

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification of ) Docket No.  
the Los Esteros Critical Energy ) 03-AFC-02  
Facility 2, Phase 1 )  
\_\_\_\_\_ )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

MONDAY, DECEMBER 6, 2004  
10:09 a.m.

Reported by:  
Peter Petty  
Contract No. 170-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William J. Keese, Chairman, Presiding Member

Jackalyne Pfannenstiel, Commissioner

HEARING OFFICER, ADVISORS PRESENT

Ed Bouillon, Hearing Officer

Scott Tomashefsky Advisor to Chairman Keese

Timothy Tutt, Advisor to Commissioner Pfannenstiel

STAFF AND CONSULTANTS PRESENT

Robert Worl, Project Manager

Dick Ratliff, Senior Staff Counsel

Steve Baker

Gabriel Taylor

PUBLIC ADVISER

J. Mike Monasmith

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Rick Tetzloff, Project Manager  
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Steven A. DeYoung, Principal  
DeYoung Environmental Consulting

Gary S. Rubenstein  
Sierra Research

INTERVENOR

Robert Sarvey  
Californians for Renewable Energy

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

10:09 a.m.

PRESIDING MEMBER KEESE: Good morning and welcome to this evidentiary hearing on the Los Esteros Critical Energy Facility 2, Phase 1.

I'm Bill Keese, Chair of this Committee. And on my left is my Advisor, Scott Tomashefsky. Commissioner Pfannenstiel is Second on this case; and on the far right, her Advisor, Tim Tutt.

Mr. Ed Bouillon will be conducting this hearing as our Hearing Officer. Mr. Bouillon, do you want to take over?

HEARING OFFICER BOUILLON: Thank you, Mr. Chairman. This is a duly noticed hearing on docket number 03-AFC-2 for the Los Esteros Critical Energy Facility 2, Phase 1. The possible recertification of the existing power plant.

This notice was duly filed with the Commission on November 23, 2004. I note that the parties are all present with the exception of CURE I don't see. But they have, I believe, elected not to participate in this evidentiary hearing.

I would like to request now that we go around the table, starting with the applicant. And if one person from each party would introduce

1       himself and those with him, and then we'll go  
2       through the staff and CARE.

3               MR. TETZLOFF: I'm Rick Tetzloff,  
4       Project Manager for Calpine. And along with me is  
5       Chris Ellison, counsel; and behind me is Gary  
6       Rubenstein and Steve DeYoung.

7               HEARING OFFICER BOUILLON: Mr. Ratliff.

8               MR. RATLIFF: Dick Ratliff, counsel for  
9       staff. And with me is Bob Worl, the Project  
10      Manager. We have with us also today Steve Baker,  
11      who is a witness on energy efficiency; and we have  
12      also Gabriel Taylor, who is in the air quality  
13      office.

14              HEARING OFFICER BOUILLON: Mr. Sarvey.

15              MR. SARVEY: Bob Sarvey representing  
16      CARE.

17              HEARING OFFICER BOUILLON: Well, let's  
18      begin, and I would suggest that we begin with the  
19      applicant. Mr. Tetzloff, is he prepared?

20              MR. TETZLOFF: Yes, I'm here.

21              HEARING OFFICER BOUILLON: Okay, are you  
22      going to provide a general overview, could you  
23      give us a few minutes on that?

24              MR. ELLISON: Actually, Mr. Bouillon,  
25      let me just mention a couple housekeeping matters,

1 if I may.

2 HEARING OFFICER BOUILLON: Okay.

3 MR. ELLISON: The first is that I spoke  
4 just a few moments ago with Mr. Ratliff and Mr.  
5 Sarvey. And we have all agreed that we will  
6 stipulate to the admission of the staff's  
7 testimony, as well as Calpine's testimony. So I  
8 would propose that with that stipulation, which  
9 you can confirm with the other parties, that we  
10 can skip all the foundational questions on direct,  
11 and proceed directly to the substance.

12 And then secondly what we would propose  
13 to do is to put our three witnesses up as a panel  
14 because there is a certain amount of cross-over  
15 overlap between the three issues that CARE has  
16 raised in the proceeding. And allow cross-  
17 examination of all three witnesses as a panel, the  
18 three witnesses being air quality, efficiency and  
19 environmental justice.

20 So those are the two housekeeping  
21 matters.

22 HEARING OFFICER BOUILLON: Mr. Sarvey,  
23 do you find that agreeable?

24 MR. SARVEY: Yeah, I think it would  
25 expediate the hearing, so I think it's a good

1 idea.

2 HEARING OFFICER BOUILLON: I'm sorry,  
3 I've got a little bit of a cold --

4 MR. SARVEY: I believe it would  
5 expediate the hearing, so I believe it's a good  
6 idea, yes, I agree to it.

7 HEARING OFFICER BOUILLON: Well, maybe  
8 we should take a step backwards then and first  
9 introduce the testimony that the parties have  
10 agreed can come in by stipulation subject to the  
11 right of cross-examination. Would you want to put  
12 those documents on the record.

13 MR. ELLISON: Certainly. The Calpine  
14 testimony is that testimony that was dated  
15 November 23, 2004, and is titled, testimony for  
16 the application for certification for the Los  
17 Esteros Critical Energy Facility, with the docket  
18 number.

19 And consists of -- the pages are not  
20 necessarily sequentially numbered, but roughly 40  
21 pages of testimony, including affidavits and  
22 r, sum, s of witnesses.

23 The testimony also includes in each  
24 subject area other documents that are incorporated  
25 by reference and that are identified specifically

1 in the 40 pages of testimony that I just referred  
2 to. And that generally is the respective sections  
3 of the application for certification and certain  
4 responses to data requests.

5 So what we propose be admitted pursuant  
6 to the stipulation is the testimony filed November  
7 23, 2004, and all of the documents incorporated by  
8 reference therein.

9 HEARING OFFICER BOUILLON: Mr. Ratliff,  
10 do you agree with that?

11 MR. RATLIFF: Yes.

12 HEARING OFFICER BOUILLON: Mr. Sarvey?

13 MR. SARVEY: I just have one matter.  
14 Our petition for intervention requested that I be  
15 placed on the proof of service list. So to date I  
16 have not received an AFC, although I understand  
17 from Mr. Boyd, he has. And it's quite a  
18 voluminous document so it's almost impossible for  
19 me to download.

20 So I'm a little bit handicapped in that  
21 respect, but I do accept the testimony. And also  
22 I wanted to let the Committee know that this is my  
23 first look at the testimony from the applicant  
24 here, as I did not receive a hard copy of this  
25 testimony, either.

1 HEARING OFFICER BOUILLON: You received  
2 that this morning?

3 MR. SARVEY: Yes, just now.

4 HEARING OFFICER BOUILLON: And with  
5 regard to the AFC, you should have been provided  
6 with a copy.

7 MR. SARVEY: I wasn't. Apparently -- I  
8 looked at the proof of service list this morning.  
9 I'm not on it, even though the petition for  
10 hardship specifically asked that I be placed on  
11 it.

12 HEARING OFFICER BOUILLON: Okay. For  
13 today, you can have mine.

14 MR. SARVEY: Okay.

15 HEARING OFFICER BOUILLON: And I realize  
16 that --

17 MR. WORL: Commissioner, if I may --

18 HEARING OFFICER BOUILLON: Just one  
19 second. I realize that Mr. Sarvey is at somewhat  
20 of a disadvantage in that his petition to  
21 intervene was granted only a few days ago, and he  
22 has had insufficient time to prepare. But I do  
23 note that in his petition to intervene, and in  
24 subsequent communications, they have indicated  
25 that they were prepared to proceed and take the

1 case as they found it. And we are prepared to  
2 proceed on that basis this morning.

3 Now, Mr. Worl.

4 MR. WORL: Yes. We did, even though  
5 CARE had not appeared yet on the proof of service  
6 list, we did, on the basis of the last meeting,  
7 send them an AFC. But we sent the CD of the AFC.  
8 We didn't have a hard copy to send at that time.  
9 And it went to CARE, and the address of record is  
10 Mr. Boyd. So I just wanted to, for the record,  
11 say that we did, in fact, respond to the  
12 Committee's direction.

13 HEARING OFFICER BOUILLON: Mr. Sarvey,  
14 let me ask you this. I don't recall the order  
15 granting the petition at this time. Normally  
16 proof of service would list Mr. Boyd at the  
17 organization's headquarters. You live in, I  
18 believe, Tracy, is that correct?

19 MR. SARVEY: Tracy, that's correct.

20 HEARING OFFICER BOUILLON: And is it  
21 your desire to also be placed on the proof of  
22 service, if you are not already?

23 MR. SARVEY: Absolutely, yes. I'm not  
24 on it officially, and I don't intend to delay the  
25 proceedings here. I just wanted to note for the

1 record that I was a little bit disadvantaged, and  
2 this will help, thank you.

3 HEARING OFFICER BOUILLON: All right.

4 I'd note I've just found the motion to intervene.  
5 And I note that you have requested to be placed on  
6 the proof of service. And if you have not been I  
7 will see that you are --

8 MR. SARVEY: Thank you.

9 HEARING OFFICER BOUILLON: -- this  
10 afternoon.

11 MR. ELLISON: Mr. Bouillon, if I could  
12 just make one brief comment to this colloquy. To  
13 the extent that there is any disadvantage to CARE  
14 that's been referred to, it is certainly our view  
15 that it is entirely the result of CARE's own delay  
16 in filing their petition for intervention.

