PUBLIC 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, Phase 2 )
(Los Esteros 2) )
_______________________________)

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

WEDNESDAY, JUNE 28, 2006
9:06 a.m.

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

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
COMMITTEE MEMBERS PRESENT
Jackalyne Pfannenstiel, Presiding Member

COMMISSIONERS PRESENT
John Geesman

HEARING OFFICER, ADVISORS PRESENT
Gary Fay, Hearing Officer
Timothy Tutt

STAFF AND CONSULTANTS PRESENT
Robert Worl, Project Manager
Richard Ratliff, Senior Staff Counsel
David Ashuckian
Mark Hesters
R. Peter Mackin
Utility System Efficiencies, Inc.

APPLICANT
Jeffery D. Harris, Attorney
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representing Calpine Corporation

Michael Argentine
Robert McCaffrey
Calpine Corporation

Gary Rubenstein
Sierra Research

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
P R O C E E D I N G S

9:06 a.m.

PRESIDING MEMBER PFANNENSTIEL: This is
a public hearing on the Los Esteros Critical
Energy Facility Phase 2. I'm Commissioner Jackie
Pfannenstiel; I'm the Presiding Member on the Los
Esteros Committee.

To my far right is Commissioner John
Geesman, who, because it's anticipated that
Commissioner Geesman will join this Committee,
he's sitting in on today's hearing.

To my immediate right is Hearing Officer
Gary Fay. To my left is Tim Tutt, my Advisor.

This is for purposes of considering
additional evidence that relate to the staff
motion to possibly override the City to gain LORS
compliance, or to override the LORS issue, to be
able to finally certify the license for this
plant.

So, the hearing today will be conducted
by Hearing Officer Fay. Turn that over to Gary.

HEARING OFFICER FAY: Thank you,
Commissioner Pfannenstiel. I'd just like to
review for the parties the documents, but first
I'd like to take appearances. We'll begin with
the applicant.

MR. HARRIS: Good morning; my name is Jeff Harris. I'm here on behalf of the applicant. To my right is Mike Argentine, who is the development Project Manager.

Also with us today is Bob McCaffrey, who's Director of Gas-Fired Operations. And Gary Rubenstein with Sierra Research; our air quality expert. And Shane Conway, a clerk with my office, as well.

HEARING OFFICER FAY: Thank you. Mr. Ratliff?

MR. RATLIFF: Dick Ratliff, Counsel for the staff. With me today is Bob Worl, the Project Manager. And to my left are three witnesses that the staff would have testify today, Dave Ashuckian, Mark Hesters and a consultant to the staff, Peter Mackin.

HEARING OFFICER FAY: Thank you. Is CARE here? Is there a representative from CARE present? How about the City of San Jose? Is there a representative from the City of San Jose present?

Okay, I'd just note that the hearing was noticed for 9:00 a.m., and it is now ten minutes
after nine. So we'll see if we hear from them later.

Just for the record I'd like to review the documents, relevant documents. The staff filed its motion for hearing on May 26th. And on June 9th the Committee issued a Committee order granting staff's motion and noticing today's hearing.

In the notice the Committee directed parties to file comments, legal argument and any additional testimony that they sought to introduce on June 22nd.

On June 22nd we received testimony from the staff on a number of transmission system related issues, including support, loss analysis and such. And then we received the City of San Jose's response to staff motion at that time. We received an email from Mike Boyd regarding project-related nitrogen deposition. And the applicant's brief in support of the Commission Staff's motion for override was also received.

And then this morning we received a message from Mr. Harris that their firm had not been served by the City of San Jose in the matter. And so I'll just begin with that. Mr. Harris, did
you want to comment on that?

MR. HARRIS: Yes, thank you, Mr. Fay. I appreciate the opportunity. We did not receive the brief in our office, you're correct. Mr. Argentine did receive it in the mail, but our lawfirm, Mr. Wheatland in particular, is on the official service list. And if it helps, I do have copies from the website of the Commission's service list. I have a copy of the San Jose proof which omits our lawfirm. And then there's an electronic copy that was served by dockets, as well. I have those documents. But they're generally available to you, as you know already.

