, we don't have geographic specific  
4 constraints, at least for this particular project  
5 we don't. And we don't question the authenticity  
6 of the credit or whether or not it's surplus, for  
7 example.

8 MR. ELLISON: Now I note here in looking  
9 at the table in AQSC10 that with respect to the  
10 priority reserve it simply says that  
11 identification is sufficient by saying through  
12 priority reserve, you see that?

13 MR. BIRDSALL: Yes.

14 MR. ELLISON: Why would the  
15 identification not be correct for it to simply say  
16 for NOx through the reclaim program?

17 MR. BIRDSALL: The south coast district  
18 handles -- as you are aware -- handles the  
19 priority reserve program in a completely different  
20 context than the reclaim program. The priority  
21 reserve program is a commitment from the district  
22 that emission reductions will occur.

23 And reclaimed credits, being not  
24 controlled by the district but rather being held  
25 by the third party and competitive interests

1 possibly, means that the reclaimed market for  
2 credits is much more volatile and much more  
3 difficult to gain access to than priority reserve,  
4 which is held by the district and guaranteed by  
5 the district.

6 In priority reserve the district  
7 guarantees the availability of the priority  
8 reserve credit, and they guarantee the price of  
9 that credit.

10 MR. ELLISON: Okay. I was really asking  
11 a different question, so let me rephrase it. I  
12 appreciate your answer, but I was really saying  
13 let's assume for the sake of argument that the  
14 Committee or the Commission were to agree with  
15 Calpine that it had in fact at this point in time  
16 sufficiently identified the RTC's, and therefore  
17 this table were simply a change to say through the  
18 reclaim program for the NOx RTC's.

19 Would staff have any difficulty  
20 implementing that condition?

21 MR. BIRDSALL: If the Commission adopted  
22 the condition, with the changes that you're  
23 recommending, I don't think that staff would  
24 analyze the project or would treat the project  
25 differently from that point forward.

1           MR. ELLISON: I want to ask you about  
2 the other cases where Applicants provided RTC's.  
3 You mentioned one case in which it was an existing  
4 facility that already had RTC's because it was an  
5 existing facility, and then you also mentioned I  
6 believe the El Segundo project.

7           El Segundo is also an existing facility  
8 which would have pre-existing RTC's, correct?

9           MR. BIRDSALL: That's correct. In fact,  
10 before you go further I should also add that there  
11 are existing sources at Magnolio, so that would  
12 make all three of them existing facilities.

13          MR. ELLISON: So the fact that they  
14 provide RTC's can be directly attributable to the  
15 fact that they already have them, as a function of  
16 being an existing facility. Whereas in this case  
17 we're talking about a new facility that does not  
18 have them, correct?

19          MR. BIRDSALL: Well, the fact that they  
20 held RTC's can be attributed to a number of things  
21 probably, and I'll speculate yes, they are  
22 operating with RTC and with reclaim accounts.

23          And B, that they did not sell them away  
24 to the competitive marketplace. They held them  
25 with the intent to use them for the development

1 that they were proposing through the CEC license.

2 MR. ELLISON: I recall from the July  
3 workshop a statement from staff that staff was not  
4 really questioning the availability of RTC's for  
5 this project, but rather that this was an issue of  
6 principal, and the principal was that other  
7 projects had provided them and that therefore this  
8 project should provide them. Do you recall that  
9 discussion?

10 MR. BIRDSALL: I recall that. And the  
11 principal applies partially to projects here in  
12 the south coast district, here, but it applies  
13 really to all of the projects that we treat.

14 And that is that when a project comes  
15 forward with an offset strategy, we look to the  
16 offset strategy to determine whether the credits  
17 have been identified, and this is a test that we  
18 apply uniformly to Applicant's throughout the  
19 state, regardless of whether they are subject to  
20 offsetting requirements through reclaim or through  
21 a more traditional ERC program.

22 MR. ELLISON: Okay, well I want to get  
23 back to the question of consistency in a minute,  
24 but first let me ask you then is the staff  
25 questioning the availability of RTC's for this

1 project as opposed to this issue of principal?

2 MR. BIRDSALL: I think that the answer  
3 is no, and that, for a price I do believe that the  
4 Applicant will be able to go forward and purchase  
5 parts he sees as required by the district and at  
6 the time required by the district prior to the  
7 district issuing its permit to operate, and that  
8 RTC's will probably be available.

9 MR. ELLISON: Then with respect to this  
10 issue of principal, in the El Segundo case, El  
11 Segundo only provided 90 percent of the RTC's that  
12 were necessary, correct?

13 MR. BIRDSALL: That's what the testimony  
14 says, yes.

15 MR. ELLISON: And staff supported that  
16 as being sufficient, correct?

17 MR. BIRDSALL: Yes.

18 MR. ELLISON: How did El Segundo  
19 identify the other ten percent?

20 MR. BIRDSALL: Well, in my review of the  
21 notes of the case they committed to securing the  
22 RTC's prior to securing their permit to operate.  
23 So they were identified in much the same way that  
24 90 percent of Inland Empire's RTC's are currently  
25 identified today.

1 MR. ELLISON: Is it the staff's position  
2 that the Commission licensed El Segundo illegally?

3 MR. KRAMER: That seems to call for a  
4 legal interpretation.

5 MR. ELLISON: I'll withdraw the  
6 question, I'll rephrase it, that's a fair  
7 objection. But the staff supported that as  
8 sufficient to meet the statute in that case,  
9 correct?

10 MR. BIRDSALL: I did not personally work  
11 on that case, but I would believe yes, staff  
12 supported that.

13 MR. ELLISON: Okay. Can you explain why  
14 the identification of some but not all RTC's meets  
15 the statute in El Segundo, but doesn't meet the  
16 statute here?

17 MR. BIRDSALL: I think that it's  
18 difficult to pretend that 90 percent of the RTC's  
19 being held should be ignored. When staff  
20 interprets the statute I can't say that staff has  
21 historically interpreted it consistently. It's  
22 possible that on El Segundo staff inconsistently  
23 interpreted the requirement for identification.

24 Inconsistent with what we are proposing  
25 here, and what we are recommending here for this

1 case.

2 MR. ELLISON: If a project Applicant, or  
3 two or three project Applicant's choose to exceed  
4 legal requirements, in other words choose to meet  
5 a legal requirement by doing more than is  
6 necessary, is it staff's position that all  
7 subsequent Applicants should be required to do the  
8 same thing?

9 MR. BIRDSALL: No, I would not say that.

10 MR. ELLISON: And in each of the three  
11 prior cases, the three existing projects provided  
12 these RTC's voluntarily as opposed to being  
13 ordered by the Commission over their objection to  
14 provide them, correct?

15 MR. BIRDSALL: Having not worked on  
16 those three cases I do not know if they were  
17 voluntarily provided, or if staff through  
18 workshops and data requests and the entire  
19 licensing process had requested that all along.

20 MR. ELLISON: Well, my question is --  
21 let me ask the question a little differently. The  
22 issue was not litigated and disputed in front of  
23 the Commission or the Committee, was it?

24 MR. BIRDSALL: Again, having not worked  
25 on the cases I don't know if the question got as

1 far as the Committee, because it's possible that  
2 it did or it was headed to the Committee and the  
3 Applicant may have adjusted their strategy as they  
4 got closer to being before the Committee. So I do  
5 not know, I cannot answer that question, I guess.

6 MR. ELLISON: Well, let me ask it a  
7 little differently then. Isn't it fair to say  
8 that this is the first case in which this issue  
9 about defining identification has been presented  
10 in dispute to the Commission?