17 We have no objection to placing Mr.  
18 Sarvey on the service list. Mr. Boyd has already  
19 been on the service list. And all of Calpine's  
20 documents, and we believe all of the staff  
21 documents, have been served in accordance with all  
22 of the orders regarding the service list.

23 So the only reason that Mr. Sarvey  
24 hasn't been served is that their petition asking  
25 that he be placed on the service list has only

1       come in very recently, and after the filing of all  
2       the documents that we've been referring to.

3               HEARING OFFICER BOUILLON: All right,  
4       let us proceed. Have you premarked -- you have  
5       not assigned any exhibit numbers?

6               MR. ELLISON: We have not.

7               HEARING OFFICER BOUILLON: The testimony  
8       for application for certification described by Mr.  
9       Ellison we will mark applicant's exhibit 1.

10              The documents referred to therein will  
11       be incorporated into that exhibit by name and not  
12       given any other exhibits, other than incorporating  
13       them. In the decision we will have to use names  
14       for them.

15              MR. ELLISON: Actually, if I could make  
16       a suggestion, I would suggest that the main  
17       document that's incorporated by reference is the  
18       AFC. Because of the potential for there being  
19       duplicate page numbers as between the testimony  
20       and the AFC, I would suggest that we separately  
21       number the AFC as exhibit 2.

22              HEARING OFFICER BOUILLON: I think  
23       that's an appropriate suggestion. The AFC will be  
24       exhibit 2.

25              MR. ELLISON: Okay, and with that I

1 would, pursuant to the stipulation, move the  
2 admission of exhibits 1, including all documents  
3 incorporated by reference therein, which includes  
4 exhibit 2.

5 So both exhibit 1, exhibit 2, and any  
6 other incorporated documents, I would move the  
7 admission.

8 HEARING OFFICER BOUILLON: Any  
9 objection?

10 MR. SARVEY: No objection.

11 MR. RATLIFF: No.

12 HEARING OFFICER BOUILLON: There being  
13 no objection, they are admitted.

14 Mr. Ratliff, do you have any documents  
15 to submit by stipulation?

16 MR. RATLIFF: The staff would submit two  
17 documents, one of which is the final staff  
18 assessment, which --

19 HEARING OFFICER BOUILLON: What has been  
20 referred to as the staff report?

21 MR. RATLIFF: Yes, well, that is right,  
22 that is what it is. But it also is titled the  
23 final staff assessment at the top of the document,  
24 at least. And I believe the date on that is  
25 November 15th.

1           And we have a second document which is a  
2           November 23rd errata for the very minor change to  
3           one condition of certification in the cultural  
4           resources section.

5           HEARING OFFICER BOUILLON: Errata for  
6           staff testimony, cultural resources?

7           MR. RATLIFF: Yes.

8           HEARING OFFICER BOUILLON: Mr. Sarvey,  
9           have you been provided with both of those  
10          documents?

11          MR. SARVEY: Yes, I have.

12          HEARING OFFICER BOUILLON: The final  
13          staff assessment we will mark as exhibit 3. And  
14          the errata for staff testimony on cultural  
15          resources dated November 23, 2004, will be exhibit  
16          4.

17          Anything else, Mr. Ratliff?

18          MR. RATLIFF: No.

19          HEARING OFFICER BOUILLON: Mr. Sarvey, I  
20          understand you have no testimony -- no evidence to  
21          offer, as such?

22          MR. SARVEY: I have no witnesses and no  
23          exhibits at this time. Perhaps through cross-  
24          examination I may present some that the parties  
25          are already in possession of. But other than

1 that, no.

2 HEARING OFFICER BOUILLON: Any objection  
3 to accepting exhibits 3 and 4 into evidence?

4 MR. ELLISON: No objection.

5 MR. SARVEY: No objection.

6 HEARING OFFICER BOUILLON: They will be  
7 admitted.

8 All right, we can turn to the matter  
9 then of the panel of witnesses for the applicant  
10 to be cross-examined by Mr. Sarvey first, and by  
11 Mr. Ratliff, should he care to do so.

12 MR. ELLISON: Thank you. I would call  
13 as Calpine's panel Mr. Rick Tetzloff, Mr. Steve  
14 DeYoung, and Mr. Gary Rubenstein.  
15 Whereupon,

16 RICK TETZLOFF, STEVEN DeYOUNG AND  
17 GARY RUBENSTEIN

18 were called as witnesses herein, and after first  
19 having been duly sworn, were examined and  
20 testified as follows:

21 MR. ELLISON: In the interest of  
22 brevity, Mr. Bouillon, we have a limited set of  
23 disputed issues here. The testimony already  
24 provides summary, so I would simply make the panel  
25 available for cross-examination.

1 HEARING OFFICER BOUILLON: Thank you.

2 Mr. Sarvey.

3 MR. SARVEY: Thank you.

4 CROSS-EXAMINATION

5 BY MR. SARVEY:

6 Q Mr. Rubenstein, the applicant provided  
7 \$565,000 to the Air District for PM10 mitigation,  
8 and is now being asked to surrender approximately  
9 34 tons of SO2 credits in addition, to meet the  
10 original PM10 liability, is that correct?

11 MR. RUBENSTEIN: I believe that's  
12 correct, yes.

13 MR. SARVEY: And, Mr. Rubenstein, you  
14 disagree with the CEC Staff on the effectiveness  
15 of the PM10 mitigation program. Could you briefly  
16 summarize the disagreement and the magnitude of  
17 the emission reductions you believe were achieved  
18 under this program.

19 MR. RUBENSTEIN: In summary, the  
20 disagreement was that we believed, and we continue  
21 to believe, that the emission reductions that were  
22 achieved in the mitigation program required, under  
23 the original licensing, provided benefits greatly  
24 in excess of the direct tons of emissions  
25 reductions that were documented.

1           In particular we believe that because of  
2 both the different dispersion characteristics  
3 between simple cycle gas turbine and the  
4 mitigation sources, which, in this case, were  
5 diesel school buses and fireplaces and wood  
6 stoves; and also because of the increased toxicity  
7 of the pollutants coming from, for example, diesel  
8 school buses as compared with the toxicity of the  
9 particulates coming from this gas-fired power  
10 plant, that the benefits were greater, as I said,  
11 than just the direct reductions in emissions.

12           In the mitigation plan that was  
13 submitted to the Commission and approved in 2002,  
14 we actually quantified what we believe those  
15 benefits to be.

16           And based on the quantification  
17 techniques included in that analysis we believe  
18 that the PM10 impacts from the project were, in  
19 fact, fully mitigated.

20           The nature of the dispute with the CEC  
21 Staff is that they believe that only the direct  
22 reductions in emissions on a tonnage basis are  
23 providing mitigation benefits. And the additional  
24 emission reduction credits that we proposed to  
25 surrender, as documented in the staff assessment,

1 represents a compromise in an effort to resolve  
2 the issue, with both parties agreeing to disagree  
3 on whether in fact that additional mitigation was  
4 required.

5 MR. SARVEY: Have you surrendered those  
6 SO2 credits as of yet?

7 MR. RUBENSTEIN: No, we have not. They  
8 are not required to be surrendered until after the  
9 project decision.

10 MR. SARVEY: In your analysis of  
11 benefits that the PM10 mitigation program  
12 achieved, did the applicant receive any credits  
13 for the jobs that are produced by the mitigation  
14 program, such as wood stove installers and bus  
15 manufacturing?

16 MR. RUBENSTEIN: I'm not sure I  
17 understand your question, received any credits  
18 how?

19 MR. SARVEY: Do you feel that that's a  
20 benefit of the program, basically is what I'm  
21 asking, that should be considered when evaluating  
22 this program.

23 MR. RUBENSTEIN: In evaluating the air  
24 quality benefits? No, I don't.

25 MR. SARVEY: Okay. Did the applicant

1 receive any credit for the public awareness of the  
2 air quality issue and benefits derived from this  
3 PM10 mitigation program? Were you credited  
4 anything for that? Do you believe that that was a  
5 benefit?

6 MR. RUBENSTEIN: I'm not aware that the  
7 applicant was credited in any way for that.

8 MR. SARVEY: Do you believe that was a  
9 benefit?

10 MR. RUBENSTEIN: I think that to the  
11 extent that the funds spent by the Bay Area  
12 District in advertising this mitigation program  
13 resulted in increased public awareness of the need  
14 to reduce wood stove and fireplace emissions in  
15 the Bay Area in the wintertime.

16 To the extent those funds contributed to  
17 that awareness, I think there was a corollary  
18 environmental benefit, yes.

19 MR. SARVEY: Thank you. If staff would  
20 allow the applicant to provide the same amount of  
21 money to the wood stove program as the cost of the  
22 additional 34 tons of ERCs to satisfy the  
23 applicant's CEQA liability, would that be a  
24 greater benefit to the community? And would the  
25 applicant be willing to do so?

1 MR. RUBENSTEIN: If it was strictly on  
2 the basis of dollars, and if all the applicant was  
3 required to do was to literally write a check for  
4 the amount equivalent to the cost of those ERCs,  
5 then I think the applicant might be willing to do  
6 that. However, that option was explicitly  
7 rejected by the Commission Staff.

8 MR. SARVEY: And do you believe that  
9 that option would provide a greater benefit to the  
10 community than providing the SO2 ERCs?