I had a chance to briefly look at San Jose's brief -- briefly, brief -- this morning. And I guess I would say one thing, and then make one request.

The one thing I would say is that I'm not particularly concerned about any of the arguments in there. The state of the law is the state of the law. And San Jose doesn't have the ability -- the Legislature changed that law, so I'm not particularly concerned, at the highest level. So that's what I'd like to say.

And then in terms of relief, I would
like to ask for the Committee to consider granting
the applicant, and the applicant alone, the
opportunity to review that brief; and the rights,
but not the obligation, to file a response.

I think that ought to be limited to the
applicant on those legal issues. And I'm not even
sure we'll avail ourselves to that relief, but
that would be my request.

HEARING OFFICER FAY: How much time are
you requesting?

MR. HARRIS: I would say a week from --
let me think -- I'm trying to remember, with the
holiday.

UNIDENTIFIED SPEAKER: It's the 4th of
July.

MR. HARRIS: Yeah.

(Laughter.)

MR. HARRIS: Which day of the week --

HEARING OFFICER FAY: Thank you. We'll
take official notice of that.

MR. HARRIS: Corrected once again. How
about next Friday would be like five working days,
is that right, plus or minus? Anybody --

HEARING OFFICER FAY: I believe so, if
that's --
Mr. Harris: Yeah, let's take next Friday at the latest; and we will --

Hearing Officer Fay: Okay, so that would be July 7th.

Mr. Harris: Commissioner Geesman?

Okay.

Hearing Officer Fay: Okay, we'll -- all right, the Committee concurs with that remedy, so the applicant, alone, will have a right to respond in writing to San Jose's response to the staff motion. And applicant will file its response, if it has one, by July 7th. And that is direction only to the applicant. Other parties will not have that opportunity, since they were served by the City of San Jose.

Okay. Yes, Mr. Worl.

Mr. Worl: I just wanted to say the City is not here to speak, but I did want to say that the proof of service list that they used was one that was on the website. And if there was any error, it may be either with the mails or with that --

Hearing Officer Fay: Well, the proof of service list they used and sent back to us does not match the proof of service list the staff
used. And staff's proof of service list includes the attorneys for the applicant, as have all the proof of service lists in this case, to my knowledge.

So, this is an interesting omission.

Mr. Harris.

MR. HARRIS: Yeah, I would just like to say that the current list on the Commission's website, which again I have a copy if you'd like, is revised on 4/25. And so from 4/25 forward certainly we're on that list, at least from that date.

HEARING OFFICER FAY: Okay.

MR. WORL: I just wanted to clarify where they had gotten the proof of service list because they did call me, and that was the only list we had available.

HEARING OFFICER FAY: Since you brought this up, we'd direct staff to check that proof of service listed on the web, and insure that the attorneys for the applicant have not been deleted.

MR. WORL: I don't believe that they were.

HEARING OFFICER FAY: Please check that.

MR. WORL: But I will double-check it.
HEARING OFFICER FAY: All right.

Without further delay we'd like to begin first with taking additional evidence. The parties were offered an opportunity to provide any additional evidence they thought was relevant to the question of override.

Staff filed, as I mentioned, in regards to local system effects; and Intervenor CARE filed regarding nitrogen deposition. CARE seems to have no representative here, but let's go ahead with the staff testimony.

MR. RATLIFF: Yes, Commissioners. When we presented our testimony in this case a year ago, staff had actually not tried to put together a case that would support an override. This was because we were under the impression that that would not be necessary. The City had consistently told us that they were going to amend their zoning ordinance such that it would be consistent with the project. And they had told us that they would use the staff FSA to do that.

And we had proceeded on that basis without really trying to focus on project benefits that would support an override.

A year ago today I think you will
remember, actually it's a year ago and two days, it was June 30th of last year, the City confirmed that, and actually assured this Committee that by August they would have conformed their ordinance. Of course, they did not do so.

And now staff is moving for override because we have -- are essentially in a position where there is complete paralysis under the City's interpretation of CEQA. And we therefore want to put on additional evidence, realizing that it's entirely possible that implicitly from the existing record there is sufficient evidence to support an override.