11 MR. BIRDSALL: I believe that it is.

12 MR. ELLISON: Let me return to the issue  
13 of AQSC5 and the monitoring. I recall you -- and  
14 correct me if I'm wrong, I may not remember this  
15 correctly -- but I believe you testified that, as  
16 proposed by staff, at least at the present time,  
17 there is no performance number that would trigger  
18 a change in methods based on the monitoring, is  
19 that correct?

20 MR. BIRDSALL: Staff was careful not to  
21 write a specific performance number into AQSC5.  
22 So there is no specific performance number.

23 MR. ELLISON: But I thought I heard you  
24 testify as to 50 micrograms per cubic meter as  
25 being in your mind an appropriate threshold. Is

1 that also a fair statement?

2 MR. BIRDSALL: When I think of a fair  
3 threshold I think of some of the other  
4 regulations, for example, that are similar to  
5 AQSC5. In mind I have something like the south  
6 coast air district rule 403, which has a  
7 compliance target of 50 micrograms per cubic  
8 meter.

9 So I've used 50 micrograms per cubic  
10 meter in my mind as some kind of a threshold, but  
11 I was careful not to write it into the condition.

12 MR. ELLISON: So staff is reserving  
13 judgment, staff could make it one microgram per  
14 cubic meter if it wanted to, under the staff's  
15 proposal, is that what you're saying?

16 MR. BIRDSALL: No. I'm saying that the  
17 plan will have to identify what it does with the  
18 data, and having a one microgram per cubic meter  
19 difference would probably be within the margin of  
20 error or detectability of the devices and wouldn't  
21 mean a thing.

22 So I can't say that staff would look at  
23 a thing like that, and I think that this is all  
24 open to the plan.

25 MR. ELLISON: But open to the staff's

1 decision subsequent to licensing?

2 MR. BIRDSALL: Well, staff would require  
3 approval of the plan from the CPM in the condition  
4 the way its recommended currently.

5 MR. ELLISON: So whatever number the CPM  
6 thinks is appropriate?

7 MR. BIRDSALL: Yes, I guess. Let me  
8 clarify though that developing the plan would  
9 require negotiation and a little bit of  
10 consultation between the CPM and the Applicant,  
11 and I'm not entirely certain that one fixed number  
12 would be a trigger number. It may be a range.

13 MR. ELLISON: That's all. Thank you.

14 MR. BIRDSALL: Thank you.

15 HEARING OFFICER WILLIS: Mr. Kramer, are  
16 you going to have redirect?

17 MR. KRAMER: A very brief one.

18 HEARING OFFICER WILLIS: Okay, and then  
19 I think after that we'll take a quick few minutes  
20 break before we go on to public health.

21 MR. KRAMER: Mr. Birdsall, is staff  
22 intending to require upwind/downwind monitoring at  
23 the compressor station site?

24 MR. BIRDSALL: No. We haven't  
25 recommended upwind/downwind monitoring at the

1 compressor station site primarily because that  
2 would be a very short construction schedule there,  
3 but also the location of the sensitive receptors  
4 around the compressor station site is not what it  
5 is at the project site.

6 MR. KRAMER: And Mr. Ellison  
7 characterized the issue regarding the  
8 identification of RTC's as -- he used the term  
9 principal in several of his questions. And I  
10 wanted to ask you, for staff is this an issue of  
11 principal or statutory requirement, in your mind?

12 MR. BIRDSALL: Well, I do believe that  
13 this is a statutory requirement.

14 MR. ELLISON: I really do have to make  
15 the same objection that Mr. Kramer's been making  
16 on the very same basis, it's a legal conclusion.  
17 Your asking him whether it's required by law.

18 MR. KRAMER: No, I'm asking him if he  
19 believes that staff is making the requirement  
20 because, due to a requirement of the law or  
21 whether it's just a matter of principal regardless  
22 of the law.

23 I'm not asking him to interpret the law.  
24 I'm not suggesting that his -- or not meaning to  
25 suggest anyway -- that he's either right or wrong

1 that the law requires this. I'm just asking him  
2 what his motivation is.

3 MR. ELLISON: Okay.

4 MR. KRAMER: And then, finally, was it  
5 staff's intent in creating condition SC5 to have  
6 the Applicant just try to meet a numeric target,  
7 whatever it might be, or was the purpose to have  
8 them use the monitoring as a tool to monitor and  
9 adjust their mitigation strategies to be as  
10 effective as possible?

11 MR. BIRDSALL: The thought that went  
12 into AQSC5, and resulted in the condition being  
13 worded the way it is, is an indication that there  
14 will probably be a variety of interpretable  
15 conclusions, or a variety of conclusions that can  
16 be interpreted from whatever data is gleaned from  
17 the monitors, and we were careful to not specify a  
18 certain target range or a certain target  
19 concentration because certainly setting that  
20 target concentration would be something that would  
21 be disputed throughout the process.

22 And it may provide a false sense of  
23 security if perhaps we are shooting for a certain  
24 number. I think that the AQSC5 is worded in such  
25 a way that it allows for the data to be

1 interpreted as it comes in, in whatever form it  
2 comes in, as long as it's interpreted according to  
3 the way the plan specifies.

4 MR. KRAMER: And those interpretations,  
5 the immediate ones, would be conducted by the  
6 AQCM?

7 MR. BIRDSALL: I believe that the  
8 condition, the way that it's written, allows for  
9 the plan to -- excuse me, the ambient air  
10 monitoring plan, and I'll read from the  
11 verification of AQSC5, "the verification says that  
12 the ambient air monitoring plan shall be included  
13 as part of the construction mitigation plan  
14 required under SC2."

15 And SC2, yes, would be monitored by the  
16 AQ construction mitigation manager.

17 MR. KRAMER: So are you expecting the  
18 CPM to be looking at this data on a daily basis  
19 and giving feedback?

20 MR. BIRDSALL: No, the CPM would not be  
21 involved on a daily basis.

22 MR. KRAMER: Okay. Would they see the  
23 monitoring information at all, the CPM?

24 MR. BIRDSALL: The compliance project  
25 manager would see the data -- well, upon CPM

1 request, as it says in verification of AQSC5. And  
2 then the data would be submitted in the monthly  
3 compliance report.

4 MR. KRAMER: Thank you. No further  
5 questions.

6 HEARING OFFICER WILLIS: Mr. Ellison, do  
7 you have any recross?

8 MR. ELLISON: No.

9 HEARING OFFICER WILLIS: Mr. Kramer,  
10 would you like to move your documents?

11 MR. KRAMER: Yes. The air quality  
12 portions of the FSA, that's Exhibit 67,  
13 supplemental testimony Exhibit 68, and --

14 HEARING OFFICER WILLIS: I believe you  
15 also need to move the FDOC.

16 MR. KRAMER: Right. That's Exhibit 69,  
17 and I've forgotten where the others -- 48 and 52.  
18 And the staff errata Exhibit 70.

19 HEARING OFFICER WILLIS: Any objections?

20 MR. ELLISON: No.

21 HEARING OFFICER WILLIS: So moved. We  
22 do have one speaker?

23 COMMISSIONER PERNELL: Yes, Mr.  
24 Lunstrum, come forward please.

25 MR. LUNSTRUM: Well, I'll get my voice -

1 - can everybody hear me? I've got my voice in the  
2 right position.

