

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Mariposa Energy Project) 09-AFC-3
(MEP))
_____)

MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT
BOARD ROOM
230 SOUTH STERLING DRIVE, SUITE 101
MOUNTAIN HOUSE, CALIFORNIA

THURSDAY, MAY 5, 2011

3:00 p.m.

Reported by:
John Cota
Contract No. 170-09-002

EHLERT BUSINESS GROUP

(916) 851-5976

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Kenneth Celli, Hearing Officer

Eileen Allen, Advisor to Commissioner Douglas

Galen Lemei, Advisor to Commissioner Douglas

STAFF AND CONSULTANTS PRESENT

Kerry Willis, Senior Staff Counsel

Craig Hoffman, Project Manager

Brewster Birdsall (via teleconference)

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

Lynn Sadler, Assistant Public Adviser

APPLICANT

Gregg Wheatland, Attorney
Ellison, Schneider & Harris LLP

Chris Curry
Diamond Generating Corporation

Doug Urry
CH2M HILL

INTERVENORS

Rajesh Dighe

Morgan Groover

Jim Lamb

Mountain House Community Services District (MHCSD)

Robert Sarvey

Rob Simpson

represented by April Sommer

Jass Singh

Andy Wilson

California Pilots Association

ALSO PRESENT

Celeste Farron

Mountain House Board of Directors

Ramkuma Balanbramaiar

Guy Colton

John Rubin

Vasu Devan

Vipin Goel

Smitha Unnikrishnan

Rahul Dighe

Pramit Shah

Jeremiah Bodnar

Paul Bhathal

Shan

Alan Torres (via WebEx)

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P R O C E E D I N G S

3:04 p.m.

1
2
3 PRESIDING MEMBER DOUGLAS: Welcome to the PMPD
4 conference for the Presiding Member's Proposed Decision on
5 the Mariposa Energy Project.

6 The Committee Members assigned to this case are
7 myself, Karen Douglas, as the Presiding Member on this case.

8 To my left is our Hearing Officer, Ken Celli. To my right
9 is my advisor, Galen Lemei, and to my far right is Eileen
10 Allen, who is serving as my advisor on this case as well.

11 I would like to ask for introductions, beginning
12 with the applicant.

13 MR. WHEATLAND: Good afternoon, I'm Gregg
14 Wheatland; I'm the attorney for the applicant. And to my
15 left is Mr. Chris Curry with Diamond Generating.

16 HEARING OFFICER CELLI: Okay. Now just a quick --
17 can you press your mic again.

18 MR. WHEATLAND: Now that's better, I'm on now.

19 HEARING OFFICER CELLI: Okay. Would you mind just
20 saying it again for the benefit of the people on the phone.

21 MR. WHEATLAND: For the people on the phone I'm
22 Gregg Wheatland, I'm the attorney for the applicant. And to
23 my left is Chris Curry with Diamond Generating.

24 PRESIDING MEMBER DOUGLAS: Thank you. And staff?

25 MS. WILLIS: Good afternoon. My name is Kerry

1 Willis, I'm senior staff counsel. And with me is Craig
2 Hoffman, project manager.

3 PRESIDING MEMBER DOUGLAS: Thank you. Let's go
4 through the intervenors who are here, beginning with
5 Mountain House.

6 MR. GROOVER: I'm Morgan Groover, the Community
7 Services Director with Mountain House.

8 PRESIDING MEMBER DOUGLAS: Thank you.

9 MR. WILSON: Andy Wilson, California Pilots
10 Association, also known as Cal Pilots.

11 PRESIDING MEMBER DOUGLAS: Thank you.

12 MS. SOMMER: April Sommer, counsel for intervenor
13 Rob Simpson.

14 PRESIDING MEMBER DOUGLAS: Thank you, Ms. Sommer.

15 Are there any -- if more parties come, more
16 intervenors come, we'll introduce them when they come in.

17 Are there any members of federal -- are there any
18 parties who are on the phone?

19 (No response)

20 PRESIDING MEMBER DOUGLAS: Hearing none, are there
21 any representatives of federal government agencies here
22 today?

23 (No response)

24 PRESIDING MEMBER DOUGLAS: What about the Bay Area
25 Air Quality Management District?

1 (No response)

2 PRESIDING MEMBER DOUGLAS: Is there anyone here
3 from Alameda, Contra Costa or San Joaquin County
4 departments?

5 MR. FARRON: My name is Celeste Farron, I'm with
6 the Board of Directors in Mountain House.

7 PRESIDING MEMBER DOUGLAS: Thank you.

8 Are there any other representatives of cities or
9 city departments?

10 All right. And Water Board, is there anyone from
11 the Water Board?

12 (No response)

13 PRESIDING MEMBER DOUGLAS: All right. I'd like to
14 introduce the public adviser, Jennifer Jennings, who is in
15 the room and the deputy public adviser, Lynn Sadler who is
16 also here, in the blue jacket.

17 And with that I'll turn this over to the hearing
18 officer, Mr. Celli.

19 HEARING OFFICER CELLI: Thank you. You all can
20 hear me okay? People are nodding, good. Good afternoon
21 everyone.

22 I just wanted to check before I start my remarks
23 with Ms. Sadler. Do we have, do we know who is on the phone
24 in terms of do we have any intervenors who are here now that
25 may have appeared by phone?

1 MS. SADLER: Not that I know of.

2 HEARING OFFICER CELLI: Okay. As I'm speaking and
3 I am looking at the -- it looked like we were call-in user
4 number three or something like that but I can't really tell.

5 But hopefully we won't need to mute the people on the
6 telephone.

7 I want to begin my comments this morning, this
8 afternoon by thanking Mountain House Community Service
9 District on hosting us, letting us sit at their normal place
10 where they do business. It's a beautiful place; I wish we
11 had come before. This is really quite nice so thank you.

12 Today the Presiding Member's Proposed Decision,
13 which is a document I am going to hold up. I want to show
14 everybody. This is the Proposed Decision; it's a document
15 about two inches thick, 600-plus pages.

16 It was published on April 13, 2011. On that date
17 the Notice of Availability went out to a proof of service
18 list which noticed today's conference and the May 18, Energy
19 Commission Business Meeting.

20 The Notice of Availability of the PMPD asked the
21 parties to file written comments on April 28, 2011. Energy
22 Commission staff filed comments on the PMPD on April 27,
23 2011 and the applicant filed comments on the PMPD on April
24 28, 2011, as did Robert Sarvey and Rajesh Dighe, neither of
25 whom are here today but hopefully they'll show up. Maybe

1 they're just late.

2 None of the other parties have filed comments.
3 Actually, April Sommer, I received your comments on behalf
4 of Robert Simpson today. They were docketed with Dockets
5 but they went out to the proof of service apparently this
6 morning; is that correct?

7 MS. SOMMER: Yeah.

8 HEARING OFFICER CELLI: Okay, thank you. So I am
9 not all of that up on your comments because we just got
10 them. Other than that are there any parties -- Mr. Wilson,
11 did you file any comments?

12 MR. WILSON: No, I didn't at that time. But based
13 on the briefs that have been filed I'll be making some
14 comments based on those briefs.

15 HEARING OFFICER CELLI: That's fine. The April 28
16 date was really a convenience to the Committee. And
17 Mr. Groover, anything from Mountain House?

18 MR. GROOVER: No.

19 HEARING OFFICER CELLI: Thank you.

20 HEARING OFFICER CELLI: So I believe we have
21 received all of the comments from the parties so far. It
22 doesn't preclude other comments coming in.

23 A word on the comments filed by Mr. Sarvey and
24 Mr. Dighe and I may have to say this again if and when they
25 show up. In both instances the comments were more in the

1 nature of argument opposed to certain findings contained
2 within the PMPD or rebuttal arguments to testimony contained
3 in the evidentiary record.

4 These types of comments are not included in the
5 Draft Errata. Which reminds me: ladies and gentlemen, all
6 the people who are here. Back where the public adviser is
7 standing in the corner is a stack of documents. That is the
8 Draft Errata. So if you are interested in following along
9 those are the suggested changes, edits and comments that we
10 have received from the applicant and staff.

11 So the Draft Errata lists those errors of fact
12 which are unfortunate but seemingly inevitable. With every
13 PMPD we do, try as we can to try to catch all of the errors
14 sometimes some get through. So we are interested today in
15 any changes to conditions or errors of fact.

16 For example, let's just say there was a statement
17 in the PMPD that says the tower height was 800 feet but the
18 true height according to the evidence was 80 feet. We would
19 want that error to be brought to our attention so we can
20 correct the record. So that's what we're talking about with
21 regard to errata.

22 While we are interested in all comments, only the
23 actual errors listed in the staff and the applicant's
24 comments have been incorporated into the Draft Errata so
25 far. Copies of which, as we said, were in the back of the

1 room. We will ask the parties to make comments on the Draft
2 Errata at this time so I am going to begin first with
3 applicant.

4 I am going to ask you, Mr. Wheatland, because I
5 did not see any -- you know, sometimes you receive errata
6 from both the applicant and staff addressing the same issue
7 from two different angles and I didn't see anything like
8 that this time. I don't know, did I get that wrong?

9 MR. WHEATLAND: No, I think that's right. We have
10 reviewed the Errata that you have prepared and we are in
11 agreement with all of the items on your errata sheet. We
12 don't have any further comments or corrections to that
13 errata.

14 We do have three additional factual errors that
15 were listed in our comments on the PMPD that were not picked
16 up in the errata sheet and at the appropriate time we would
17 like to raise those three additional items with you.

18 But as far as what is set forth here at this
19 point, we are in full agreement.

20 HEARING OFFICER CELLI: So what I am going to take
21 that to mean is that we faithfully got your errata in here
22 and you don't have any disagreement with any of the staff's
23 errata as well.

24 MR. WHEATLAND: That's correct.

25 HEARING OFFICER CELLI: Okay, thank you. Then

1 what I think we might want to do now is just let's hear what
2 the three extra changes would be.

3 MR. WHEATLAND: All right. If Mr. Urry come
4 forward. Oh, he's way ahead of me.

5 MR. URRY: I'm Doug Urry. Three minor corrections
6 in the Transmission Line Safety and Nuisance section.

7 HEARING OFFICER CELLI: And go slow, I'm grabbing
8 the book as we speak. TLSN?

9 MR. URRY: TLSN page one.

10 HEARING OFFICER CELLI: Yes.

11 MR. URRY: Second paragraph, last sentence.

12 HEARING OFFICER CELLI: The project switchyard
13 will?

14 MR. URRY: The project switchyard would be
15 designed and built by the project owner, instead of PG&E.
16 So it would be designed and built by the project owner
17 according to PG&E guidelines on safety and field management.

18 HEARING OFFICER CELLI: So basically I'm striking
19 PG&E, the first mention of PG&E in that sentence only and
20 inserting, the project owner.

21 MR. URRY: Correct.

22 HEARING OFFICER CELLI: Okay. Any objection to
23 that, staff?

24 MS. WILLIS: We're confused. What page are you
25 on?

1 HEARING OFFICER CELLI: Page one of TLSN,
2 Transmission Line Safety and Nuisance.

3 MS. WILLIS: Of the PMPD.

4 HEARING OFFICER CELLI: The PMPD.

5 MS. WILLIS: But not the applicant's comments.

6 HEARING OFFICER CELLI: Correct. This is --

7 MS. WILLIS: Okay. I thought they said they were
8 included in their comments but just not picked up.

9 MR. WHEATLAND: They were included in our
10 comments.

11 MS. WILLIS: What page is that?

12 MR. WHEATLAND: Page six of our comments.

13 MS. WILLIS: Okay, thank you.

14 HEARING OFFICER CELLI: That's right, I remember
15 seeing this. I thought maybe I missed it and put it in some
16 other, maybe it was duplicating something from TSE or
17 something.

18 MS. WILLIS: No, we have no objection.

19 HEARING OFFICER CELLI: Morgan Groover, any
20 objection on behalf of Mountain House?

21 MR. GROOVER: Can I assume that that's constructed
22 and per the design and inspection of PG&E?

23 HEARING OFFICER CELLI: It says: The project
24 switchyard will be designed and built by the project owner
25 according to PG&E guidelines on safety and field management.

1 MR. GROOVER: Yes, thank you. Then I have no
2 objections with that concurring response.

3 HEARING OFFICER CELLI: Mr. Wilson, you receive
4 that?

5 MR. WILSON: No objection.

6 HEARING OFFICER CELLI: Okay. And Ms. Sommer?

7 MS. SOMMER: No objection.

8 HEARING OFFICER CELLI: Okay, that's fine, thank
9 you. And then the next one.

10 MR. URRY: The next one is on page seven of our
11 comments. It's Hazardous Materials. Page two of Hazardous
12 Materials in the PMPD.

13 HEARING OFFICER CELLI: Okay. I'm there.

14 MR. URRY: Under the heading Natural Gas.

15 HEARING OFFICER CELLI: Yes.

16 MR. URRY: The first paragraph, second sentence.
17 The natural gas will be delivered by Pacific Gas and
18 Electric via a new 580 foot long eight inch pipeline rather
19 than four inch.

20 HEARING OFFICER CELLI: That's correct, I remember
21 seeing that as well, eight inch pipeline. And this was in
22 your original proposed changes, wasn't this?

23 MR. URRY: Correct.

24 MR. WHEATLAND: Correct.

25 HEARING OFFICER CELLI: So the parties should have

1 already received that change as well. Thank you. And
2 lastly?

3 MR. URRY: Page nine of Hazardous Materials in the
4 PMPD.

5 HEARING OFFICER CELLI: Okay.

6 MR. URRY: Under Risk Mitigation.

7 HEARING OFFICER CELLI: Yes.

8 MR. URRY: The first paragraph, last sentence.

9 HEARING OFFICER CELLI: Yes.

10 MR. URRY: We propose that to read: MEP would use
11 19 percent aqueous ammonia solution stored in one stationary
12 10,000 gallon above-ground storage tank, with a maximum fill
13 quantity of 8,500 gallons to minimize the potential for
14 overflow during filling.

15 HEARING OFFICER CELLI: Okay, let me make sure I
16 have this right. MEP would use 19 percent aqueous ammonia
17 solution stored in one stationary 10,000 gallon above-ground
18 storage tank, with a maximum capacity of 8,500 gallons.

19 MR. URRY: With a maximum fill quantity of 8,500
20 gallons.

21 HEARING OFFICER CELLI: Fill quantity, striking
22 the word, capacity?

23 MR. SARVEY: Correct.

24 HEARING OFFICER CELLI: With a maximum fill
25 quantity of 8,500 gallons.

1 MR. URRY: To minimize the potential for overflow
2 during filling.

3 HEARING OFFICER CELLI: To minimize the potential
4 for overflow during filling?

5 MR. URRY: Correct.

6 HEARING OFFICER CELLI: Thank you. And that
7 covers them all, that's all three of them.

8 MR. WHEATLAND: That's all three of them. And
9 with those three changes the applicant is in complete
10 concurrence with the PMPD as modified by the Proposed
11 Errata.

12 HEARING OFFICER CELLI: Thank you.

13 The record should reflect -- welcome, Mr. Singh.
14 Welcome back. How are you?

15 MR. SINGH: I am good.

16 HEARING OFFICER CELLI: Mr. Singh just walked in.
17 So those three changes were all in the original
18 document of changes proposed by the applicant.

19 MR. URRY: Correct.

20 HEARING OFFICER CELLI: Thank you very much for
21 those corrections. Anything we can do to make this a better
22 document. With that, staff, let's hear from staff with
23 regard to the Draft Errata.

24 MS. WILLIS: We only had two minor changes. On
25 page eight and page nine of the applicant's proposed changes

1 to -- it's number 14, which was the table Attachment A.
2 Going down. It's seventh where it says, Lubrication oil.

3 HEARING OFFICER CELLI: Now are we --

4 MS. WILLIS: We're on the Draft Errata.

5 HEARING OFFICER CELLI: Now page 14 --

6 MS. WILLIS: Page eight, number 14.

7 HEARING OFFICER CELLI: Gotcha.

8 MS. WILLIS: It's a table that goes two pages.

9 HEARING OFFICER CELLI: Yes. I'm glad you raised
10 that. I had a question about this too, go ahead.

11 MS. WILLIS: Third from the bottom on the first,
12 on page eight where it says, Lubrication oil. The change
13 that they had says 3,240, it should be 3,200. And that's
14 straight out of the Supplemental Staff Assessment. I think
15 it's just a typo.

16 HEARING OFFICER CELLI: That was my question.
17 Because these changes I think were going to cut from the SSA
18 into this document and so I wasn't sure how to attribute the
19 source of the changes.

20 MS. WILLIS: Right. Yeah. All of these -- I went
21 through the SSA and checked all of the changes. This one
22 was just, I think was just a typographical error under
23 Lubrication oil. Instead of -- it was changed from 400
24 gallons to 3240 but it should be 3200.

25 MR. WHEATLAND: And we agree with that. That was

1 our intent was to cut this from the SSA.

2 HEARING OFFICER CELLI: Thank you.

3 MS. WILLIS: And then on page nine is a similar
4 type of change. If you go three from the bottom, three rows
5 from the bottom where it says, EPA protocol gases. The
6 number that it's changed to, 24 pounds, should be 25 pounds.

7 But otherwise everything was -- I checked everything
8 against the Supplemental Staff Assessment.

9 HEARING OFFICER CELLI: Okay, on page nine, EPA
10 protocol gases, Calibration gases. And then what I show is
11 25 is stricken and it went up to 624 pounds.

12 MS. WILLIS: No, it should be 25.

13 MR. WHEATLAND: And it should be 25.

14 HEARING OFFICER CELLI: Okay.

15 MS. WILLIS: It should be 25 pounds.

16 HEARING OFFICER CELLI: So we are inserting 25
17 pounds on page nine into the quantity column across from the
18 EPA protocol gases.

19 MS. WILLIS: Right.

20 HEARING OFFICER CELLI: Okay, thank you.

21 MS. WILLIS: And I did go through and check all of
22 the applicant's changes to the Supplemental Staff Assessment
23 and they were all included in the Supplemental Staff
24 Assessment.

25 HEARING OFFICER CELLI: So with these changes now

1 you find the Errata acceptable?

2 MS. WILLIS: Yes, thank you. Thank you very much.

3 HEARING OFFICER CELLI: Thank you. Morgan
4 Groover, did you have a chance to review on behalf of
5 Mountain House Community Services District the Errata and
6 have any questions or comments on it?

7 MR. GROOVER: Yes and no.

8 HEARING OFFICER CELLI: Okay.

9 MR. GROOVER: Yes I reviewed it and no, I don't
10 have any questions.

11 HEARING OFFICER CELLI: Thank you.

12 And now Mr. Wilson, did you have any comments on
13 the Draft Errata to the PMPD?

14 MR. WILSON: Yes. And it involves where there's
15 mention of the aircraft at the airport and it doesn't
16 mention any jet traffic. So you added -- staff added --

17 HEARING OFFICER CELLI: What page are we looking
18 at?

19 MR. WILSON: -- a sentence --

20 HEARING OFFICER CELLI: Is this under Traffic and
21 Transportation?

22 MR. WILSON: Yes.

23 HEARING OFFICER CELLI: Traffic and
24 Transportation. It starts at page 22 of the Draft Errata.
25 At page 25 there's the discussion about the visual flight

1 rules.

2 MR. WILSON: It's where the standard pattern
3 aircraft -- it mentioned the types of aircraft and it left
4 off jet traffic. I guess it's not here. I don't know where
5 I saw it. Let's see. All right, why don't --

6 HEARING OFFICER CELLI: I think I have it.

7 MR. WILSON: Okay.

8 HEARING OFFICER CELLI: Page 24.

9 MR. WILSON: Yes.

10 HEARING OFFICER CELLI: Item 45, which the staff
11 proposes. "Item 45, page 4, Paragraph 2, change to read as
12 follows:" The last sentence is: "The Byron Airport, located
13 2.7 miles northwest of the MEP site, is a small public
14 facility owned by Contra Costa County --"

15 MR. WILSON: Ah, that's it.

16 HEARING OFFICER CELLI: -- and is used for general
17 aircraft operations, flight training, skydiving, and
18 ultralight and glider operations."

19 MR. WILSON: But there is also jet traffic, which
20 it's the jet demonstration team. And also general aviation
21 aircraft.

22 HEARING OFFICER CELLI: Okay.

23 MR. WILSON: I don't know why they're trying to --
24 used for general -- okay, general aircraft air operations,
25 flight training, skydiving, ultralight and glider. But I

1 would like -- because the jet team works out of there and
2 they are currently building two more hangers I would like
3 the words, jet traffic.

4 HEARING OFFICER CELLI: So jet traffic isn't
5 general aircraft?

6 MR. WILSON: It is but it's special.

7 HEARING OFFICER CELLI: Special, okay.

8 MR. WILSON: Because it is a jet demonstration
9 team.

10 HEARING OFFICER CELLI: Okay. First let me ask
11 the applicant whether you have any comment on that addition?

12 MR. WHEATLAND: That addition is fine, we have no
13 objection.

14 HEARING OFFICER CELLI: Anything from staff?

15 MS. WILLIS: No, that's fine.

16 HEARING OFFICER CELLI: Any of the intervenors at
17 all have a problem with the insertion of the word, jet?

18 Where I think we would do that, Mr. Wilson, is,
19 let's see. "And is used for general aircraft operations,
20 flight training, skydiving." Well, we have "and ultralight
21 and glider operations."

22 MR. WILSON: I think we could say, general
23 aircraft operations, including jet operations.

24 HEARING OFFICER CELLI: I was going to put it
25 towards the end where it says, and ultralight.

1 MR. WILSON: All right, Sure.

2 HEARING OFFICER CELLI: Make it ultralight, glider
3 and jet --

4 MR. WILSON: Operations.

5 HEARING OFFICER CELLI: Okay. And?

6 MR. WILSON: And I have one more. It's not here
7 but we talked about it but I didn't brief it, so the fault
8 is mine. But when the term is used for the project manager
9 or -- the CEC project manager. When the applicant applies
10 or sends a letter to the FAA I would like that to be copied
11 to the airport manager, which is Keith Freitas. So anything
12 to do where the requirements are for the applicant to
13 contact the FAA.

14 HEARING OFFICER CELLI: Is there in the Errata a
15 specific --

16 MR. WILSON: Not in the Errata but in the PMPD.

17 HEARING OFFICER CELLI: Okay.

18 MR. WILSON: So the way it's worded right now is
19 the requirement for the applicant is I believe it's 90 days
20 before the turbines are ruled, started up, then they are
21 required to send a notice to the FAA and request the NOTAM
22 be put on the charts. The NOTAM be marked on the charts.
23 And all I'm asking is --

24 HEARING OFFICER CELLI: The NOTAM.

25 MR. WILSON: -- is --

1 HEARING OFFICER CELLI: Stay with me for a minute.

2 MR. WILSON: Yeah, yeah.

3 HEARING OFFICER CELLI: Isn't the NOTAM section in
4 the Errata or was that just Mr. Sarvey's comments?

5 MR. WILSON: I think it was Mr. Sarvey's comments.

6 HEARING OFFICER CELLI: But the NOTAM --

7 MR. WILSON: That's right.

8 HEARING OFFICER CELLI: Was there any Errata -- an
9 actual edit from staff or applicant with regard to the
10 NOTAM?

11 MR. WILSON: No.

12 HEARING OFFICER CELLI: All right. I think I'm
13 confusing that with the comments --

14 MR. WILSON: No, no.

15 HEARING OFFICER CELLI: -- made by Mr. Sarvey.

16 MR. WILSON: Yeah. All I'm asking is that when
17 the applicant is required to notify the FAA, or requests
18 from the FAA, that the airport manager be copied. And the
19 airport manager for the Byron Airport is also the airport
20 manager for the Buchanan Airport.

21 HEARING OFFICER CELLI: Okay. Right now the way
22 TRANS-8 reads is: "The project owner shall initiate the
23 following actions to ensure pilots are aware of the
24 project's location and potential hazards to aviation."