Nevertheless, we want to put on the witnesses who would support the local system effects benefits that the project represents, would confirm.

And for that today we have three witnesses, two from the staff, one a consultant. Those are Mark Hesters and Dave Ashuckian of the staff; and Peter Mackin, who is a consultant to the staff.

And I would like to have them, with your permission, testify as a panel. I think it will be more efficient. And they will need to be
sworn. And then I would like to basically go through the preliminary questions with all three of them, and have them summarize their testimony individually.

HEARING OFFICER FAY: Okay. Will the court reporter please swear the panel.

Whereupon, MARK HESTERS, DAVID ASHUCKIAN and PETER MACKIN were called as witnesses herein, and after first having been duly sworn, were examined and testified as follows:

THE REPORTER: Would you please state and spell your full names.

MR. ASHUCKIAN: Dave Ashuckian, A-s-h-u-c-k-i-a-n.

MR. HESTERS: Mark Hesters, M-a-r-k H-e-s-t-e-r-s.

MR. MACKIN: Peter Mackin, P-e-t-e-r M-a-c-k-i-n.

DIRECT EXAMINATION

BY MR. RATLIFF:

Q Starting with Mr. Ashuckian for the moment, Mr. Ashuckian, did you prepare the testimony -- or did you contribute to the preparation of the testimony titled, electricity
benefits and loss analysis resulting from conversion of the Los Esteros Critical Energy Facility to a combined cycle plant?

MR. ASHUCKIAN: I did.

MR. RATLIFF: And is that testimony true and correct to the best of your knowledge and belief?

MR. ASHUCKIAN: Yes.

MR. RATLIFF: Do you have any changes to make in it at this time?

MR. ASHUCKIAN: No.

MR. RATLIFF: Mr. Hesters, did you likewise contribute to that testimony?

MR. HESTERS: I did.

MR. RATLIFF: And is that testimony true and correct to the best of your knowledge?

MR. HESTERS: Yes, it is.

MR. RATLIFF: Do you have any changes to make at this time?

MR. HESTERS: No.

MR. RATLIFF: Mr. Mackin, you provided a separate piece of testimony. It is titled, electricity supply benefits and local system effects created by the conversion of the Los Esteros Critical Energy Facility to a combined
cycle plant, is that correct?

MR. MACKIN: Yes.

MR. RATLIFF: And is that testimony true
and correct to the best of your knowledge and
belief?

MR. MACKIN: Yes, it is.

MR. RATLIFF: Do you have any changes to
make in it at this time?

MR. MACKIN: I noticed a typographical
error when I mailed it in to you, but I can't
recall exactly where it is. That would be the
only change.

MR. RATLIFF: Okay. We won't worry
about the typographical errors.

I would like to start with Mr. Hesters,
and ask Mr. Hesters to summarize his testimony,
first starting with what his contribution to the
testimony was, and what his conclusions were.

MR. HESTERS: My contribution is the
loss analysis of the electric supply benefits and
loss analysis resulting from conversion of Los
Esteros Critical Energy Facility to combined cycle
plant portion of the testimony.

The loss analysis is essentially when
you locate a power plant in a load center such as
San Jose, like you are doing with Los Esteros, you reduce the line losses that are caused when you're serving load from essentially remote generation.

So we did an analysis of the reduction and line losses that would occur if the 140 megawatts of the conversion plant was added to -- or built or operating in San Jose.

We essentially did five scenarios because where you assume the Los Esteros generation -- the generation that you assume, the Los Esteros generation, is displacing, makes a big difference in the losses that you see.

The scenarios included a local -- a couple of local scenarios, one looking at Los Medanos, a nearby plant. Also the Moss Landing plant. Both of those were local generation changes. We also looked at a change if the Los Esteros plant was supplanting imports from the northwest.

The results of the study showed a range of loss differences between 6 and 20 megawatts. We applied some factors to those and came up with an expected loss savings of about 9 megawatts.