3 COMMISSIONER PERNELL: We just need your  
4 name for the record.

5 MR. LUNSTRUM: My name is Ralph  
6 Lunstrum, I live in Homeland, four miles up the  
7 road. A big discussion here has taken place on  
8 this dust problem, and you triggered my thought on  
9 this to try and get on record.

10 Your question was to the protocol was  
11 that, evidently, you don't have too much  
12 confidence in having a person on board to check  
13 this dust problem. I'm going to take, and just  
14 tell you a little story in Homeland. Riverside  
15 County put in a flood control basin right across a  
16 40 foot street from my house.

17 And we had problems with dust from the  
18 day one on that project. So when it really got  
19 bad is when they started running 13 double thin  
20 buggys down in the hole, then out, and in comes  
21 another one. And the dust got so bad -- I'm  
22 talking about dust clouds 40 foot to 60 foot high.

23 And it only had to travel about 60 feet  
24 and it covered my house. That's a pretty bad  
25 sandstorm, just from the daily activity.

1           So I got to thinking I'm going to call  
2 -- help me on what I'm going to say, AQMD? Is  
3 that all the letters?

4           COMMISSIONER PERNELL: Yes.

5           MR. LUNSTRUM: Okay. I got ahold of  
6 their phone number and gave them a call. And it  
7 happened to be the person who answered the phone  
8 is the man that takes care, or it could have been  
9 a woman, takes care of all this territory out here  
10 by the Hemet area.

11           He came to my house in one hour and 50  
12 minutes from the time I got off the phone with  
13 him. He came all the way from Diamond Bar. And  
14 I'm talking now to the people who want to put this  
15 plant in here, this power plant.

16           He came out, came right to my door, and  
17 across the street the tractors never paid a bit of  
18 attention, they kept on working. He asked me a  
19 question or two. His first thing to do was to go  
20 across the street and go over there and look at  
21 the sand -- there was no, hey it was sand, it was  
22 powdered dust.

23           And that's where we had the problem. So  
24 I talked to him awhile, and he finally left. But  
25 I had a question, I said what will you do, will

1 you come out again if I give you another call if  
2 this continues. He says I'll be there in a  
3 heartbeat.

4 And I'm just trying to throw out to  
5 everybody behind me now as to how this works. I  
6 have a couple of answers to your questions, and  
7 they'll be coming up.

8 He came out the second time. The first  
9 time he didn't talk to them, he only checked the  
10 condition of the soil to verify that it was a  
11 sandy condition. The second time I called him he  
12 came out and I just watched him. He went across  
13 the street and he talked to the head man on the  
14 job site for the contractor.

15 And he had that discussion, so now he  
16 comes back, his car is right in front of my house.  
17 And I went out and I whistled at him as he started  
18 driving away. I said I have another question. I  
19 said what is going to come of this if it  
20 continues. He said with the second call they are  
21 notified of a \$100,000 fine. And we're only  
22 talking about me as a Joe Blow civilian. That's  
23 all it took was one phone call.

24 So then I ask him, I said if they don't  
25 quit now what are you going to do? Is there

1 anything in the law that has responsibility  
2 connected to this activity? He said oh, yeah.  
3 The next step was, if you call again, which will  
4 be time number three, they will come in and shut  
5 the project down, just like that, no questions  
6 asked.

7 And when they shut the project down that  
8 project is shut down until the day that all things  
9 have been, the correction has taken place to their  
10 satisfaction. Then the job site can come onboard  
11 again and start working.

12 Now that I think is an answer here to  
13 this big long discussion as to what it only takes.  
14 One civilian can shut a project down, that is if  
15 the contractor doesn't have enough brains to do  
16 what he's got to do.

17 Now they were running water sprinklers,  
18 but they were down ten foot in the ground. Now  
19 when you get down there it's dry, so they could  
20 not put enough water in it to take and hold it.

21 But that's just what I wanted to tell  
22 the whole Committee here, how simple it can be.  
23 And the electric developer, they have to pay  
24 attention, otherwise it really gets serious.

25 What does it cost them if he shuts down.

1 Because number one, if the project can't be  
2 completed in daytime now lots of money comes into  
3 play again. So that's all I'd like to leave with  
4 you, but that's as of exactly one year ago. And I  
5 got that information by calling AQMD.

6 COMMISSIONER PERNELL: Well, thank you  
7 sir for your testimony.

8 MR. LUNSTRUM: And then I did take --  
9 when I called back the next time I talked to a  
10 supervisor and I told him about the field man, I  
11 said this is what he told me. I said can you  
12 verify that there is any fact or truth to what he  
13 told me. He said it's all truth.

14 COMMISSIONER PERNELL: Thank you.

15 HEARING OFFICER WILLIS: Thank you, sir,  
16 for waiting so long. Mr. Puentes, I know you've  
17 waited a long time also.

18 MR. PUENTES: Thank you, I appreciate  
19 it. Do I need to give my name and all that stuff  
20 again? John Puentes, 26851 Dawson Road, Romoland.  
21 I just have a couple questions. I'm not really  
22 familiar with a lot of the vernacular that was  
23 thrown about.

24 RTC's, ERC's, that kind of stuff -- I  
25 suppose it's just another word for pollution

1 credits, so they can buy and sell and let people  
2 have more pollution than they should.

3 My question is how much pollution will  
4 the plant produce, because I know they're talking  
5 about they're going to produce this level and that  
6 level, but can they just tell me how many tons of  
7 the stuff are they going to put into the air on a  
8 daily and annual basis in accordance with the NOx,  
9 the carbon monoxide, and any other carcinogen that  
10 they might be aware of?

11 COMMISSIONER PERNELL: Yes, that's a  
12 question for you, Mr. Rubinstein, I do believe.  
13 Or someone on your team.

14 MR. RUBENSTEIN: Thank you. I was just  
15 waiting to see if Mr. Birdsall was going to answer  
16 it. I'm going to -- Mr. Puentes, the answer to  
17 your question is contained in the staff's  
18 analysis. I'm going to read from their analysis,  
19 and I can make sure you get a copy of this page so  
20 you don't have to copy the numbers down.

21 But for the record it's on page 5.1-19,  
22 air quality table seven. And it shows the maximum  
23 daily emissions and maximum annual emissions in  
24 tons per year from the project. And probably the  
25 easiest thing to do would be for me to give you a

1 copy of this, so you don't have to copy all ten of  
2 the numbers down. But that information's in  
3 there.

4 MR. PUENTES: All right. Just in a  
5 round nutshell, just give me the NOx, so I can get  
6 a --

7 MR. RUBENSTEIN: Okay. For example, for  
8 the NOx, the maximum daily NOx emissions are 1511  
9 pounds per day, and the maximum annual NOx  
10 emissions are 169 tons per year.

11 MR. PUENTES: Okay. And I have a few  
12 other questions, and I'll try to make it as quick  
13 as I can.

14 COMMISSIONER PERNELL: Will you still  
15 like a copy of the document?

16 MR. PUENTES: Yes, please. And since  
17 Calpine presents the plan as being a low pollution  
18 generator, it says "clean" in the little pamphlet.  
19 Will Calpine's plant operations enable higher  
20 pollution rate generators, other people, to  
21 produce additional pollution credits, since I'm  
22 going to assume they're going to underproduce what  
23 they're allowed, and then sell that.

24 Is that what they're possibly going to  
25 do?

1           COMMISSIONER PERNELL: Well, this will  
2 be a new facility, they're not shutting down an  
3 old facility and using those credits. This is a  
4 new facility, so I don't think that applies, but  
5 that's my interpretation.