11 MR. RUBENSTEIN: If the funds were  
12 efficiently spent on projects to reduce emissions  
13 I think that it would be equivalent and perhaps  
14 better.

15 MR. SARVEY: Can you think of a better  
16 method to encourage these types of PM10 mitigation  
17 programs that the applicant has surrendered in  
18 this case?

19 MR. RUBENSTEIN: Yes, those are the  
20 measures that were included in the original  
21 mitigation plan that we submitted to the  
22 Commission and was approved.

23 MR. SARVEY: Thank you. What is the  
24 current best available control technology level  
25 for NOx in the Bay Area Air Quality Management

1 District for simple cycle turbines of this size?

2 MR. RUBENSTEIN: I believe it's 2.5  
3 parts per million, but I'm not certain.

4 MR. SARVEY: I'd like to offer this as  
5 an exhibit, Mr. Bouillon, if it's acceptable to  
6 the parties.

7 HEARING OFFICER BOUILLON: Mr. Sarvey,  
8 is this an exhibit for purposes of refreshing the  
9 witness' recollection, or to establish facts  
10 independently of --

11 MR. SARVEY: To establish BACT.

12 HEARING OFFICER BOUILLON: Excuse me?

13 MR. SARVEY: To establish BACT in the  
14 Bay Area Air Quality Management District for  
15 simple cycle turbines is 2.5 parts per million  
16 averaged over three hours.

17 HEARING OFFICER BOUILLON: All right.  
18 At this point we will mark it exhibit 5 for  
19 identification.

20 MR. ELLISON: Mr. Bouillon, if I could  
21 just ask Mr. Sarvey how he obtained the document,  
22 and whether this is the complete document, or  
23 whether it's simply a portion of a larger  
24 document.

25 MR. SARVEY: In actuality I obtained it

1 off the internet. And there is actual no complete  
2 document. It's just referenced by section off the  
3 internet. So there is no actual complete document  
4 for -- because it's updated regularly as new items  
5 come on.

6 MR. ELLISON: Okay, so you got it off  
7 the Bay Area Air Quality Management District's  
8 website as --

9 MR. SARVEY: That's correct.

10 MR. ELLISON: -- as the bottom of the  
11 document would indicate?

12 MR. SARVEY: That's correct.

13 MR. ELLISON: Okay.

14 HEARING OFFICER BOUILLON: Mr. Ellison,  
15 for purposes of the record I will attempt to  
16 identify this and see if Mr. Sarvey agrees. I  
17 believe this is a page printed off the internet  
18 from the website of the Bay Area Air Quality  
19 Management District, is that correct?

20 MR. SARVEY: That's correct.

21 MR. ELLISON: And the other concern that  
22 I have is it's not apparent to me how this  
23 document is relevant to the PM10 and PM2.5  
24 emissions issues that you raised in your petition  
25 for intervention.

1 HEARING OFFICER BOUILLON: Well, we're  
2 going to let him try to establish that through his  
3 questions, I believe.

4 MR. ELLISON: Okay.

5 MR. SARVEY: Ready to proceed?

6 HEARING OFFICER BOUILLON: It's marked  
7 for identification. It's dated 11/27/2004, which  
8 I assume is the date it was printed, not the date  
9 it was compiled?

10 MR. SARVEY: Yes, it was printed.

11 HEARING OFFICER BOUILLON: Go ahead and  
12 ask whatever question that you have based upon  
13 this document.

14 BY MR. SARVEY:

15 Q Mr. Rubenstein, did you work for the  
16 applicant in the permitting of the Creed Energy  
17 Center?

18 MR. RUBENSTEIN: No, I did not.

19 MR. SARVEY: Did your firm?

20 MR. RUBENSTEIN: Not in the original  
21 licensing of it, no.

22 MR. SARVEY: Okay. As part of the  
23 mitigation program for the impacts from this  
24 project, you were required to apply best available  
25 control technology, is that correct?

1 MR. RUBENSTEIN: Are you referring to  
2 the PM10 mitigation program?

3 MR. SARVEY: I'm referring to the  
4 mitigation for this project in general, which  
5 would include the PM10 mitigation, since NOx is a  
6 precursor to PM10.

7 MR. RUBENSTEIN: No. The PM10  
8 mitigation program for this project was very  
9 explicitly limited to the retrofit of wood stoves  
10 and fireplaces, and the replacement of diesel  
11 school buses.

12 There was no reference to NOx emissions  
13 or best available control technology as part of  
14 the PM10 requirements.

15 Best available control technology is  
16 required under the Bay Area District's regulatory  
17 program, however.

18 MR. SARVEY: And in your opinion do  
19 emissions of NOx contribute to secondary formation  
20 of PM2.5 in those winter months?

21 MR. RUBENSTEIN: The emissions of NOx  
22 contribute to secondary formation of PM2.5  
23 throughout the year, not just in the winter  
24 months.

25 MR. SARVEY: Okay, thank you. And by

1 limiting these NOx you would, in effect, be  
2 contributing to the reduction of PM2.5 formation,  
3 is that correct?

4 MR. RUBENSTEIN: I'm hesitating because  
5 it's a complicated answer that requires modeling  
6 to respond to. In general the answer is yes, but  
7 the extent to which it contributes would vary  
8 depending on the location, meteorology and time of  
9 year.

10 MR. SARVEY: Okay, thank you. I'd like  
11 to ask a couple questions about the energy  
12 resources.

13 BY MR. SARVEY:

14 Q The applicant's testimony in the AFC on  
15 page 9.3 states that the conversion of the LECF to  
16 a natural fired combined cycle generating facility  
17 would meet the State of California's objective to  
18 license the most efficient running power plants  
19 possible as intended under Public Resources Code  
20 section 2552. Is that your testimony?

21 MR. DeYOUNG: That's correct.

22 MR. SARVEY: Now I'd like to ask a  
23 couple environmental justice questions.

24 BY MR. SARVEY:

25 Q Did the applicant meet with any minority

1 organizations in the project area?

2 MR. TETZLOFF: During this relicensing  
3 phase, no, there have not been meetings with  
4 minority groups.

5 MR. SARVEY: Were the mitigation  
6 programs designed in the original licensing  
7 targeted to the minority community?

8 MR. RUBENSTEIN: What mitigation  
9 programs in particular are you referring to?

10 MR. SARVEY: The PM10 program.

11 MR. RUBENSTEIN: No. The PM10 program  
12 was not targeted at a minority community because  
13 it was targeted at a regional air quality problem;  
14 mitigation was required to address a cumulative  
15 air quality impact and not an environmental  
16 justice issue.

17 MR. SARVEY: Okay. That's all I have  
18 for the applicant.

19 MR. ELLISON: Let me just ask one  
20 redirect question. I'll direct it to Mr.  
21 Rubenstein.

22 MR. RATLIFF: Excuse me, counsel.

23 MR. ELLISON: Oh, I apologize.

24 MR. RATLIFF: I did have one question I  
25 wanted to ask the panel before we -- and I was

1 asleep at the switch. I think I forgot to take my  
2 cue.

3 CROSS-EXAMINATION

4 BY MR. RATLIFF:

5 Q I did want to ask whichever witness is  
6 the appropriate witness to confirm that the  
7 operation of this facility in the first two years  
8 of its operation has been in what could aptly be  
9 described as a baseload operation -- I mean, not  
10 baseload, peaking mode of operation, is that  
11 correct?

12 MR. TETZLOFF: I would characterize the  
13 way the facility has run over the last two years  
14 as being anywhere from peaking to intermediate.  
15 Most likely -- or in most instances it's been  
16 asked to operate in a cycling mode where it comes  
17 on during the peak period and off during the  
18 offpeak.

19 MR. RATLIFF: Okay, thank you.

20 HEARING OFFICER BOUILLON: Mr. Ellison.

21 MR. ELLISON: Thank you.

22 REDIRECT EXAMINATION

23 BY MR. ELLISON:

24 Q Mr. Rubenstein, my redirect question is  
25 is there any disagreement between staff and

1 applicant that the PM10 and PM2.5 emissions from  
2 this project have been fully mitigated?

3 MR. RUBENSTEIN: No, there is no  
4 disagreement on that.

5 MR. ELLISON: That's all, thank you.

6 HEARING OFFICER BOUILLON: Mr. Sarvey,  
7 do either of those questions raise anything else?

8 MR. SARVEY: I'd just like to follow up  
9 on Mr. Ratliff's question.

10 RECROSS-EXAMINATION

11 BY MR. SARVEY:

12 Q Essentially this project's operating  
13 profile is not as a peaker plant, is that correct?

14 MR. TETZLOFF: I don't think I would say  
15 that it's not a peaker plant. I would say that it  
16 operates as a peaker, as a simple cycle facility  
17 would be expected to operate, which is basically  
18 running eight to 16 hours during the day during  
19 the week when you're having peak periods, in times  
20 of high demand. And it comes off generally at  
21 night.

22 MR. SARVEY: The majority of this  
23 plant's operation, then, is not triggered by stage  
24 one, two and three emergencies then?

25 MR. TETZLOFF: I wouldn't say it's

1 triggered by those. That's -- I'd say when this  
2 plant's operating, then I'd say the two events  
3 occur simultaneously, but they're not related.

4 MR. SARVEY: So this plant could operate  
5 as it currently is in baseload operation as a  
6 combined cycle plant, as well, correct, were it to  
7 be converted?

8 MR. ELLISON: Objection, that assumes a  
9 type of operation that's inconsistent with what  
10 the witness testified to.