We then applied a system load factor to that, and that 9 megawatts of loss savings comes
out to about 27 gigawatt hours per year in
generation savings. And this is generation that
if this plant isn't operating has to be done
somewhere else. That generation comes with a
emissions and other water impacts that if you are
operating Los Esteros you don't see at all.

The value of these savings we calculated
at about between $1.7 and $2.7 million per year.
Over 20 years that comes to about $17 to $24
million.

MR. RATLIFF: Does that conclude your
summary?

MR. HESTERS: That concludes my summary.

MR. RATLIFF: Thank you. Mr. Mackin,
could you summarize your testimony briefly, as
well? And could you start by very briefly going
over your experience and credentials and your
participation in former Commission cases.

MR. MACKIN: Yes, I can. My name's
Peter Mackin, and I -- I guess, I worked for PG&E
for about 15 years; at the ISO for five. And
during that time when I was at the ISO I provided
expert witness testimony in system reliability and
transmission system engineering for the Metcalf
Energy Center, the Los Medanos Energy Center,
which at the time was called Pittsburg District
Energy Facility, the Delta Energy Center, the Moss
Landing Power Plant Expansion, and the El Segundo
Expansion. And I'm not sure on that one; I
prepared that testimony, but when it actually was
filed I'm not sure if my name was still on it,
because I left the ISO just about the time that
that testimony was filed.

And then after the ISO I worked for five
years at Navigant Consulting and I'm currently at
the Utility System Efficiencies as a Vice
President of Reliability Services and Principal
Electrical Power System Analyst.

MR. RATLIFF: Did you mention your
participation in the Metcalf proceeding?

MR. MACKIN: I did. I prepared, also
prepared, or helped prepare in that proceeding the
local system effects testimony.

MR. RATLIFF: Thank you. Could you go
forward with a brief summary, then?

MR. MACKIN: Sure. Okay. So, what I
did is I reviewed the ISO letter that was
submitted; I believe it was submitted in this
proceeding, correct?

MR. RATLIFF: Yes.
MR. MACKIN: Okay. I reviewed that letter and basically I agree with their conclusions except for the conclusion where they state that they believe there may be some detrimental effects to moving the interconnection point of the power plant from the 115 kV system to the 230 kV system.

I reviewed the ISO's local capacity requirements analysis for 2007. And the system impact study and facility study for the Los Esteros Critical Energy Facility expansion. And both of those documents, my interpretation of those documents is that they support actually an improvement in system performance rather than a reduction in system performance.

And also I reviewed draft testimony of staff regarding the loss analysis. And it appears that that analysis is consistent with the methodology that I used in the local system effects testimony for Metcalf. And I agree with their conclusions regarding loss savings.

I believe that's essentially it.

MR. RATLIFF: Okay, Mr. Mackin, you testified that you were the witness in the Metcalf case. Could you perhaps briefly tell us how
things changed and how things are the same with
regards to -- well, first of all, let me ask you
to say what your conclusions were in that case
when you studied this issue. And then could you
tell us how things have changed since then?

MR. MACKIN: Well, in the Metcalf
analysis we determined that there were substantial
loss savings due to the location of the Metcalf
Energy Center in south San Jose. We also
determined that there were some potential system
benefits due to deferral of capital projects. And
some -- let's see, what else did we have -- there
were about four different items. Yeah, there was
an improvement in reactive margin.

Actually, if I could just refer to my
notes. Okay, yeah, there was a deferral, as I
mentioned, deferral of capital projects;
improvement in reactive margin because of the
reactive power source and also the real power
providing near the load center.

And also we determined that there would
be a potential for a reduced RMR costs due to the
fact that the plant was located in an RMR area,
and that it would likely be less expensive to
operate; and if it were under an RMR contract it
would cost less than the existing facilities in
the Bay Area.

MR. RATLIFF: Do you recall if during
the testimony in Metcalf whether you testified
that, in terms of its location electrically, the
Los Esteros site is actually even superior to that
of Metcalf for providing benefits?

MR. MACKIN: Yeah, I believe in one
part, I don't know if it was that testimony, but
in one of the analyses that we performed for that
project, we looked at different locations for
power plants to determine which location might
have the greatest benefits.