6           MR. PUENTES: Well, what I'm saying is,  
7 in the future, say when they're running, and  
8 they're running at that clean whatever --

9           COMMISSIONER PERNELL: Right. But we're  
10 requiring them to run by best available control  
11 technology, which is BACT. So they don't get  
12 extra credit for doing something that they're  
13 required to do in the first place.

14          MR. PUENTES: Okay. That's a good  
15 thing. I was confused, they were talking about  
16 all these credits, and I thought well maybe --

17          COMMISSIONER PERNELL: Well, I was  
18 confused too.

19          MR. PUENTES: And then I guess this  
20 question wouldn't be -- well, I'm going to ask it  
21 anyway. Can this board prohibit Calpine from  
22 purchasing and selling pollution credits after,  
23 once they're done starting up their plant there?

24                 Say for example they change the rules  
25 later on and they lower them, and all of a sudden

1 they got surpluses and so then they go around --

2 COMMISSIONER PERNELL: Well, what this  
3 board is doing is hearing testimony for them  
4 licensing the facility. And once that's done, and  
5 the construction's done -- because we also monitor  
6 the construction activity -- then they're dealing  
7 with the air quality management district, which  
8 the gentleman was talking about earlier, AQMD.

9 MR. PUENTES: Okay, now if I understand  
10 correctly, do most of the pollution standards that  
11 we have right now in this area, they already  
12 exceed -- when I say exceed it's too high for the  
13 California standards to begin with?

14 COMMISSIONER PERNELL: There was some  
15 testimony this evening -- if someone could clarify  
16 -- I think they were talking about background --

17 MR. PUENTES: Well, just our regular,  
18 the pollution in the air right now as we speak, is  
19 it above California standards or is it --?

20 COMMISSIONER PERNELL: Okay, let me  
21 refer you to someone from staff.

22 MR. BIRDSALL: Hi, this is Brewster  
23 Birdsall, a consultant with the staff. It's true,  
24 the ambient air quality here in this part of the  
25 Inland Empire does exceed the state and federal

1 goals or standards for a couple of pollutants.  
2 Most substantially particulate matter and ozone.

3 MR. PUENTES: Okay. And we'll just be  
4 adding to it with this plant, correct?

5 MR. BIRDSALL: Well, this plant would  
6 add particulate matter and it would add pollutants  
7 that are precursors to ozone, or smog. But, this  
8 whole talk about credits is all about finding  
9 other facilities in the south coast air district  
10 that are either shutting down or are for whatever  
11 reason are liberating themselves of credits to  
12 pollute.

13 And this is the only way that the Inland  
14 Empire power plant will come online is once  
15 they've secured these credits. Which means that  
16 reductions in the same or greater amounts have  
17 occurred elsewhere.

18 MR. PUENTES: Oh, so you're going to  
19 substitute this pollution for what's already out  
20 there, so there's not going to be a net increase?

21 MR. BIRDSALL: Exactly.

22 MR. PUENTES: Is there an abatement  
23 program in place to control the pollution from the  
24 stacks when there's wind going around? Because  
25 sometimes we have around here it'll get about 40,

1 50 mile an hour winds.

2 And considering the school is up north  
3 of there and I'm to the south of it, I'm wondering  
4 what's the odds of me getting a cloud of exhaust  
5 pipe fumes in my neck of the woods?

6 COMMISSIONER PERNELL: I do believe it's  
7 Mr. Rubinstein's turn.

8 MR. RUBENSTEIN: Thank you, Commissioner  
9 Pernell. Under those kinds of conditions, no,  
10 you're not going to get a cloud of fumes coming  
11 down to the ground. The requirements for cleaning  
12 up this plant make the pollution levels in the  
13 stack so clean that, for some pollutants it's  
14 actually cleaner than what's out here in the air.

15 But for two of the five pollutants,  
16 what's inside the stack has less pollution in it  
17 than what's inside this room right now. For the  
18 other pollutants it's higher, but not a whole lot  
19 higher.

20 And by the time the pollution comes out  
21 of the stack, under the worst case weather  
22 conditions, and comes down, it's not going to  
23 create any unhealthful situations, it's not going  
24 to create the kind of plume you're thinking of.

25 COMMISSIONER PERNELL: And how tall is

1 the stack? We think it's about 160 feet tall?  
2 I've heard four different numbers here.

3 MR. RUBENSTEIN: I think it's 195 feet,  
4 but let me check just to be sure.

5 MR. PUENTES: And is the fact that the  
6 wind is going to be fairly warm, or hot sometimes,  
7 affect the quality of the exhaust? Because we  
8 really don't get cold wind out here.

9 MR. RUBENSTEIN: We have to analyze the  
10 project and look at all the different winds that  
11 might come through the area for an entire year.  
12 So we looked at 8,760 different wind conditions,  
13 and then had to make sure that under the worst of  
14 those that we're not going to cause any problems.

15 The kinds of winds you're talking about  
16 are actually not likely to be the worst case in  
17 terms of causing high pollution levels down at the  
18 ground. But they were included under all the  
19 different kinds of wind conditions we have to look  
20 at.

21 MR. KRAMER: Isn't it calm conditions  
22 that are the worse? I mean, the winds help clean  
23 up pollution, right?

24 MR. RUBENSTEIN: There are some wind  
25 conditions that can create -- and I don't want to

1 get too technical, it's way too late for that, but  
2 that can bring the plume down fairly quickly. So  
3 we had to look at those, some of those high wind  
4 conditions.

5           The worst case impacts from this plant  
6 are actually in the hills to the southeast of the  
7 plant, and those -- and the kinds of weather  
8 conditions that cause those highest pollution  
9 levels is actually a fairly gradual wind, not a  
10 complete calm condition, but a light wind hitting  
11 towards the south. And that's the worst case for  
12 this plant.

13           And we had to show that the plant was  
14 safe even under those kinds of conditions.

15           MR. PUENTES: And then part of these,  
16 the monitoring and stuff that's going to be going  
17 around during the construction and those types of  
18 things, will there be some kind of, will the  
19 surrounding community be informed when they exceed  
20 their safe limits, or whatever standard limit  
21 that's set for the particulate matter?

22           For example, like you talked about, say  
23 it goes above whatever it is, the bells and  
24 whistles go off over at the construction site. Is  
25 anybody ever going to know besides whoever they

1 report to and they say hey, you know, we did this?

2 COMMISSIONER PERNELL: Yes, part of that  
3 discussion was what is the most effective  
4 monitoring plan to have, that is what the  
5 Committee was concerned about. So I'm not -- I  
6 guess your question is whether or not, if there is  
7 a health violation will the community know that  
8 it's there.

9 And that is something that the Committee  
10 will consider, I can't sit here and answer that,  
11 we're still going through the process. But that's  
12 a very good question.

13 MR. PUENTES: All right. I'm almost  
14 winding down here. I notice that there's been  
15 talk about the plant here bringing all kinds of  
16 improvements to the area, and I wanted to know, in  
17 order to mitigate the blight factor because no  
18 matter how you say it, having an electric plant in  
19 your back yard is not the most attractive thing to  
20 have in your neighborhood.

21 And I wanted to find out what their  
22 plans are, and what kind of commitment they plan  
23 on, in order to -- specifically, what type of  
24 immediate and future improvements to the community  
25 of Romoland, which is where I live, will they

1 commit to invest in, such as parks, road  
2 improvements, landscaping -- especially around the  
3 plant, you know, maybe beautifying the plant to  
4 make it look a little bit more presentable.