11 MR. SARVEY: Okay, withdraw.

12 HEARING OFFICER BOUILLON: Mr. Ratliff,  
13 do you have anything further?

14 MR. RATLIFF: No.

15 HEARING OFFICER BOUILLON: Mr. Ellison,  
16 anything further?

17 MR. ELLISON: No.

18 HEARING OFFICER BOUILLON: Earlier I  
19 neglected to note that on behalf of the Public  
20 Adviser's Office Mr. Monasmith was here. I don't  
21 know if there's any member of the general public  
22 here, but the general public has a right to make  
23 any comments it would like, as a part of this  
24 evidentiary hearing.

25 Is there anyone here who would like to

1 make any additional comments at this time?

2 Hearing no response, do you have  
3 anything further to offer, Mr. Ellison?

4 MR. ELLISON: No. We would ask that the  
5 panel be excused.

6 HEARING OFFICER BOUILLON: Mr. Ratliff?

7 MR. RATLIFF: The staff has two  
8 witnesses that we had confirmed that we would  
9 provide today with both the Committee and with Mr.  
10 Sarvey.

11 I propose that the first witness be Mr.  
12 Gabriel Taylor, who will testify on air quality.  
13 Whereupon,

14 GABRIEL TAYLOR  
15 was called as a witness herein, and after first  
16 having been duly sworn, was examined and testified  
17 as follows:

18 MR. RATLIFF: Skipping the formalities  
19 of the preliminary questions, I'll go directly to  
20 the questions that I have for Mr. Taylor.

21 DIRECT EXAMINATION

22 BY MR. RATLIFF:

23 Q Mr. Taylor, did you put together the  
24 staff's recommendations for conditions of  
25 certification for the original four-month license

1 for this power plant?

2 A I did.

3 Q And in your opinion was the project  
4 adequately mitigated by those conditions of  
5 certification at that time? Or did you testify to  
6 that effect in the prior case?

7 A Yes, the conditions of certification, as  
8 approved by the Commission, in the original case  
9 would have mitigated fully the project's emissions  
10 impacts.

11 Q And during the past two years did you  
12 become aware that there were certain problems with  
13 the adequacy of that mitigation for the effects of  
14 that project over the long term?

15 A Yes, we did become aware of that,  
16 specifically with the PM10 mitigation and the  
17 requirement for wood stove retrofits and  
18 replacements.

19 Q And have you attempted to remedy that  
20 deficiency in this relicensing proceeding?

21 A We have. In negotiations with the  
22 applicant we have decided that rather than  
23 attempting to correct problems with the  
24 availability of wood stoves to be retrofit, we  
25 have decided to request mitigation by ERCs, which

1 was an option that was allowed in the original  
2 conditions of certification, and was the option  
3 that we chose in negotiations to use at this time.

4 Q Would you say that it's an unusual  
5 situation that staff gets to actually look at the  
6 efficacy of its conditions of certification and  
7 then change them?

8 A I would definitely say it's unusual, and  
9 perhaps unique. In this case, however, I would  
10 like to point out that the original condition of  
11 certification that required this PM10 mitigation  
12 did offer as an option the submittal of emission  
13 reduction credits.

14 Q And now that the applicant has agreed to  
15 submit emission reduction credits, do you feel  
16 that the project is fully mitigated and offset?

17 A I believe that the mitigation, as stated  
18 in the final staff analysis, if it is fully  
19 implemented will mitigate the project, yes.

20 Q Thank you. Do you have anything further  
21 to comment on in the summary of your testimony?

22 A Not at this time.

23 Q Okay.

24 MR. RATLIFF: Thank you, that concludes  
25 our direct testimony.

1 HEARING OFFICER BOUILLON: Mr. Sarvey?

2 MR. SARVEY: Yes.

3 CROSS-EXAMINATION

4 BY MR. SARVEY:

5 Q Mr. Taylor, Mr. Ratliff just asked you  
6 if you had prepared the conditions of  
7 certification for this project. And I want to  
8 call your attention to condition of certification  
9 AQ19-A, which is on page 4.1-15 of exhibit 3.

10 A Yes.

11 Q And you have recommended this project be  
12 permitted at 5 parts per million over three hours,  
13 is that correct?

14 A That's correct.

15 Q Were you aware that the current best  
16 available control technology for the Bay Area Air  
17 Quality Management District for this size turbine  
18 is 2.5 parts per million over three hours?

19 A I would acknowledge there's a  
20 disagreement between the exhibit number 5 that you  
21 provided here and the information provided to us  
22 at the time of publication of this document by the  
23 District.

24 Q Okay.

25 MR. SARVEY: I don't know if this has

1       been accepted as an exhibit, but I would like to  
2       offer it once again, if it has not.

3               HEARING OFFICER BOUILLON:  It has not  
4       been accepted.  It's been identified.  It has not  
5       been authenticated.  I don't know if you can do  
6       that with these witnesses or not.

7               If it is an official document that the  
8       Bay Area Air Quality Management District can  
9       provide to this Commission either now or at some  
10      subsequent date within the near future, of course,  
11      that it is an official record of that agency,, the  
12      Commission may be able to take judicial notice of  
13      it.

14              I don't know that to be the case.  I  
15      take it you're not prepared to, through any  
16      witnesses, be able to authenticate this document  
17      at this time?

18              MR. SARVEY:  Well, I believe that the  
19      fact that the document has an internet address on  
20      the bottom that it is easily accessible and speaks  
21      for itself.  So I do believe that it should be, as  
22      in previous proceedings --

23              HEARING OFFICER BOUILLON:  It does, but  
24      it is not clear that this is the current standard  
25      of that agency.  I don't see where it says that on

1 here.

2 MR. TAYLOR: I believe that what's at  
3 discussion here is whether or not this is the  
4 correct BACT number. And I believe that is a  
5 number that is set by the Bay Area Air Quality  
6 Management District.

7 The Energy Commission does not set BACT.

8 BY MR. SARVEY:

9 Q Mr. Taylor, did you write the staff  
10 assessment for the original project here?

11 A Yes, I did.

12 Q And the staff assessment for the  
13 original project on page 4.1-10 states that in the  
14 event that no other reasonable mitigation  
15 opportunities exist in the vicinity of the Los  
16 Esteros Critical Energy Facility the applicant may  
17 surrender banked ERCs with approval of the CEC.  
18 Because the ERCs are specifically a regional  
19 mitigation mechanism, this should be considered  
20 only a fair mitigation option for the project's  
21 emissions.

22 Does that statement imply that this  
23 option is inferior to the actual PM10 mitigation  
24 program?

25 A Yes.

1           Q     Would staff be willing to accept the  
2     money that the applicant is surrendering for the  
3     SO2 credits as complete mitigation for this  
4     project?

5           A     No.

6           Q     Do you feel that this circumstance that  
7     arose over this mitigation program in any way  
8     deters project applicants from performing  
9     mitigation programs such as the applicant has?

10          A     I can't comment on the motivation of  
11     individual applicants.  However, I would like to  
12     point out that this program has offered a lot of  
13     real evidence on how to implement this type of a  
14     program.  And that other projects have  
15     successfully or are successfully implementing this  
16     program.

17                     And staff has received requests from  
18     other parties concerning information about this  
19     program.  So this is building on existing  
20     information and providing more real-world  
21     experience for successfully implementing these  
22     types of PM10 mitigation programs.

23          Q     Yeah, I believe that the staff and the  
24     applicant should be proud of this program.  Do you  
25     agree with that?

1 A Yes, definitely.

2 Q Okay. Do you know where the SO2 credits  
3 that the applicant is going to surrender were  
4 created, and when they were created?

5 A The applicant has not, to my knowledge,  
6 identified specific SO2 credits at this time.

7 Q So at this time they have not been  
8 surrendered, correct?

9 A Right.

10 Q Okay. The project's NOx emissions have  
11 the potential to convert to secondary PM2.5. How  
12 does staff propose to mitigate this impact to the  
13 PM10 and 2.5 levels from the project's NOx  
14 emissions?

15 A The NOx emissions from the facility are  
16 mitigated under District rules by an ERC program.  
17 And staff believes that the NOx emissions from the  
18 facility are fully mitigated at this time.

19 Q Well, since the applicant provided VOC  
20 credits rather than NOx credits for the NOx  
21 emissions, how does staff reconcile that as CEQA  
22 mitigation to the secondary PM2.5 impacts?

23 A This is the Bay Area Air Quality  
24 Management District's emission reduction credit  
25 program, which is a programmatic approach to

1 managing long-term ambient air quality pollutants.

2 In this case, nitrogen oxides are  
3 managed through the ERC program, which allows  
4 either nitrogen or VOC ERCs to be submitted  
5 because of their contribution to ozone.

6 However, in the long term the reduction  
7 of either pollutant will reduce the basinwide  
8 pollutant levels, ambient pollutant levels.

9 Q Normally CEC Staff assesses an ammonia  
10 to secondary PM2.5 conversion of 30 percent. And  
11 that's even in an ammonia-rich area. What  
12 percentage of the project's ammonia emissions did  
13 your analysis assume conversion?

14 MR. RATLIFF: I guess I have to object  
15 on the grounds that the preliminary portion of  
16 that question is testimony that as to what staff's  
17 position on ammonia deposition actually is. And I  
18 don't know that that is a correct statement.