I believe it was maybe in the
alternative section. And in that analysis we
actually determined that the Newark or Los Esteros
area of San Jose was actually superior to Metcalf
in reducing losses and providing other benefits to
the system. Although the difference was not
great, it was enough of a difference to be
mentionable.

MR. RATLIFF: At the risk of having you
restate something you've already stated, can you
tell us about the LCR study and what it actually
shows?
MR. MACKIN: Okay. The local system, local capacity requirement study is sort of the -- it's the analysis that supersedes RMR. And I believe it's going to take the place, once the ISO puts into place MRTU, which is one of the something technology and update -- yeah, it's -- who knows. We always call it Mr. Tu, so I can't tell you what it actually stands for.

Anyway, the LCR analysis --

COMMISSIONER GEESMAN: Market redesign and technology update.

MR. MACKIN: Technology update. Thank you.

COMMISSIONER GEESMAN: I'm looking forward to joining this Committee because of the value that I seem to bring to the record.

(Laughter.)

MR. MACKIN: Well, the problem is there's too many acronyms, and even when you live with them you forget what they mean.

Anyway, in this LCR analysis the ISO looked at different areas of the system and determined what the capacity requirements would be in each area and subarea of the system, essentially using a methodology very similar to
what they did for RMR.

The criteria was different. I don't know the exact details of all the differences, but I believe LCR is a little more stringent, so the LCR requirements might be a little higher than what you'd see under RMR.

Anyway, for the San Jose area what the ISO determined was that the critical contingency for San Jose was the loss of two 115 kV lines, the Evergreen Markham to San Jose B line; and the Metcalf to IBM Harry Road to El Patio 115 line. And when both of those lines are out, there's only three remaining lines, and only one that's really significant to provide load service to San Jose from the south. And so that line tends to overload under conditions where there's not a lot of local generation in San Jose.

And the Los Esteros Critical Energy Facility, due to its location in northern San Jose, provides additional energy to serve load that reduces the loading on the line from the south, and provides benefits to the system. It doesn't reduce the LCR requirement, but it enables the San Jose area to be served more reliably due to its presence.
MR. RATLIFF: Is that, in effect, what you mean when you say operational benefits --

MR. MACKIN: Yes, --

MR. RATLIFF: -- elsewhere in your testimony?

MR. MACKIN: Right. And when I discuss operational benefits -- well, actually I don't really discuss them in that much detail, but in the operational benefits what we're looking at is, you know, normally a planning analysis will look at the peak and determine whether or not you can serve a peak load under conditions of having all facilities in service, and then certain facilities out of service.

Well, the system has to operate 365 days a year, 24 hours a day. And so under those conditions, load may not be at peak, but other facilities are out of service because you have to maintain them. And so under conditions where load may not be at maximum, but certain lines may be out of service, like for example one of the lines I mentioned earlier, then the ISO has to be able to operate the system under the possibility of having additional lines go out of service.

And so in those situations, having
additional local generation provides operational flexibility by increasing the window under which maintenance can be done on facilities. And that provides a great benefit to the ISO.

MR. RATLIFF: Does that conclude your summary of your testimony?

MR. MACKIN: Yes, it does.

MR. RATLIFF: Are there any further things that you would like to add to it on this issue?

MR. MACKIN: There is one other thing I forgot. There was an additional benefit that I determined from reviewing the system impact study that PG&E performed. And that was that due to the increase in generation at LECEF, line loadings under contingencies throughout the San Jose area went down. I don't believe there were any that actually went up.

Because that study showed reduced loadings on the 115 kV, what that says to me is the addition of LECEF, the expansion, would provide additional load serving capability to the San Jose area.

Without LECEF, as the load grows, PG&E would have to add additional facilities,
transmission or perhaps generation, to serve the load.

With LECEF in service, the expansion, those projects would be, at a minimum, deferred; in some cases maybe not necessary.