5 And I wanted to know what their plans  
6 were about that.

7 COMMISSIONER PERNELL: Well, I know that  
8 there's a landscaping plan, and keep it in mind  
9 that the plant will be located in a industrial  
10 area, so I'm not sure of any criteria for fixing  
11 the parks or any of that. I would suggest that  
12 you contact your local representative and have him  
13 do those types.

14 But in terms of visual for the project  
15 there is a landscaping plan where -- at least from  
16 what I see -- they have trees and etc. around the  
17 plant to help with some of the visual blight of  
18 the facility.

19 I don't know if I'd call it blight, but  
20 there is a landscaping plant, and if someone from  
21 the Applicant side want to add to that, you can.

22 MR. PUENTES: And actually it is kind of  
23 close to the --

24 COMMISSIONER PERNELL: Perhaps we can do  
25 this, because we're getting ready to take a break,

1 and if you guys can talk to him about the plan,  
2 maybe show him a picture, and that'll help me  
3 leave the podium for a minute.

4 MR. PUENTES: And I'll also let them  
5 work on another question, please, and I'll just  
6 throw that out right now?

7 COMMISSIONER PERNELL: You can throw it  
8 out, but if you would get with them offline then.

9 MR. PUENTES: What kind of employment  
10 opportunities were they going to offer, say, some  
11 of the residents of Romoland -- in particular  
12 entry-level -- and maybe some kind of application  
13 program for qualified applicants to have. like, a  
14 jump on say, the first hirings and stuff for  
15 whatever openings they're going to have at the  
16 plant.

17 COMMISSIONER PERNELL: All right. Mr.  
18 Rubenstein, can you identify someone that can talk  
19 to the residents about the future employment as  
20 well as his other question on the landscaping?

21 MR. RUBENSTEIN: Yes, we'll do that.

22 COMMISSIONER PERNELL: Okay, with that  
23 -- thank you very much for waiting by the way.

24 HEARING OFFICER WILLIS: Okay. If there  
25 aren't any other comments on air quality then

1 let's close the record. And we will take, let's  
2 try a ten minute break and let's try to keep it at  
3 ten minutes, and then we'll try and finish up.

4 COMMISSIONER PERNELL: And then we have  
5 one more section. I think we can get through it  
6 this this evening, or tonight. So we're off the  
7 record.

8 (Off the record.)

9 COMMISSIONER PERNELL: Back on the  
10 record. Ms. Willis?

11 HEARING OFFICER WILLIS: Okay. At this  
12 time we're going to move on to public health, and  
13 I believe staff is going to call their witness  
14 first?

15 MR. KRAMER: Yes. Dr. Greenberg has  
16 already been sworn. Can we stipulate to his  
17 qualifications on public health?

18 (laughter)

19 COMMISSIONER PERNELL: We learned our  
20 lesson earlier.

21 MR. KRAMER: Okay. Dr. Greenberg, this  
22 subject area is not in dispute among the parties,  
23 but for the benefit of the public and community  
24 we'd like you to summarize your testimony briefly,  
25 if you could?

1           MR. GREENBERG: I'll try and keep it to  
2 under ten minutes. Staff's expert, Gary  
3 Rubenstein, gave a very eloquent and accurate  
4 summary of the public health testimony that was  
5 prepared, and I won't reiterate that, other than  
6 to state that staff conducted our own review and  
7 evaluation and concurs with the Applicant's  
8 experts testimony that the health risks are below  
9 a level of significance.

10           What staff does is looks at the release  
11 to the atmosphere of toxic air contaminants from  
12 various sources at the facility. Now the  
13 Committee is aware, but for the benefit of the  
14 public who are present tonight, the reason that  
15 there is a difference or a differentiation between  
16 air quality as an issue and public health as an  
17 issue is not due to the fact that they don't all  
18 impact on public health -- because they do --  
19 but because of the state and federal regulatory  
20 approach to what we call criteria pollutants.

21           These are pollutants for which there are  
22 national and state air quality standards, and  
23 those are addressed in the air quality section.  
24 And for what we call the non-criteria pollutants,  
25 the toxic air contaminants which are addressed in

1 the public health section, for which there are no  
2 air quality standards but instead a human health  
3 risk assessment must be performed to address  
4 additively, in an additive manner, all the toxic  
5 air contaminants and the risk of cancer and the  
6 hazard of non-cancer adverse health risk impacts  
7 must be below a level of significance before the  
8 facility can be permitted.

9           So it's because of the state and federal  
10 regulatory apparatus that staff address these in  
11 separate matters.

12           If you turn to staff's testimony in the  
13 public health section on page 5.7-13, looking at  
14 public health table two, the hazards and the risk  
15 due to the operation of the facility, you'll see  
16 the summary where staff has indicated for acute  
17 non-cancer impacts, for chronic non-cancer impacts  
18 -- and these non-cancer impacts could be adverse  
19 impacts on the respiratory system or the heart or  
20 the liver -- that the hazard index, which is a  
21 measure of the airborne concentrations and hence  
22 exposure to a person, are well below the level of  
23 significance.

24           And the maximum theoretical individual  
25 cancer risk is also well below the significance

1 level. These hazard indices and individual cancer  
2 risks are also considered to be very conservative,  
3 that is health protective in nature, because they  
4 assume that an individual would live 70 years at  
5 the spot predicted -- the spot or location -- of  
6 predicted maximum impact of the facility.

7           And this location is a few miles, or  
8 several miles, south of the project, on the side  
9 of one of the hills or mountains in the area. To  
10 do that is consistent with state and federal risk  
11 assessment guidelines and allows us to state that  
12 any other individual located at any other  
13 location, including children at the school or a  
14 person living 600 or 800 feet south of the  
15 project, would have a risk or a hazard even less  
16 than depicted in table two.

17           That means that because the risk of  
18 cancer and the hazard of non-cancer diseases is  
19 less than the level of significance at the point  
20 of maximum impact, it would be even lower for any  
21 person living in the community, or for an  
22 individual working in a community, or for a  
23 sensitive receptor such as a young child attending  
24 school.

25           That way staff can state with great

1 confidence that there will not be significant  
2 impacts to public health as a result of emissions  
3 during the operations.

4 Staff also looked at impacts during  
5 construction. One of the concerns that staff has  
6 is due to the emissions of particulates during the  
7 construction phase. We've already discussed the  
8 reasons why there is the recommendation by staff,  
9 the air quality staff, for a PM-10 mitigation  
10 monitoring program.

11 Because of the sensitive nature of  
12 children to the effects of air pollutants, and the  
13 ability of particulate matter to exacerbate  
14 childhood asthma, and the ability of particulate  
15 matter that contain hazardous air pollutants or  
16 toxic air contaminants, such as diesel exhaust, to  
17 actually cause asthma, staff looked at this  
18 particular location and considered the distance of  
19 the project site to the school.

20 And that's why I support the  
21 recommendation for mitigation monitoring of PM-10  
22 mitigation steps as an added measure and a viable  
23 and realistic measure to ensure that the children  
24 at the school are indeed protected from PM-10  
25 emissions during construction activities.

1           I think that this is particularly  
2 important when you review the fact that I have  
3 worked for the California Energy Commission since  
4 1993 on 38 different power plant siting projects,  
5 and staff has made the recommendation on only five  
6 of those for this type of monitoring. That's five  
7 out of 38.

8           For the unnamed project, the East  
9 Altamount project, there is a school that's one  
10 mile away and I did not make a recommendation for  
11 PM-10 mitigation monitoring at that location. So  
12 there are specific site considerations that lend  
13 itself to supporting the need for that type of  
14 monitoring.