19 So, since we have no witness making that  
20 testimony I object to the question --

21 MR. SARVEY: I'll restate it.

22 BY MR. SARVEY:

23 Q What percentage of the project's  
24 ammonia emissions did your analysis assume  
25 conversion to PM2.5?

1           A     Just to clarify, are you referring to  
2     the original analysis or the FDOC, the current  
3     FDOC -- I'm sorry, FSA?

4           Q     The original analysis or the current.

5           A     Or? I'm not sure. I would have to  
6     review my notes for those, but I believe that we  
7     did not assume any ammonia converted to PM10 for  
8     this project.

9           Q     Are you the author of the original  
10    condition AQSC-4 in the original decision?

11          A     Yes.

12          Q     Okay. Part of that condition reads:  
13    This mitigation shall be approved by the CPM in  
14    total and initiated prior to the first fire, and  
15    must be fully realized prior to the second year of  
16    operation."

17                 Was this mitigation fully realized prior  
18    to the second year of operation?

19          A     No.

20          Q     Has there been any consequences since  
21    this condition hasn't been met?

22          A     Yes, this is why staff met with the  
23    applicant and negotiated to require the previously  
24    addressed SO2 credits be submitted.

25          Q     So this is pending mitigation, then?

1 A That's correct.

2 Q Okay.

3 MR. SARVEY: That's all I have for Mr.  
4 Taylor; thank you.

5 HEARING OFFICER BOUILLON: Mr. Ellison,  
6 do you have any questions for this witness?

7 MR. ELLISON: I'm sorry, I do.

8 CROSS-EXAMINATION

9 BY MR. ELLISON:

10 Q Mr. Taylor, is it your understanding  
11 that the project has begun its second year of  
12 operation?

13 A Yes, it's my understanding.

14 MR. ELLISON: Well, let the record  
15 reflect I have a different understanding, but  
16 we'll let that go.

17 BY MR. ELLISON:

18 Q Secondly, with respect to exhibit number  
19 5, which is the webpage. Am I correct that the  
20 District's BACT standard for NOx was 5.0 parts per  
21 million at the time the project was originally  
22 licensed?

23 A That is correct.

24 Q And so at the time the project was  
25 originally licensed there was no relaxation of

1 that requirement by the Energy Commission?

2 A The Energy Commission does not set BACT.  
3 Can you clarify that? What do you mean by  
4 relaxation of --

5 Q The Energy Commission's license for this  
6 project was fully consistent with the 5.0 parts  
7 per million BACT requirement in effect at that  
8 time, correct?

9 A That is correct. And to clarify, there  
10 was a 5.0 one-hour average -- I'm sorry, 5.0  
11 short-term average, and a 2.5 annual average BACT  
12 determination.

13 Q And the project was licensed by the  
14 Energy Commission consistent with both of those  
15 requirements?

16 A Yes, the requirements on the Energy  
17 Commission's license are identical to the District  
18 licensing.

19 Q And Calpine relied upon those  
20 requirements in procuring the equipment for the  
21 facility and constructing the facility, correct?

22 A Presumably, yes.

23 Q And there's a substantial investment  
24 involved in doing that, correct?

25 A Again, presumably.

1           Q     Is it your understanding that the  
2 project has completed its second year of  
3 operation?

4           A     I do not think so. I believe the first  
5 fire for the facility was approximately May, I  
6 believe, of last year, which would mean we're  
7 approximately 15 months in.

8           Q     Isn't it correct that if NOx emissions  
9 from this project were reduced from 5 parts per  
10 million to 1.5 parts per million the required NOx  
11 mitigation would be correspondingly reduced?

12          A     That's not as simple as it sounds since  
13 the applicant is requesting to increase the fuel  
14 flow rate through the facility, as well as the  
15 operational hours of the facility may change,  
16 depending on whether or not the applicant --  
17 depending on the operational behavior of the  
18 facility, the assumptions, I'm sorry.

19                     In other words, if the facility operated  
20 and burnt more fuel per hour and operated more  
21 frequently, then the annual emissions may increase  
22 or stay the same.

23          Q     Is it correct that in June of this year  
24 the Bay Area District removed the three-year  
25 restriction on the operation of the plant?

1 A The Bay Area District did, yes.

2 Q And in doing so the District did not  
3 propose to change BACT from the 5.0 parts per  
4 million level, is that correct?

5 A That is correct.

6 Q Let me return to the answer you gave a  
7 moment ago about Calpine proposing changes in the  
8 hours or the fuels consumption.

9 If I were to limit my question to just  
10 the phase 1 relicensing and not phase 2, would  
11 your answer be different?

12 A To limit your question, and as far as I  
13 understand you're asking if the BACT determination  
14 were to be reduced by 50 percent, and the hours of  
15 operation and fuel flow rate were to remain the  
16 same, would the annual NOx emissions be reduced.

17 The answer would be yes.

18 Q And the required NOx mitigation would be  
19 correspondingly reduced, correct?

20 A The NOx mitigation has already been  
21 submitted and approved and withdrawn from the  
22 District bank. So if the facility were to reduce  
23 its emissions I believe it would have to apply to  
24 the District for a new ERC, which may or may not  
25 be approved.

1           Q     The staff is supporting the phase 1  
2     relicensing of this project, at least -- and your  
3     air quality testimony supports it, correct, with  
4     the conditions of certification?

5           A     With the recommended mitigation, yes,  
6     staff is supporting relicensing.

7           Q     Okay, so with that recommended  
8     mitigation can I safely assume staff believes that  
9     the project complies with applicable LORS and is  
10    fully mitigated?

11          A     Yes.

12                 MR. ELLISON:  That's all I have, thank  
13    you.

14                 HEARING OFFICER BOUILLON:  Mr. Ratliff,  
15    do you have anything?

16                 MR. RATLIFF:  Yes.

17                         REDIRECT EXAMINATION

18    BY MR. RATLIFF:

19           Q     Mr. Taylor, regarding the document that  
20    Mr. Sarvey gave us during his cross-examination of  
21    the Bay Area Management District's guidelines for  
22    BACT, first of all are you generally familiar with  
23    the way the Bay District applies its BACT  
24    regulations?

25          A     Yes.

1           Q     And with regard to the relicensing of  
2     this facility, is there any change in the annual  
3     tonnage of NOx emitted by this facility between  
4     the existing license and the relicense?

5           A     No.

6           Q     And under the Bay District's regulations  
7     would BACT therefore apply to this relicensing  
8     project?

9           A     BACT, the best available control  
10    technology, for the District consists of two  
11    parts. First the level at which the facility must  
12    comply with. And secondly, whether or not the  
13    facility is required to comply with that level.

14                   And that trigger of whether or not  
15    required to comply with is two part. First of  
16    all, it has to emit more than 10 pounds per hour;  
17    and secondly, it has to be increased in emissions.  
18    And this facility did not increase emissions, and  
19    so it did not trigger the requirement to comply  
20    with BACT.

21           Q     So, if I can just go one step beyond  
22    your last answer, does this document have any  
23    application to the relicensing of this facility?

24           A     I do not believe it does.

25           Q     Okay, thank you.

1 HEARING OFFICER BOUILLON: Mr. Sarvey,  
2 do you have further questions?

3 MR. SARVEY: Yeah.

4 RE-CROSS-EXAMINATION

5 BY MR. SARVEY:

6 Q Mr. Taylor, have you had an opportunity  
7 to examine the FDOC for this project? Phase 1?

8 A There was no FDOC published for the  
9 phase 1 project. There was a PDOC published for  
10 the phase 2. But the phase 1 project was not  
11 reviewed by the Bay Area Air Quality Management  
12 District.

13 They prepared an administrative  
14 modification of their existing license, which  
15 eliminated the expiration date, the three-year  
16 expiration date. And that was the extent of their  
17 analysis.

18 Q If this project were to run a full 8760  
19 hours at 5 ppm what is your professional opinion  
20 whether it could meet an annual limit of 74.9  
21 tons?

22 A It could not at 5 ppm.

23 Q So, in fact, this project's licensed for  
24 8760 hours at 5 ppm, but it cannot meet the annual  
25 limit, is that correct?

1           A     That's correct. The annual tonnage  
2     limit is based again on a 2.5 ppm assumption, over  
3     8760 hours.

4           Q     Is it correct that the annual tonnage  
5     limit is projected on 4330 hours at 2.5 ppm, and  
6     that gives you the 74.9? That's what's reflected  
7     in the FDOC, I don't --

8           A     I believe that's more accurate. I think  
9     that I would have to check again my notes, but the  
10    assumption is based on a certain amount of down  
11    time and maintenance time.

12           MR. SARVEY: I'd like to offer the FDOC  
13    as an exhibit, if I can find it. I do have it  
14    here.

15           MR. RATLIFF: A question. Which FDOC  
16    are we talking about?

17           MR. SARVEY: For phase 1 from the Bay  
18    Area Air Quality Management District.

19           MR. RATLIFF: The witness just testified  
20    there was no FDOC.

21           MR. SARVEY: I have it right here in my  
22    hand.

23           MR. TAYLOR: The original licensing?

24           MR. SARVEY: From the original  
25    licensing, yes. That's correct. I do not have

1 copies. I'll just go on. I could have this  
2 verified when I have the District BACT verified by  
3 the District personnel, if that would be okay with  
4 the Committee.

5 MR. RATLIFF: Could we ask Mr. Sarvey  
6 what is the date on the document that he's --

7 MR. SARVEY: 2/1/02.

8 HEARING OFFICER BOUILLON: Show it to  
9 Mr. Ellison, also.

10 (Pause.)