25 MR. WHEATLAND: Hearing Officer Celli, the

1 clarification already provides the language that Mr. Wilson
2 is requesting. It says, within 30 days following the start
3 of construction the project owner shall submit draft
4 language for the letters of request to the FAA, including
5 NorCal and Byron Airport to the CPM for review and approval.

6 MR. WILSON: Then Byron Airport, airport manager.
7 How is that? Because there is -- because there is somebody
8 located in the Byron Airport.

9 MR. WHEATLAND: We have no objection to saying the
10 Byron Airport manager.

11 HEARING OFFICER CELLI: Staff, any objection?

12 MS. WILLIS: No, we wouldn't object to that.

13 HEARING OFFICER CELLI: And Mr. Hoffman, aren't
14 you the CPM for this, for Mariposa? So I just want to make
15 sure that that's okay with you. We're basically saying
16 Byron Airport manager, inserting the word "manager" in that
17 first paragraph of the verification of TRANS-8.

18 MR. HOFFMAN: We'll make sure that Keith Freitas
19 gets that.

20 HEARING OFFICER CELLI: Anything else, Mr. Wilson?

21 MR. WILSON: No. Thank you very much, Mr. Hearing
22 Officer.

23 HEARING OFFICER CELLI: Thank you. Now I'm going
24 to -- I would like to get back to -- Mr. Sarvey, welcome.

25 MR. SARVEY: Thank you.

1 HEARING OFFICER CELLI: Glad you could make it.

2 MR. SARVEY: Me too.

3 HEARING OFFICER CELLI: What we have done, just to
4 catch you up, is we have gone through the Errata. Applicant
5 looked at it and they said, that's what we were asking for.
6 and applicant looked at their Draft Errata and they said
7 that's what we want, we don't have a problem with it. But
8 we actually added a couple of things that were in the
9 original filing of edits that we had omitted to actually put
10 in; there were three of those. But other than that, it's
11 everything that you have seen.

12 MR. SARVEY: Okay.

13 HEARING OFFICER CELLI: Mr. Groover had no issue
14 with the Draft Errata. Mr. Wilson just made a suggestion.

15 You weren't here. I'm going to read this again
16 because I wanted to explain why none of the things that you
17 suggested are in my Draft Errata. Basically we said,
18 Mr. Sarvey and Mr. Dighe, in both instances the comments
19 were more in the nature of argument opposed to certain
20 findings contained within the PMPD or rebuttal arguments to
21 testimony contained in the evidentiary records.

22 These types of comments are not included in the
23 Draft Errata. The Draft Errata lists those errors of fact
24 which are, you know, the errors that we inevitably will have
25 in a PMPD, like for instance, if we said a road was 1,000

1 feet but it was really 100 feet, something like that.

2 So I hope that's clear. I just wanted you to know
3 that we didn't ignore your comments. That they were
4 received and considered.

5 So with that what we are interested in knowing
6 right now is if you have had a chance to look at the Draft
7 Errata and if you have any comments on the Draft Errata that
8 we have from applicant and staff so far?

9 MR. SARVEY: No, I haven't had a chance to look at
10 it.

11 HEARING OFFICER CELLI: There are extra copies --

12 MR. SARVEY: I will look at it over the course of
13 the hearing. I already got one from the public adviser,
14 thank you, and I'll take a look at it while we're having our
15 conversation.

16 HEARING OFFICER CELLI: I'll come back to you.

17 MR. SARVEY: Okay.

18 HEARING OFFICER CELLI: I was at Jass Singh.

19 Mr. Singh, have you had a chance to look at the Draft
20 Errata?

21 MR. SINGH: I was looking into -- I was, you know,
22 trying to pull all the documents on downloading. So give me
23 two minutes and then I can make my comments.

24 HEARING OFFICER CELLI: Okay. April Sommer, I
25 would say having only just looked at it really quickly, the

1 comments that you submitted today, that they, like
2 Mr. Sarvey's and Dighe's, seem to be more in the nature of
3 argument than actual errata. But if I am wrong about that
4 let me know. In terms of things like misplaced commas or
5 erroneous information that doesn't comport to the evidence.

6 MS. SOMMER: Yeah. I did not receive this, I'm
7 apparently not on the service list. I'm not sure whether
8 that hasn't happened yet so I just had a chance to look
9 through it briefly.

10 But as far as the applicant's Errata. Changing
11 the -- this was under the Hazardous Materials page two. The
12 pipe from an eight inch to a four inch.

13 HEARING OFFICER CELLI: No, it went the other way
14 around. It's a four inch -- that we had erroneously put in
15 as four but it's an eight inch pipe.

16 MS. SOMMER: Okay. That answered my question.

17 I need a few more minutes to review it. Like I
18 said, I've just looked at it now but I don't have any
19 objections at this moment.

20 HEARING OFFICER CELLI: Okay. With that then what
21 I would like to do, since most of these are staff and
22 applicant's, is I wanted to address certain Committee
23 concerns with some of the Errata so we can get an answer
24 perhaps.

25 Staff, the Errata at page three, Greenhouse Gas

1 Emissions, strikes a lot of language. And I wanted to hear
2 from staff -- I wanted to first tell you what that was about
3 and then see what your position was and hear from the other
4 parties. What that section talks about and what the staff
5 is proposing to strike at page three are construction phase
6 greenhouse gas emissions.

7 The language was inserted to try to bring current
8 the language that has been used since Avenal so that it
9 reflected the current state of the law. And it was trying
10 to deal with the different approaches that, say for
11 instance, the Bay Area Air Quality Management District had,
12 as opposed to South Coast Air Quality Management District's
13 approach to quantifying the greenhouse gases during
14 construction and sort of tagging that to the, to the overall
15 greenhouse gases. And Mr. Lemei had a big part to do with
16 that, so if I'm saying something wrong please jump in and
17 correct me.

18 ADVISOR LEMEI: That's generally the purpose of
19 the update. The original, the discussion in Avenal adopted
20 kind of draft approaches that had been proposed by staffs of
21 I think several airports and other, and other draft
22 guidance. Some of that draft guidance has since become
23 final and so it is an update in that regard.

24 HEARING OFFICER CELLI: And it seemed to me that
25 since it was mostly policy or regulatory information, not

1 factual. Because as I recall, staff's concern was that it
2 wasn't in the record, per se. But it looked like the sort
3 of thing we could take official notice of and I just wanted
4 to know if there was a deeper problem than that.

5 MS. WILLIS: My understanding was that our staff
6 was just concerned that they didn't testify to it or know
7 about it being in the record. If Mr. Birdsall or Mr. Bemis
8 have any contrary comments, if they are on the line.

9 HEARING OFFICER CELLI: It looks -- Mr. Bemis, I
10 can see he is on the line but he has got the headphone
11 symbol versus the telephone symbol, which I think means he
12 can only hear but not speak unless he wants to get on the
13 phone in the next minute or so. Is Brewster Birdsall on the
14 line?

15 MR. BIRDSALL: Hi. Can you hear me in the room?
16 This is Brewster from Energy Commission staff on air quality
17 and GHG.

18 MS. WILLIS: Yes, Brewster, thank you. Do you
19 have any objection to including this language? As Mr. Celli
20 just -- you heard Mr. Celli just point out that this is more
21 of a policy discussion.

22 MR. BIRDSALL: I don't have objection in that my
23 understanding of what's in the PMPD is generally correct. I
24 was resistant to or I recommended that it be removed from
25 the PMPD because in our Staff Assessment we did not

1 uniformly take notice of local air district recommendations
2 for criteria air pollutants or GHG. Because as you know, as
3 the Energy Commission is the lead agency, the Energy
4 Commission is available to make its own determination and
5 its own threshold of significance as part of the record of
6 the testimony. And we have done that in the GHG section
7 without relying on how the local air districts have been
8 providing their recommendations.

9 And because we have been making and building the
10 evidence for our threshold of significance based on our
11 testimony without relying on the local air district
12 guidance, I thought it was appropriate to keep this
13 information out of the PMPD. That's the whole of my
14 direction here.

15 HEARING OFFICER CELLI: Mr. Lemei, if you want to
16 ask Mr. Birdsall any questions about that, go ahead, GHGs in
17 the Air Quality section.

18 ADVISOR LEMEI: Forgive me, I'm flipping to the
19 appropriate section.

20 MR. BIRDSALL: I'm sorry, the line is quite noisy
21 so it's difficult for me to understand what is being said.

22 ADVISOR LEMEI: What is being said is that pages
23 are being flipped so it's not a whole lot of content. I'll
24 speak up when I get to the right place, I apologize.

25 HEARING OFFICER CELLI: We're in GHG.

1 ADVISOR LEMEI: Right.

2 HEARING OFFICER CELLI: And if you look at page 7
3 starting at, as noted above. It's the first full paragraph
4 on page seven. Starting on page seven it's the first full
5 paragraph on page seven and then it goes to page eight.

6 ADVISOR LEMEI: So I am now looking at the
7 section. And I did personally assist Mr. Celli in working
8 on this section. The concern that I had with the, with the
9 -- the concern -- I don't have the Staff Analysis in front
10 of me but my recollection is that the Staff Analysis did
11 make reference to, to practices.

12 HEARING OFFICER CELLI: There was some reference
13 to practices but I don't have staff's assessment either.

14 ADVISOR LEMEI: I guess the, I guess the broader
15 issue is I understand that it is not routine and that the
16 Commission is not, is not formally subject to air district
17 practices and that such practices aren't necessarily
18 routinely referenced.

19 In this case operational impacts or construction
20 GHG impacts, CEQA analysis of GHG impacts is itself kind of
21 an emerging discipline and the Avenal decision acknowledged
22 that emerging state of the law.

23 I think that the Committee's sense was that to the
24 extent that the decision that we were looking to
25 acknowledged the emerging state of the law it was

1 appropriate to update by reference, it was appropriate to
2 update by reference the current state of the law.

3 Not to suggest that the Commission were bound by
4 such approaches but to provide context for the, for the
5 notion that the current approach being taken was, was still
6 consistent with the, with the law and practices as they have
7 emerged, not just as they were when Avenal was decided.

8 HEARING OFFICER CELLI: Did you get all that,
9 Mr. Birdsall?

10 MR. BIRDSALL: I think I caught most of that and I
11 guess I'll try to be brief.

12 The items that are identified in the PMPD are
13 generally dated from 2008 for the Air Resources Board, June
14 of 2010 for the Bay Area guidance and then 2008 December for
15 South Coast guidelines.

16 And the Governor's Office of Planning and
17 Research, the Governor's Office of Planning and Research has
18 since 2008 adopted changes to the state CEQA guidelines to
19 make it much more clear on how lead agencies would prepare
20 analyses for GHG. So some of this information that is being
21 cited in the PMPD predates the changes to the state's CEQA
22 guidelines that were adopted and became effective in 2010.

23 So I just feel like there's this portion of the
24 PMPD that is a little bit backwards-looking without needing
25 to be.

1 HEARING OFFICER CELLI: Okay, well thank you,
2 Mr. Birdsall. Let's hear from the applicant on that.

3 MR. WHEATLAND: The applicant really has no
4 position on this issue. We don't object to the inclusion of
5 the language and we would not object to its removal.

6 HEARING OFFICER CELLI: Do any of the other
7 parties have opinion one way or the other about this? We'll
8 start when you can get to the microphone, Mr. Sarvey, if you
9 have a position one way or the other on the proposed
10 language to be stricken here in GHGs.

11 MR. SARVEY: Well, I had a whole other idea about
12 GHG but I'm not sure you're willing to entertain that so
13 I'll pass on it.

14 HEARING OFFICER CELLI: Okay, thank you.
15 Mr. Groover?

16 MR. GROOVER: I have none.

17 HEARING OFFICER CELLI: Okay. And then
18 Mr. Wilson, did you have an opinion one way or the other on
19 this subject?

20 MR. WILSON: Not at this time. But because --
21 isn't it a fact that as the applicant continues through this
22 process he has to abide by the greenhouse gas laws?

23 HEARING OFFICER CELLI: Right.

24 MR. WILSON: So --

25 HEARING OFFICER CELLI: Just to be clear for the

1 benefit of everybody, this section was designed to sort of
2 inventory the approaches to construction phase GHG
3 calculations.

4 MR. WILSON: So I have no objection.

5 HEARING OFFICER CELLI: Okay, thank you. And then
6 Mr. Singh, I guess you would be next.

7 MR. SINGH: We have no objection at this time.

8 HEARING OFFICER CELLI: Thank you. Ms. Sommer,
9 any comment?

10 MS. SOMMER: Not at this time.

11 HEARING OFFICER CELLI: Okay. We are going to go
12 off the record for a moment.

13 (Off the record at 3:43 p.m.)

14 (On the record at 3:45 p.m.)

15 HEARING OFFICER CELLI: So we are back on the
16 record. Sorry for the interruption, everyone.

17 So Mr. Brewster, I mean Birdsall, we just wanted
18 to know, the Committee wanted to know whether you actually
19 felt that any of this language was erroneous in the proposed
20 language?

21 MR. BIRDSALL: You know, I don't think the PMPD is
22 erroneous. The information, however, was not in staff's
23 testimony on it was not a basis for the foundation of our
24 conclusion of significance or insignificance.

25 HEARING OFFICER CELLI: Okay, thank you very much.

1 Thank you, staff, for presenting Mr. Birdsall for us.

2 Okay, we'll take that one under advisement.

3 The next question I had had to do with Errata page
4 seven. And when I say Errata I'm talking about the Draft
5 Errata that we put out having to do with "The Operation
6 Security Plan shall include --." And then the new language
7 was, and this was applicant's proposal:

8 "Background investigations shall be
9 restricted to determine the accuracy of
10 employee identity and employment history and
11 shall be conducted in accordance with state
12 and federal laws regarding security and
13 privacy."

14 And I just was wondering whether that precluded a
15 criminal background check? And my question is addressed to
16 the applicant.

17 MR. WHEATLAND: Well it would not preclude a
18 criminal background check if a private party is able to
19 undertake such a check under the current state laws. I
20 can't tell you today whether state law would permit the
21 project owner to do that. But if it's permitted by state
22 law then that would be part of our investigation.

23 HEARING OFFICER CELLI: What about credit history?

24 MR. WHEATLAND: It is my understanding that credit
25 history is not relevant to employment and there are specific

1 state laws that bar access to certain credit information
2 relating to employment conditions. So there may be some
3 restrictions with respect to determining credit history of
4 an employee.

5 HEARING OFFICER CELLI: The reason I'm asking is
6 it seemed to us to be a sort of a higher level security
7 issue, the personnel at a power plant. And that in
8 accordance with state and federal laws regarding security
9 and privacy we're satisfied that that encompasses a criminal
10 check. See, it says "restricted to."

11 I would change the words "in accordance" to
12 something to the effect of, to the extent legal or available
13 or something like that, under state and federal law.

14 MR. WHEATLAND: I'm informed that the language
15 that we're discussing is already in Section 4.A so we added
16 that language in 4.B just so that it conformed also to 4.A.

17 HEARING OFFICER CELLI: So it just mirrors?

18 MR. WHEATLAND: Mirrors the language, yes.

19 HEARING OFFICER CELLI: Okay. The concern had to
20 do with the fact that the wording said "restricted to." In
21 other words, it's limiting an employment check to merely an
22 employee's identity and employment history. And we wanted
23 to make sure that that language didn't preclude a criminal
24 background check if possible.

25 MR. WHEATLAND: Well, then you could delete the

1 words "be restricted" and say "shall determine the accuracy
2 of employee identity and employment history and shall be
3 conducted in accordance."

4 HEARING OFFICER CELLI: I don't know if that
5 solves the problem. Because if we make it: "Background
6 investigations shall determine the accuracy of employee
7 identity and employment history" then it's sort of limited
8 to the expressed terms.

9 MR. WHEATLAND: One of the problems here I guess I
10 should mention is that this, this category involves
11 employees, contractors and vendors. And certainly with
12 respect to employees the project owner is going to be
13 conducting an extensive investigation of that, of that
14 employee.

15 But when it comes to contractors and/or vendors,
16 for example someone who might deliver a part to the project
17 site. It is much more difficult to determine and would be
18 burdensome to undertake an extensive background
19 investigation of a particular vendor that might be
20 delivering a part or might be delivering bottled water.

21 HEARING OFFICER CELLI: So we would want to limit
22 it to employees only.

23 MR. WHEATLAND: Yes, exactly. So if it was
24 limited, if it was limited to employees. The applicant
25 certainly is intending to undertake an extensive

1 investigation of those individuals.

2 HEARING OFFICER CELLI: Okay. Background shall be
3 restricted to actually --

4 MR. WHEATLAND: That language here is -- so we
5 can, we can suggest some target wordsmithing that -- we can
6 suggest some language for you.

7 HEARING OFFICER CELLI: I would appreciate that.
8 We really just want to, we want to -- the balance we are
9 trying to strike is not requiring a criminal background,
10 because that's a very amorphous area, you know. You can go
11 on the Internet these days and run every county in the state
12 and see if anybody shows up on their rolls. Or you can hire
13 a private investigation company to really go digging. It's
14 hard to say when you have done due diligence.

15 So what I would like to see is some language that
16 includes something more than just a permissive look at the
17 criminal but requires some sort of review of criminal
18 background for an employee of the power plant.

19 HEARING OFFICER CELLI: Okay, we will suggest
20 that. And then, if I understand it, that it is all right to
21 have a lesser degree of scrutiny for vendors and
22 contractors.

23 HEARING OFFICER CELLI: Oh yeah, absolutely.
24 Thank you, that solves that problem.

25 The next question had to do with, I think we

1 talked about this earlier with staff, at page eight and nine
2 of the Draft. What I cite to on page eight and nine is the
3 Attachment A of Hazardous Materials proposed for use at the
4 Mariposa Energy Project. And we are citing to Exhibit 309,
5 page 4.4-33 through 4.4-34, which is where this came from.

6 And I just wanted to make sure that these changes
7 that have come in, because these were applicant's proposed
8 changes, reflected what's in the staff's supplemental
9 assessment and isn't new information that I have to refer to
10 somewhere else in the record.

11 MS. WILLIS: No, I went through each and every
12 change and checked it off to the Supplemental Staff
13 Assessment on page 4.4-33. And they all matched up exactly
14 except the two that I proposed changes in.

15 HEARING OFFICER CELLI: Thank you very much, that
16 clears that up.

17 And then page 33 -- 13, rather. I was going to --
18 this is staff's proposal, "Item number 19 on page 33, number
19 24, change to read as follows:" And it says: "Condition of
20 Certification BIO-16 will ensure impacts to the Golden Eagle
21 from construction and operation of the MEP below the level
22 of significance." Which doesn't, isn't exactly a perfect
23 sentence.

24 What I was going to suggest is if we left the word
25 "reduce" in but inserted the word "potential." Would that

1 solve the problem? So it would read: Condition of
2 Certification BIO-16 will reduce potential impacts to the
3 Golden Eagle from construction and operation of the MEP
4 below the level of significance.

5 MS. WILLIS: I don't see that as a problem.

6 HEARING OFFICER CELLI: So I think we'll go with
7 that. So the idea is, rather than putting the word "ensure"
8 we will strike the word "ensure." Instead of having
9 "reduce" as stricken we would leave in the word "reduce."
10 And after the word "reduce" but before the word "impacts"
11 insert the word "potential." And I think that solves the
12 problem. Is that okay with everybody? Mountain House, any
13 problem with that?

14 MR. GROOVER: None.

15 HEARING OFFICER CELLI: Mr. Sarvey, any problem?

16 MR. SARVEY: (Shook head.)

17 HEARING OFFICER CELLI: He's shaking his head no.

18 MR. WILSON: No problem.

19 HEARING OFFICER CELLI: Thank you. Mr. Wilson
20 says, no. Mr. Singh?

21 MR. SINGH: No.

22 HEARING OFFICER CELLI: No problem. Ms. Sommer?

23 MS. SOMMER: At page 32 there is -- there is no
24 problem with that change, which is a similar issue, number
25 14.

1 HEARING OFFICER CELLI: Let me get to that. Is
2 that in the Errata?

3 MS. SOMMER: It's not but it's the same change of
4 language that you're talking about right now. It just
5 seemed appropriate to talk about it.

6 HEARING OFFICER CELLI: So in Bio, we're in Bio,
7 page 32.

8 MS. SOMMER: Fourteen.

9 HEARING OFFICER CELLI: Okay.

10 MS. SOMMER: This is again -- the language is it
11 will ensure.

12 HEARING OFFICER CELLI: Page 14.

13 MS. SOMMER: Thirty-two, number 14.

14 HEARING OFFICER CELLI: Got it. Item number 14 is
15 actually finding of fact number 14, okay. So what is the
16 change you're proposing, Ms. Sommer? Because Item 14 that I
17 have says, Condition of Certification. It should be
18 Conditions of Certification, I'm glad you caught that one.

19 MS. SOMMER: Perhaps I'm understanding incorrectly
20 then what the change is as far as the Golden Eagle. Can you
21 just --

22 HEARING OFFICER CELLI: What it was -- let me read
23 it to you the way it was originally.

24 MS. SOMMER: Okay.

25 HEARING OFFICER CELLI: It used to say, "Condition

1 of Certification BIO-16 will reduce impacts to the Golden
2 Eagle from construction and operation of the MEP below the
3 level of significance."

4 And then the proposed new change from staff was to
5 strike the word "reduce" and put in the word "ensure." And
6 my sense was they wanted to say that this BIO-16, Condition
7 of Certification BIO-16 will ensure that impacts to the
8 Golden Eagle will be reduced below significance. But it
9 didn't make syntactical sense.

10 MS. SOMMER: I would then object to that. That
11 that's not a finding that this Board has the ability to
12 make. And I guess I was actually saying the exact opposite
13 on 14, that I have a problem with the use of "ensure."

14 HEARING OFFICER CELLI: Okay, but that's actually
15 a discretionary finding of the Committee itself. So let me
16 just say that you are welcome to dissent and that's okay. I
17 mean, everybody, the majority of people here don't agree
18 with a lot of the things that are being said in the PMPD.
19 But essentially the Committee looks at the evidence, weighs
20 the evidence, makes a discretionary finding. When the
21 Committee makes its findings the findings are stated in
22 unequivocal language.

23 So they're finding that these conditions ensure
24 that these impacts will be reduced to below the level of
25 significance. That's not so much an erroneous thing as

1 that's a position that you take in opposition to the
2 decision.

3 MS. SOMMER: Well, I mean, as far as 14 that's
4 only a conclusion that, you know, the Fish and Wildlife
5 Service can make. You're talking about endangered species.
6 That you will be able to ensure that there will not be
7 significant impacts. So that's --

8 HEARING OFFICER CELLI: Actually that is our job.
9 That's what the California Energy Commission does with
10 regard to within the site of the power plant. So we do work
11 with the CDFG and we work with USFWS but we do have to make
12 these findings under CEQA and that's what these conditions
13 are for.

14 MS. SOMMER: Okay.

15 HEARING OFFICER CELLI: Your objection --

16 MS. SOMMER: My objection is on the record.

17 HEARING OFFICER CELLI: The objection is noted,
18 thank you. Applicant, anything on that?

19 MR. WHEATLAND: No objection.

20 HEARING OFFICER CELLI: Okay, thank you.

21 Last one. Page 19 of the Errata. The only change
22 I would make on page 19 on the top paragraph, which is the
23 second sort of half of Item 33 under, I think, Worker
24 Safety. It says, the last sentence says: "Also, Condition
25 of Certification LAND-1 would ensure no additional loss of

1 agricultural land will occur." This is proposed language
2 from staff.

3 What I would do is just to change it to be more
4 declaratory is to make it: Condition of Certification LAND-1
5 ensures no additional loss of agricultural land will occur.

6 And that's just to take it out of the subjunctive case.

7 MS. WILLIS: That's fine, thank you.

8 HEARING OFFICER CELLI: Okay. And then I had a
9 similar change on page 27, which is -- if you look at the
10 very top of 27, which cuts into an existing paragraph that
11 staff was proposing. Which we would accept, it's just that
12 it says: "Condition of Certification SOCIO-1 is proposed to
13 ensure payment of fees to these districts." And I would
14 change it to read: Condition of Certification SOCIO-1 will
15 ensure payment of fees to these districts.