15           With that monitoring, and with -- oh,  
16 I'd like to bring up one other thing. There is  
17 another source of potential impacts to human  
18 health that was evaluated ,and that is the cooling  
19 tower. There is a low yet definite possibility  
20 that the bacteria known as Legionella could grow  
21 in a cooling tower.

22           Towards that, in order to reduce the  
23 likelihood to a level of insignificance that  
24 Legionella could grow and then be dispersed either  
25 onsite or offsite such that onsite workers and the

1 offsite public could be exposed to the Legionella  
2 bacteria, staff has proposed condition of  
3 certification public health one that would require  
4 a biocide use and Legionella monitoring program.

5           This program would be consistent either  
6 with -- or should be consistent -- either with CEC  
7 staff guidelines or the Cooling Technology  
8 Institute guidelines, both of which I believe the  
9 Applicant has in their possession and has  
10 reviewed. The monitoring program would be  
11 reviewed and approved by the CPM.

12           To conclude, then, the health risk  
13 assessment prepared by the Applicant demonstrating  
14 that emissions during operations from all sources  
15 of emitting, including the stack and even  
16 including the diesel operated fire water pump --  
17 that's an emergency pump that has to be tested on  
18 a certain basis each year -- so even including  
19 those emissions the Applicant's health risk  
20 assessment has demonstrated that the project will  
21 pose an insignificant risk to the public.

22           With staff's proposed mitigation of  
23 condition of certification public health one we  
24 believe the risk of the cooling tower causing or  
25 releasing Legionella, and therefore potentially

1 causing disease either to onsite workers or  
2 offsite public, would also be reduced to a level  
3 of insignificance.

4 HEARING OFFICER WILLIS: Does that  
5 conclude your testimony?

6 MR. GREENBERG: Yes.

7 COMMISSIONER PERNELL: Thank you.

8 HEARING OFFICER WILLIS: Mr. Wheatland,  
9 do you have any cross-examination?

10 MR. WHEATLAND: No, we don't.

11 HEARING OFFICER WILLIS: Staff, would  
12 you like to move your documents into the record?

13 MR. KRAMER: Yes, the public health  
14 portions of Exhibit 67 and 68.

15 HEARING OFFICER WILLIS: Any objections?

16 MR. WHEATLAND: None.

17 HEARING OFFICER WILLIS: So moved.

18 MR. KRAMER: I'd just like to note for  
19 the record, and perhaps as a heads up to the  
20 Applicant, there's some discussions among staff  
21 about requesting that the Committee make the  
22 public health condition a precedential condition.

23 In other words make the decision  
24 precedential as to just that condition. If we  
25 decide to make that request we'll probably make it

1 in our opening brief.

2 MR. WHEATLAND: Just as a matter of  
3 procedure, it's my understanding that that sort of  
4 request would generally come after the Commission  
5 had made a final decision. That then, staff --  
6 after the full Commission has decided something --  
7 can make up, or the Applicant for that matter  
8 could ask that some or all of it be made a  
9 precedent. With that comment, I don't know what  
10 else to say.

11 MR. KRAMER: Yes, I just wanted to offer  
12 it, so you'd know in advance.

13 MR. WHEATLAND: Well, I appreciate the  
14 heads up.

15 HEARING OFFICER WILLIS: Will you be  
16 drawing other items into the record for public  
17 health?

18 MR. KRAMER: Yes, just those two.

19 HEARING OFFICER WILLIS: Are there any  
20 other comments on public health? If you could,  
21 please, state your name?

22 MS. PUENTES: Melinda Puentes, 26851  
23 Dawson Road, Romoland. I just want to ask if any  
24 of you have lived next to a power plant, or if you  
25 do? I didn't think so.

1           So you can't guarantee that myself or my  
2 family, basically from what I've heard you say is  
3 that you can't guarantee that I'm not going to get  
4 cancer from the toxins being placed in the air  
5 from this plant?

6           MR. GREENBERG: First of all, let me  
7 answer your first question about living near a  
8 power plant.

9           MS. PUENTES: Very close. As close as  
10 my husband and I are going to be living.

11          MR. GREENBERG: Whether or not I live  
12 close to a power plant, or might in the near  
13 future because there is one that has been in the  
14 headlines of my local county newspaper --

15          MS. PUENTES: I'm sure you would have  
16 the opportunity to move, I'm sure you could afford  
17 to move.

18          MR. GREENBERG: If I may continue?

19          MS. PUENTES: Okay.

20          MR. GREENBERG: Whether or not I do or  
21 don't quite frankly should not influence your  
22 decision and your information. You should base  
23 your decision on information that you receive. I  
24 have specialized training, and I don't expect that  
25 everybody is a toxicologist and has that type of

1 experience and training.

2           And so, what I would or would not do for  
3 my family really shouldn't influence you. If you  
4 want my answer after that caveat I'd be happy to  
5 give you my honest answer as to whether or not it  
6 would bother me to live that close to a power  
7 plant.

8           But in all honesty, I would encourage  
9 you to make your own decision, not on what I would  
10 do personally.

11           MS. PUENTES: And I have made my  
12 decision, and I really would rather not have the  
13 power plant near my home.

14           MR. GREENBERG: Okay. To answer your  
15 second question, about guarantees that you won't  
16 get cancer. I think you understand that nobody  
17 can guarantee that we're not going to get hit by  
18 lightning tonight, or that anything can or cannot  
19 injure you.

20           However, we do talk about what we call a  
21 risk, which is essentially a chance or a  
22 probability, and these probabilities of getting  
23 cancer or not getting cancer are indeed based upon  
24 very sound scientific principles.

25           We're not just rolling the dice here,

1 but rather we are looking at the cause and effect  
2 relationship between the toxic air contaminants  
3 that are emitted from the stack, and what your  
4 exposure can be.

5           The EPA-approved air dispersion models  
6 tend to over-estimate your exposure to what would  
7 come out of the power plant. The cancer potency  
8 values tend to be what we call on the high side.  
9 In other words, they're not an average value, but  
10 rather they're an upper-bound value. Your  
11 exposure duration, how long you'd be exposed to  
12 these emitted substances, are also on the upper  
13 end.

14           When you add all those upper end values  
15 together that gives me a great deal of information  
16 and a great deal of confidence to be able to say  
17 to you that you have less of a chance -- let's say  
18 this, you have a greater chance from driving your  
19 automobile and inhaling the fumes that spews out  
20 from its tailpipe than you would from what's  
21 coming out of the power plant.

22           The reason for that is because you are  
23 closer to the source, the tailpipe is right at the  
24 ground. And the automobile exhaust isn't  
25 dispersed as much as is the contaminants coming

1 out of the stack get blown away by the wind and  
2 they're dispersed to the point that we couldn't  
3 even measure, as scientists, as analytical  
4 chemists, we couldn't even measure the  
5 concentration of contaminants that would come out  
6 of the stack and be at your house.

7 We could measure the concentration that  
8 comes out of your automobile that would be at your  
9 house. And so if that's helpful in any way, if  
10 that can reassure you in any way, then that's my  
11 explanation.

12 MS. PUENTES: Well, thanks for your  
13 insight, it doesn't reassure me, but thank you.

14 COMMISSIONER PERNELL: Excuse me, ma'am,  
15 are you -- since you're on the record, are you in  
16 favor or opposed?

17 MS. PUENTES: I am opposed.

18 COMMISSIONER PERNELL: Okay. Thank you.

19 HEARING OFFICER WILLIS: Any other  
20 comments? Okay -- on public health? Okay.

21 MR. LUNSTRUM: Here I am again. My name  
22 is Ralph Lunstrum, I live in Homeland, been there  
23 42 years. For Calpine, you're hearing this, and  
24 we have this here contaminant possibility, what  
25 was it, the bugs in the water in that cooling

1 tower?