And also fault duties were reduced because the plant was being removed from the 115 system to the 230 system; fault duties on the 115 kV system declined, which is a benefit to the system. Obviously because the plant was moved to the 230 system, the local 230 kV breakers, the fault duty, did increase. But it was well within the capability of the breakers, so there was no adverse impact to the system from the addition of the expansion.

MR. RATLIFF: Thank you, Mr. Mackin.

Finally, we have Mr. Ashuckian from the staff, who is, I think, more of a big-picture guy in some measure. And I would like him to very briefly summarize his testimony, as well.

MR. ASHUCKIAN: Thank you. I contributed to the discussion about, again, the benefits similar to Peter regarding the local area capacity requirements, as well as the future benefits, as load grows.
The Los Esteros plant is located in the RMR location, as Peter noted. In addition to that, northern California currently has a fairly significant amount of generation, but there is over 1000 megawatts currently at potential for retiring, as well as another 1500, for a total of 2600 megawatts that are on our list of aging plants that don't currently have contracts, that may retire in the future.

Both our analysis and PG&E's resource adequacy analysis indicates that they will need to acquire additional resources in the coming years, possibly again, beginning as early as 2008 if some of these aging plants retire.

So, this plant will provide benefits to helping ease that potential burden if those plants do retire. And in addition to that, they offer alternatives to those plants that may facilitate their retirement, as well.

MR. RATLIFF: Does that conclude your summary? Oh, I'm sorry.

MR. ASHUCKIAN: Yeah, that's really it. Again, I concur with what Peter has said about the value of the plant because of its local capacity requirement areas. It is about 40 percent of the
capacity in that local capacity requirement area.
So it's a pretty significant player.

MR. RATLIFF: Thank you. Commissioners, that is our presentation. And the witnesses are available for cross-examination or questions from the Committee.

Oh, and I should also mention, I think, that the ISO did provide a letter to the docket. It was supportive of the benefits of the project. Unfortunately, the personnel at the ISO who were responsible for the letter were unable to attend due to vacations and also I think the departure of one of those personnel to another job. And so there was no one who could really speak with authority on the contents of the letter for this date.

HEARING OFFICER FAY: Okay, thank you. Let's first see if the applicant has any questions. Any cross, Mr. Harris?

MR. HARRIS: No questions, thank you.

HEARING OFFICER FAY: Okay. I would just like to go over this in just a slightly different way, because of the requirements of the statute.

In making an override finding the
Commission's required to look at at least three particular areas, environmental benefits of the project; consumer benefits; and local system reliability.

And I believe your testimony has covered that, but if you could just -- if the appropriate member of the panel could just capsulize each area in brief summary, I think it would help the record.

First, environmental impacts of going ahead with the project versus the no-project alternative, from your perspective.

MR. RATLIFF: Well, I think --

MR. ASHUCKIAN: Well, I think one argument that could be made is the fact that this is going to be a new plant that complies with all new current air quality standards. And, again, it is likely, if it's operational, to replace aging plants that are not necessarily permitted to the same standards.

So, there is some benefits there, as this operates and displaces existing facilities.

MR. HESTERS: I can speak a little bit to the environmental benefits and consumer benefits of the loss savings.
The loss savings, if you don't receive
the loss savings, the line losses have to be
generated somewhere. And in this case we're
estimating 9 megawatts and 26, about 27 gigawatt
hours a year.

If this project's built that's 27
gigawatt hours that doesn't have to be generated
anywhere. It's 27 gigawatt hours of emissions and
other environmental impacts that don't appear on
the system.

It also would, again if you have to
generate for those losses, it's going to cost the
system $1.7 to $2.4 million per year. That's a
consumer benefit that should show up. I don't
know exactly how it will translate through the
market, but that is a basic generation efficiency
savings.

HEARING OFFICER FAY: And would you
consider that a consumer savings? A consumer
benefit?

MR. ASHUCKIAN: That's what I was
saying. It should, in the long run, translate
through the market, but it may not happen right
away.

MR. MACKIN: Yeah, well, I guess I could
address that issue from the perspective of the
current market. I believe, under the current
market structure of the ISO, generators pay for
system losses. And so therefore this loss savings
that we've determined would -- the monetary
benefits would actually flow back to the
generators.