16 Okay, any question with that? Any intervenors?

17 MR. SINGH: I have a question.

18 HEARING OFFICER CELLI: Okay, Mr. Singh, go ahead,
19 please. And speak into the mic.

20 MR. SINGH: So on this particular, page 51 --
21 sorry, no sorry, page 26, Section 51.

22 HEARING OFFICER CELLI: Correct.

23 MR. SINGH: I'm not sure if we can make it part of
24 the comment or provide you the feedback. That the total
25 area being 7,280 square feet of occupied, and for which the

1 mitigation amount given is a total \$2,621.

2 Now, our conclusions is we have four schools. And
3 I have a document here which I can send you. And that gives
4 us a total of 46.5 acres of land on which these schools are
5 being built. This is Vicklund School, Bethany and Questa.
6 Plus we have Lammersville, which is on 20 acres square feet.

7 Now how this works out -- So I'm not sure on what
8 basis this calculation is taken.

9 HEARING OFFICER CELLI: Let's ask the applicant.
10 I'm going to ask the applicant and staff.

11 MR. SINGH: Sure.

12 HEARING OFFICER CELLI: Because this should come
13 from -- let me just say that the error that they are
14 pointing out is that in writing the PMPD we omitted the
15 condition altogether, although I remember seeing it so I
16 knew it existed at the time the evidentiary hearing record
17 was opened.

18 We omitted the condition and the verification
19 because we came in without any conditions at all in the PMPD
20 for Socio. And what I wanted to know is -- because I don't
21 recall this actually being litigated in the evidentiary
22 hearing. I could be wrong. Let me defer to applicant on
23 this one.

24 MR. WHEATLAND: Well it's my understanding that
25 the payment of these fees is a routine part of the siting

1 process. Generally the way it works is the school district
2 sends us a bill or assessment and we pay it. In fact, in
3 this case they have already sent us the assessment and the
4 amount has already been paid to the school district.

5 HEARING OFFICER CELLI: Was it the \$2,621?

6 MR. WHEATLAND: Chris, do you know how much was
7 the amount that they billed us?

8 MR. CURRY: They only charged us four cents per
9 square foot. It's 7400 square feet so somewhere around \$276
10 that they asked for. That check is working its way through
11 our accounting department right now and I'll send that out
12 next week.

13 HEARING OFFICER CELLI: Okay. But that number is
14 determined by whom?

15 MR. CURRY: That number was determined by the
16 Mountain House Education -- the Mountain House ESD. I was
17 working with Mr. Jeffrey Potter of Mountain House ESD.

18 HEARING OFFICER CELLI: Okay. So Mr. Singh --

19 MR. SINGH: Now, Mountain House ESD is the school
20 which is within one miles. And in it we have four schools.

21 Now are they only collecting the data for 2,000 or we are
22 also collecting what exists as of today? That's more
23 important. When you mitigate what exists as of today should
24 be mitigated.

25 HEARING OFFICER CELLI: There is actually, this is

1 pursuant to a statute. There is a code section that
2 requires and sets out what the calculation is.

3 MR. WHEATLAND: Right. And this assessment is
4 with respect to the school district in which the facility is
5 located. The facility is not located in the Mountain House
6 Community Services District nor in San Joaquin County so
7 there was not going to be a payment to San Joaquin County
8 school districts.

9 HEARING OFFICER CELLI: I see.

10 MS. WILLIS: This exact language is on the
11 Supplemental Staff Assessment 4.8-8. So it isn't any new
12 language or any changes, it was in there since the
13 beginning.

14 HEARING OFFICER CELLI: That's right.

15 MR. SARVEY: And Jass, you just get the pollution,
16 not the money.

17 MR. SINGH: Yeah, that's true. So now, you know,
18 I really want to figure it out first of all, you know. What
19 is the main purpose and agenda of today's meeting?

20 HEARING OFFICER CELLI: Let me --

21 MR. SINGH: You know, so everyone -- if we can
22 educate so that we drive the things from there.

23 HEARING OFFICER CELLI: Yes. So I'm glad you
24 asked. Today, see we have already had all of our
25 evidentiary hearings. I see many familiar faces that are

1 here today so I know that you participated in that. And
2 people on the phone for that matter. And the purpose of the
3 evidentiary hearing was to take evidence on all matters that
4 were in dispute with regard to the siting of the Mariposa
5 Energy Project.

6 And in the end after we heard all of the evidence
7 the Presiding Member's Proposed Decision was issued on April
8 13. And what it contains are all of the decisions of the
9 Presiding Member of the Committee, essentially.

10 And so what we are here to do today is to make
11 sure, for instance, we put out an Errata to make sure that
12 we don't have these glaring errors, factual errors, mistakes
13 that the parties have caught that they are telling us now,
14 you know. If we dropped a comma or overstated a number or
15 something like that, so we can make that correction in the
16 record.

17 The other opportunity today is when we're finished
18 doing this, which is really pretty quickly, we give the
19 public an opportunity to comment on the Presiding Member's
20 Proposed Decision. So that's what we're, that's the purpose
21 of today.

22 MR. SINGH: And that includes the intervenor also?

23 HEARING OFFICER CELLI: Absolutely. That's what
24 we're doing right now. That's why I'm asking, I'm asking
25 pointed questions with regard to the Errata that we have

1 already received.

2 Do you remember, we sent out the notice that said
3 we wanted your comments on the 28th? Because the comments
4 that we did received, we only received comments from
5 Mr. Sarvey, Mr. Dighe, applicant and staff. And then later
6 Mr. Simpson's attorney submitted some today. That's what we
7 are responding to at this time.

8 MR. SINGH: So basically this mitigation amount of
9 2,000, which will go to MSED, which is not part of MHCS. D.
10 It would be MHESD, Elementary School District, which is not
11 in this area, which is outside the boundary of here. And
12 there are four other schools which will be getting all the
13 pollution, they are not getting mitigated. As of today --

14 HEARING OFFICER CELLI: No, actually that is not a
15 true statement because in writing the PMPD, all of the
16 emissions are mitigated, and that's the decision. But your
17 question is, who is getting the money. And apparently the
18 money is going to the district that the site, the power
19 plant is sited in.

20 So since it's not sited, if the power plant were
21 sited in Mountain House then the Mountain House School
22 District would be the recipient.

23 MR. SINGH: I see.

24 HEARING OFFICER CELLI: But it is by law, by
25 statute, it goes to the school district where the site, that

1 the plant is located in.

2 MR. SINGH: But then we put into socioeconomics
3 and EJ, that gives us an area of six miles radius and in six
4 miles we fall in. So I think then this section should not
5 be part of Socioeconomics, in Environmental Justice.

6 HEARING OFFICER CELLI: No, it's a law. It's a
7 pointed statute that speaks just to -- is this under the
8 Education Code, I think it is?

9 MS. WILLIS: Yes. Actually if you look right
10 below where it says, applicant proposes, number 53. It's
11 Education Code Section 17620.

12 HEARING OFFICER CELLI: 17620.

13 MS. WILLIS: It doesn't have anything to do with
14 the six mile radius; it's a specific, it's specific to the
15 Education Code.

16 MR. SINGH: So now Education Code that you're
17 referring, does it fall under Socioeconomics and EJ?

18 HEARING OFFICER CELLI: No.

19 MR. SINGH: No. So now then this particular
20 section, why it was written under Socioeconomics and EJ?
21 That's my question.

22 HEARING OFFICER CELLI: That's --

23 MS. WILLIS: It did fall under -- the way we
24 divided up our sections, our technical sections, impacts on
25 education, housing and such fall under the Socioeconomics

1 section. This is a condition that is based on the Education
2 Code solely, though.

3 MR. SINGH: Okay. So if it falls under
4 Socioeconomics, as you said, then the six miles of radius
5 should be considered.

6 MS. WILLIS: It's not.

7 HEARING OFFICER CELLI: No.

8 MS. WILLIS: No, it's --

9 HEARING OFFICER CELLI: It's limited by the law.

10 MS. WILLIS: It's a law not our staff's analysis.

11 HEARING OFFICER CELLI: It's not a CEQA analysis.

12 There's a law that says, if you are going to build in a
13 school district you must pay fees according to a grid.

14 MR. SINGH: Then I think we should move this
15 section somewhere else. Because what's happening here is
16 you are telling us, hey, MHCS D and everybody -- it's a
17 perception being created that we are paying you mitigation
18 amount of 2,000-plus, chiller, and you guys just cool down.

19 So what I'm saying, this is a perception that is being
20 created. So that perception should be correctly being
21 created and this section should be moved to somewhere else
22 and not should not be in Socioeconomics and EJ.

23 HEARING OFFICER CELLI: Have you had a chance to
24 read the --

25 MR. SINGH: Yes, I did.

1 HEARING OFFICER CELLI: Because in the first
2 paragraph it explains what's covered under Socioeconomics
3 and including things such as taxes, property taxes, local
4 finances, et cetera. And that's why it's germane to
5 socioeconomics, because it's local finances. It's local
6 taxes, essentially, it's an assessment that runs with the
7 parcel. It's actually with the project, not with the land.

8 MR. SINGH: Is it a parcel or it's a built-out
9 area?

10 HEARING OFFICER CELLI: It's the project.

11 MR. SINGH: No, I meant to say, the school area
12 when you take, is it a built-out area or it's a parcel? Can
13 you ask the applicant this question?

14 HEARING OFFICER CELLI: I don't have a copy of the
15 evidence -- Education Code right now. He wants to know
16 whether the --

17 MR. WHEATLAND: I think he's asking, the school
18 impact fee, which is paid to the school district under state
19 law, is calculated on the square footage of the buildings
20 that are constructed on the site.

21 MR. SINGH: All of the parcel.

22 MR. WHEATLAND: Yes.

23 HEARING OFFICER CELLI: As opposed to the whole
24 parcel.

25 MR. WHEATLAND: Yes, it's not assessed on the

1 basis of the size of the parcel, it's based on the size of
2 the buildings, occupied buildings that are constructed on
3 the site.

4 MR. GROOVER: If I may interject.

5 HEARING OFFICER CELLI: Please.

6 MR. GROOVER: For Mr. Singh. The site means the
7 Mariposa site, not the school district site.

8 MR. SINGH: Sure, sure.

9 HEARING OFFICER CELLI: Okay, thank you for that
10 clarification. So with that, that was the -- so I was just
11 basically, the only change that I was addressing, Mr. Singh,
12 had to do with just the syntax of the sentence. Changing it
13 from sort of the future tense to the present tense.

14 So that really covers all of the comments that the
15 Committee had with regard to the Errata.

16 Hello, Mr. Lamb. Nice to see you again. So I
17 have Mr. Sarvey, I have Mr. Lamb and Mr. Singh.

18 And I think, Ms. Sommer, you also asked to sort of
19 take a moment to look and see if there was anything with
20 regard to the Errata that you wanted to comment on and that
21 was probably a good 10, 15 minutes ago.

22 So let me start with Mr. Sarvey, any comments on
23 the Draft Errata, sir?

24 MR. SARVEY: Just that I would have liked to have
25 it before our meeting, maybe yesterday would have been good

1 or the day before.

2 And I totally dislike the way you've got the PMPD
3 numbered here.

4 HEARING OFFICER CELLI: The page numbers?

5 MR. SARVEY: The page numbers. They're just
6 really hard to deal with. It was the same with the Staff
7 Assessment. It's really difficult to comment on something
8 right.

9 HEARING OFFICER CELLI: That is actually, that's a
10 valid complaint. This is something that's sort of new that
11 came out of the ARRA cases. We used to do our pagination so
12 if you were in Socioeconomics it would be section 4.1-
13 whatever page number. And we're not doing that anymore; we
14 want to go back to it. I do acknowledge the confusion of
15 having several page ones. There's at least 22 page ones in
16 here so that's a valid complaint.

17 Any further concerns with the Draft Errata,
18 Mr. Sarvey?

19 MR. SARVEY: No. I just had one more condition I
20 wanted to comment on that I failed to comment on in my
21 comments and that's Worker Safety-6.

22 HEARING OFFICER CELLI: Is that in the Errata or
23 in the --

24 MR. SARVEY: No.

25 HEARING OFFICER CELLI: -- PMPD?

1 MR. SARVEY: It's in the PMPD. Worker Safety-6.
2 The verifications at least five days prior to the start of
3 commercial operations the project owner shall provide
4 documentation of the payment described above to the CPM.

5 I would think the most dangerous time for this
6 project will be during construction so --

7 HEARING OFFICER CELLI: I want to just say for
8 everybody.

9 MR. SARVEY: Sure.

10 HEARING OFFICER CELLI: Worker Safety-6 reads as
11 follows:

12 "The project owner shall provide the
13 \$70,000 payment to the Tracy Fire Department
14 prior to the start of commercial operation.
15 This funding shall fully compensate Tracy
16 Fire Department for any services it may be
17 called to provide the project over the life
18 of the project."

19 And did you have a comment on that?

20 MR. SARVEY: I would just say that the money
21 should be surrendered before the start of construction. The
22 construction is going to be the most dangerous time. But,
23 you know, if the applicant has an objection to it then
24 forget it but I would just recommend that.

25 HEARING OFFICER CELLI: Does applicant have a

1 comment.

2 MR. WHEATLAND: Yeah. Mr. Curry had a
3 conversation with the fire department on this issue and I
4 would like to ask him to relate his discussions with them.

5 MR. CURRY: We had talked about the timing of the
6 payment. And I think it was actually in the e-mail that you
7 might have seen in the last -- it was the hearing or the
8 workshop, I can't remember. But we had agreed in that e-
9 mail, or rather the offer and acceptance, that the payment
10 would be rendered prior to commercial operation.

11 HEARING OFFICER CELLI: So it sounds like an
12 agreement between the parties.

13 Anything further on the Draft?

14 MR. SARVEY: No, nothing else, thank you,
15 Mr. Celli.

16 HEARING OFFICER CELLI: Thank you. Now let's hear
17 from the Mountain House Community Services District, which
18 is Mr. Lamb and Mr. Groover.

19 MR. GROOVER: Nothing.

20 HEARING OFFICER CELLI: Thank you.

21 And then Mr. Singh, did you have comments on the
22 Draft Errata?

23 Which, by the way, I have -- does everyone here,
24 do we all have a copy? I have color copies here if anyone
25 in the Committee needs one. I have some extra copies if we

1 run out.

2 Mr. Singh, any comment on the Draft Errata?

3 MR. SINGH: Not yet.

4 HEARING OFFICER CELLI: Okay. Ms. Sommer?

5 MS. SOMMER: Let's see. And we're on page eight.

6 Can you just confirm where all these changes are?

7 HEARING OFFICER CELLI: Yes.

8 MS. SOMMER: Are these just errors or?

9 HEARING OFFICER CELLI: What I'm going to read
10 you, it's Exhibit 301, page 4.4-33 to 4.4-34. Now that's
11 interesting, let me take a look at that. Because why are we
12 having those kinds -- oh, I'm sorry, because Exhibit 301 was
13 the staff's supplemental analysis and they did their
14 pagination the old fashioned way with the sections. So that
15 is the cite for that information.

16 And then correct me if I'm wrong but I got
17 confirmation a little while ago from staff that the
18 information that was contained in the table did come from
19 the Exhibit 301 and is accurately reflected in Exhibit 301.

20 Is that correct?

21 MS. WILLIS: Correct. The change that the
22 applicant was proposing with the two modifications that I
23 had is correct.

24 HEARING OFFICER CELLI: Thank you. So in other
25 words, it didn't come from somewhere else in the record, it

1 came from that same document. We apparently just got it
2 wrong when we put it in the PMPD.

3 MS. SOMMER: And then on page 11 and 12. The
4 change for "Undetermined" to "Yes." I'm just a little
5 confused on it. Those are still -- all seem to be pending
6 issues with the ESA and the Clean Water Act. Why that would
7 be a yes instead of undetermined?

8 HEARING OFFICER CELLI: Those all are staff's
9 proposed changes. On page 11, folks, we're talking about,
10 it says: Item 18, staff proposes, page 29, Table 2, change
11 to read as follows:

12 It's a Biological Resources Table 2, Compliance
13 with Federal, state and Local LORS table. The headings are
14 Applicable LORS, Federal and then further down State. And
15 then there's a column that says, In Compliance and then the
16 next column there's a Discussion.

17 Initially there were three items under the Federal
18 LORS that in the Compliance column said Undetermined and the
19 remainder said "Yes." And staff proposed to strike the
20 words "Undetermined" in all instances and enter the word
21 "Yes." And I am going to let the staff explain why.

22 MS. WILLIS: Let me -- I'm sorry. On the March 7
23 hearing the biology staff, Sara Keeler, actually testified
24 to these changes; that she had determined that these areas
25 were in compliance. This is just updating the table.

1 HEARING OFFICER CELLI: So --

2 MS. WILLIS: It just wasn't updated according to
3 the oral testimony.

4 HEARING OFFICER CELLI: Okay. So in order to
5 conform to proof, essentially, you made that change. I just
6 wanted to make sure that the change -- was there any more to
7 it than the testimony of the biology expert for staff?

8 MS. WILLIS: It's our staff biology expert's
9 opinion that these areas are in compliance. And she just
10 wanted to make sure that she had -- she stated that on the
11 record during her oral testimony and then we just wanted to
12 make sure that this change was included in the PMPD.

13 HEARING OFFICER CELLI: Thank you. So does that
14 clear that up for you, Ms. Sommer?

15 MS. SOMMER: Yeah. It just seems a little bit in
16 contradiction to the discussion on each of them, which is
17 saying that permit and certification is pending. That's my
18 confusion on that.

19 HEARING OFFICER CELLI: So if I may, because this
20 is how I would reconcile this in my mind is that the staff's
21 expert testified that they found that there was no non-
22 compliance or that the undetermined status of the expert was
23 that they were in compliance. Notwithstanding the fact that
24 apparently there's permits that are still pending and not
25 permitted yet.

1 MS. WILLIS: That's correct. The staff had worked
2 closely with US Fish and Wildlife Service staff and with the
3 California Department of Fish and Game staff. And even
4 though final copies of their opinions were not available at
5 the time they were, it was clear in their mind that they
6 would be in compliance. So that was our staff's opinion
7 during the testimony.

8 HEARING OFFICER CELLI: Very clear. Is that clear
9 enough for you, Ms. Sommer?

10 MR. SARVEY: I would agree with Ms. Sommer. This
11 stuff is undetermined. I don't think the PMPD should say
12 that they're in compliance until these particular permits
13 are granted.

14 HEARING OFFICER CELLI: Well let's remember what
15 we're talking about here. Now this is staff's testimony.

16 MR. SARVEY: I understand.

17 HEARING OFFICER CELLI: Okay.

18 MR. SARVEY: This is the PMPD.

19 HEARING OFFICER CELLI: Right. But, I mean, it's
20 staff's --

21 MR. SARVEY: I understand what the staff's
22 position is but I'm talking about this is the PMPD. And
23 you're telling people they've got these permits and they
24 don't.

25 HEARING OFFICER CELLI: Oh, I don't know that

1 that's what it says.

2 MR. SARVEY: It says, in compliance. It won't be
3 in compliance until the agency grants a permit and at that
4 stage you could say it's in compliance. But right now, to
5 be determined later maybe or something. But in compliance,
6 yes. No, that's no correct.

7 HEARING OFFICER CELLI: Well it says -- okay.

8 "The USACE is currently drafting the CWA
9 404 authorization to construct the project
10 under Nationwide Permit #12, but the permit
11 cannot be issued to Mariposa Energy until
12 Section 7 ESA consultation is finished ;(i.e.
13 Biological Opinion sent to the USACE)."

14 So that is a pending procedural.

15 MR. SARVEY: Okay, "pending" I would admit would
16 be okay but "yes" no. Because this is Section 404 of the
17 Clean Water Act. If they don't have the permit how can you
18 say yes it's in compliance, it's not, in the PMPD.

19 In their testimony sure they can have that opinion
20 but the PMPD is the final word. And they don't have any of
21 these permits so I would say it's pending, you know, if you
22 want to be accurate. If it doesn't matter it doesn't matter
23 but, I mean, when I look at it and I'm reading it, I look at
24 the, okay, applicable LORS. That implies that they have the
25 permit but they don't.

1 HEARING OFFICER CELLI: Okay. So was that your
2 concern as well, Ms. Sommer?

3 MS. SOMMER: Yes, yes.

4 HEARING OFFICER CELLI: Did Mr. Sarvey adequately
5 represent your position?

6 MS. SOMMER: Yeah. I mean, particularly, you
7 know, if you look at the first one, you know. Cannot be
8 issued until consultation is finished. The results of that
9 consultation, it's not a done deal. And saying yes it's in
10 compliance, you know, implies that.

11 HEARING OFFICER CELLI: Understood. I get what
12 you're saying, I understand what you and Mr. Sarvey are
13 explaining. And what I think the distinction is that what
14 you have is a pending permit process still in proceeding
15 essentially and yet you have staff's static opinion now that
16 it passes muster and that it's in compliance. But your view
17 is until the permit is issued it can't be in compliance.
18 Mr. Sarvey, go ahead.

19 MR. SARVEY: Do we have -- and this may be off the
20 subject but do we have an update on the biological opinion
21 yet?

22 HEARING OFFICER CELLI: I don't know, let's hear
23 from staff.

24 MS. WILLIS: I just asked Mr. Hoffman and he said
25 probably mid-May. But we have been waiting a long time for

1 US Fish and Wildlife staff to have the time.

2 HEARING OFFICER CELLI: Mid-May. So thank you for
3 that. Anything further besides that, Ms. Sommer?

4 MS. SOMMER: No.

5 HEARING OFFICER CELLI: Okay. And Mr. Singh, did
6 we hear from you or not? Or you had no further comment on
7 the Draft.

8 MR. SINGH: No.

9 HEARING OFFICER CELLI: Okay, thank you.

10 Okay. With that, ladies and gentlemen, the PMPD
11 and the Errata will be before the full Commission at the
12 Business Meeting on Wednesday, May 18th. We will receive
13 comments through May 13th. And I want to acknowledge that
14 today is Cinco de Mayo, it's May 5th.

15 The reason we do this, though, is because -- and
16 it's a service to us. I'm grateful, Mr. Sarvey, Ms. Sommer
17 and Mr. Dighe who isn't here today and applicant and staff
18 are providing these a little earlier because it gives us a
19 jump. It lets us perfect the document to the best that we
20 can and that's what we're about.

21 So if there is nothing further then I think we
22 would open it up to public comment. But let me just ask all
23 of the parties if there was anything further starting, I'll
24 start with the staff and work my day down.

25 MS. WILLIS: We have nothing further, thank you.

1 HEARING OFFICER CELLI: Thank you. Anyone from
2 Mountain House Community Services District?

3 MR. LAMB: I have a process question.

4 HEARING OFFICER CELLI: Yes.

5 MR. LAMB: The determination not to use reclaimed
6 water was mainly because it wasn't financially feasible, is
7 my understanding.

8 HEARING OFFICER CELLI: My recollection, I'm not
9 looking right at it, but it was more than just financial.
10 It was also there were some hurdles out there with regard to
11 things like oil pipelines.

12 MR. LAMB: I understand.

13 HEARING OFFICER CELLI: And cows and things like
14 that.

15 MR. LAMB: So I don't see anything in here or
16 hadn't heard anything that would condition them to -- the
17 question is, if they go for a permit in the future to turn
18 this into a baseload plant will there be a new review of
19 that criteria?

20 HEARING OFFICER CELLI: Oh, yes.

21 MR. LAMB: That's what I wonder. So it's not like
22 it has to happen now; it would happen at that time.

23 HEARING OFFICER CELLI: That's correct. And there
24 is nothing, nothing to preclude the applicant to go into
25 recycled water in the future if it becomes available and

1 feasible. And they would come in with an amendment and make
2 the request and really the CPM would take care of that, the
3 Compliance Project Manager.