2 MR. GREENBERG: Legionella. It's a  
3 possibility, however very small.

4 MR. LUNSTRUM: Just for Calpine's  
5 benefit, it probably concerns nobody else. But I  
6 can tell you of some water, a water machine that  
7 is made by a man in New York state. But that  
8 water can take care of Legionella. And that's all  
9 I gotta say on that. Thank you.

10 COMMISSIONER PERNELL: Thank you, sir.

11 HEARING OFFICER WILLIS: Thank you. I  
12 think with that we'll close the topic of public  
13 health.

14 MR. WHEATLAND: Oh, I'm sorry, but I  
15 believe you'll need to just briefly introduce the  
16 staff Exhibits on public health?

17 HEARING OFFICER WILLIS: I thought we  
18 just did that?

19 MR. WHEATLAND: I'm sorry, the  
20 Applicant's Exhibits, I'm sorry.

21 HEARING OFFICER WILLIS: Oh, I'm sorry,  
22 we didn't do that. Okay.

23 MR. WHEATLAND: We can do it in one  
24 minute.

25 HEARING OFFICER WILLIS: No, that's

1 fine, I'm sorry. We've reopened that record, and  
2 can hear you submit.

3 MR. WHEATLAND: Just very briefly. Mr.  
4 Rubinstein, as one of the witnesses for the  
5 Applicant on the subject of public health, are you  
6 sponsoring Chapter 5.2 of Exhibit Two and the  
7 other documents referenced therein?

8 MR. RUBENSTEIN: Yes, I am.

9 MR. WHEATLAND: And Dr. Greenberg has  
10 testified that there would not be a significant  
11 impact to public health as a result of the  
12 construction and operation of the Inland Empire  
13 Energy Center. Do you agree with that statement?

14 MR. RUBENSTEIN: Yes, I do.

15 MR. WHEATLAND: Dr. Greenberg also  
16 cleverly inserted further discussion on the PM-10  
17 monitoring issue that I thought had been closed,  
18 into his public health testimony. Can you comment  
19 briefly on that please?

20 MR. RUBENSTEIN: In 30 seconds. I did  
21 not find any reference to that in his written  
22 testimony. The only reference I found to the  
23 fugitive dust issue in his testimony is on page  
24 5.7-9, in which he refers to the extensive  
25 fugitive dust control measures required by south

1 coast district rule 403, and I believe those are  
2 adequate as well. That concludes my comment.

3 HEARING OFFICER WILLIS: Staff, do you  
4 have any cross-examination?

5 MR. KRAMER: No.

6 MR. WHEATLAND: I'd like to move into  
7 evidence Chapter 5-2 of Exhibit Two, and the other  
8 documents referenced therein.

9 HEARING OFFICER WILLIS: Are there any  
10 objections?

11 MR. KRAMER: No.

12 HEARING OFFICER WILLIS: Okay, now I  
13 think with that we'll close public health. And  
14 we're going to try and go quickly through the list  
15 of topics to be submitted by declaration, with the  
16 addition of Mitchell Resources.

17 We'll start with alternatives. And I  
18 think what we'll do is we'll start with Applicant,  
19 and maybe you can identify your Exhibits and we'll  
20 move them into the record.

21 MR. WHEATLAND: Since we are dealing  
22 with this by declaration I haven't identified the  
23 specific Exhibits that are associated with each  
24 subject area. We have identified the declarants,  
25 and what I would propose to do for all of the

1 undisputed areas is to move the testimony in  
2 wholesale as opposed to item by item, if that  
3 would be --

4 HEARING OFFICER WILLIS: So you mean  
5 take every topic on the list, go through each  
6 topic and then move it all in as one?

7 MR. WHEATLAND: Yes, please, if we could  
8 do so. We have no objection to the introduction  
9 of any Exhibits that are on the tentative Exhibit  
10 List, which would include all of the staff's  
11 Exhibits on these undisputed areas, if they feel  
12 similarly that we could do this as a single  
13 function.

14 HEARING OFFICER WILLIS: That'll  
15 certainly move it faster. Do you have any  
16 objections?

17 MR. KRAMER: No.

18 HEARING OFFICER WILLIS: I do want to  
19 add that, while we were at the break we did mark  
20 one more Exhibit, the determination of no hazard  
21 to air navigation dated 6-15-2003, and that's been  
22 marked as Exhibit 77.

23 Okay, so at this time would you like to  
24 go ahead and identify and all of the subject  
25 matters?

1 MR. WHEATLAND: Yes, if I could.

2 HEARING OFFICER WILLIS: And please add  
3 visual?

4 MR. WHEATLAND: Yes. In the area of  
5 alternatives, the Applicant's witnesses are Jim  
6 McLucas and Jenifer Morris. In the area of  
7 biological resources, the Applicant's witnesses  
8 are set forth in the list that was prepared by the  
9 Committee.

10 On this subject we have a very brief  
11 statement of 30 seconds that we'd like to make,  
12 reflecting one of our understandings. It doesn't  
13 in any way change or affect the conditions, but  
14 we'd like to add the statement just to clarify the  
15 record, and we've previously advised the staff of  
16 our interest in making the statement.

17 HEARING OFFICER WILLIS: And is there  
18 any objection from the staff?

19 MR. KRAMER: I've heard several  
20 different things, so I'm not sure which one he's  
21 referring to. If he's going to repeat it, then  
22 I'll let you know.

23 MR. WHEATLAND: All right, Jenifer, if  
24 you could please?

25 HEARING OFFICER WILLIS: And have you

1     been sworn in?

2                   MS. MORRIS:  I have not.

3                   HEARING OFFICER WILLIS:  Okay.  Why  
4     don't we do that real fast?

5     Whereupon,

6                   JENIFER MORRIS

7     was called as a witness herein, and after first  
8     having been duly sworn, was examined and testified  
9     as follows:

10                  MR. WHEATLAND:  State your name for the  
11     record, please?

12                  MS. MORRIS:  My name is Jenifer Morris.  
13     And our statement in biology is, in the biology  
14     conditions of certification staff and Applicant  
15     have agreed to shorten some of the time periods  
16     originally proposed in the FSA for review of  
17     compliance documents.

18                  As stated in staff's supplemental  
19     testimony, these changes were made with the  
20     understanding that any underlying requirement that  
21     the approval be granted before a particular action  
22     can take place, i.e., site mobilization,  
23     construction or operation, is unaffected by the  
24     change.

25                  The parties also understand that, as is

1 currently the practice, the staff will use best  
2 efforts to complete compliance procedures in the  
3 time frames specified in the decision. Indeed,  
4 staff often completes its review and approval long  
5 before the specified time limits.

6           However, in the event that a deadline is  
7 not met, despite the best efforts of all parties  
8 involved, the Applicant bears the risk that the  
9 review and approval cannot be accomplished within  
10 the specified time period, especially where the  
11 review process requires resubmittal of the  
12 required information.

13           MR. KRAMER: I think that would go for  
14 all the topic areas in our mind, frankly.

15           MR. WHEATLAND: Yes, and I was just  
16 going to say that that would apply to all the  
17 places where we've made that change.

18           MR. KRAMER: I think we have a specific  
19 statement in visual about the treatment of some of  
20 the equipment.