11 MR. ELLISON: Mr. Bouillon, let me just  
12 say that the document that was just given to us is  
13 approximately 36 pages. The pages appear to be  
14 out of sequence. The document appears to be  
15 incomplete. I showed it to Mr. Rubenstein who is  
16 our air quality witness, and we, in the amount of  
17 time offered, really can't make heads or tails of  
18 it.

19 So, we're not prepared to stipulate to  
20 the legitimacy of this document as an FDOC for the  
21 original phase 1 relicensing.

22 I would also say that this is an issue  
23 which we view as being outside the scope of the  
24 issues that were raised by CARE in its petition  
25 for intervention. And if this line of questioning

1 is allowed to continue we would ask that we be  
2 allowed to recall Mr. Rubenstein, which we're  
3 prepared to do immediately, to comment on the  
4 issue.

5 MR. SARVEY: I've completed my  
6 questioning on that item.

7 HEARING OFFICER BOUILLON: Wait a  
8 second, Mr. Sarvey. Mr. Ratliff, do you have any  
9 comments?

10 MR. RATLIFF: Well, we're reluctant to  
11 object to a document which is a matter of public  
12 record, but then I guess there is always some  
13 question as to whether the document we have in our  
14 hand is the actual final document.

15 I don't know what it is, and I'm not  
16 quite sure why it's being offered. But if the  
17 Committee really thinks it needs to look at the  
18 FDOC for the first licensing in the four-month  
19 process for the project, that document does exist  
20 and is in our docket, and is available to the  
21 Committee. For what purpose I'm not quite sure  
22 you would want to look to it.

23 I do have at least one redirect question  
24 for my witness before you decide whether or not to  
25 put on Mr. Rubenstein again, however.

1 HEARING OFFICER BOUILLON: Mr. Sarvey,  
2 do I understand that the purpose of this  
3 collection of paper you have there in your hand is  
4 an attempt to use it as the FDOC in the original  
5 certification of Los Esteros?

6 MR. SARVEY: Well, I understand from Mr.  
7 Ratliff here that it's already part of the  
8 proceedings, so I'll just reference to it. And  
9 it's already accepted in the administrative  
10 record, and I'll offer it to the evidentiary  
11 record. I have no more questions about it.

12 HEARING OFFICER BOUILLON: That --

13 MR. SARVEY: The purpose was just to  
14 show --

15 HEARING OFFICER BOUILLON: That FDOC --

16 MR. SARVEY: -- that this project cannot  
17 meet 74 tons annually at 5 ppm, and this project  
18 is licensed for 8760 hours.

19 HEARING OFFICER BOUILLON: The  
20 substantive part of your argument aside, if you're  
21 seeking to establish something through your  
22 questions that refers to the FDOC in the original  
23 certification that is a matter of public record,  
24 and a matter contained in this Commission's public  
25 records, and if you would ask the Commission to

1 take judicial notice, or the Committee to take  
2 judicial notice of that document, we could do so.

3 And if you need to refresh the  
4 recollection of the witness by using some paper  
5 you have, if it helps, you can do so. I'm not  
6 going to -- I have not seen those papers, but I'm  
7 not going to mark something as an exhibit if it is  
8 not a complete document. But if you can use it to  
9 assist you in your questioning, you're welcome to  
10 do so.

11 MR. SARVEY: I trust the Commissioners'  
12 discretion. Judicial notice is fine with me,  
13 thank you.

14 HEARING OFFICER BOUILLON: All right, we  
15 will do that.

16 MR. ELLISON: Mr. Bouillon, we would  
17 still ask to recall Mr. Rubenstein for one  
18 question based upon the questioning that has just  
19 occurred.

20 HEARING OFFICER BOUILLON: I see no  
21 problem with that.

22 MR. ELLISON: Okay, at the appropriate  
23 time we'll do that.

24 HEARING OFFICER BOUILLON: Do you have  
25 some additional questions for this witness, Mr.

1 Sarvey?

2 MR. SARVEY: No. Thank you, Mr. Taylor.

3 MR. RATLIFF: I have merely one question  
4 on redirect, and that is to try to clarify, I  
5 think, perhaps some confusion about this.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. RATLIFF:

8 Q Mr. Taylor, with regard to the prior  
9 proceeding there was a final DOC, final  
10 determination of compliance issued by the Air  
11 District for the original four-month license for  
12 this proceeding, is that correct?

13 A That's correct.

14 Q And is it your understanding that that  
15 is what the document that was just offered into  
16 evidence by Mr. Sarvey?

17 A That is correct, I'm familiar with that  
18 document.

19 Q And for the current licensing  
20 proceeding, or relicense proceeding of this  
21 project that we are discussing today, there is no  
22 such final determination of compliance, is that  
23 correct?

24 A That is also correct.

25 Q Is there any further elaboration you

1 wish to make on this which would clarify it any  
2 further it needs to be? And be careful here,  
3 don't make it more complicated.

4 A Just as a minor point of clarification,  
5 the staff has been treating this as three separate  
6 individual analyses, three separate projects, the  
7 original project, the relicense project and the  
8 combined cycle project.

9 And that was named in the AFC as phase 1  
10 and phase 2, so the unnamed original project is --  
11 it doesn't have a name, but the original project.  
12 When Mr. Sarvey asked me about the phase 1, I  
13 assumed he meant the relicense, not the original  
14 project. I apologize for the difference.

15 MR. RATLIFF: I have no other questions.

16 HEARING OFFICER BOUILLON: Mr. Ellison,  
17 do you have any further questions for this  
18 witness?

19 MR. ELLISON: For this witness, no.

20 HEARING OFFICER BOUILLON: Mr. Sarvey,  
21 does that last question by Mr. Ratliff raise  
22 anything in your mind?

23 MR. SARVEY: I only have one other  
24 question.

25 Mr. Taylor indicated that this project

1 had run 12 months, and I just wanted to offer the  
2 compliance record as an exhibit. It has run 12  
3 months.

4 HEARING OFFICER BOUILLON: I'm sorry,  
5 what is that?

6 MR. SARVEY: This is the compliance  
7 record for the Los Esteros project. It was given  
8 to me by Lance Shaw. I have his card attached to  
9 it.

10 So, in fact, this project has run over  
11 12 months.

12 HEARING OFFICER BOUILLON: Let's hold  
13 off on that for one moment.

14 Mr. Ellison, you wanted to recall a  
15 witness that you think has some relevance to this  
16 matter?

17 MR. ELLISON: I do. We would like to  
18 recall Mr. Rubenstein who has been previously  
19 sworn.

20 HEARING OFFICER BOUILLON: You may do  
21 so. You're still under oath.  
22 Whereupon,

23 GARY RUBENSTEIN  
24 was recalled as a witness herein, and having been  
25 previously duly sworn, was examined and testified

1 further as follows:

2 DIRECT EXAMINATION

3 BY MR. ELLISON:

4 Q Mr. Rubenstein, you heard the cross-  
5 examination of Mr. Taylor, correct?

6 A Yes, I did.

7 Q Do you have any comments on the issue of  
8 the ability of the plant to run at 5.0 parts per  
9 million NOx for 8760 hours and meet the limits of  
10 the District?

11 A Yes, I do. As Mr. Taylor indicated in  
12 his testimony, the short-term BACT limit was  
13 originally set for the project at 5 parts per  
14 million. However, the project was also designed  
15 to meet half that level or 2.5 parts per million  
16 on a long-term average basis. That was clearly  
17 discussed during the record of the prior  
18 proceeding.

19 The relevance of that is that this plant  
20 does, in fact, have the ability, both from an  
21 engineering perspective and legally under its  
22 permit, to operate 8760 hours per year should it  
23 be called on to do so.

24 You can see that quite simply by taking  
25 a look at the staff assessment for this phase of

1 the proceeding, and looking in particular at  
2 condition AQ-19, subparagraph (g) as in George.  
3 That's on page 4.1-16 of the staff assessment.

4 That condition limits the total NOx  
5 emissions on a short-term basis to 34.2 pounds per  
6 hour for all four turbines. That 34.2 pound per  
7 hour number is based on the short-term  
8 concentration of 5 parts per million.

9 If you just simply cut that number in  
10 half, going from 5 parts per million down to 2.5  
11 parts per million, which is the long-term design  
12 basis for the plant, then instead of 34.2 pounds  
13 per hour, the emissions from all four turbines  
14 combined would be 17.1 pounds per hour.

15 If you multiply that by 8760 hours, and  
16 divide that by 2000 pounds per ton, you arrive at  
17 exactly 74.9 tons per year, which is the annual  
18 emissions limit shown in condition AQ-22 further  
19 down on that page.

20 There are a number of different  
21 operating scenarios obviously that a plant like  
22 this can operate under. I merely wanted to  
23 clarify, based on what I heard earlier, that the  
24 design basis was not based on some fraction of a  
25 year operation. The plant, in fact, was designed

1 so that from both an engineering and a legal  
2 perspective it could operate up to 8760 hours per  
3 year at full load and remain in compliance with  
4 the 74.9 ton-per-year NOx limit.

5 MR. ELLISON: That's all we have, thank  
6 you.

7 HEARING OFFICER BOUILLON: Mr. Sarvey,  
8 you wish to cross-examine on that topic?

9 MR. SARVEY: Yeah.

10 CROSS-EXAMINATION

11 BY MR. SARVEY:

12 Q Mr. Rubenstein, this project, as  
13 permitted with the Bay Area Air Quality Management  
14 District, its emission rates indicated that the  
15 project at 5 ppm would well exceed 74.9 tons per  
16 year, is that correct?