4 MR. LAMB: What I'm interested in is essentially
5 having the project condition to say that in the event that
6 reclaimed water becomes practical or financially feasible
7 that you'll use reclaimed water. And that way it avoids
8 problems with fights over BBID wanting to have -- using well
9 water because they want to sell the water.

10 HEARING OFFICER CELLI: Right.

11 MR. LAMB: When the state is saying, you should
12 use reclaimed water. So I guess I'm looking for that kind
13 of condition and I don't see that.

14 HEARING OFFICER CELLI: You know why? That's
15 actually contained in the PMPD.

16 MR. LAMB: It is? I didn't see it, I was looking
17 for it.

18 HEARING OFFICER CELLI: I'll bring it to your
19 attention. Because basically what the Committee says is
20 because there is a zero net use of water ultimately that
21 there would be no condition. Because there is no use there
22 is no impact. And that was why the Committee said, okay,
23 we're not going to venture forward and start making
24 conditions in the absence of impacts.

25 MR. LAMB: Okay. And is it strictly the

1 Commissions to make sure there are no impacts?

2 HEARING OFFICER CELLI: That's the CEQA analysis.

3 MR. LAMB: Okay. And that's more or less your
4 job. As long as you mitigate the impacts then you have done
5 your job.

6 HEARING OFFICER CELLI: Right. It's analogous to
7 an EIR.

8 MR. LAMB: Okay.

9 HEARING OFFICER CELLI: I think you might be
10 involves in those yourselves.

11 MR. LAMB: Yes.

12 HEARING OFFICER CELLI: And so basically you
13 either have a negative declaration or a mitigated neg-dec.
14 And essentially the PMPD is like a mitigated neg-dec that
15 says, okay, these are the identified impacts and with this
16 mitigation it would be a mitigated neg-dec, essentially.

17 MR. LAMB: Thank you, I appreciate the answer.

18 HEARING OFFICER CELLI: Sure. Mr. Groover,
19 anything? Mr. Sarvey?

20 MR. SARVEY: Yeah. In the PMPD it implies that
21 the reason that this project is needed is that this project
22 has a contract with PG&E.

23 And what I want to raise here is that the PMPD
24 does not deal with the issue of the fact that this
25 particular contract is under a rehearing request that's

1 supported by DRA.

2 Now what happens to this house of cards if that
3 contract fails? If the PUC ultimately decides that contract
4 is not valid and they cancel it? Now that changes the
5 picture in your PMPD completely. And I would like to know
6 what, what the PMPD has in it. I haven't read anything that
7 deals with that possible contingency.

8 HEARING OFFICER CELLI: The cancellation of the
9 PPA.

10 MR. SARVEY: That possible contingency. Because
11 the PPA is under a request for rehearing. Like I said, it's
12 a rehearing request that's backed by DRA, it's a pretty
13 strong company. I think maybe the PMPD might want to
14 include something to deal with that issue.

15 HEARING OFFICER CELLI: I'm going to, I'm going to
16 ask the applicant to respond to that question because what
17 would be the effect, from the applicant's point of view, of
18 a -- did you say a cancellation of the PPA?

19 MR. SARVEY: It could get cancelled, it could --
20 there's many things that could happen. Modified, cancelled,
21 it could be reheard. There's a lot of things that could
22 happen in the rehearing request.

23 MR. WHEATLAND: Well first of all it isn't subject
24 to an application for rehearing at the California Public
25 Utilities Commission. The period for an application for

1 rehearing is past.

2 There is a petition for modification that is
3 currently pending but that's a discretionary petition. The
4 Commission has the discretion whether or not to grant that
5 petition and as of this date they have not.

6 Mr. Sarvey was a party to the original decision
7 that granted the PPA. He was the one that stipulated that
8 the project was needed and he was supporting the PPA at that
9 time. Yes you were, Bob.

10 MR. SARVEY: First of all I wasn't a party, CARE
11 was the party.

12 MR. WHEATLAND: CARE was a party.

13 MR. SARVEY: I was their expert --

14 MR. WHEATLAND: Witness in that, in that
15 proceeding, that's correct.

16 MR. SARVEY: I was their expert witness so I don't
17 have any position on that at all, that's CARE's position,
18 number one.

19 HEARING OFFICER CELLI: But I did want to, I want
20 to cut in just because -- we'll give you a chance to
21 respond, let's listen to the applicant.

22 MR. WHEATLAND: And now CARE is one of the parties
23 that is seeking a petition for modification in violation of
24 the settlement agreement that they entered into.

25 If the PUC were to grant the petition for

1 modification that would initiate a new hearing process but
2 would not necessarily mean that the contract would be
3 changed or negated in any way. It would simply be an
4 additional hearing.

5 But whether or not the PUC eventually acts with
6 respect to this PPA in any manner, the applicant is taking
7 care to put evidence in this evidentiary record to show that
8 there are important public benefits and needs resulting from
9 this contract, from this project. And we have talked about
10 those. We have talked about the flexibility, the support of
11 renewable resources, the support of local load. We put all
12 this information into the record. So whether or not the PUC
13 may act, we believe there is an independent evidentiary
14 basis for the Commission to conclude that this project
15 should be licensed.

16 HEARING OFFICER CELLI: Mr. Sarvey, anything?

17 MR. SARVEY: Well first of all he's totally
18 mischaracterized the settlement agreement. He wasn't a
19 party to it so I understand he doesn't know what it is. But
20 the settlement agreement was that PG&E was supposed to come
21 forth with 1,543 megawatts and they went over it with the
22 Oakley project. So there's some serious issues here and I
23 know the PUC is working this out.

24 But there's several areas in the PMPD that rely on
25 this contract. For the No Project alternative; for the

1 staff's entire testimony why the project is needed is
2 because it has a contract with PG&E.

3 HEARING OFFICER CELLI: It does figure prominently
4 because the Committee was relying on the determination of
5 the CPUC.

6 MR. SARVEY: Exactly.

7 HEARING OFFICER CELLI: Which we are going to
8 need. Because we are not supposed to -- I mean, basically
9 our regs will say not to.

10 MR. SARVEY: I understand.

11 HEARING OFFICER CELLI: So you're right about
12 that. But what the -- I do want to respond to your question
13 which is, what's going to be, what would be the outcome,
14 let's say, if this thing is nullified or canceled or
15 whatever language is used. And what I would say is that we
16 have -- I know it's a little artificial but we have the
17 record that we have and, you know, it's got a start and a
18 finish. And that is our universe is the record. And the
19 state of the record is there's a PPA.

20 MR. SARVEY: Well my concern is that the PMPD
21 would no longer be factual if the contract got cancelled.

22 HEARING OFFICER CELLI: We run that risk, not just
23 in this regard but in many others, you know. And depending
24 on things in the future changes, new contingencies and
25 things like that.

1 The beauty of the system, if I may, is that we
2 don't just grant a license and walk away. We actually --
3 and in this case you have a CPM who actually used to be the
4 PM on this case.

5 And I don't mean to throw a lot of letters around,
6 folks. We have a project manager who is designated now to
7 become the compliance project manager. We have a compliance
8 program after the project is certified whereby we make sure
9 that all of the conditions are adhered to. And so things
10 will come up in the compliance context after certification
11 and I suppose something like that will come up then.

12 Good to see you, Mr. Dighe.

13 MR. DIGHE: It just stuck. The database was down.

14 HEARING OFFICER CELLI: I'm sorry. We covered a
15 lot of ground. Is there anything you would like to say
16 about the Draft Errata that we put out.

17 MR. DIGHE: Actually I was wondering if we could
18 discuss, are we planning to discuss outside the draft some
19 points which are not specifically mentioned?

20 HEARING OFFICER CELLI: Okay, so -- Oh, I see what
21 you -- okay. First, the reason we're here is because we are
22 asking people to comment on the proposed Errata and any
23 changes there.

24 MR. DIGHE: Yes.

25 HEARING OFFICER CELLI: Did you have any? Because

1 I did receive -- Oh, I had a comment on that earlier; let
2 me, let me.

3 MR. DIGHE: Yes, do you want to respond to my
4 comments?

5 HEARING OFFICER CELLI: Yes. I'm going to read
6 this because it's easier than having to think it through
7 again.

8 Mr. Dighe, this was true not just of you but of,
9 you know, Mr. Sarvey and others, Mr. Simpson's comments.
10 Your comments were more in the nature of argument opposed to
11 certain findings contained in the PMPD or rebuttal arguments
12 to testimony contained in the evidentiary record.

13 And these types of comments were not included in
14 the Errata because they were more essentially dissent. You
15 disagree with the decision of the PMPD. But what we're
16 really interested in in the Draft Errata are errors of fact.

17 The example I used is if the stack height is 80 feet but we
18 accidentally said, 800 feet.

19 MR. DIGHE: Sure.

20 HEARING OFFICER CELLI: We're looking for those
21 kinds of things. We have received your briefs. We pretty
22 much know at this time everybody's position, all the
23 intervenors, the staff and applicant's position on
24 everything because everybody submitted a brief. A timely
25 brief at that, which was nice. So we understand the

1 positions.

2 And when the decision comes down and the decision
3 is made, decisions -- you know, for every decision that is
4 made you have got one person who is real happy and one
5 person who is unhappy about that decision, whichever the
6 decision may be.

7 But we have received your briefs, we have received
8 comments from you in particular, which mirrored what you
9 said in your brief.

10 And on the 18th is an opportunity again to go
11 before the full Commission and make your positions known to
12 the full Commission. Because they have to adopt this PMPD.

13 This isn't etched in stone. The Commission has to
14 adopt this decision.

15 MR. DIGHE: Sure. Oh, if I may, can I make one
16 comment?

17 HEARING OFFICER CELLI: Yes.

18 MR. DIGHE: Just to exactly the point which you
19 just mentioned. I have two things specifically mentioned
20 around the Alternatives, and I did mention. Because that
21 the PMPD decision consider the non-natural gas pipeline
22 alternative.

23 HEARING OFFICER CELLI: Right.

24 MR. DIGHE: I believe it just said that other
25 options were not efficient.

1 HEARING OFFICER CELLI: It was actually with
2 regard to -- so for instance like solar. Solar and wind or
3 nongas-fired technology was not a superior, not even
4 equivalent technology in this case. Because the purpose,
5 the stated objective of this Mariposa Energy Project was to
6 produce fast-ramping quick-start power to handle the
7 intermittency of renewable, non-gas sources of energy, wind,
8 solar, et cetera.

9 MR. DIGHE: But did that statement in the PMPD is
10 again an argument. It is not true that we don't have an
11 alternative to the current suggested Mariposa project, which
12 is in the application process. I didn't see a factual proof
13 that because, I mean, this is a technologically advancing
14 time where a lot of innovative strategies have been
15 considered. I feel, I expected some kind of a concrete
16 analysis where we all will be convinced. Just to let you know.
17 So that's one part of it.

18 And the second is. And I believe I suggested
19 something around a practical approach to this 200 megawatt
20 energy production, energy production need right now. I
21 still feel it is incomplete so that's my one comment to
22 that.

23 My second comment was around, specifically around
24 the need itself. I heard in the PMPD that CEQA and I think
25 there are a lot of laws which say it's not needed to be -- I

1 think Sarvey, Mr. Sarvey also mentioned about that.

2 But I still want to get a concrete as well as a --
3 I am not so certain that it's a public need so I don't want
4 to go back and forth around that. So I believe that's -- I
5 think it's pretty -- I think it's argumentative currently in
6 the PMPD also the fact. I mean, it's not -- I don't see a
7 fact that we need this power plant.

8 HEARING OFFICER CELLI: I'm going to, I wonder if
9 the -- go ahead and finish and then the Commissioner may
10 want to --

11 MR. DIGHE: The third is -- I think that the third
12 is the land. The site on which this power plant is proposed
13 is interesting and I wondered what were the details on that.
14 And currently I don't see another good, good, good PMPD
15 statement saying that this is the best location right now
16 for a 200 megawatt power plant.

17 HEARING OFFICER CELLI: Okay.

18 MR. DIGHE: I see a lot of arguments around,
19 around the legal stand. I don't see, I don't see a concrete
20 fact right now. And because the County in which it is being
21 proposed as well has, has said it on the record, we are
22 going for this power plant for financial reasons. And I
23 think my brief has clearly identified that specific
24 statement. And they also said, we don't want community
25 benefits. So the community benefits, whatever we receive,

1 are taken but we still will go ahead. And so there's a lot
2 of interesting stuff.

3 They're still getting the benefit, they're still
4 getting the power plant and they're getting everything what
5 they need on the financial benefit. But a lot of
6 requirements around is this power plant needed and all. I
7 really expected PMPD to strongly give an answer to that and
8 I didn't see anything.

9 PRESIDING MEMBER DOUGLAS: So, Mr. Dighe, I wanted
10 to speak to that question and not the narrow one of need
11 analysis the way the Energy Commission used to do, but your
12 broader question of why not photovoltaic, why not rooftops,
13 why not wind, why not large-scale solar panels.

14 You see us come in here and we're siting power
15 plants and you don't have much opportunity to see the
16 broader set of work that the Energy Commission does. So,
17 for example, last year we permitted about 4,000 megawatts of
18 large-scale solar. So we see solar thermal as it's here,
19 it's now, it's a huge potential.

20 We see drops in the price of photovoltaic
21 technology that really make us look forward, not only look
22 forward but believe that we are here today; that
23 photovoltaic is increasingly able to compete economically
24 with natural gas.

25 We've got, we are really fortunate in California

1 to have tremendous renewable energy resources. From wind to
2 the best solar in the world to tremendous geothermal
3 resources, the potential for wave energy. And we have also
4 got this huge innovation engine, not only in Silicon Valley,
5 although certainly in Silicon Valley, but San Diego and in
6 Sacramento and many other parts of the Bay Area and the
7 state, Los Angeles.

8 So I hear what you're saying. What you're saying
9 is correct, that the technology is changing fast. The
10 Energy Commission is doing everything we can to support this
11 change and to implement the state's climate law. So, for
12 example, siting solar thermal plants, pushing research and
13 development deployment programs throughout the state, not
14 only in electricity but also in the fuels and transportation
15 sector. And that's actually a push point that might bring
16 us to more demand for electricity not less as people move to
17 electric vehicles.

18 So I say all of this just to tell you that it is
19 not that we don't have these goals. It's not that they are
20 not a reality because they are. They're here.

21 And we have got a 12,000 megawatt distributive
22 generation goal, that's your rooftop solar. It's a huge
23 goal. It's a lot of electricity that we are currently
24 trying to find a way to develop through photovoltaic or
25 through other distributed generation.

1 I think what I want to try to help you understand
2 is that all of these different technologies have their
3 advantages and their disadvantages, so to speak. So when
4 you think about running a system and trying to make sure
5 that you have the ability to turn on the lights whenever you
6 want to, and if you work in a manufacturing facility or if
7 you work in a data center, you know, that you've got the
8 power when you need it.

9 And so as we think about changing the system,
10 integrating the distributive generation, making sure you
11 have power not only when the wind blows but also when it
12 isn't, and it's making everything fit together. This load
13 following and this peaking capability that this kind of
14 plant will have we think is still important. And there may
15 be a day when we have storage or we have very sophisticated
16 demand response and those are potential alternatives on the
17 horizon that can work with natural gas peaking facilities.

18 But I think what I wanted to do is sort of help
19 you -- to help communicate that. It's not, we are not
20 sitting here saying gas is the only way but we see this
21 plant as potentially fitting in in the broader scheme of
22 many different things that are coming together and hopefully
23 changing in the electricity system.

24 So that would be my response if you were to say,
25 why not photovoltaic? You know, we're doing photovoltaic.

1 Why not wind? We're doing wind. Why not large-scale solar?
2 Five thousand megawatts permitted last year. It's just
3 that this state uses a lot of electricity.

4 MR. DIGHE: Can I add one statement? Why this
5 site? I mean, why this specific? I mean, I understand you
6 do this but why can't you just get this 200 megawatt away
7 from my residential community? I know it may sound really
8 just -- we will, sure we will decrease the demand by having
9 solar over here. You know what I'm saying? I mean, just
10 get it out of this community, I mean. Because when all of
11 us bought these homes, I mean -- I think they're here. We
12 are this close and I see your hand.

13 HEARING OFFICER CELLI: I just want to speak to
14 that in terms of how we operate as the California Energy
15 Commission. We don't tell people where to put a power
16 plant. An applicant comes in and says, we'd like to apply
17 for a license for a power plant. And they are going to tell
18 us where they want to put it and then we decide whether it's
19 an environmentally appropriate place for a power plant.

20 I wanted to get back to your original question
21 though because you mentioned that there were certain places,
22 need and things like that, in the PMPD that didn't have that
23 punch and didn't have certainty for you. And I wanted to --
24 the reason I wanted to take that on is because that's a
25 legal standard.

1 When you go, when you serve on jury duty and you
2 go in there to criminal court the standard is beyond a
3 reasonable doubt. And if you cannot find this person guilty
4 beyond a reasonable doubt that person walks out the door a
5 free man because the standard is beyond a reasonable doubt.

6 And there are other legal standards, clear and convincing
7 and various standards over the years that have evolved.

8 But we use the preponderance standard; we're an
9 administrative hearing. And preponderance basically means
10 we're balancing and the side that has the more convincing
11 force wins. And there may be hardly any evidence one way or
12 the other but it's the one that, it's the side that the
13 Committee finds more convincing that wins.

14 And sometimes it isn't all black and white,
15 convincing and clear; sometimes it's mushy. But the
16 Committee has to make a determination based on the evidence.

17 Can't look outside the evidence, has to look in the record.

18 So that is why there are probably parts in the PMPD that
19 don't necessarily conform to your ideals of what a decision
20 should contain. And I hope that makes that clear.

21 So I'm going to move on now, I think. Have we, I
22 was at Mr. Wilson. Go ahead, Mr. Wilson.

23 MR. WILSON: No comments at this time.

24 HEARING OFFICER CELLI: Thank you.

25 MR. WILSON: So I pass the microphone.

1 HEARING OFFICER CELLI: Thank you for your
2 participation in all this. Mr. Singh.

3 MR. SINGH: Can we make general comments or --

4 HEARING OFFICER CELLI: Sure.

5 MR. SINGH: -- do we have to be specific?

6 HEARING OFFICER CELLI: This is your.

7 MR. SINGH: Well, before we started this hearing
8 on the first day of my interaction with the entire Committee
9 Members here I went and told my wife, the decision has been
10 made and what we are doing is we are just completing the
11 formalities of CEC. And not only that, some of our, you
12 know, the intervenors also we discussed. And but we still
13 went ahead.

14 And, you know, I was giving a very large thought
15 the time we have spent, you know. I was not able to fully
16 devote my time to my committee in terms of being a director
17 of MHCS D. And I spent almost like three months totally
18 hovering the things on my head in CEC that this power plant
19 is stopped.

20 Now the system is broke, Mr. Celli. These are my
21 internal comments. And I hope your system should be
22 improved. How it is broken? It's broken, for example, the
23 energy need analysis not being done. It's so important.
24 Think about what happens. Mariposa put \$250 million in
25 building this plant and they recover back this money from

1 the taxpayers. Now how it get taxed into. It's like, you
2 know, you build the infrastructure and the public is there
3 to pay, either through the taxes or through the special
4 taxes added on to the electricity bill. So the ratepayer in
5 somehow directly or indirectly pay for this infrastructure.

6 Now second system the way it is broken is that
7 logically, I'm pretty much sure, you know, most of you,
8 Mr. Lemei, Mr. (sic) Douglas, Mr. Celli, you guys have
9 master's degree and maybe PhD degree. And you have seen the
10 system a whole.

11 Like when you do a EJ analysis you depend on US
12 Census data. Now in the US Census data which is taken in
13 2000 and there is no new US Census data. And it is
14 available now. It is a complete US Census data. And you
15 can look into -- instead of zip code you look into -- I see
16 the command you mention. If we typing 95391 there are many
17 other cities, zip code falls into that. But if you really
18 go to 2010 Census data it will tell you especially on
19 Mountain House how much is the population.

20 And the snapshot, I showed it to you on *New York*
21 *Times*. It exactly maps. *New York Times* in real time they
22 monitor the data. And the census for Mountain House --

23 HEARING OFFICER CELLI: Wait a minute, the *New*
24 *York Times* was -- okay, I might be getting confused. There
25 was Exhibit 801 which was a picture of a map and it showed

1 the little dots and it was households.

2 MR. SINGH: Right. Very much.

3 HEARING OFFICER CELLI: But it included Tracy, it
4 wasn't just Mountain House.

5 MR. SINGH: Yeah, that's fine. No, I am coming
6 back to that.

7 HEARING OFFICER CELLI: So you're not talking
8 about that?

9 MR. SINGH: I'm talking about that.

10 HEARING OFFICER CELLI: Oh, you are talking about
11 that, the map.

12 MR. SINGH: That data in real time they track and
13 then we look into 2010 Census data, which is complete for
14 California, especially for San Joaquin and Mountain House.
15 It clearly shows very close numbers to what I showed the
16 picture, which was not taken into consideration.

17 So, you know, looking at your background, there is
18 a rational decision. You know, as an effort there is a hole
19 in the system. The hole in the system is this ten year
20 period. Now, are you going to reform? Can somebody, one of
21 you can go and add those things. If US Census data is not
22 available what is a parallel site we should go to and access
23 that data to --

24 HEARING OFFICER CELLI: Did you read that section?
25 I know you read the section, we talked about it. I thought

1 that the Committee did the best thing it could do under the
2 circumstances is say, okay, the census wasn't ready at the
3 close of the record. However, the Committee found that
4 there was enough evidence presented by you and Mr. Dighe
5 that okay, it's close enough, we'll call it a minority.
6 Because why not, you know. In the big picture that was
7 probably I think the best thing to be done and the right
8 decision to make.

9 MR. SINGH: Right. So now let me add on to this.
10 Now consider that fact. If this has been considered right
11 from the beginning of the hearing or right from when the
12 application has been filed for --

13 HEARING OFFICER CELLI: You understand though --

14 MR. SINGH: -- the power plant.

15 HEARING OFFICER CELLI: I just want to be clear
16 that staff, unfortunately staff isn't a private party, they
17 are state workers. They are stuck with the laws as they
18 read now, the guidelines as they read now. And we took
19 plenty of testimony where they said, yeah, we know it's a
20 2000 census and this is 2010, but the law says we have to
21 rely on the census and therefore we're stuck with the 2000
22 census because we didn't have the 2010.

23 MR. SINGH: I agree with you, Mr. Celli. But the
24 thing is, you are the educator, you are the body to the
25 governor, to the state and to the federal. You make the

1 changes of the law before the public spend their tons of
2 time. You know what, all these intervenors. They have
3 risked their jobs, they have risked their businesses to
4 provide those feedbacks.

5 HEARING OFFICER CELLI: And we took that into
6 consideration and made a finding that Mountain House was
7 probably a minority and therefore treated it as a proven
8 fact that Mountain House was a minority community.

9 MR. SINGH: Right. Now think about if you could
10 have affected as a minority right from the beginning when
11 the application was filed.

12 HEARING OFFICER CELLI: We can't do that.

13 MR. SINGH: Was your --

14 HEARING OFFICER CELLI: Because, I mean, this may
15 sound like a formality but we have, the PMPD has to be based
16 only, solely on the evidentiary record. The evidentiary
17 record didn't happen -- I don't remember the date but it was
18 in 2009 when the AFC came in. And there's changes, you
19 know.

20 MR. SINGH: Yeah.

21 HEARING OFFICER CELLI: There's data adequacy and
22 things. It's a long process.

23 MR. SINGH: My only, my only feedback to you
24 people is, when you find a hole in the system don't use that
25 hole for the corruption. This is very important. You fix

1 that hole, you know, how this hole doesn't appear. I want
2 to see CEC going back, say okay. When this application is
3 filed and then we don't have the data available is there any
4 parallel sources we can go and conclude whether it's a
5 minority and falls in the EJ, let's do a EJ connection.

6 I remember when we were starting this hearing and
7 there was a comment that we have not established a fact that
8 we are a EJ community. We will find the fact after we go
9 through this committee. So think about how this case would
10 be taken if it had been declared initially that's it's a EJ
11 community and how it will be taken care.