21           MR. WHEATLAND: Yes.

22           HEARING OFFICER WILLIS: So there's no  
23 objection to that statement?

24           MR. KRAMER: No, just make it broader.

25           HEARING OFFICER WILLIS: Okay.

1           MR. WHEATLAND: Thank you. In the area  
2 of cultural resources our witness is Doug Davy.  
3 In the area of facility design our witness is Jim  
4 McLucas. In the area of geology and paleo --  
5 which wasn't on the Committee's list and I think  
6 we should indicate both geology and paleo -- our  
7 witness is Thomas Stewart.

8           In the area of -- oh, and also in the  
9 area of land use our witness is Jenifer Morris.  
10 In the area of noise our witnesses are Tom Adams  
11 and Jim McLucas.

12           And there I would just like to state for  
13 the record, that while the Applicant staff are in  
14 complete agreement with respect to the conditions  
15 of certification we differed in the methodologies  
16 by which we reached the result that there would  
17 not be a significant noise impact.

18           So we've agreed to disagree on the  
19 methodology, but we both reached the same ultimate  
20 conclusion, and we concur on the conditions of  
21 certification.

22           In the area of power plant efficiency  
23 our witness is Jim McLucas, as well as power plant  
24 reliability. In socio-economics our witnesses are  
25 Doug Davy and Jenifer Morris. In traffic and

1 transportation our witnesses are Doug Davy, Jim  
2 McLucas and Jenifer Morris.

3 In transmission line safety and nuisance  
4 our witnesses are Jim McLucas, Alan Roth, and Ali  
5 Amirali. In transmission system engineering our  
6 witnesses are Jim McLucas, Alan Roth, and Ali  
7 Amirali. In waste management our witness is Jim  
8 McLucas. In water and soils are witnesses are  
9 Kris Helm and Jim McLucas. And Jim McLucas is our  
10 witness in worker safety and fire.

11 In addition, visual, our witnesses are  
12 Tom Priestly, Jim McLucas and Ian Davidson was  
13 identified as a witness, but we have not provided  
14 a declaration for him.

15 So that, then, is a complete summary of  
16 the Applicant showing on all the undisputed areas.  
17 i'd also like to add, just for the record, in the  
18 area of visual resources, that there is a  
19 condition that requires the submission of a visual  
20 simulation, that's condition vis 3. It requires a  
21 simulation of the project of landscaping at five  
22 years after start of construction.

23 And while the Applicant has agreed to  
24 that as a condition we understand that that  
25 condition would not prohibit us from submitting

1 simulations depicting additional time periods if  
2 the project owners believe that such additional  
3 information would be relevant to review by the  
4 staff.

5 We'll certainly provide the five year  
6 requirement, but we'd ask leave to submit  
7 additional information, if that's appropriate.

8 HEARING OFFICER WILLIS: Staff, is that  
9 your understanding?

10 MR. KRAMER: Well, I guess the reply  
11 understanding is that it's staff's position that  
12 only the results at five years matter and anything  
13 beyond that is irrelevant because that's what we  
14 consider to be a period of temporary disturbance.

15 So what we don't want to see is this  
16 interpreted to allow the standard to creep beyond  
17 five years, at which we require adequate  
18 mitigation.

19 HEARING OFFICER WILLIS: Thank you.  
20 Does that identify all of your witnesses?

21 MR. WHEATLAND: Yes, it does. Thank you  
22 very much.

23 HEARING OFFICER WILLIS: At this point,  
24 would you like to move the remaining portions of  
25 your documents?

1           MR. WHEATLAND: Yes, for those items  
2 that are on the tentative Exhibit list that have  
3 not been previously introduced into evidence as  
4 Applicant's witnesses, I'd like to move then into  
5 evidence at this time.

6           HEARING OFFICER WILLIS: Are there any  
7 objections?

8           MR. KRAMER: No.

9           HEARING OFFICER WILLIS: So moved.  
10 Staff?

11           MR. KRAMER: In alternatives our witness  
12 is Sue Walker. In biological resources Shari  
13 Koslowsky and Natasha Nelson. Cultural resources  
14 Roger Mason and Gary Reinoehl. Facility design is  
15 Brian Payne. Geology and paleontology is Dale  
16 Hunter. Land use is Negar Vahidi. Noise is Ron  
17 Brown.

18           Power plant efficiency, Brian Payne.  
19 Power plant reliability is Brian Payne as well.  
20 Socioeconomics, our witness is Sue Walker.  
21 Traffic and transportation, Paul Taylor.  
22 Transmission line safety, Obed Obemelam. And  
23 transmission systems engineering, Mark Hesters and  
24 Al McCuen. Dr. Alvin Greenberg for waste  
25 management. Water and soils is John Kessler.

1           Worker safety and fire protection is Dr.  
2 Alvin Greenberg and Rick Tyler. And finally, our  
3 visual witnesses are Michael Clayton and Will  
4 Walters. We'd move into evidence those portions  
5 of Exhibits 67, 68 and where appropriate, 70.

6           And I believe we've moved in all the  
7 other Exhibits we had, which were basically the  
8 pieces of the final determination of compliance.  
9 I think that covers it all.

10           HEARING OFFICER WILLIS: Are there any  
11 objections?

12           MR. WHEATLAND: No objections.

13           HEARING OFFICER WILLIS: so moved. I  
14 just want to clarify, on Exhibit 70 -- I believe  
15 that's the latest finding by staff. Just to make  
16 sure Applicant was in agreement with the changes  
17 that were made on those conditions?

18           MR. WHEATLAND: Yes we are. And I  
19 think, if we haven't done so already, I'd like to  
20 move into evidence Exhibit 77, the last one we  
21 just identified.

22           HEARING OFFICER WILLIS: Is there any  
23 final public comment on this project before we  
24 close the hearing? Okay, at this time we've  
25 established a briefing schedule and an evidentiary

1 hearing order.

2 We would like to close the record on all  
3 topics, and that included the ones that we had  
4 oral testimony on earlier tonight and all the  
5 topics that have been taken in by declaration.

6 Opening briefs will be due on August  
7 22nd. We appreciate the parties focusing on the  
8 legal issues that we believe are surrounding the  
9 area of identification of the reclaimed trading  
10 credits.

11 Also, on staff's condition air quality  
12 SC5, and any other areas that you think would be  
13 important, but primarily we are very much  
14 interested in the air quality, and also the  
15 compliance issues.

16 MR. KRAMER: And we'll propose some  
17 language for AQSC6 as well.

18 HEARING OFFICER WILLIS: And that would  
19 be most helpful, otherwise the Committee will  
20 determine the language ourselves. Reply briefs  
21 are going to be due on September 3rd, if that date  
22 works for everyone. And are there any comments or  
23 other questions?

24 COMMISSIONER PERNELL: I'd just like to  
25 thank, on behalf of the Committee thank everyone

1 who stayed here and stuck it out who didn't have  
2 to, and those that had to I want to thank you for  
3 your cooperation and certainly thank our Reporter.

4           And thank whomever provided the  
5 refreshments. So with that, and if there's  
6 nothing else to come before this Committee -- the  
7 Committee seeing that there is no other business,  
8 this Committee is adjourned. We're off the  
9 record.

10 (Off the record.)

11 (Whereupon, at 9:56 p.m., the hearing was  
12 adjourned)

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## CERTIFICATE OF REPORTER

I, James Ramos, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Resources Conservation and Development Commission; 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 meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of August, 2003.

James Ramos

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