If they were to bid in a market the same
way they're bidding now, it would just increase
their profits. However, you would expect that if
it's a competitive market that they would then
seek to lower their bid prices in order to remain
competitive, because the other generators could
also lower bid, you know, and beat them out. So,
therefore the cost savings would then, in a round-
about way, flow back to the ratepayers.

HEARING OFFICER FAY: Okay, and what
about system reliability? Just to capsulize that.

MR. MACKIN: Okay, from a system
reliability perspective, you know, as I mentioned
earlier I did review the facility study and system
impact study that PG&E performed for this project.

And it noted that in almost all cases
the line loadings and breaker duties were reduced
due to the addition of the project. Therefore,
you know, in both cases the system does fully meet applicable reliability criteria.

However, under the scenario where the LECEF expansion is in service, because line loadings are reduced under severe contingencies that might be beyond the reliability criteria, or scenarios that aren't looked at normally, because line loadings are reduced, you would have the likelihood that the reliability of the system would be improved.

Because under the severe contingencies, if line loadings were lower after the project, after severe contingencies, they would also be lower. And that would improve the reliability of the system, reduce potential load shedding under severe contingencies and things of that nature.

HEARING OFFICER FAY: Great. Thank you. All right, anything further, Mr. Ratliff?

MR. RATLIFF: No.

HEARING OFFICER FAY: In terms of your witnesses.

MR. RATLIFF: No.

HEARING OFFICER FAY: Okay. Well, I want to thank the panel; that was very helpful. And helps us to bring the record up to date.
I'd now like to ask, starting with the applicant, if you have anything to argue in addition to your written filing, or if you wish to respond to any of the other parties, acknowledging that you will have the opportunity to respond in writing to the San Jose's filing?

MR. HARRIS: Just maybe a couple things, Mr. Fay.

First, I guess, at the highest level, it's time to act on this application. There's been a lot of process here, and I would characterize that as, you know, extra-legal, super process. The Commission is fabulous on due process. And in this case you've gone above and beyond, especially at the staff level. So I want to compliment on the staff on their activities to try to bring this thing forward.

But at the end of the day, it is time to act on this application. We've got to move forward. We think that the staff brief does a very good job of making the argument that this entitlement, quote-unquote, is completely preempted by the Energy Commission's authority. The moniker, itself, is a permit. And we think the Commission's permitting authority preempts
this permit. And we would ask that you make that
finding of preemption.

In addition, out of an abundance of
cautions, we would also recommend that you make the
finding necessary for the override. So, you know,

belt-and-suspender approach, to use a
colloquialism there. I think that's probably the
most prudent course. And it does allow us to
bring this process to closure. So that would be
where we'd like to see this process end up.

So, thank you.

HEARING OFFICER FAY: I'm sorry, I was
taking notes and you said belt-and-suspen-
dier. What are the two parts in addition to the staff's
motion you also recommend?

MR. HARRIS: No, I just think, at the
end of the day, the finding ought to be both a
finding of preemption, number one. So no need for
an override. And then maybe that's the belt, I
don't know.

And then out of an abundance of caution,
to make the override findings, as well. So that
if there's ever a challenge on the question of
preemption you could rest on either means. I
think you ought to make both findings.
And the Commission has done that in the past, I think, in a couple of cases. And I do think that the Commission's interest in the legal defensibility of the decision is well served by making both findings.

HEARING OFFICER FAY: Are you recommending at all that there be an environmental override finding?

MR. HARRIS: I do not believe there's any significant environmental impacts that require an override. So, we don't need to add another pair of suspenders. I think we're fine.

HEARING OFFICER FAY: All right. Mr. Ratliff, anything further? And I'd like your thoughts on what Mr. Harris has just said, because as I recall, staff did not recommend the preemption approach.

MR. RATLIFF: Well, staff looked closely at the preemption issue. We think it's arguable that the Energy Commission permit would essentially serve in place of the PD permit that the City issues.

But because the issue is arguable we would not recommend that you rely solely on saying that our permit preempts theirs. Rather, we think...
that you should make the override.