17 A If it were to operate at 5 parts per  
18 million year-round, yes, it would exceed 74.9 tons  
19 per year.

20 Q So you're speaking of design limits, not  
21 permit limits, correct?

22 A No, I'm speaking of two types of permit  
23 limits, both the short-term limit and a long-term  
24 limit. And as Mr. Taylor indicated, and I agree,  
25 the long-term limit of 74.9 tons per year is based

1 on the concentration of 2.5 parts per million, not  
2 5 parts per million.

3 Q Okay. You prepared answers to the data  
4 requests for air quality and biology, is that  
5 correct, in terms of the air quality impacts from  
6 this project?

7 A Yes, I did.

8 MR. ELLISON: I'm sorry, let me clarify  
9 that question. Did you ask about both air quality  
10 and biology?

11 MR. SARVEY: The air quality sections of  
12 the biology project.

13 MR. ELLISON: Okay.

14 BY MR. SARVEY:

15 Q And you prepared attachment Bio-1, daily  
16 NOx and NH3 emissions, is that correct?

17 A Can you tell me which data request  
18 that's in response to?

19 Q That would be data request 4. It's on  
20 page 17 of your data request response.

21 HEARING OFFICER BOUILLON: Sorry, Mr.  
22 Sarvey, what page are you on?

23 MR. SARVEY: Unfortunately these pages  
24 are not numbered. Page 17 is attachment Bio-1;  
25 that would be of the data request responses.

1 (Pause.)

2 MR. RUBENSTEIN: I'm sorry, Mr. Sarvey,  
3 I'm still trying to figure out which data response  
4 attachment Bio-1 was provided in response to. You  
5 had indicated that it was data response 4, but  
6 data response 4 has nothing to do with -- it's an  
7 air quality data response, not biology. So I'm  
8 still looking to see what the reference was for  
9 that.

10 I see now. It was in response to data  
11 request 15.

12 BY MR. SARVEY:

13 Q Fifteen, that's correct.

14 A On page 8. And this was prepared by the  
15 applicant; I can't recall whether it was prepared  
16 by the plant staff and submitted by us, or whether  
17 we prepared this based on data provided by the  
18 plant staff.

19 Q So it wasn't prepared by you, then?  
20 Okay. Well, looking at this response prepared by  
21 the applicant, does it look like this project is  
22 meeting 2.5 on a consistent level?

23 A No, because it hasn't been required to,  
24 to comply with any of the permit limits, --

25 Q Okay.

1           A     -- including the 74.9 ton per year  
2     limit.

3           Q     Okay.  In fact, biology staff has  
4     indicated that they project that this project will  
5     emit 161 tons per year operating at 8760 hours.  
6     Do you disagree with that?

7           A     Absolutely.

8           Q     Okay, thank you.

9           MR. SARVEY:  That's all I have.

10          (Pause.)

11          MR. RATLIFF:  And, Mr. Bouillon, if I  
12     may I just wanted to assure the Committee that in  
13     terms of the amount of criteria emissions any  
14     project emits, it is staff's practice to always  
15     have that be an air quality witness matter, not to  
16     be contradicted by biological testimony.

17                 So it will be, to be certain, those  
18     numbers will have to be reconciled if they are not  
19     the same.  But I don't believe that there is any  
20     testimony by the biological witnesses as to the  
21     emissions of criteria pollutants in this case.

22          HEARING OFFICER BOUILLON:  All right.  
23     Anything left on this topic?

24          MR. ELLISON:  I do have some redirect  
25     and followup to the last question from Mr. Sarvey.

1 HEARING OFFICER BOUILLON: Go ahead, Mr.  
2 Ellison.

3 REDIRECT EXAMINATION

4 BY MR. ELLISON:

5 Q Mr. Rubenstein, your last answer was  
6 that you absolutely disagreed with the statement  
7 that running at 8760 hours per year that the  
8 project would exceed the 74.9 tons per year limit.

9 Would you explain why you absolutely  
10 disagree with that statement?

11 A Yes. Because there is a permit limit of  
12 74.9 tons per year, and the facility hasn't even  
13 come close to approaching that limit. And there's  
14 sufficient design flexibility, both in terms of  
15 operating the plant and operating the emission  
16 control systems, to insure that that limit is met.

17 Q So to sum up, on a short-term basis the  
18 project can operate at up to 5 parts per million,  
19 correct?

20 A That's correct.

21 Q But on a long-term basis it has to  
22 achieve the 74.9 tons per year limit, correct?

23 A That's correct.

24 Q And it can do so both under its permit  
25 and under its physical operation, operating -- it

1 can, when I say do so, it can achieve the 74.9  
2 tons per year limit consistent with both its  
3 permit and its physical design, correct?

4 A That's correct.

5 MR. ELLISON: That's all I have, thank  
6 you.

7 HEARING OFFICER BOUILLON: Mr. Sarvey.

8 MR. SARVEY: That's all I have, thank  
9 you.

10 HEARING OFFICER BOUILLON: There are two  
11 other witnesses from the staff. Do you have any  
12 cross-examination? In light of what's gone  
13 heretofore, do you have any further cross-  
14 examination of staff witnesses?

15 MR. SARVEY: A couple of quick questions  
16 of the two other witnesses, nothing extensive.

17 HEARING OFFICER BOUILLON: Mr. Ratliff,  
18 would you call your next witness, please.

19 MR. RATLIFF: Yes. Our next witness is  
20 Mr. Steve Baker, who is the staff witness on power  
21 plant efficiency. Mr. Baker was the supervisor  
22 for Shahab Khoshmashrab, who was the original  
23 witness who prepared the testimony, but who was  
24 unavailable today because he had to take his son  
25 to the doctor, I believe.

1           So, I believe it's agreeable; I told --  
2           we were aware of this conflict when we had the  
3           prehearing conference. I told all parties that  
4           Mr. Baker would testify in place of the actual  
5           witness. And that was agreeable at that time; no  
6           parties objected at least then. And so Mr. Baker  
7           is now going to be that witness.

8           Whereupon,

9                                 STEVE BAKER

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

13                         HEARING OFFICER BOUILLON: Mr. Ratliff,  
14          I would ask preliminary to this testimony if you  
15          would establish his abilities to testify for the  
16          witness who did prepare this testimony.

17                         MR. RATLIFF: Yes.

18                                 DIRECT EXAMINATION

19          BY MR. RATLIFF:

20                         Q     Mr. Baker, you're familiar with the  
21          testimony of Mr. Shahab Khoshmashrab on power  
22          plant efficiency in this case, is that correct?

23                         A     Yes.

24                         Q     And did you supervise and review the  
25          preparation of that testimony?

1           A     Yes, I did.

2           Q     And is that testimony true and correct  
3 to the best of your knowledge and belief?

4           A     Yes, it is.

5           Q     Do you have any changes to make in it at  
6 this time?

7           A     No.

8           Q     Okay. Can you briefly describe why our  
9 electric supply system requires both peaking and  
10 baseload facilities?

11          A     The load on the grid at any one moment  
12 is constantly changing. Since storing electricity  
13 is very expensive, we generate the electricity at  
14 the exact moment that it's needed or demanded.

15                 Since the load is always changing, the  
16 demand is always changing. Therefore, the supply  
17 has to be continually changing also.

18                 Baseload power plants like to run at a  
19 constant output. They work efficiently and  
20 cleanly when they run at a constant output. Yet,  
21 since the demand is constantly changing, we have  
22 to have some power plants on the grid that can  
23 vary their output on a short-term basis, either  
24 daily or hourly or minute-by-minute.

25                 We need a certain amount of these

1 plants, and we need some of them near the load,  
2 itself. Peaking plants are intended to serve this  
3 need. Peakers are typically fairly small. They  
4 can be adjusted -- their output can be adjusted up  
5 and down fairly quickly to meet demands. And some  
6 of them have to be located near the load in order  
7 to maintain power quality.

8 The Los Esteros project does fit the  
9 definition of a peaker. It can be -- it's output  
10 can be adjusted up and down rather rapidly, and it  
11 is located very near the load center.

12 Q You heard the earlier discussion today  
13 concerning the way in which this power plant has  
14 been operated as a peaking or load-following  
15 facility, is that correct?

16 A Yes.

17 Q Do you agree with that testimony or have  
18 any comment to make about it?

19 A I agree with it. Looking at the actual  
20 plant energy output over the first 19 months of  
21 operation, that's March 2003 through September  
22 2004, looking at statistics compiled by the  
23 staff's assessments office, the average capacity  
24 factor of the Los Esteros project, that is the  
25 actual energy output, as a portion of the

1 potential output, had it run at full output, it's  
2 capacity factor over those first 19 months was  
3 only about 12 percent.

4 In other words, it only ran about an  
5 equivalent of one-eighth of the time. This is a  
6 number consistent with a peaker.

7 Q Why is it not economic to operate a  
8 peaking facility as a baseload unit?

9 A A peaker typically is less fuel  
10 efficient than a baseload plant, so it's going to  
11 burn more fuel. Fuel costs money. Therefore,  
12 operating a peaker in place of a baseload would  
13 consume more fuel, consume more money.