12 Anyway, I am putting my comments. I know there
13 are a lot of reasons and justice can be given logically to
14 comments that others. And we can win in our logic to
15 convince each other, but can we convince our system, the
16 system that is carrying the hole.

17 The third comment I want to make is that there is
18 a big hole, there is a big hole when all these analyses are
19 being conducted through the applicant money. The direct
20 supply of money from the applicant, to those analysts who
21 does the analysis and who are the independent consultants,
22 those analyses should be done through CEC. The money should
23 be paid by CEC. And they can advise to applicant, look at,
24 this is the money we have spent. And you guys go and hire
25 those independent people.

1 They have millions of dollars, deep pockets, maybe
2 probably billions of dollars. And let me tell you system.
3 You getting billions, it's O.J. Simpson right?

4 HEARING OFFICER CELLI: I just have to --

5 MR. SINGH: He made so many crimes.

6 HEARING OFFICER CELLI: I just have to mention one
7 thing. We almost didn't get to come here today and I am not
8 kidding. There is a, Governor Brown put a stop on state
9 travel and we almost did this by WebEx from the Energy
10 Commission on the phone because we don't have the money to
11 get from Sacramento to Mountain House.

12 MR. SINGH: I think you haven't heard my comment.
13 The comment is, let us say applicant hired many independent
14 consultants to do the analysis for various things.

15 HEARING OFFICER CELLI: Oh, I understand, you're
16 saying there's a conflict of interest, essentially.

17 MR. SINGH: A conflict of interest come directly
18 here because I am the boss, you know. When I pay somebody
19 and he shows me the data, the data doesn't look good, I say,
20 can you do better on this data to keep me happy.

21 MR. WHEATLAND: I'm going to just -- I would like
22 to interject here for one minute.

23 MR. SINGH: No.

24 HEARING OFFICER CELLI: I understand your
25 objection.

1 MR. SINGH: In a minute we will listen to you,
2 Mr. Mariposa.

3 HEARING OFFICER CELLI: Let me get to you,
4 Mr. Wheatland, I understand what you're saying. But I have
5 the feeling, Mr. Singh, being a man of integrity, that if
6 your boss came to you and said, fudge the numbers, you
7 probably wouldn't do that.

8 MR. WHEATLAND: But the reality of it too is, I
9 must add, is the applicant paid the Commission \$250,000 in
10 licensing fees at the outset of this application to provide
11 the Commission with money to go out and hire the outside
12 consultants that would be necessary to support the staff's
13 analysis. That's exactly what happened.

14 PRESIDING MEMBER DOUGLAS: Yes, let's talk through
15 this.

16 MR. SINGH: Let me complete all my comments.

17 HEARING OFFICER CELLI: We'll get to you.

18 MR. SINGH: Then of course you have the time to
19 address it.

20 HEARING OFFICER CELLI: We're working on it.

21 MR. SINGH: So now the money, which is of course a
22 conflict of interest when applicant is directly paying to
23 this independent consultant. Now come on our side of the
24 table. Do you think we can pay hundreds of thousand
25 dollars, these intervenors, to basically hire those experts

1 and get the study done and disprove those studies? We don't
2 have that much power.

3 Now yes, billions of dollars goes to CEC from our
4 taxpayer money. You have good amount of money to basically
5 do those independent analysis and match. So that's another
6 way that you can look at it, how the system is broken.

7 So, you know, it seems to me like a charade, you
8 know. Trust me. And I am not convinced. Yes, I am totally
9 convinced with the decision and I will definitely respect
10 the decision if you guys would have said, okay well, there
11 is a hole, 2000 data we have considered, let's go and take
12 the current data and let's see what are those numbers.

13 I would be very happy to put into the support,
14 okay, we saw the 2010 data. Yes, now we are convinced.
15 Instead of, you know, we pushing you guys. Oh, it's the EJ,
16 it's the EJ, we are a minority, we are a minority, and
17 spending our time circled around the same issue and not
18 accepting it. If this would happen, consider us EJ, I'm
19 pretty sure that applicant would have come here during the,
20 during the decision-making process they would have mitigated
21 Mountain House somehow.

22 Now the third iteration is, our police department,
23 our fire department and our medical response will be
24 impacted. And I was talking to all these units in San
25 Joaquin County. The responders are -- police is available

1 here 24/7. And if any incident happens in the MEP plant and
2 then they call they have to respond immediately. Because
3 although there is the Alameda boundary, but as a courtesy
4 call, irrespective of the boundary --

5 HEARING OFFICER CELLI: Mutual aid.

6 MR. SINGH: They have to basically respond to it.
7 Same with the fire. And trust me. And I will send a letter
8 that any response that goes from here applicant should
9 mitigate us. Then medical response, it is again available
10 here, which is the closest one. And I have written in my
11 comments how far each one of these three areas are.

12 HEARING OFFICER CELLI: You've said you've written
13 in your comments. I don't think I received any comments
14 from you.

15 MR. SINGH: Well this was --

16 HEARING OFFICER CELLI: I got your brief.

17 MR. SINGH: -- the brief. Yeah.

18 HEARING OFFICER CELLI: So you're talking about
19 your brief, not your comments.

20 MR. SINGH: So in the brief. So these are a few
21 things. The laws are there. I do anything -- we should
22 respect the law. But whenever there is a hole in the law
23 it's your body, it's not us. That, you know, we go to state
24 and federal. Do you think like we intervenors should go to
25 state and federal and put a lawsuit on CEC that they are not

1 plugging those holes? I want to see how you're plugging
2 these holes which are wide open for corruption, which is
3 wide open to the flow of money, which is wide open to make a
4 decision in favor of the applicants and not to the general
5 public.

6 You look into your fiduciary responsibilities, you
7 look into what you are there to perform. And I believe your
8 fiduciary responsibility includes also to take care of the
9 public as a minority or non-minority. Not to pollute them,
10 not to dump the junk on it.

11 And there are many ways this power plant, they
12 have billions of dollars, they can locate other site and
13 they can conduct their business. They go for easiness.
14 There's water, there's a grid running there. And they know
15 that with the least cost they can build a power plant in
16 that facility because everything is available.

17 Now consider the fact that you have refused, you
18 have denied two power plants in Alameda County and then you
19 approved a third one. Look into why you disapproved it.
20 Because those people were opposing in Alameda County. And
21 now San Joaquin County is opposing you guys and you don't
22 care. So where is the analysis of the entire justice for
23 the state? Not looking to the parties, not looking into
24 different counties and how we can see the analysis being
25 done.

1 Now, mitigation. Mitigation is a soft way of
2 bribing, a corruption. Where you see the impact is
3 happening let's apply the money to mitigate. Let's have a
4 strong, angry man, pay them the money so that they are not
5 able to put a lawsuit down the line for another 100 years.

6 In the same way if I look into your system and
7 your body, that how you can cut down those sort of things.
8 That there should be a viable mitigation instead of, you
9 know, looking into the laws. Not giving the mitigation
10 money. But if you are providing the mitigation money for
11 the pollution it has to be very quickly justified to the
12 right community which is getting polluted.

13 Now think about the money goes in the hand of the
14 San Joaquin Air Pollution Board and so how they are going to
15 spend the money. Probably they are going to pocket that
16 money into their pocket, they are not going to spend. And
17 how is the tracking system being enabled? Who will ask
18 those questions? Here is the community which is the most
19 impactable community here and nobody is taking care of us.

20 That's what I have to say and I respectfully
21 request your Committee that plug those holes which are
22 viable for corruption, which are viable for making a
23 favorable decision and not considering the entire
24 population. We don't have tons of money, not having
25 hundreds of thousands to spend on doing a deep analysis to

1 basically oppose whether the analysis being done was wrong
2 or right.

3 Logically we can convince, you can go with the
4 facts, and we cannot produce and do our own analysis and
5 produce the fact. Even whatever the minimum we do, that is
6 not acceptable because that snapshot of the screen was not
7 evidence for you. And now you see it is a very close --

8 HEARING OFFICER CELLI: Actually that was a
9 snapshot of the screen shot that you gave us with the --
10 remember it said on the bottom the percentages of the racial
11 makeup. It was part of the reason why the Committee said
12 let's find that this is an EJ community. So you did
13 contribute.

14 MR. SINGH: So it's too late. I would say it's
15 too late to find --

16 HEARING OFFICER CELLI: It's not too late.
17 Actually that's a finding, if you read --

18 MR. SINGH: I want that mitigation money. Do you
19 guys find and get the information whether we spend our whole
20 entire, another three months, what are the laws. That we as
21 a minority should be, should be mitigated here.

22 You guys find out. Okay, where is the law? Let's
23 find out and educate the applicant. Maybe they know it.
24 And you find, spend some time and see how Mountain House can
25 be mitigated because they will be living. This, this --

1 HEARING OFFICER CELLI: Well let me just speak to
2 that, though.

3 MR. SINGH: This charade, this charade will live
4 toward the life. You know, maybe we will die but this power
5 plant is for another 200, 300, 500 years.

6 HEARING OFFICER CELLI: Oh no it will not. It
7 will last, it will close down in I think 30 years or 40.

8 MR. SINGH: Okay, let's go for 30 years. So we
9 have to live for 30 years, right? Anyway, so I respectfully
10 again see, you know, close those holes and logically
11 convince yourselves. And you know, your conscious mind will
12 say whether you're taking the right decision. And that's
13 it, thank you very much.

14 HEARING OFFICER CELLI: Thank you, Mr. Singh. I
15 want to, I just want to say that this isn't -- this is a
16 proposed decision. This isn't the decision of the
17 Commission. This is a proposed decision and there is
18 another opportunity to speak to the full Commission.

19 Ms. Sommer, any further final parting shots?

20 MS. SOMMER: Yeah, there's two things that I would
21 like to address. The first is the issue and the way that
22 this meeting has been, has been advertised and has been run,
23 which is not in the spirit of the Bagley-Keene Open Meeting
24 Act. That agencies exist to aid in the conduct of the
25 people's business. The notice announced a 30 day public

1 comment period and then proceeded to say, but if you don't
2 get your stuff here in two weeks we're not going to be able
3 to consider it.

4 HEARING OFFICER CELLI: No, it doesn't say that.
5 That's not a true statement. If you read the notice.

6 MS. SOMMER: In order to --

7 HEARING OFFICER CELLI: Would you read that part,
8 please.

9 MS. SOMMER: Sure.

10 "In order to assure your written comments are
11 considered, your e-mail must be received by
12 the Docket Unit by 3:00 o'clock on April 28,
13 2011 or mailed comment physically delivered
14 on or before that time, postmarks do not
15 count."

16 So in order to ensure that your written comments
17 are considered.

18 HEARING OFFICER CELLI: That's out of context. We
19 are asking that if you want your comments to be considered
20 at the PMPD conference, the Committee Conference, which is
21 what we are having today, if we don't have comments we've
22 got nothing to talk about. So we were asking you to give us
23 your comments so that we have something to talk about today.

24 But your comments, as I have said several times, you have
25 until the 13th of May to file comments. And they will be in

1 the, and they will be considered in the PMPD.

2 MS. SOMMER: I mean, I'm reading the language of
3 the notice and there is no reason that this meeting couldn't
4 have been scheduled after the end of the public comment
5 period.

6 HEARING OFFICER CELLI: Oh there's many reasons
7 but anyway, go ahead. Go ahead.

8 MS. SOMMER: It's an unfortunate attitude. The
9 version that I had of the notice said that there was a map
10 included, which wasn't included.

11 And you're scheduling a meeting at three o'clock
12 in the afternoon. Mountain House is a community of working
13 people. You know, that's a time that is not intended to
14 maximize public participation.

15 HEARING OFFICER CELLI: Well actually we set it up
16 for three because we figured once we heard from all of the
17 intervenors it would be after five o'clock, which it is, and
18 then people would be coming in from work and they would be
19 able to comment as late as we need to hear their comments.

20 MS. SOMMER: But that's not something that the
21 public is going to understand and it's not clear in the
22 notice. And again, I strongly believe this is not in the
23 spirit of the Bagley-Keene Act.

24 HEARING OFFICER CELLI: Okay.

25 MS. SOMMER: The additional thing I wanted to

1 comment on. I addressed this in the comments that were
2 submitted by the 28th but just had a few more things to say
3 about it as far as the Williamson Act.

4 HEARING OFFICER CELLI: Are you talking about the
5 Draft Errata? I just want to know, I want to be looking at
6 whatever you're talking about.

7 MS. SOMMER: Not about the Errata. The comments
8 would be, let's see, page 29 of the Local Impact Assessment
9 section, which is under Section 7. Ten, 11 and 12.

10 HEARING OFFICER CELLI: Of the Draft Errata?

11 MS. SOMMER: Of the Draft.

12 HEARING OFFICER CELLI: Oh okay. What page?

13 MS. SOMMER: Again, this is the Local Impact
14 Assessment Section, page 29.

15 HEARING OFFICER CELLI: Are we talking Biology?
16 Page 29 of which section?

17 MS. SOMMER: Local Impact Assessment.

18 HEARING OFFICER CELLI: Local Impact Assessment?
19 There is a Local Impact Assessment on -- is this Biology?

20 HEARING OFFICER CELLI: Oh, Land Use, okay. About
21 Williamson Act, is that what you're talking about?

22 MS. SOMMER: Yes.

23 HEARING OFFICER CELLI: Okay, that would be Land
24 Use. Okay, what page again? I'm sorry.

25 MS. SOMMER: Page 29.

1 HEARING OFFICER CELLI: Okay.

2 MS. SOMMER: So again I'm discussing the comments.
3 I just wanted to add a few things to things to this.

4 HEARING OFFICER CELLI: All right, I'm with you.
5 These are the, you're talking about the findings of fact at
6 the end of the Land Use section.

7 MS. SOMMER: Yes.

8 HEARING OFFICER CELLI: Page 28 and 29.

9 MS. SOMMER: Findings, specifically 10, 11 and 12.
10 The proposal for this project to be built on the land in
11 question is in violation of the Williamson Act contract on
12 that land. You know, again, I flesh this out in the
13 comments but, you know, briefly, California Government
14 Section 51240 addresses Williamson Act contracts. And a
15 contract may provide for restrictions, terms and conditions
16 more restrictive than or in addition to those required by
17 this chapter.

18 And what I wanted to point out was the entire
19 analysis has focused on the compatibility as it is defined
20 in the Williamson Act and has not looked at the actual terms
21 of the contract. The contract specifically says, let's see.

22 During the term of this agreement, I'm paraphrasing, the
23 said property shall not be used for any purpose other than
24 agricultural uses for producing agricultural commodities for
25 commercial purposes and compatible uses, which uses are set

1 forth in Exhibit B attached hereto and incorporated by
2 reference. Exhibit B provides for two uses, grazing,
3 breeding and training of horses or cattle and cogeneration
4 wastewater distillation factory as described by the
5 conditional use permit.

6 And, you know, what I wanted to point out is
7 looking at 10, 11, 12, again, this does not in any way
8 address the terms of the contract that covers this land.

9 HEARING OFFICER CELLI: That's right, that's at
10 page, starting at page nine where it says, will the project
11 conflict with existing zoning and agricultural use?

12 The LCA, which is what we're calling the land
13 conservation agreement, is your Williamson Act contract.
14 It's discussed at page 10 and goes into page 11 of the
15 analysis.

16 Just as a convention we discuss, we actually put
17 in the analysis in the body of the decision and then
18 essentially cull the findings from the discussion. So those
19 discussion points, those findings of fact that you're
20 talking about now as your 10, 11 and 12 on page 28, are
21 referring to that section on pages really 10 and 11.

22 MS. SOMMER: Well sure. I mean, as you can
23 imagine I read through that thoroughly. It reflects, it
24 reflects your findings in that the entire analysis is based
25 on Williamson Act compatibility as opposed to the compatible

1 uses as specifically defined in the Williamson Act contract
2 that covers this land.

3 HEARING OFFICER CELLI: Does it not make a
4 distinction between the Williamson Act and the Williamson
5 Act contract? Can you contract out of the Williamson Act
6 with a Williamson Act contract, is the question?

7 MS. SOMMER: Again, 51240. A contract may be more
8 restrictive.

9 HEARING OFFICER CELLI: It may be, but who is it
10 binding on?

11 MS. SOMMER: It's binding on the landowner and
12 it's binding on the --

13 HEARING OFFICER CELLI: The parts to the contract.
14 That was really the essence of that part of the decision.

15 MS. SOMMER: Well.

16 HEARING OFFICER CELLI: I mean, the Williamson Act
17 itself is binding on all of us, right? That's state law.
18 When two parties enter into a contract those two parties are
19 the parties to the contract.

20 MS. SOMMER: Except in a situation such as this,
21 51251, which allows for enforcement of any owners of land
22 that it touches.

23 HEARING OFFICER CELLI: Nearby landowners, that's
24 right. So that's by statute. But as you know, we can't,
25 for instance, I can't enter into a contract -- if I entered

1 into a contract to have somebody killed that doesn't
2 necessarily mean that because of the contract, I was bound
3 by a contract so therefore I'm not going to take a murder
4 rap? I mean, essentially a contract is just an instrument
5 between a couple of people, parties. And then you have
6 state law, which is greater than the contract.

7 MS. SOMMER: I have no idea what you're talking
8 about as far as a contract to kill someone. But in these --

9 HEARING OFFICER CELLI: I was thinking just -- I'm
10 sorry, maybe that didn't work.

11 MS. SOMMER: In these circumstances if the terms
12 of the contract are if a use is not allowed per the terms of
13 the contract that is a violation of the Williamson Act.

14 And you're setting up an unfortunate situation
15 where the analysis that you have accepted is, is lacking.
16 And it is not true in this situation that the terms of the
17 contract don't matter because it's only between the
18 landowner and the county. The terms of the contract have to
19 do with if the Williamson Act is being complied with and
20 it's not. You know, it has additional implications for CEQA
21 as well by finding that there is no issue because the
22 Williamson Act is being complied with.

23 HEARING OFFICER CELLI: Well, I am not sure that
24 we said it doesn't matter but we did say that there is
25 compliance with the Williamson Act.

1 MS. SOMMER: There isn't.

2 HEARING OFFICER CELLI: I hear you on that.

3 Anything further on that?

4 MS. SOMMER: No, thank you.

5 HEARING OFFICER CELLI: Okay, thank you.

6 I'm going to turn next to applicant. I think we
7 have heard from all of the intervenors. So applicant, any
8 final comments before we go to public comment?

9 MR. WHEATLAND: Well, there is so much I could
10 respond to. (Laughter) But I won't, other than to thank
11 the Committee for its hard work and patience in sticking
12 with this project for what is now almost two years. We
13 really appreciate the rough road that we have all been
14 through to reach this point in the decision making process
15 and we thank you very much for your consideration of this
16 application.

17 HEARING OFFICER CELLI: Thank you for your kind
18 words. And I want to thank all of the intervenors for your
19 participation. In fact everybody here made a huge
20 difference and helped make this decision what it is. We'll
21 see what the Commission wants to do with it but the fact is
22 everybody participated meaningfully, as did the public too.

23 And with that I am going to turn to Ms. Jennings.
24 I want to know whether we have members of the public who
25 wish to make a comment here today?

1 MS. JENNINGS: Yes, we have one card so far. Can
2 I suggest we take a break and then --

3 HEARING OFFICER CELLI: That's a great idea. It
4 looks like it's about 5:17 by the clock on the wall. Should
5 we go until 5:30? Take a break to 5:30. Can we all come
6 back at 5:30 and resume for public comment?

7 If you want to make a public comment I'm going to
8 ask that see Jennifer Jennings who is standing up by the
9 door. You fill out the blue card and that's how we know you
10 want to make a comment and we call your name off the blue
11 card.

12 (Off the record at 5:17 p.m.)

13 (On the record at 5:35 p.m.)

14 HEARING OFFICER CELLI: Out in the foyer, if you
15 want come in and take your seat, we're going to open up for
16 public comment at this time. So if everyone can come on in
17 and get comfortable in this lovely room, the Mountain House
18 Community Services District Board Room. It's very nice to
19 be here.

20 The public comment period is the opportunity for
21 us to hear from anybody, any member of the public regarding
22 anything having to do with the Mariposa Energy Project. And
23 we're interested in your comments.

24 We came out here. We could have done this by
25 phone, we could have done this in Sacramento, but we came

1 out here to Mountain House because we wanted to hear from
2 you. And we want to hear from the people, locals, and so
3 that's why we're here. So with that we would like to hear
4 from anybody.

5 If you have spoken in the past it's okay, you can
6 say more things. You're not limited to one comment. I'm
7 just saying, if you have spoken, addressed us during the
8 evidentiary hearings and you want to say a comment again you
9 can, we welcome it.

10 If you want to speak we need you to fill out one
11 of these blue forms, which Jennifer Jennings sitting by the
12 door there has. And it just basically tells us who you are
13 so that we know who wants to make a public comment and we
14 call your name. So with that I'm going to start with Ram.
15 Ram. Hi, Ram.

16 MR. BALANBRAMAIAR: Hi.

17 HEARING OFFICER CELLI: Hello again. I remember
18 you from the evidentiary hearings. Go ahead. Speak right
19 into that microphone.

20 MR. BALANBRAMAIAR: So hello everyone. Hello,
21 Committee members, my name is Ram.

22 We moved to the, moved to Mountain House in the
23 summer of 2008. And at that time we moved to Mountain House
24 for one main reason and that was that we came here, we
25 looked at the place and we thought it was absolutely

1 pollution-free. We really loved it.

2 Now, I mean, we hear that this power plant is
3 going to come. I'm sure all of us know the kind of
4 pollution that it's going to create.

5 We take this very seriously. I want to come, I
6 want to come here again and tell this to all of you. We
7 take this very seriously. In fact so seriously that if this
8 power plant does come about I am very sure that we will move
9 out of this area. I am also sure that there are numerous
10 families that will agree with me on this.

11 So I really request you to take a position against
12 this power plant coming to this area. That's all I wanted
13 to tell.

14 HEARING OFFICER CELLI: Can I ask you something?

15 MR. BALANBRAMAIAR: Aha.

16 HEARING OFFICER CELLI: Did you know, did you know
17 about the East Altamont project?

18 MR. BALANBRAMAIAR: I know they cancelled it.

19 HEARING OFFICER CELLI: Did you know about it when
20 you moved in?

21 MR. BALANBRAMAIAR: No, I did not know about this
22 or that so both.

23 HEARING OFFICER CELLI: Okay. Yeah, I think I
24 should make an important point. First of all, thank you for
25 your comment. Second of all, I have no expectation that any

1 right-thinking member of the public actually read all 621
2 pages of this document. I mean, it's a big legal document.

3 But what I wanted you to know, if you get the
4 opportunity to read the Public Health section of the PMPD.
5 And I don't know if you remember Obed Odoemelum testified on
6 Public Health for staff. The acoustics were really bad in
7 the room that day, it was very hard to hear.

8 But the statistics of the impacts of the public
9 health are such that if you live on -- I mean, Mountain
10 House is two-plus miles away from the power plant site. But
11 if you lived there for 70 years with the power plant running
12 for 70 years continuously there would be, there are no
13 impacts, health impacts, according to the record, that
14 would, that would affect you living there, let alone two
15 miles away.

16 Now I am somebody who lives in a town, I live less
17 than a mile away from a freeway. And running right next to
18 that freeway is a railroad and it's a very busy one. And
19 I'll tell you something, a railroad is a really, it pollutes
20 quite a bit. And those vehicles run 8,760 hours a year and
21 this project is supposed to run somewhere between 600 and
22 1400 hours a year. And it is clean, natural gas that you
23 cook with. I don't know if you have gas or electric when
24 you cook.

25 MR. BALANBRAMAIAR: Gas.

1 HEARING OFFICER CELLI: But if you have gas, the
2 little blue flame, it's that same gas. It's the same
3 regulated gas. We know exactly how much sulfur it has in
4 it, we know what the conditions are. And the power plant
5 itself has catalysts and all sorts of filters, if you will,
6 to make sure that it is essentially polluting the least
7 amount it can.