That partly has to do with the way the San Jose ordinance actually works. And it works, in essence, to the effect that if a use is not consistent, or if the PD permit is not in existence, the underlying base zoning category applies. And in this case it would be agricultural.

I think the City would probably make that argument, although they have not done so yet. If that were the case, if it were agricultural, the base zoning would not be consistent with the power plant use.

And really we don't want to have to face the possibility of having to argue about that if we can avoid it. And we think that there are very strong grounds for an override to avoid ever having to wrestle with that argument.

HEARING OFFICER FAY: Okay. Thank you.

Anything further?

MR. RATLIFF: No. Mr. Fay, I guess we had expected that the City might show up to talk about the issues they raise in their brief. Certainly it's not very sporting to speak badly about the City when they aren't even here. And I
don't really want to do so.

But, the City's suggestion that they
would correct the factual record is sort of lost
on the staff, because we believe that the facts
that we recite in our motion are a fairly
restrained and accurate depiction of what has
actually happened. More things could be said that
were not said. And the things that are actually
not documented are within the personal knowledge
of people in this room. So, we aren't quite sure
what they mean by that.

Secondarily, the City, for the first
time, offered a suggested -- the City goes to some
length to say that there is no actual impasse
here, and that they would still be quite willing
to conform the ordinance, and offered for the
first time another suggested solution for doing
so.

That suggested solution would be that
the Energy Commission would, in some manner,
certify the FSA or the PMPD as the environmental
document. And then they could use it. Like I
say, we have never heard that suggestion in all of
our discussions in the past before they filed
their brief.
Let me also point out that the brief, on page 4, 5 of the brief, they go to great length to say that they cannot use the staff FSA or the PMPD because under the CEQA guidelines the Energy Commission would have to take the final approval first before they could rely on that document. And that would be entirely inconsistent with this new theory that they've thrown out in their brief. So they're being, again, inconsistent with how they are suggesting they either can or can't proceed.

This has been, I think, the kind of shifting inconsistent explanation that we've gotten from the City all along. The sum result of which is that there is complete paralysis. The City cannot act to change its ordinance; and the Energy Commission cannot make findings of conformity.

This is based on the City's interpretation of the CEQA guidelines, which we believe, and which the Chief Counsel for this agency, has told the City in the past is an incorrect reading of the CEQA guidelines. But they persist in this interpretation. And we think it makes it really impossible for anyone to act.
unless the Commission does commit itself to an override.

And it is for that reason that we are here today.

HEARING OFFICER FAY: Well, thank you for that summary. And I'll note that this Committee, in its evidentiary hearing on June 30th of 2005, had Mr. Buikema of the City of San Jose Planning Department, on the phone. And he indicated at that time that he thought by mid-August the City Council would have approved the zoning. And also stated that he didn't anticipate any problem with it. And, in fact, said he thought it would go smoothly.

So, there's obviously been a lot of shifting in position since that time. And from what I know of the staff's efforts on this -- I want to commend staff for its patience and continuing efforts in trying to resolve this before filing its motion to override.

CHAIRPERSON PFANNENSTIEL: I guess I would just observe that this agency does not use its override authority frequently. I read that we have only used it fewer than half a dozen times in the existence of the Energy Commission.
And I think for good reason. I think that to the extent we possibly can, we work with and respect the local authorities. And I think in this case we've tried very hard to do that.

So we find ourselves at a point where this is a case that has dragged on longer than it needed to, as we've tried to resolve the issues.

And, you know, we're here now, and I think it's a significant decision that the Committee is being asked to make. And we will look at both the argument and the evidence, and with any additional argument that may come in, I guess from the applicant counsel after they've had a chance to look at the brief. And then render the decision.

Thank you, Hearing Officer Fay.

HEARING OFFICER FAY: Okay. Any closing remarks? Anything further?

All right. This closes the evidentiary record in the Los Esteros Phase 2 proceeding. And we are adjourned.

(Whereupon, at 9:52 a.m., the public hearing was adjourned.)
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 7th day of July, 2006.

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