14 If you could serve the load with your  
15 more efficient baseload plant, you would obviously  
16 choose to do so.

17 Q Would you expect Calpine to convert this  
18 facility to a combined cycle facility if they  
19 intended to run it in a baseload capacity?

20 A I'd be surprised if they did not.

21 Q And is it your impression that that is  
22 exactly what Calpine has filed an application for  
23 its phase 2 of this proceeding?

24 A Yes, it is.

25 MR. RATLIFF: I have no other questions.

1 HEARING OFFICER BOUILLON: Mr. Sarvey.

2 BY MR. SARVEY:

3 Q Mr. Baker, you prepared the original  
4 supplement to the staff assessment for this  
5 project December 31, 2001?

6 MR. RATLIFF: Sorry, which document are  
7 you referring to?

8 MR. SARVEY: That would be the Los  
9 Esteros Critical Energy Facility staff report  
10 dated December 2001.

11 MR. RATLIFF: Well, we don't have that  
12 document with us. It's not being offered in  
13 evidence today. Is this a document that was for  
14 the original licensing --

15 MR. SARVEY: For the original license,  
16 correct.

17 MR. RATLIFF: Oh, okay.

18 MR. BAKER: That's ancient history. I'd  
19 have to go to the files to refresh my memory.

20 MR. SARVEY: I'll move on.

21 BY MR. SARVEY:

22 Q Has staff considered a limit on how long  
23 this project can operate as a simple cycle  
24 facility?

25 A No, we have not. We don't feel it's

1 necessary.

2 Q So that limit that it was originally  
3 imposed was imposed in response to a state law,  
4 correct?

5 A I don't know what limit you're referring  
6 to.

7 Q The efficiency limit that was imposed  
8 that exists in the license as it stands now,  
9 Efficiency-1, I believe it is.

10 A The condition of certification under the  
11 efficiency section of the original license under  
12 which the plant now operates was there in response  
13 to a law which allowed accelerated permitting of  
14 this project, and accelerated operation of the  
15 plant in exchange for the promise that it would be  
16 later either relicensed or converted to a combined  
17 cycle facility.

18 Q Thank you. Were this project to be  
19 converted to a combined cycle facility could you  
20 give the Committee an idea of how many million  
21 Btus would be saved per megawatt of production  
22 from this project?

23 A If it were still operated at the current  
24 capacity factor of about 12 percent, not much.

25 Q If it were operated --

1           A     It's not a good idea to try to compare  
2     fuel consumption of a peaker plant with fuel  
3     consumption of a baseload plant, because they're  
4     not going to be operating the same number of  
5     megawatt hours per year.

6           Q     Were it to be operated 8760 hours, as  
7     it's permitted, could you give us an estimate,  
8     please?

9           A     If this plant were operated continuously  
10    throughout the year we can expect a fuel  
11    efficiency of about 38 percent. The combined  
12    cycle version of this plant, putting out the same  
13    number of megawatt hours a year, would be  
14    operating at less than full capacity. So its  
15    efficiency would be somewhat less than its maximum  
16    of 46 percent.

17                   My quick, off-the-cuff guess would be  
18    that the baseload plant could operate somewhere  
19    between 42 and 46 percent efficiency, let's say  
20    44. So we're talking an increase in fuel  
21    efficiency of, at most, 6 percentage points.

22                   But, we're talking about 2 million  
23    million Btus consumption of the plant, the  
24    existing plant, at 12 percent capacity factor.  
25    So, whereas the current plant might have consumed

1 16 million Btus, the combined cycle might  
2 comparatively consume maybe 15 million Btus --  
3 million million, excuse me.

4 Q You mentioned earlier that the price of  
5 natural gas is the motivation for the applicant to  
6 convert this project to combined cycle, is that  
7 correct?

8 A That's certainly an important  
9 motivation.

10 Q And if the applicant had a contract that  
11 could pass the price of natural gas on to the  
12 buyer, is that motivation removed?

13 A That's speculative. I wouldn't know.

14 MR. SARVEY: That's all I have.

15 MR. ELLISON: No questions.

16 HEARING OFFICER BOUILLON: Do you have a  
17 desire to cross-examine the third staff witness,  
18 Mr. Sarvey?

19 MR. SARVEY: Yes, I do.

20 MR. RATLIFF: There is no third staff  
21 witness.

22 HEARING OFFICER BOUILLON: I'm sorry.

23 (Laughter.)

24 HEARING OFFICER BOUILLON: Anything  
25 further, gentlemen?

1 MR. ELLISON: No.

2 HEARING OFFICER BOUILLON: Mr. Ratliff?

3 MR. RATLIFF: No.

4 HEARING OFFICER BOUILLON: Mr. Sarvey.

5 Your document, exhibit 5, has not been admitted.

6 I'm not sure, given the testimony we've heard, and

7 your questions based on it, that it has -- that

8 you demonstrated any relevance to that document.

9 However, I think the most appropriate  
10 thing to do at this point is to take that matter  
11 of that document under submission subject to  
12 giving you maybe three days to submit to this  
13 Commission a proper request for judicial notice  
14 describing the document, where it comes from and  
15 how this Committee can authenticate it.

16 Once it has become authenticated we will  
17 then issue a ruling about whether or not to admit  
18 it as evidence.

19 But I think for purposes of concluding  
20 this hearing and making any arguments the parties  
21 wish to make, they can include references to  
22 exhibit 5 as they deem appropriate.

23 And I will start first with Mr. Ellison,  
24 ask you if you wish to make any argument?

25 MR. ELLISON: With respect to exhibit 5,

1 we have no objection to official notice of the  
2 entirety of the District's rules. We do have a  
3 concern with selectively noticing pieces of them.

4 And in particular, the concern we have  
5 is if you're going to take notice of the 2.5 parts  
6 per million NOx threshold, it's critical that you  
7 also take notice of the rules that govern when  
8 that threshold applies and when it doesn't. It  
9 does not apply in this case, as the record already  
10 reflects.

11 So, if you're going to take notice, we  
12 would certainly stipulate with CARE to taking  
13 notice of all of the District's rules. But we  
14 would object to taking notice of some portion of  
15 them without all of them.

16 HEARING OFFICER BOUILLON: Mr. Ellison,  
17 I can assure you that this Committee has no  
18 intention of excerpting one page from any report  
19 and taking judicial notice of it, especially as it  
20 might establish some fact.

21 Once we're provided the authentication  
22 of it, if we take judicial notice at all it will  
23 be of the entire document. But at this point I  
24 don't know what that entire document consists of.

25 When I asked you for argument, I meant

1 with regard to the entire proceedings here today.  
2 Do you have anything further to off?

3 MR. ELLISON: No, I'm sorry, I  
4 misunderstood. I apologize. No, we do not have  
5 anything further.

6 HEARING OFFICER BOUILLON: Mr. Ratliff?

7 MR. RATLIFF: No.

8 HEARING OFFICER BOUILLON: Mr. Sarvey,  
9 would you like to make any argument?

10 MR. SARVEY: Just that I didn't  
11 understand why the environmental justice  
12 representative wasn't here for staff, number one.

13 And as far as authenticating exhibit 5,  
14 I would need ten days to execute a public records  
15 request with the Bay Area Air Quality Management  
16 District to authenticate it. So, that's my  
17 limitation on that.

18 MR. RATLIFF: Mr. Bouillon, if I may,  
19 the environmental justice witness, so to speak, is  
20 essentially the socioeconomic witness. That's  
21 where the testimony is found.

22 And that testimony is purely demographic  
23 in nature, and describes the demographics of the  
24 population within a six-mile radius of the  
25 project.

1 I didn't purport to dispute that there  
2 may be minority groups living within six miles of  
3 the project. And I didn't think that that was  
4 really going to be a very useful thing for us to  
5 be testifying about.

6 The real issue of environmental justice  
7 has to do with whether there is a significant  
8 effect on the environment. And that is an air  
9 quality issue and that is why we produced an air  
10 quality witness.

11 So I thought that we had fulfilled our  
12 obligation to produce witnesses by discussing the  
13 underlying effect, not the demographics.

14 HEARING OFFICER BOUILLON: In looking at  
15 the prehearing conference statement submitted by  
16 CARE, I note that their discussion of  
17 environmental justice does include only the air  
18 quality portion of that.

19 I would agree with Mr. Ratliff and the  
20 comments he just made, that I believe a witness  
21 testifying as to air quality is sufficient to meet  
22 his burden in that regard. And I don't think  
23 there's any question been raised about the actual  
24 demographics contained in the environmental  
25 justice portion of the testimony.

1 Mr. Sarvey.

2 MR. SARVEY: Obviously I have to accept  
3 the Hearing Officer's ruling. I just wanted to  
4 make one more statement.

5 HEARING OFFICER BOUILLON: Go ahead.

6 MR. SARVEY: I wanted to thank the  
7 Committee for offering us an opportunity, and  
8 accepting us as an intervenor, and giving us the  
9 opportunity to present our position. And it's  
10 much appreciated. Thank you.

11 HEARING OFFICER BOUILLON: Thank you.

12 At this hearing, as at all hearings, we have a  
13 requirement for the public to make any comments  
14 they'd like to make. Is there any member of the  
15 public here that would like to make any statement  
16 whatsoever?

17 Seeing no one and hearing no one, I  
18 believe we can conclude the hearing, Mr. Chairman.

19 PRESIDING MEMBER KEESE: This hearing is  
20 concluded.

21 (Whereupon, at 11:42 a.m., the hearing  
22 was concluded.)

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## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of December, 2004.

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