8 MR. BALANBRAMAIAR: So why our area? I mean, even
9 if it's polluting less. I understand what you're saying, I
10 appreciate your explanation. So why our area? Why do we
11 have to compromise on this?

12 HEARING OFFICER CELLI: Well, it actually turns
13 out that it was -- as I said, the Energy Commission doesn't
14 tell an applicant where to put their power plant. The
15 applicant comes in and says, we want to put it here. But
16 there were a lot of reasons they put in but I think the
17 foremost reason was the proximity to the wind generation.
18 So I think that was one of the main reasons why here, as I
19 recall.

20 MR. BALANBRAMAIAR: Okay.

21 HEARING OFFICER CELLI: But anyway, I wanted to
22 put it in perspective because, you know, throughout these
23 proceedings we have heard from people from Mountain House
24 saying, this is going to, we're going to be showered with
25 pollution and --

1 MR. BALANBRAMAIAR: Oh, no, no, we're not saying
2 that. I mean, we do know that we are not going to be dead
3 the next day the power plant comes. But what we are saying
4 is, why near, why in the vicinity of such a community? And
5 part of the fact is that most of the community members I'm
6 sure did not know, didn't have a choice to move in when they
7 wanted to move in. They didn't know that this power plant
8 was going to come.

9 Whatever you say, you know, it's definitely going
10 to pollute. We're pretty sure about the -- statistics could
11 say a lot of things and you can make statistics say a lot of
12 things too. I'm not saying that, you know, you're wrong or
13 anything. But what I'm saying is --

14 You know, even the little, whatever pollution it's
15 going to cause. You know, people like me who came here just
16 for the sake of -- 90 percent I came here because there was
17 going to be no pollution here, because it's so far away from
18 the freeway, this community. We like the design, we like
19 the vision of Mountain House. That's the reason why we
20 wanted to come here and raise our voice, our opinion.

21 HEARING OFFICER CELLI: Well, I do thank you. I
22 wanted to be clear I wasn't challenging you.

23 MR. BALANBRAMAIAR: I understand.

24 HEARING OFFICER CELLI: I just wanted, you caused
25 me to think some thoughts and I just wanted to share them

1 with you. So thanks so much for your public comment.

2 MR. BALANBRAMAIAR: Thank you.

3 HEARING OFFICER CELLI: Thank you. That was Ram.

4 MS. JENNINGS: Hearing Officer Celli, could you
5 call Mr. Guy Cottle next, he --

6 MR. COLTON: Colton.

7 HEARING OFFICER CELLI: Yes, absolutely. He was
8 next anyway.

9 MR. COLTON: I filled out the first card.
10 (Laughter). Mr. Chairman, thank you, Commission Members,
11 Mr. Curry, members of the public and interested parties.

12 I'm way behind the eight ball on this one. I just
13 got this first little notice that you probably all got. You
14 know, the Before the Energy Resources Conservation
15 Development, three days ago and I read through the document.

16 There wasn't a whole lot there for me so I decided
17 to contact an intervenor or two because of my concerns. So
18 I contacted Mr. Mainland of the Sierra Club. Is there
19 anyone here from the Sierra Club, by the way? I didn't
20 think so.

21 Well, I've got this other document, I'll bring
22 that up lastly. It's an uncirculated, internal Sierra Club
23 document that I just got three hours ago that I perused and
24 looked at and I'm going to bring up a couple of points. I
25 contacted Mr. Mainland and Mr. Allan Korton who is the chair

1 of the Nevada Regional Conservation Committee about my
2 concerns. And I've gotten a lot of information I'd like to
3 give some information.

4 Again, my name is Guy Colton, Mr. Curry. G-U-Y-C-
5 O-L-T-O-N at yahoo.com. Anybody from the community who also
6 would like to contact me. I don't know whether I want to be
7 an intervenor or what level of my objection I'm going to
8 raise but I live at 15559 Kelso Road. That is the nearest
9 neighbor to the project. My bedroom, if you go to Google
10 Maps and draw a line, is the closest place to this project.

11 I'm wondering, has an environmental impact study
12 been done? Is anything in that talking about the decibel
13 levels? I'm an electrician.

14 HEARING OFFICER CELLI: That's what this --

15 MR. COLTON: The 620 pages? I assure you sir, if
16 I'd have had that I would have read every page and redlined
17 everything and had more to say. But I would have gotten it
18 and read it. In there is there anything about noise?

19 HEARING OFFICER CELLI: Noise and Vibration.

20 MR. COLTON: The noise levels.

21 HEARING OFFICER CELLI: We have a whole section on
22 noise and vibration.

23 MR. COLTON: I would love to have a copy of that
24 because I need to --

25 HEARING OFFICER CELLI: It's on the Internet. We

1 have the entire -- thank you for raising this, Mr. Colton,
2 because I can tell everybody. The entire PMPD is on the
3 Internet and you can click through it, it's a PDF. Each
4 section is a PDF. And one of the sections is called Noise
5 and Vibration.

6 MR. COLTON: Beautiful. Where do I find that?

7 HEARING OFFICER CELLI: That is under, it should
8 be in Engineering. No it's not.

9 MR. COLTON: No, just the whole document. Because
10 I will, I will look at the whole document.

11 HEARING OFFICER CELLI: So it's -- Mr. Hoffman,
12 maybe you can help me here. Can you give him the URL?

13 MR. COLTON: Can you give me just a piece of paper
14 that I don't have to write it down and I can just go find
15 it?

16 MS. JENNINGS: Just contact my office and we'll --

17 MR. COLTON: You'll give me a card? Very good.

18 Okay. I'm an electrician, I've done a lot of
19 industrial and commercial work. I've worked on cogen plants
20 and I have heard the scream of turbines. The exhaust stacks
21 are going to be about 460 yards from my bedroom window and
22 I'm a little concerned about that.

23 My nearest neighbor has a name so storied in these
24 parts that it still graces one of the original roads over
25 the Altamont Pass. His family has been out here for

1 generations. The next neighbor over has also been out here
2 for nine generations. We're simple country folk and we have
3 a beautiful existence out there and we love the land and we
4 take care of the land. We are concerned.

5 I am not overly concerned about the pollution
6 levels. I understand about natural gas generation and the
7 new technologies that keep things at the safest possible
8 level.

9 In the early '80s I used to have a little story
10 that I told, it was just a little factoid, and it was: I
11 know of a good, clean source that would keep America in
12 power for the next hundred years. Unfortunately it will
13 kill 6,000 Americans a year; would you do it? And everybody
14 says oh no, no, no. Guess what, you have just taken out
15 natural gas. The numbers are probably higher now. It
16 probably kills more than that a year. It is still a safe,
17 clean, viable source of energy. The pollution levels are
18 very, very low.

19 Again, my first question is, the noise generation.

20 HEARING OFFICER CELLI: I'm reading the noise
21 section as we're speaking. There is -- one residence it
22 looks like it's 3,600 feet away and there's another
23 residence that's 3,300 feet away so one of those must be
24 yours.

25 MR. COLTON: Yes.

1 HEARING OFFICER CELLI: And the current level,
2 operational noise level right now, as I understand it, is 43
3 dba, decibels is what you --

4 MR. COLTON: At the 3,000 foot?

5 HEARING OFFICER CELLI: No, right now where you
6 are. That's the ambient --

7 PRESIDING MEMBER DOUGLAS: That's your ambient
8 noise.

9 HEARING OFFICER CELLI: Ambient noise.

10 MR. COLTON: Okay, okay.

11 HEARING OFFICER CELLI: The power plant will take
12 this up to 45 actually. So the project plus the ambient
13 will be, for the house that's 3,600 feet will be 48 decibels
14 and the house that's 3,300 feet would be 46 decibels, which
15 is a change of either plus two or plus three, depending on
16 which house you have.

17 MR. COLTON: Has wind been factored into that?
18 Because the prevailing wind if you draw a line -- if you go
19 out and look at my property and you see the bend of the
20 trees you will see the prevailing wind that blows about 300
21 days a year and noise follows the wind. So if you're
22 looking at the change in just distance rather than the
23 change with the wind factor brought in, it might be a little
24 louder than that. And we have some concerns about that.

25 I mean, you know, I just mowed three acres this

1 morning and when I was done I sat out and I listened to the
2 birds chirp. It's just -- you came out here because it's
3 beautiful, country living. Most of you came out here
4 because it's beautiful, country living.

5 I don't see any of my local neighbors here. I
6 haven't spoken to my neighbors yet, be assured that I will.

7 HEARING OFFICER CELLI: You know, I want you also
8 to know that one of the -- so typically a significant impact
9 is five decibels or more so these are both pretty minor.
10 But in addition to that there is a condition of
11 certification that requires the applicant, or the project
12 owner once it's built, to actually make available a
13 complaint process and have a phone number. I don't remember
14 if there was a requirement of a sign. I think there's a
15 sign posted on a fence line of the property that says,
16 essentially, if we're too noisy call this number. And they
17 have to track those and they have to give it to the
18 California Energy Commission Compliance Project Manager and
19 resolve those issues. There is a complaint process.

20 MR. COLTON: So I wait for the sign?

21 HEARING OFFICER CELLI: Well no. Actually in
22 Oakley -- you know, this is a peaker. You know, we have
23 been doing this for a long time.

24 MR. COLTON: I understand, yes, yes.

25 HEARING OFFICER CELLI: This is a peaker.

1 MR. COLTON: I am not, I am not caviling.

2 HEARING OFFICER CELLI: No, I understand but I
3 just wanted you to know that. The project is not a
4 constant-running power plant.

5 MR. COLTON: Six hundred to 1400 hours you said?

6 HEARING OFFICER CELLI: Per year out of 8,760 a
7 year.

8 MR. COLTON: All right.

9 HEARING OFFICER CELLI: So it is designed only to
10 do what they call peak power essentially, when the other
11 sources --

12 MR. COLTON: Daytime, yeah.

13 HEARING OFFICER CELLI: Right. If the wind dies
14 down the windmills can't do it or it's nighttime or the sun
15 goes away, you know, it's cloudy, the solar can't keep up.
16 That's when they ramp up. And that's the purpose of the
17 power plant. So it's a -- it's just a peaker.

18 MR. COLTON: I gotcha. I found that in the Sierra
19 Club document. The Sierra Club document -- I'm not a Sierra
20 Club member. I'm not simpatico with a lot of their views
21 and aims. But the fact that they contacted me three hours
22 before this meeting and asked me to maybe raise some of
23 their talking points I was more than a little offended.

24 However, reading their document and listening to
25 some of the testimony and hearing some of the comments I

1 feel that I have to bring up a couple of things. A, I'll
2 just tell you that the Sierra Club is against this. You can
3 reach the gentleman at the front of the page of this, e-mail
4 him. He'll be happy to hear from you and address your
5 environmental concerns and perhaps give you some of the
6 numbers. The chairman is Allan Korton. And I just told
7 Mr. Mainland that I would raise in general the Sierra Club's
8 objection because I think they're probably going to object
9 to anything.

10 However, there is a paragraph here that I think
11 merits being put in the record.

12 "The dimensions of statewide glut of
13 fossil fuel electrical generation are
14 striking. In PG&E service territory over-
15 capacity includes 600 megawatt Russell City,
16 790 megawatt Marsh Landing, 624 megawatt
17 Oakley and 200 megawatt Mariposa, which are
18 all completely unnecessary."

19 You know, I used to correct logic papers in school
20 and I would red pencil this thing to death. But I'm just
21 reading what I have here.

22 "The CPUC ruled in 2006 that ratepayers
23 would be on the hook for the fixed costs
24 associated with these plants to assure they
25 get built. Based on electrical engineer Bill

1 Powers' calculations the fixed cost
2 associated with these four plants will be in
3 the neighborhood of 600 million per year."

4 And I am just going to interject, that's 600
5 million per year that PG&E ratepayers are going to be
6 paying. You know, in Mountain House you're not PG&E.
7 You're the Modesto Irrigation District. But still, if you
8 follow the power lines down to WAPA you'll see that it's
9 still coming out of the same grid.

10 "Even if no power from them is used,
11 \$600 million a year, even if no power from
12 them is used."

13 I don't know the truthfulness of these statements
14 but I am still struck by these things if they are true.

15 "This 600 million per year would build
16 over 300 megawatts per year of commercial
17 rooftop solar at 2010 PV prices."
18 PV is photovoltaic.

19 "Contributing to the Governor's
20 distributive renewable power target of 12,000
21 megawatt."

22 Ma'am, I heard you mention that one.

23 "Costly MEP will most sit idle, being
24 designed to run only at peak demand times."

25 Well, the reason I don't completely disregard all

1 this stuff is because I kept hearing things from comments
2 and testimony from the intervenors or the applicant and knew
3 that their facts are somehow in a row.

4 The last paragraph is -- the only other paragraph
5 I'm going to put in is:

6 "Meanwhile CPUC's official load forecast
7 tables filed December 3, 2010 in CPUC's LTPP
8 proceeding --"

9 Whatever that is. (Laughter).

10 "-- show an overall PG&E surplus
11 generation reaching 69 percent by 2020, even
12 taking into account retirement of old natural
13 gas plants and once-through cooling
14 facilities. Normal reserve margin for IOUs
15 is 15 to 17 percent. PG&E's latest current
16 margin is nearly 40 percent. A recent
17 California Independent Systems Operator study
18 based on CPUC's tables also provides
19 information that indicates that no new PG&E
20 fossil fuel procurement is necessary, even to
21 back up intermittent renewables."

22 Well, I'm on the human team; I say go team, go. I
23 believe in natural gas, I believe in progress. And my
24 thought is that this might be progress. But I take into
25 consideration everybody's objections with the idea that it

1 may not necessarily be. There is this idea of, you know,
2 put it on the plan and push, push, push, go, go, go.

3 A couple of -- one thing I wanted to address to
4 the man who is no longer here who was cavilling about
5 renewable water. There is no renewable water out there. I
6 live there. My property abuts the thing and there is no
7 renewable water.

8 Another thing, I would have liked to have asked if
9 anyone is here -- is anyone here from the Byron Bethany
10 plant? That canal goes dry from October to April. They
11 just filled it April 14th. So the water feed is going to
12 have to go all the way to their main channel and not the
13 pump and feed channel. I would like to know something about
14 that.

15 The transmission lines. Well, I live out there by
16 WAPA. Everybody knows where WAPA is down there on the
17 corner of Mountain House and Byron. Luckily I live far away
18 so that -- I don't have it -- I've got a little AC detector,
19 I'm an electrician. And as I drive down the road I put it
20 out the window and I, you know. It buzzes as you pass by.
21 Luckily I'm far enough out that there is no EMP.

22 How close are these new transmission lines going
23 to run to the property? I would like to see a map or
24 something. Is it going to be in the 621 page? Everything
25 is there?

1 HEARING OFFICER CELLI: It is in there. If you
2 give me a minute I can tell you the length of the line. Let
3 me see.

4 MR. COLTON: Well I'm going to contact Ms.
5 Jennings. My name is Guy and you'll know what I want. Send
6 me the URL for the site.

7 HEARING OFFICER CELLI: Okay, let's see.

8 MR. COLTON: What I came here today -- thank you
9 very much. What I came here mostly today was to try to find
10 out some information. Again like I said, I got this from
11 the property owner three days ago. And I thought that I'd
12 get information, and I thrive on information but I didn't
13 get very much. And then I get this thing from the Sierra
14 Club that says, are you going. I said, is it today? Oh
15 yeah. I thought it was eight o'clock, no, it's three
16 o'clock. I rushed to get here.

17 HEARING OFFICER CELLI: If I may, it's seven-
18 tenths of a mile. It's the hookup. It hooks up to the
19 substation.

20 MR. COLTON: The compressor station across the
21 street?

22 HEARING OFFICER CELLI: The Kelso Road station.

23 MR. COLTON: It's probably not the time to make
24 this complaint but we hated the fact that there is a natural
25 gas compressor station less than a quarter-mile from our

1 house and we don't have natural gas. Nobody out in the
2 country has natural gas.

3 HEARING OFFICER CELLI: So anyway, the seven-
4 tenths of a mile is how far they, so in other words the
5 lines are already out there, they just needed to --

6 MR. COLTON: Okay, they're going to hook up to
7 the --

8 HEARING OFFICER CELLI: Existing.

9 MR. COLTON: Okay, then that's okay. Mr. Curry,
10 if you could send me any information that you think would be
11 germane. I'm going to hesitate before I marshall the troops
12 and call the neighbors and everything because again, I am
13 for the project marginally right now. I am concerned about
14 the noise levels. And when I have all the information that
15 I can get, I am going to get that document, I am going to
16 call the neighbors and someone, probably my loud mouth, will
17 be there at the May 18th meeting.

18 HEARING OFFICER CELLI: Well I want to first of
19 all thank you for your comments.

20 I want you to know that this document is just the
21 decision, the proposed decision of the Committee. The
22 actual decision has to go to the full commission of the
23 Energy Commission and this is just one of the Commissioners
24 here today. So the process isn't over but it's winding down
25 I want you to know.

1 MR. COLTON: Oh yeah.

2 HEARING OFFICER CELLI: We're going before the
3 full Commission on the 18th of this month. We have already
4 had evidentiary hearings and have taken in a lot of
5 evidence. The applicant submitted what's called an
6 Application for Certification, it's monstrous, and the staff
7 presented their testimony. We got testimony from all of the
8 parties. We've heard a lot. And so what this is is really
9 kind of a distillation and a resolution of what disputes
10 were and so forth like that.

11 MR. COLTON: Well, this is the first time I saw
12 this document, the Errata. it's talking my language. I
13 love the little cross-outs and the tuning of the thing.
14 I've heard objections over a word here and a word there and
15 everything but, you know, it needs to be done.

16 One of the things that you brought up, sir, that I
17 guess the last thing on the record is "staff proposes, 52,
18 page 13, change to read as follows." I'm going to read the
19 original first.

20 "No Conditions of Certification are
21 required for his topic because no significant
22 adverse socioeconomic impacts will occur as a
23 result of construction and operation of the
24 MEP."

25 You crossed out "Conditions of Certification are

1 required for this topic because no" I wasn't there when
2 that objection was raised, I don't know why you took that
3 out. So now it reads:

4 "No significant adverse socioeconomic
5 impacts will occur as a result of
6 construction and operation of the MEP."

7 It's very difficult to read the word "no
8 significant" when it's directed at you, when it's directed
9 ad members of the community. We feel that we are
10 significant and we feel that our lifestyle and our living
11 conditions are significant and we raise our objections on
12 the basis of that.

13 HEARING OFFICER CELLI: Certainly. One of the
14 things that the socioeconomics looks at are things like
15 when, you know, a project is built there's a whole group of
16 new construction workers coming into the community to do the
17 work. Are they going to negatively impact the housing
18 supply in the area, that kind of thing.

19 MR. COLTON: Okay.

20 HEARING OFFICER CELLI: What kind of taxes are
21 going to be generated, sales tax and that sort of thing.
22 It's difficult to talk about some of these because, you
23 know, some of the -- we speak of them in these general --
24 Noise is pretty much about noise and vibration but some of
25 these things like socioeconomics, it encompasses an awful

1 lot of information.

2 MR. COLTON: Well I thank you, sir.

3 HEARING OFFICER CELLI: Well I thank you. And I
4 invite and I would recommend that you speak with our staff
5 and the people here.

6 PRESIDING MEMBER DOUGLAS: Please dig into this
7 document. There is evidence on noise so it's easy for you
8 to find. And the Public Adviser or staff can help -- or
9 applicant can help you find more detailed evidence that the
10 decision is based on, on noise or other issues that you want
11 to dig into.

12 HEARING OFFICER CELLI: And one other -- who can
13 tell me. I would like to say because we have people
14 listening in on the phone, I would like to say what the URL
15 is. If you want to look at the Energy Commission's website
16 you have to go to -- do you have the URL, Jennifer?

17 MS. JENNINGS: It's energy.ca.gov.

18 HEARING OFFICER CELLI: It's energy.ca.gov.

19 MS. JENNINGS: And there's a tab that says "power
20 plants."

21 HEARING OFFICER CELLI: Right.

22 MS. JENNINGS: On that tab you click it and in
23 alphabetical order there it is.

24 HEARING OFFICER CELLI: Okay. So it's
25 energy.ca.gov. And then when you get to the home page --

1 oh, I thought you were actually doing it.

2 MR. COLTON: Who has got the mouse.

3 HEARING OFFICER CELLI: There will be a tab and
4 the tab will, you will tab to power plants and there's an
5 alphabetical listing. And this one is the Mariposa Energy
6 Project.

7 MS. JENNINGS: He is doing it now. It's at the
8 top, sir. Go back up. There's an easier way than you're
9 about to do it.

10 MR. COLTON: Perfect. Thank you so much.

11 HEARING OFFICER CELLI: That's one way. Also, if
12 you had seen on the left there in the gray. Scroll down in
13 the left margin. It says "list of." Well, okay. Isn't
14 there a list of power plants? There you go, Power Plant
15 Licensing and Compliance. You click on that and there you
16 go. Go to Mariposa Energy Project, click on that. And
17 click on Documents and Reports. There you go. You don't
18 even have to go that far, it's right there. And there you
19 can see, staff's analysis, staff's supplemental analysis.

20 MR. COLTON: Perfect.

21 HEARING OFFICER CELLI: There's a lot, there's an
22 awful lot. All of these documents. This is two years worth
23 of documents being filed by staff, applicant, intervenors.

24 MR. COLTON: I just did a quick census in my head.
25 There's about 30 human beings very close to the area. And

1 it's probably going to impact us but we're all not
2 necessarily going to be against it. I'm going to have to do
3 a poll and talk to my neighbors.

4 Again to the members of the community that might
5 like to sign on to anything that I might do, my name is Guy
6 Colton at yahoo.com. Thank you, sir.

7 HEARING OFFICER CELLI: Thank you, Mr. Colton,
8 thank you for being here.

9 MS. SOMMER: Are there copies available for the
10 public to look of the Proposed Decision here?

11 HEARING OFFICER CELLI: Yes, we just looked at it
12 on the website. No, you mean a full --

13 MS. SOMMER: The hard copy.

14 HEARING OFFICER CELLI: The PMPD?

15 MS. SOMMER: No.

16 MS. JENNINGS: There is one.

17 HEARING OFFICER CELLI: There is one? Oh good,
18 there is one.

19 MR. COLTON: Thank you, folks.

20 HEARING OFFICER CELLI: Thank you.

21 PRESIDING MEMBER DOUGLAS: Thank you.

22 HEARING OFFICER CELLI: Is John Rubin still here?

23 Hi, come on up, here's a podium. I believe we've spoken
24 with you before, Mr. Rubin.

25 MR. RUBIN: John Rubin and I spoke at the first

1 comments period. I forgot what month that was.

2 Anyway, I didn't really plan on -- I don't have
3 any comments prepared. I didn't plan on talking today but I
4 heard -- when you made that comment about coming up despite
5 the threat of not being able to come out to Mountain House
6 for the budget cuts. I thought, well it's kind of a shame
7 that there's nobody here to actually talk.

8 So for me, and one of the reasons I was a little
9 apprehensive about talking was I kind of feel at wits end.
10 Like the decision is already made and I'm not sure what I
11 could say at this point that would sway the decision the
12 other way so that this plant doesn't happen.

13 And part of that is it's also -- when I was
14 listening to the comments during the public comment period
15 the last time, there's a lot of emotion that's expressed.
16 And I know that your decision can't be based on just
17 people's emotions, it's got to be technical analysis and
18 you've got to follow the law and emotions and law don't
19 necessarily mix.

20 The feelings I have about this plant, I can see
21 from the logical perspective that it may -- the natural gas
22 may not that significantly affect our health. From an
23 economic perspective the effects might not be significant.

24 But from my perspective as a resident of Mountain
25 House, well, as far as the pollution potential, I work in

1 the Bay Area and so most days of the week I commute to the
2 Bay Area over Altamont Pass. And when I'm looking back at
3 the valley in my rear view mirror or coming back into the
4 valley in the evening I can see -- I can barely see the
5 valley floor there is so much pollution and other
6 particulates in the air. And it just feels like adding to
7 that, it doesn't make sense to me.

8 Part of me is like, well, not only would I not
9 want the plant in Mountain House, it doesn't seem like it
10 should be anywhere in this region. So why would we want to
11 add to an already bad situation as far as the air quality in
12 this area.

13 And then from the economic perspective. I've
14 lived in Mountain House since 2004 and I have seen my equity
15 just plummet from 2006 onward. So for me any further
16 decrease in the value of my property is significant even if
17 it's a really small percentage, it's already gone down so
18 much. So from that perspective I'd rather not see this
19 plant come in.

20 Fortunately it doesn't look like there's a lot of
21 people here commenting today and I think probably a lot of
22 people share the same views as me but it's hard for them to
23 get to this hearing. Because for me, I'm lucky I'm able to
24 sometimes work from home so I was able to come here at three
25 o'clock.

1 But normally if I'm down in the South Bay to get
2 here even by five o'clock, if you've ever driven from the
3 San Jose area to Mountain House during those hours it's
4 lucky if you can get here before seven without having gone
5 through a two hour commute. So I think a lot of people are
6 up against that and they are not able to be here in person.

7 So that's another reason I wanted to comment, at least try
8 to speak on behalf of the people who couldn't be here today.

9 The last thing I'll add. When I did make the
10 decision to purchase my home in Mountain House I had also
11 looked at Tracy and looked at some pretty nice neighborhoods
12 there. But one reason I decided not to buy there was I
13 could see infrastructure in the area. For example, a glass
14 manufacturing plant, an Army Depot. Despite how nice the
15 neighborhoods were I didn't want to be close to those
16 facilities. And Mountain House looked to me like the only
17 thing that was nearby was the windmills,

18 So if I had known that a power plant like this was
19 coming in that might have influenced my decision to move
20 here. Certainly the other project you mentioned, the East
21 Altamont Energy Center, that definitely would have been a
22 deal breaker for me.

23 But I worry that even for a much smaller plant
24 like this that for people who are thinking about locating in
25 Mountain House in the future that that could be a deal

1 breaker. It's something that has to be disclosed in real
2 estate contracts and somebody who reads through and pays
3 attention to everything in there they might say well,
4 there's a few things in the area and decide not to buy in
5 the area. And so for that I see the potential impact on
6 holding down values here for longer than would otherwise be
7 the case. That's pretty much all I have.

8 HEARING OFFICER CELLI: Well thank you very much
9 for your comments. I do appreciate it, Mr. Rubin, it's good
10 to see you again.

11 MR. RUBIN: Thank you.

12 HEARING OFFICER CELLI: have you had a chance to
13 look at, to see the PMPD? I invite you if you haven't to
14 take a look at it.

15 MR. RUBIN: I haven't had a chance to look at it
16 in detail yet, just very superficially. So I'll definitely
17 take a look at that. I'm hoping to even come up to the
18 hearing on the 18th.

19 HEARING OFFICER CELLI: And that hearing, you can
20 participate by telephone. So take a look at the Energy
21 Commission's website and it will explain how to do that.

22 MR. RUBIN: Yeah. I definitely plan to, if not
23 there in person I'll be going through WebEx.

24 HEARING OFFICER CELLI: Thank you, thank you very
25 much for your comments.

1 MR. RUBIN: Thank you.

2 HEARING OFFICER CELLI: Is Vasu Devan here? Vasu
3 Devan? I'm sorry if I mispronounce anybody's name. I'm
4 doing my best.

5 MR. DEVAN: First of all thank you very much for
6 making the trip here in spite of the constraints you
7 expressed earlier. It gives us a chance to have face to
8 face interaction.

9 I don't have to say too much because some of the
10 people have already expressed what I was going to say. It's
11 just to add my name to it, I suppose. That no matter what
12 the analysis, the socioeconomic impact and what-not. It's
13 the percent that does matter, especially when it comes to
14 the value of the property. I just bought house just not too
15 long ago, just a couple of months ago. If I knew that
16 before I went into the venture I probably would have thought
17 a second, given it a second thought probably. I wouldn't
18 have bought it here, like my predecessor just mentioned.

19 So it does impact rightly or wrongly because it's
20 a matter of perception. So overall I just had to say that
21 if it were to be away from this area it's nicer. So I'm
22 kind of opposed to this on that ground because it will
23 impact the people who are living here like us. Thank you.

24 HEARING OFFICER CELLI: Thank you, thank you for
25 your comments, Mr. Devan.

1 I only have one more blue card so, Ms. Jennings,
2 if you have any more please bring them up.

3 If there is anyone who just came, has recently
4 arrived to this conference, we need you to fill out the blue
5 card so we can call your name so we know that you want to
6 make a comment. I am going to call Vipin Goel. Is Vipin
7 here?

8 MR. GOEL: Hi, good afternoon everyone; my name is
9 Vipin. And to begin with I'd like to thank everyone present
10 here, particularly thank you for coming down, giving all the
11 residents an opportunity.

12 As some people have already mentioned, this is a
13 commuter town so it is probably slightly not very convenient
14 for everyone but I'm sure some of us present here speak for
15 all of the people who wanted to come here but were not.

16 One thing I wanted to highlight, I brought it up
17 during the evidentiary hearing as well. Yesterday I
18 attended a meeting of the Vicklund School Foundation. And
19 we have a meeting every month but yesterday was a special
20 meeting called primarily to discuss the impact of the budget
21 cuts that are being proposed. I'm sure the entire state of
22 California is impacted and all school districts are impacted
23 so we are not saying that we are being singled out
24 particularly. But if like somebody sees those numbers,
25 those are drastic. I mean, it's drastic. It's really said

1 the kind of cut-downs that are being proposed and will
2 almost certainly be pushed down our throats.

3 As everyone is aware that many of these funds come
4 through property taxes. We are a town which unfortunately
5 has a dubious distinction of being devastated in that
6 aspect. The kind of cuts -- we are not just talking just of
7 programs like science clubs and music. Even basic programs
8 like GATE, the Gifted and Talented program. Library, we
9 went to library for the last few years. We started buddy
10 clubs with book donations. I mean, all kinds of ways the
11 library was built up, the school library was built up. And
12 now it will probably not be used because there won't be any
13 librarian.

14 And the parents are trying to see how much of
15 these activities can we support with the funds. But chances
16 are that we will be losing most of these, most of these.
17 Sports, not sports, music. Virtually down the -- even
18 health services, I mean. I have a friend whose daughter is
19 diabetic and there's a nurse who gives her an injection, who
20 gives her insulin every day. And it looks like next year we
21 will not have that and she will have to -- I mean, little
22 kids will be taking medicine themselves. Something like
23 that.

24 Is this connected to power plant? Yes. Despite,
25 like as my predecessor mentioned, the perception is what

1 counts. You can present all kind of data that the pollution
2 impacts and that the noise impacts and the socioeconomic
3 impacts are minimal; the residents here feel otherwise, they
4 strongly feel otherwise. The residents here feel that way
5 and the potentially new residents also feel the same way.

6 We need drastic growth in this town. Instead of
7 growth we are likely to see a regression. More people are
8 likely to move out. Property prices are likely to go down
9 further and the property taxes. Consequently the budgets
10 available to the school are likely to go down further.

11 The schools have been making a very, very drastic
12 effort. We have STAR testing going on now. The schools
13 have been very focused. Despite everything the school
14 district is the best in the county. We are still scared
15 that will all these things coming up, mainly the budget
16 cuts, the class sizes are going to go up next year.

17 I mean, anything further that impacts the town
18 adversely is something which I don't know how we can approve
19 of. I respect, respect the analysis. I am not disputing
20 those. But if the perception is what matters, the
21 opposition to the plant as a resident carries any weight to
22 the Committee, I would say that this plant should be not
23 established. Thank you.

24 HEARING OFFICER CELLI: Thank you, thank you for
25 your comments. Ms. Smitha Unnikrishnan.

1 MS. UNNIKRISHNAN: Yes.

2 HEARING OFFICER CELLI: I'm sorry if I didn't
3 pronounce your name correctly, please go ahead.

4 MS. UNNIKRISHNAN: Hi, my name is Smitha
5 Unnikrishnan; I am Rajesh's wife. We don't have the same
6 last name, I still carry my maiden name. But good evening
7 everyone and thank you for letting me speak.

8 My concerns are slightly different from his. He
9 is very dedicated to the cause but I am coming from a
10 housewife and a mom's point of view. I have some questions
11 actually.

12 You mentioned that this is a peaker power plant.
13 So would this power plant also be running during winter
14 times? Is it possible? Because we have these fogs that
15 descend on this community and clouds the whole day. And I
16 really would like to know about that. Is there a chance
17 that it might run?

18 HEARING OFFICER CELLI: Applicant, do you want to
19 respond?

20 MR. CURRY: Yes, the power plant may run in the
21 winter.

22 MS. UNNIKRISHNAN: Okay. So in that sense I am
23 concerned about pollution, otherwise I am not so concerned
24 about the pollution aspect of it. But winter, I know the
25 fog just rolls in from the hills and it just stays

1 throughout the day, throughout, it doesn't go anywhere. And
2 I know people who travel or commute to Bay Area say that
3 it's sunny and nice over there but it's just under fog in
4 this neighborhood. So pollution-wise I don't think it will
5 be great to have that just clouding this neighborhood.

6 Another thing is definitely what my, you know,
7 predecessors mentioned about the perception of property. I
8 am a cancer patient and I definitely would not have bought a
9 house here if we knew that a power plant is coming. We
10 would not have definitely moved in here. We would have --
11 we got a chance to move out but we decided to stay and it's
12 mainly because of the environment. Now, you know, this
13 thing is going to come in and it's going to, you know, add
14 another blow to the already existing problems this community
15 has.

16 We really -- I don't know, practically maybe, the
17 whole process is such that you cannot say, this power plant
18 should move from this point to another point. But
19 practically speaking I really wish you could move the
20 location of this power plant away from this community. When
21 people are already living here, they came here with the
22 understanding that it's clean, it's better than Tracy. We
23 do see the infrastructure around Tracy. This is the
24 neighborhood we want to live in, we like it. And then if
25 something like this comes along it's really going to be

1 adding to a negative impact on the community.

2 So if you can really help us and move the location
3 of this from this particular place to slightly off area that
4 would be best. And that's my only comment and I hope you
5 can accommodate that.

6 PRESIDING MEMBER DOUGLAS: Thank you.

7 MS. UNNIKRISHNAN: Thanks.

8 HEARING OFFICER CELLI: Thank you. Is it Rahul or
9 Ramul Dighe? Ramul?

10 (Ms. Unnikrishnan speaking to Mr. Rahul
11 Dighe away from the microphone.)

12 MR. RAHUL DIGHE: My dad told me.

13 (Laughter)

14 MR. RAHUL DIGHE: No power plant because the air
15 is dirty. I like to go outside to have fresh air.

16 (Applause)

17 HEARING OFFICER CELLI: Thank you. I'm sorry, was
18 that Rahul or Ramul?

19 MR. RAHUL DIGHE: Rahul.

20 HEARING OFFICER CELLI: Rahul, okay. Thank you
21 for your comments, Rahul.

22 Is Prमित Shah here?

23 MR. SHAH: Hi everybody, how are you? A lot of
24 points came and I was a bit late, sorry, I apologize for
25 that. But a lot of points came about socioeconomic impact

1 to the community and I kind of big-time disagree. You may
2 have seen labor, you may have seen property taxes, you may
3 have seen certain things that already exist inside the whole
4 socioeconomic criteria that currently exists and the power
5 plant may not affect that criteria.

6 But a lot of my predecessors talked about
7 perception. I kind of voice that again. I personally think
8 that a lot of my friends who want to move here, I brought in
9 a lot of friends who are here. A lot of friends including
10 the realtor friends, including people who are investing
11 here, they are going to have a big-time selling this
12 property in Mountain House should the power plant come in.

13 And if you tell me that this is not going to have
14 a socioeconomic impact to this just nascent bubbling
15 community I would totally disagree with you. I don't think
16 that it is accurate to say that power plants in the area, in
17 the Bay Area, are also close to the community. That would
18 also impact the people living around them. That's point
19 number one.

20 My other point is going back to Smitha's point.
21 Is that you may laugh at this point of mine but the fact of
22 the matter is that this area has a lot of fog. This area
23 has a lot of static air that happens to be around it in
24 winter months. And even some summer days. And things don't
25 move. And if you have a cloud pattern up in the sky -- and

1 I don't know how high is the stack height, forgive me for
2 my --

3 HEARING OFFICER CELLI: Eighty feet.

4 MR. SHAH: Eighty feet, okay, let's say eighty
5 feet.

6 HEARING OFFICER CELLI: Eighty.

7 MR. SHAH: Can you say that again?

8 HEARING OFFICER CELLI: Did I get that right? I'm
9 sorry, Mr. Sarvey was --

10 MR. SARVEY: Ask the applicant.

11 HEARING OFFICER CELLI: I thought it was 80 but I
12 could be wrong; I'm going to ask the applicant. Is it 80
13 feet?

14 MR. CURRY: Yes.

15 HEARING OFFICER CELLI: Eighty feet.

16 MR. SHAH: Okay. So a lot of carbon dioxide
17 greenhouse gases are going to be formed in this area and
18 it's going to remain in this area. And I don't know if you
19 guys know that fungi, fungus, bacteria, viruses, thrive on
20 carbon dioxide. These are catabolic processes and catabolic
21 processes tend to be liking carbon dioxide a lot.

22 And in the area -- and in the area there is a,
23 there is a lot of studies going on on fungus and cancer,
24 fungus and diabetes, fungus and a lot of diseases associated
25 together. The other day I was watching some video where

1 they found that fungus has directly caused people cancer,
2 lung cancer. and all kinds of cancers manifest because of
3 fungus.

4 I kind of think that this is going to really
5 impact our area because if a lot of carbon dioxide has no
6 room to move out then it's going to create that. And we
7 have seen that in the last ten years back where one in 5,000
8 will get cancer; now that number is one in 2,000. I don't
9 want to see that number go to one in 1,000 in my area.

10 And that's my biggest concern. I came here to
11 breathe the clean air, which we see now, and we don't want
12 to see our area get any more greenhouse gases than it has.
13 This valley is polluted right now, we see that. It's
14 polluted by a lot of these pesticides that float in air. We
15 don't want to see any more of the green gases here.

16 Not a lot of xenoestrogens come into these bodies
17 anywhere. Why do you want to enter, why do we want to
18 create situations that are going to increase the content of
19 xenoestrogens in my body. There's a lot of pellets around
20 me, there's a lot of plastics around me that my body is not
21 used to. And I don't want to bring in that extra atmosphere
22 in my surrounding. That may cause something bad. I don't
23 mean to over-exaggerate but that is just my concern.

24 And I want to educate my community right here.
25 And I disagree totally with you guys that this is not going

1 to cause a socioeconomic impact. We are about 3,000 houses
2 here. What makes us think that we will be able to sell
3 1,000 more houses in the next three, four years if a power
4 plant is already coming into this area?

5 And what have you done to Mountain House? What
6 have you given to Mountain House? Have you given any, any
7 concrete programs to the schools here? Should there be a
8 flight or an exit out of Mountain House that we won't be
9 able to receive property taxes here. Have you given those
10 kind of mitigations to Mountain House? Probably not, I have
11 not heard that.

12 So I strongly along with all the residents and
13 surrounding cities also would like to echo that we simply
14 don't want this power plant. You can take it anywhere you
15 like. You can take it a little bit away from our place that
16 would not affect us. We came here to live in a clean
17 environment, we didn't want to --

18 We know that natural gas simply produces carbon
19 dioxide. It doesn't have a lot of these trace metals and
20 trace minerals and, you know. You think about Vanadium and
21 all that kind of stuff. It's little tiny, we know that.
22 But I don't want to live in an environment that has
23 greenhouse gases.

24 HEARING OFFICER CELLI: Before you go away I just,
25 I wanted to see if you had had a chance yet to read the

1 PMPD?

2 MR. SHAH: I have just read on the surface of it,
3 I didn't really go deep into it, you know.

4 HEARING OFFICER CELLI: I really do invite you to
5 read that because I that when you see what the facts are and
6 see what the decision is and how it was arrived at, it would
7 change. Because you said something and several of you have
8 said things regarding perceptions. And I know exactly what
9 you're saying because, I mean, there was a time in America
10 when there was a perception that smoking cigarettes was cool
11 and that perception no longer persists.

12 MR. SHAH: That perception was only for a select
13 group of people, right? You agree?

14 HEARING OFFICER CELLI: Well, I think that -- I
15 mean, everybody smoked.

16 MR. SHAH: True, true. Everybody smoked and
17 nobody objected. You know why, because there was a select
18 group of people that really liked smoking. But this is a --
19 this is every -- you walk out to our neighborhood and walk
20 to house, house after house after house. You may not see a
21 lot of people because ours is just a bed and breakfast
22 community. People don't, people are commuting right now.
23 So I might be speaking on behalf of 50 people right now.
24 But the fact of the matter is that we just don't like this
25 idea.

1 HEARING OFFICER CELLI: I understand that. No,
2 that's not a problem. I just -- I really invite you,
3 everybody, to read the PMPD because I think it will
4 enlighten the whole group.

5 MR. SHAH: Yeah, but a PMPD is a very thick
6 document; you cannot expect anybody to read the whole gist
7 of it, you know what I'm saying.

8 HEARING OFFICER CELLI: But the beauty of it is
9 you don't have to read it from page 1 to page 620. You can
10 kind of flip around because it's that kind of a document.
11 But you can go to the parts that you care about.

12 MR. SHAH: Do you agree on the point that fungi
13 thrives on carbon dioxide?

14 HEARING OFFICER CELLI: I actually don't know.

15 MR. SHAH: Can you research, sir?

16 HEARING OFFICER CELLI: No, I'm not that, I'm a --

17 MR. SHAH: Do you want some material on that? I
18 can give you tons of material on that.

19 HEARING OFFICER CELLI: Well actually, you know, I
20 want to say that as far as I know --

21 MR. SHAH: You are at my home --

22 HEARING OFFICER CELLI: -- we don't know what
23 causes cancer. I mean, there's a lot of --

24 MR. SHAH: That is the common perception that we
25 don't know. And that is why that we don't know leads me to

1 the perception and my strong belief that fungus causes
2 cancer. And there is a huge, there is a huge amount of
3 research out there that they have, I can bring if you want.
4 I can compile and bring in 1,000 pages of documents that
5 point to that fact.

6 HEARING OFFICER CELLI: So --

7 MR. SHAH: There's also there's a lot of TV shows
8 now.

9 HEARING OFFICER CELLI: Well anyway, I didn't want
10 to -- I don't know. I'm not saying one way or the other
11 because I really don't. But I just wanted to share with you
12 that I thought that it would be useful to take a look at the
13 PMPD when you can.

14 MR. SHAH: Definitely. I will definitely try my
15 best to get around to it. But the fact of the matter is
16 that we don't want this plant.

17 HEARING OFFICER CELLI: I've got it.

18 MR. SHAH: Thank you.

19 HEARING OFFICER CELLI: Mountain House residents
20 do not want the power plant.

21 MR. SHAH: Yes. Without --

22 MR. WHEATLAND: Some, some, some Mountain House
23 residents --

24 HEARING OFFICER CELLI: That's right, actually
25 have gotten --

1 MR. WHEATLAND: But I think it's really fair to
2 say that we have heard from about 50 Mountain House
3 residents in the course of this proceeding. And we received
4 a petition from some -- and I think it's fair to say that
5 some Mountain House residents do not want this project. But
6 can I just ask one question about perception?

7 HEARING OFFICER CELLI: Please.

8 MR. WHEATLAND: Because I really would like to
9 know. As you have talked to 50 people has the perception
10 been among those 50 people that they will be able to see
11 this plant from their house?

12 MR. SHAH: No. I don't think the worry is about
13 seeing the power plant or the noise. I mean, I personally
14 don't think noise is an issue, really. Because it's got
15 enclosures around it, right? I mean, correct me if I'm
16 wrong. These are gas turbines that have enclosures so it's
17 going to mitigate all the noise. Except the stack, you
18 know. The stack is at -- maybe it's a significant height
19 for the noise to abate. But --

20 HEARING OFFICER CELLI: This is, again, another
21 reason why --

22 MR. SHAH: Right.

23 HEARING OFFICER CELLI: -- you want to look at the
24 PMPD because we actually measure that kind of stuff.

25 MR. SHAH: Right. But I don't know that 50 people

1 you're talking about but --

2 MR. WHEATLAND: The ones you -- you said you
3 talked to 50 people. I was just asking about perception.

4 MR. SHAH: Well I just gave you a number of 50
5 people. I have talked to hundreds of people, I'll tell you.
6 I have not just talked to 50 people. I just gave you a
7 number that I just, I just happened to tell you that. At
8 most, 50 people I talked to have expressed concern. I have
9 talked to hundreds of people.

10 MR. WHEATLAND: And of those hundreds of people
11 how many of them are aware of a cogeneration plant that is
12 the same distance to their community as our proposed plant?

13 MR. SHAH: A similar cogeneration plant?

14 MR. WHEATLAND: How many of them are aware of the
15 cogeneration plant?

16 MR. SHAH: A lot, a lot. They also know that
17 Tracy has a cogeneration next to Mountain House.

18 HEARING OFFICER CELLI: I would like to say that
19 -- to get to your point, Mr. Wheatland. I have received e-
20 mails from Mountain House residents that say, I am a
21 Mountain House resident. Don't lump me in with these other
22 people because I don't agree, I am not opposed to the
23 project. So it isn't unanimous. But we have heard comment
24 from, I don't know, maybe hundreds of people, and most of
25 them were opposed to it. So I want you to understand that

1 we understand that we understand that.

2 MR. SHAH: Right.

3 HEARING OFFICER CELLI: And this is not, this is a
4 quasi-judicial process. This is not a legislative process.

5 MR. SHAH: Absolutely.

6 HEARING OFFICER CELLI: Here is the difference.
7 When it's legislative they want to know how many people are
8 in favor or against. The quantity of people in favor or
9 against doesn't affect a quasi-judicial situation like we
10 have here. It isn't the number of people, it's really the
11 quality of the evidence that makes the decision.

12 MR. SHAH: Right. And I can, I can at least say
13 that the majority of Mountain House does not want it. It
14 could be a bunch of residents not having the idea that it's
15 okay because it's economically good to have something, it's
16 going to generate taxes to the -- to the -- to the state
17 executor.

18 But overall if you see, not a single Mountain
19 House resident is going to gain any employment because of
20 that. Not a single -- no direct. No direct benefit to
21 Mountain House. No direct benefit to the schools in
22 Mountain House. No direct benefit to anything in Mountain
23 House. That speaks itself.

24 I don't need to say anything more, you know.

25 HEARING OFFICER CELLI: Okay. Well thank you for

1 your comments.

2 MR. SHAH: Thank you.

3 HEARING OFFICER CELLI: I do appreciate you coming
4 forward.

5 MR. SHAH: Thank you.

6 HEARING OFFICER CELLI: We also have Jeremiah
7 Bodnar, is he still here? Mr. Bodnar, come on up.

8 MR. BODNAR: Hello again.

9 HEARING OFFICER CELLI: Hello again. I remember
10 you from the evidentiary hearing.

11 MR. BODNAR: I know you do. You were generous
12 with me and gave me plenty of chances to speak so I won't
13 take too much of your time now but I have a few new
14 questions as well.

15 So you have been really generous in giving me some
16 time to speak, not always so eloquently. But about the
17 justifications as I see it for why this power plant should,
18 should be denied. Going from the Davis paper. And you have
19 given me time to express the fact that I don't think that
20 the justification and studies that were used, whether
21 they're -- I mean, some of them using just a single power
22 plant rather than the general survey that the Davis paper
23 used. Or the ones that are focusing on power lines rather
24 than the economic effects of power plants themselves. The
25 data is not nearly as good as the Davis paper itself. I

1 know it's been attacked, especially for not creating a peer
2 group analysis. But that isn't the methodology he chose.
3 In the Davis paper he uses about half of the paper, 10, 15
4 pages, just to find his statistical methodology for
5 isolating the factors that are, that are of value to him.
6 You've pretty much let me express that and so I appreciate
7 it.

8 one thing that I've noticed has happened since
9 then is that the new census data has come out. Although I
10 know that my arguments about Davis are on the record, I
11 don't feel like our community is really being reflected on
12 the record. As far as I saw you didn't use any of that
13 data. Or did you?

14 HEARING OFFICER CELLI: We did and we did consider
15 your comments, which were very helpful. But I wanted you to
16 know where you were going because I kind of wanted to read
17 this to you.

18 MR. BODNAR: Okay.

19 HEARING OFFICER CELLI: Actually we said,
20 essentially, that okay, so the law requires the staff and
21 the applicant to rely on the census and it's old census data
22 and we had received other evidence from other witnesses.
23 Mr. Singh gave us a map showing, a distribution showing
24 something like 46 percent Asian.

25 In any event, what the Committee did, and I think

1 that this is laudable, is that the Committee said, close
2 enough. We'll just consider Mountain House a minority area
3 and just proceeded accordingly. Because, you know, rather
4 than split hairs and try to, you know, wait for a new census
5 one way or the other, ultimately the racial makeup of an
6 area is just part of a three part question. And rather than
7 goof around with that question we just said, let's just
8 assume that it is. And that was, that's how the PMPD
9 proceeded.

10 MR. BODNAR: Okay.

11 HEARING OFFICER CELLI: So, you know, that's what
12 we did.

13 MR. BODNAR: Okay, I appreciate that. And I know
14 that that in itself isn't enough to start anything in
15 process but I just felt, it feels good to be represented at
16 least for who we are.

17 HEARING OFFICER CELLI: Yes.

18 MR. BODNAR: I have a question about this just
19 because it's come up several times; this is the last time we
20 get to talk to you guys. I've heard repeated again and
21 again the claim that we don't choose the location of power
22 plants. And it seems sort of disingenuous to me in some
23 ways because having veto power over a location seems like
24 it's the same thing as choosing a location. Obviously you
25 don't say, here. But having veto power seems like it's

1 basically the same thing.

2 HEARING OFFICER CELLI: It's kind of like that but
3 I'll tell you what the difference is. What you're talking
4 about, the veto power, comes in -- the ability to override
5 essentially is what you're talking about. We can't even get
6 into the alternatives unless and until an override situation
7 presents itself.

8 So essentially unless there are superior
9 alternatives or there is a reason why there's such a
10 significant impact in any of these disciplines that we have
11 been talking about that would cause us to say, okay, it
12 looks like you can't have your power plant here. Now if we
13 were to say, but we want that power plant so badly that
14 we're going to override this significant impact. Now you
15 start looking at the alternative sites, the alternatives and
16 that's how you get into it. So it's not like we can just
17 say, we don't want it there, put it over there.

18 MR. BODNAR: Fair enough.

19 HEARING OFFICER CELLI: There's procedural hurdles
20 you have to get through.

21 MR. BODNAR: Fair enough. But the procedure
22 itself is what determines where a power plant does not go so
23 sort of de facto it determines where a plant actually goes.

24 PRESIDING MEMBER DOUGLAS: Let me jump in on that.
25 So what we do is we wait for applications to be brought to

1 us. We don't go to developers and say, we've identified ten
2 great sites that we think you should go to.

3 MR. BODNAR: Right.

4 PRESIDING MEMBER DOUGLAS: And so that's the
5 process. And so a developer will come to us and say, we
6 have a site, here's where we want to build this kind of
7 plant, here's why and we began with our civil service staff
8 doing the analysis of the impacts. And if there are
9 significant impacts and we can't find ways to mitigate it
10 that's where, as Hearing Officer Celli said, that's where
11 you get into alternatives. But what we don't have is a
12 process where we choose a site. This is not how a normal
13 review at the Energy Commission has worked.

14 MR. BODNAR: Thank you. The last thing again
15 because it might be the last time I get to talk to you guys.

16 I know several of us have expressed frustration at even
17 though I found the Davis paper to be good there was
18 definitely a lot of testimony against that. It seems to me
19 like there is a real lack of data at least that people are
20 willing to accept that is going into this question of
21 socioeconomics, and especially given the general environment
22 in which we are now.

23 What's the possibility of the California Energy
24 Commission itself commissioning a study that you would
25 consider valid? Because I don't consider the ones that you

1 used to be very good evidence. I know you're going to come
2 back against the one that I brought. Is there any horizon
3 for getting good, scientific, statistical evidence that we
4 can agree upon? And I know that's not what you guys do
5 but --

6 HEARING OFFICER CELLI: It's a good question and
7 I'm glad you raised it because it raises something really
8 important under CEQA. And that is, the whole idea of
9 economic impact. CEQA, the California Environmental Quality
10 Act, there's cases on point that say, CEQA is not an
11 economic protection statute, it's an environmental
12 protection statute. And so it basically, it isn't a
13 consideration. In other words, it is outside of the purview
14 of CEQA to even consider property values, et cetera, unless
15 they have a physical impact, like a physical environmental
16 impact.

17 And there are cases where they have actually found
18 that there has been. There's a correlation between the
19 economic and the physical impacts that resulted. The one
20 I'm thinking of was a case up near Bishop where they put in
21 a Target or something like that and essentially what it did
22 was it created a, it changed the whole physical layout of
23 the town and it affected the physical environment and so
24 that was a finding of the court. But the point is, you need
25 to show a physical impact, not just an economic one.

1 PRESIDING MEMBER DOUGLAS: And so, for example, in
2 the analysis we'll look at air quality and will the air
3 quality harm human health. You know, we'll look at visual.

4 Is there something ugly that people will have to contend
5 with. We'll look at noise, vibration. Physical
6 environmental impacts that people of the area might have to
7 contend with. And those are the --

8 And we'll get socioeconomics in terms of, will
9 workers come and end up camping because there aren't places
10 for them to stay and that sort of thing. But I think a lot
11 of the issue that we're talking about now is that decline in
12 property values due to fear of power plants, that's grounded
13 in perception but not grounded in what our analysis shows
14 the plants will do to the air or to the environment. It's
15 not something under CEQA that we have the discretion to base
16 a decision on.

17 And this is getting into some of the standards
18 that we use in a quasi-judicial proceeding where we can't be
19 arbitrary and capricious, we have to rely on the evidence in
20 the record. And so that's -- it's kind of a different
21 world, I realize, for you and I hear loud and clear the
22 concern of the community.

23 MR. BODNAR: So that's the sample of the internal
24 policy and the federal guidelines as they're laid out to
25 protect the sensitive socioeconomic groups as well? Has to

1 be --

2 HEARING OFFICER CELLI: There has to be, the next
3 step is there has to be a physical impact. So we don't just
4 say, oh, this is a, this is an EJ community, this is an
5 environmental justice community. Once you make that
6 determination the next question is, okay, are these people
7 suffering a disproportionate impact. In other words, what
8 we are trying to do is keep, you know, polluting the poor
9 and polluting minor areas, as used to be the case. But in a
10 situation as this where there is no impact then it doesn't
11 matter what the makeup is. You need to have an impact in
12 order to determine whether the impact disproportionately
13 affects a minority or a low-income group.

14 MR. BODNAR: I mean, I'm wondering though to what
15 degree it makes sense to isolate. I mean, depending on what
16 you mean by physical. But to isolate the physical impacts
17 from economic impacts. Because the economic status of a
18 community is going to be one of the best predictors and
19 probably determiner for the health of a community. How can
20 you sort of tease those things -- if I were, say, were
21 hitting you in the pocketbook but we're not hitting your
22 health, when things like, you know, health care and services
23 and even the ability to keep our community clean. It's so
24 closely connected to the economic status of the resources
25 that we have available and property values and things like

1 that.

2 HEARING OFFICER CELLI: And I think that that is,
3 that's one of those, not chicken and the egg but that's one
4 of those causation things that you can just -- something
5 that the causation goes on and on and on. But I think that
6 under the statute what the PMPD has done is it looked at the
7 state of the law as it is, looked at this project, heard the
8 evidence and said, okay, do we have an impact? And if we
9 do, are the proposed mitigation measures enough to
10 neutralize this so there is not significant. And that's the
11 CEQA inquiry.

12 And in the end all impacts were mitigated below
13 significance for the Mariposa Energy Project. It's a peaker
14 and it's 2.7 miles away from here and you can't see it from
15 here. It's natural gas burning, peaker that will run, as I
16 said, 600, 1400, we don't know. The staff averaged 1400
17 based on the history of this whole state but applicant said,
18 we think it's going to run 600.

19 So whatever that may be, the point is the running,
20 the operation of that power plant, based on the laws, based
21 on CEQA, does not have a significant adverse impact and
22 therefore it doesn't have, it can't have -- because it has
23 no significant adverse impact on any community it can't have
24 a special one on Mountain House.

25 MR. BODNAR: Right.

1 HEARING OFFICER CELLI: You've got to first have
2 the impact.

3 MR. BODNAR: Right, right. Okay. Well I thank
4 you for your time and I actually have to say that I feel
5 better about American democracy after this process than
6 before it, even though it looks like things are not going to
7 go my way. You've put a lot of effort into making sure
8 people's voices are heard. And I have been amazed at the
9 fact that what I say, even though I don't like what you say
10 back entirely, is considered. I had no idea that people in
11 the public actually had the ability to participate at this
12 level this frequently if we force ourselves to do it, for a
13 decision like this.

14 So thank you for your work even though it's not
15 going to go my way. Maybe, maybe next time. So probably, I
16 suspect.

17 HEARING OFFICER CELLI: Thank you, Mr. Bodnar.

18 PRESIDING MEMBER DOUGLAS: Thank you.

19 HEARING OFFICER CELLI: And talk with Jennifer
20 Jennings about how you can participate in the hearing, at
21 the business meeting before the full Commission.

22 MR. BODNAR: Okay.

23 HEARING OFFICER CELLI: And you can be heard then
24 too. So thank you for your comments.

25 I have Paul Bhathal.

1 MR. BHATHAL: Bhathal, right.

2 HEARING OFFICER CELLI: Bhathal. I'm sorry.

3 MR. BHATHAL: Hello, my name is Paul Bhathal.

4 HEARING OFFICER CELLI: Hi.

5 MR. BHATHAL: And I'm glad to be here,
6 participate. It was very educative to be here and listen to
7 both sides. My predecessors kind of repeated what I -- I
8 don't want to repeat what they said but I share some of the
9 concerns that they had.

10 But one thing, and I think Primit Shah kind of
11 touched on that is that socioeconomically, I mean, besides
12 all those things, the one thing is that I can understand
13 from Alameda County's perspective the benefit and the least
14 impact by having this plant in one corner and then we being
15 just next to it and having all the perceptual or other
16 effects, side effects, but not having any advantage to the
17 community, contribution to the community. So that was one
18 of the areas that I do not see much information or benefit
19 to the community. But besides that, yes, perception-wise
20 there is impact. And property values, all those concerns
21 about it, I share that.

22 HEARING OFFICER CELLI: Thank you very much for
23 your comments.

24 MR. BHATHAL: Thank you.

25 HEARING OFFICER CELLI: It says Shan, all I have

1 is Shan. I'm sorry, I don't know if that's Mr. Shan or?

2 SHAN: It's actually Shan.

3 HEARING OFFICER CELLI: Shan.

4 SHAN: Thanks for giving me the opportunity to
5 talk to you too. I'm a resident of Mountain House too and
6 I'm opposed to this plant too. I wasn't prepared for this
7 but I thought I'd come in here and --

8 Again, I don't want to repeat stuff that has
9 already been said but I had a question. And basically the
10 question was that -- it's again going on to the
11 socioeconomic effects of this plant. When you see a growing
12 community such as Mountain House that has the ability of
13 growing more in the coming years and the taxes that we as
14 residents pay here, has there been any evaluation done as to
15 what's -- I mean, you has to see and make it objective and
16 the overall significance or profits that a community makes
17 or a power plant makes, right. It might be part of the
18 situation between Alameda and San Joaquin.

19 But overall I think our community does generate a
20 lot of revenue in terms of taxes. So how do you put that in
21 perspective when the residents don't need this power plant
22 and it could have an effect in the growth, future growth of
23 this community? Which could very well be, you know,
24 generating a lot more in benefits and economic growth for
25 the area rather than this power plant. Has any evaluation

1 been done on that?

2 HEARING OFFICER CELLI: Yes. I really, and I want
3 to say this again to everybody, invite you to take a look at
4 the PMPD section. Read the socioeconomics section. Because
5 you will understand that socioeconomics is much broader than
6 just what we have been talking about, housing values and
7 things like that. Because housing values really is not an
8 environmental concern.

9 SHAN: I'm not even talking about housing values.

10 HEARING OFFICER CELLI: It's more about taxes and
11 that sort of thing.

12 SHAN: Taxes, yeah.

13 HEARING OFFICER CELLI: What's funny about the
14 Mariposa Energy Project is it just so happens to be located
15 at the very tip-top corner of Alameda County. You could
16 throw a rock from there to Contra Costa County and I imagine
17 San Joaquin is not all that far away either, it's pretty
18 close. And they are all right hunched up together there.
19 But generally speaking, land issues are governed by the
20 county that you're in and the taxes are paid to the county
21 that you're in. And that is just, just happens to be the
22 location of this power plant. Really, that's governed by
23 law.

24 SHAN: So, I mean, how do you -- I mean,
25 definitely there is going to be an impact on the growth of

1 this community going forward.

2 HEARING OFFICER CELLI: Well, only if you -- see,
3 I have to say that there's like -- I'm listening to the
4 self-fulfilling prophecy playing out and I'm listening to
5 people who have heard this now. I have lived with this case
6 a long time.

7 SHAN: Yeah, I know.

8 HEARING OFFICER CELLI: And I've heard from a lot
9 of community members. And I'm thinking in the back of my
10 mind, I might as well go public with this. I'm sitting here
11 thinking, you know, if they keep saying this, this is going
12 to be true. They are going to make this true. Right now
13 this is, this doesn't exist. Nobody knows about this thing,
14 right now it doesn't exist, okay.

15 SHAN: Right.

16 HEARING OFFICER CELLI: But if you start running
17 around and saying, oh my goodness, you know. And none of
18 the things that I have been hearing up until now are fact.

19 SHAN: But that would be cheating, right, to
20 people who are coming in?

21 HEARING OFFICER CELLI: Well, you know something,
22 I don't know. I am not a real estate attorney, I am not
23 here to give anybody legal advice.

24 SHAN: Because --

25 HEARING OFFICER CELLI: You have to disclose

1 whatever you have to disclose.

2 SHAN: Right.

3 HEARING OFFICER CELLI: But I would say this.

4 SHAN: I have talked to a lot of people. And when
5 it comes to the perception of the gas plant in the vicinity,
6 The other choice, I mean, nobody would really like to live
7 in the vicinity of a gas plant. If they are given a choice
8 to San Francisco or, you know, some other place that is away
9 from the gas plant, right?

10 HEARING OFFICER CELLI: Well San Francisco has got
11 its issues as well. But let me just say that this is -- you
12 know, one of the things about modern life is that we are all
13 in it together. And we all, it isn't just Mountain House, I
14 mean, it's the whole San Joaquin Valley. It's Tracy,
15 Stockton, I mean it's the whole big picture.

16 And yet this is a power plant that when you read
17 the PMPD you will see that every possible measure, every
18 control technology that is available to contain and manage
19 and mitigate any of its adverse impacts are in place. And
20 so --

21 SHAN: Yeah.

22 HEARING OFFICER CELLI: And it's a peaker. I have
23 often said, not to anyone here but to other people, that if
24 I could trade a peaker that's going to run 600 hours for my
25 freeway and railroad that's within a mile of where I live I

1 would make that deal. But, you know --

2 SHAN: Yeah, and again, but it's about the
3 perception, right? No matter what --

4 HEARING OFFICER CELLI: Right. And so what I am
5 inviting the people --

6 SHAN: No matter what you say about technologies
7 in place, if anybody in this room can tell me that yeah,
8 they would like to live given a choice of San Francisco or
9 in this Mariposa, near Mariposa Power Plant, who can raise
10 their hand and say yeah, I want to live near Mariposa and
11 not in San Francisco.

12 HEARING OFFICER CELLI: Well, I can't speak to
13 that but I would say is this. The reason I raised up the
14 cigarette smoking, because nowadays if you talk to most
15 people who are my age who grew up with people smoking
16 cigarettes all over.

17 SHAN: Yeah.

18 HEARING OFFICER CELLI: We think, oh, that's
19 disgusting, what a disgusting habit, get it out of here.
20 And yet when we were growing up it was cool. Our parents
21 did it and everybody was smoking cigarettes.

22 SHAN: Right.

23 HEARING OFFICER CELLI: So I want you, I just want
24 to say that a perception is mythology and it's just a fact
25 that people are going to bring into being by agreement

1 versus perhaps having a different kind of a conversation
2 about it. But that's a choice that the people of Mountain
3 House can make.

4 SHAN: But it's actually not even perception.
5 It's a fact that nobody would really want to live near a gas
6 plant.

7 HEARING OFFICER CELLI: 2.7 miles away. It's not
8 like it's in Mountain House.

9 SHAN: Yeah, if given a choice. Anybody can raise
10 their hand and say, okay, I'll trade my house which I have
11 right now wherever they have near and come and stay over
12 here. Would they do that?

13 HEARING OFFICER CELLI: Well I understand based on
14 the evidence we received -- Mr. Dighe gave us a great video
15 clip that if I lived in Mountain House I'd trade for a house
16 in San Francisco too because I would probably retain my
17 housing value better. But that's an economics call. So I'm
18 not sure it has to do necessarily just with power plants.

19 PRESIDING MEMBER DOUGLAS: So let me ask a
20 question on the issue of perception, on the issue of
21 community concern, you know. If we asked our staff to give
22 you some comparisons of the pollution that you would receive
23 from this power plant living in Mountain House versus being
24 X yards from a freeway versus being X yards from a, you
25 know, freight train line, would that help you put this in

1 perspective in terms of --

2 SHAN: No, we know that. I mean, we know
3 technology-wise and, you know, pollution-wise it's a great
4 plant probably to have the best technology possible.

5 But people don't believe in that. And it's,
6 again, like cigarette smoking. Nobody knew about cigarettes
7 until when they had cancer and everything.

8 HEARING OFFICER CELLI: I also want to say that it
9 also makes sense in light of what happened in Japan. When
10 they were saying, oh it's safe, you can go back to where the
11 nuclear plant is. So I understand that people are naturally
12 distrustful and that's not necessarily a bad thing either.

13 SHAN: Yeah. I mean, but as decision makers again
14 the question is, you're in the decision-making seat right
15 now. Given the growth of the community and that community
16 which already gives so much in taxes, literally millions of
17 dollars in taxes, versus the profits that a gas plant would
18 do for Alameda County. So what really weighs more?

19 If we were in the decision-making seat we would
20 say, hey, let our community grow more so we can contribute
21 more towards the taxes of San Joaquin. And that would be
22 far, far, much, much, much, much more than a gas plant of
23 this magnitude can actually generate for Alameda County.

24 And you're actually burning more gas. You are
25 putting millions of dollars into constructing this gas

1 plant. What is the ROI? And how many years would it take
2 to get the benefits back from this power plant versus the
3 amount of taxes that are generated right now from this
4 community. So if we were in the decision-making seat we
5 would say no, we don't need this, we want the growth of this
6 community more and faster. And so you have more businesses
7 over here and more tax money.

8 So, I mean, common sense-wise I don't see why this
9 gas plant is required. Maybe -- I don't know, maybe there's
10 a really good reason for this gas plant. But it would slow
11 down the community growth and would slow down San Joaquin's
12 growth, you know. All the revenue that the county gets in
13 dollar amount.

14 HEARING OFFICER CELLI: Well, Shan. It's Shan,
15 right?

16 SHAN: Right, right.

17 HEARING OFFICER CELLI: Is it Mr. Shan? Is that
18 your last name or your first name?

19 SHAN: Well, it's actually my nickname.

20 HEARING OFFICER CELLI: Okay, okay. First of all
21 I want to thank you for your comments.

22 Second of all I am going to ask if you, I hope you
23 get a chance, read the PMPD.

24 SHAN: Sure.

25 HEARING OFFICER CELLI: And take a look at it.

1 And you'll get a sense of what this is really about and then
2 I think that might help.

3 SHAN: Sure. Thank you so much.

4 HEARING OFFICER CELLI: I think hopefully as a
5 culture, as a community, maybe we would start a new
6 conversation than the old one.

7 SHAN: Sure.

8 HEARING OFFICER CELLI: Thank you very much.

9 SHAN: Thank you.

10 HEARING OFFICER CELLI: I am going to ask now if
11 there are any people on the telephone who wish to make a
12 comment at this time?

13 (No response)

14 HEARING OFFICER CELLI: Lynn Sadler, have you got
15 an indication of anybody?

16 MS. SADLER: (Nodded)

17 HEARING OFFICER CELLI: Is there anyone else here
18 who wishes to make a comment?

19 Seeing none, at this time I want to thank you all
20 for participating.

21 MR. SINGH: Can I make some last comments?

22 HEARING OFFICER CELLI: Yes you can.

23 MR. SINGH: Thank you very much.

24 Now let's talk about the smoking cigarette
25 injurious to health, right? So it also talks about how much

1 people are paying for that smoke and how much taxes are
2 going to state and federal about the smoke. If we don't pay
3 the state and federal tax on the smoke I think the
4 government would ban the smoking here.

5 Now, you know, a very concrete thing. Can you
6 give me a letter saying that in another 30 years until this
7 plant exists, if any of the Mountain House goes under
8 socioeconomic conditions, it would be any, then Mariposa
9 will mitigate them. If let us say health issues happens or
10 the home prices goes down and the community doesn't develop.

11 So do you think that we could be provided some letter,
12 okay, we will mitigate at that time if these effects happens
13 in the community.

14 I can tell you like -- I can get so many people
15 that will sign and say go ahead and build it as long as you
16 are going to mitigate for our health. So if you or
17 applicant can provide us a written statement then we are not
18 here. We can save your time, our community time and
19 probably applicant's time too.

20 HEARING OFFICER CELLI: That's right. Let me
21 just, let me give you the short version here. In California
22 every wrong has a remedy. Any injury you suffer you have
23 recourse. If you suffer an injury as a result of the
24 Mariposa Energy Project you can sue them.

25 MR. SINGH: How about they pay if you get any

1 cancer?

2 HEARING OFFICER CELLI: We can't, we don't, we're
3 not -- we're just the Energy Commission but that's what the
4 courts are there set up to do. So that's how that works.

5 MR. SINGH: So let us talk about some of the
6 revenues and the profitability which MEP will be getting,
7 probably in millions of dollars. So how about we set aside
8 some of the funds in escrow. If anything happens down the
9 line those funds will be used for mitigating Mountain House.
10 Can we come up with some other system like that?

11 HEARING OFFICER CELLI: You know, when the
12 evidentiary record was open and we were setting up
13 conditions and looking at the evidence, if you had had some
14 evidence to show that there was a likelihood. Just as they
15 have to mitigate, for instance, the land, biology land. If
16 they're going to cost we the Californians some habitat for
17 some animal then what they have to do is go out and buy that
18 mitigation land, okay. And that's according to proof.

19 Unfortunately what you're talking about now I
20 think is well after the fact. But there is nothing in the
21 record that shows that there was any likelihood. In fact
22 the record shows quite the opposite, that there will be no
23 health impacts.

24 MR. SINGH: So the record does show that there is
25 an impact but there is not significant impact. Since there

1 is a impact that is how San Joaquin Air Pollution Governing
2 Board was paid \$640,000. So if there is not impact why the
3 mitigation money is being provided? So that's a question.
4 So there should not be any mitigation money, period. So why
5 the mitigation money is being provided if there isn't
6 impact?

7 HEARING OFFICER CELLI: That's how you get below
8 significance is basically by mitigation.

9 MR. SINGH: So now what if --

10 MR. WHEATLAND: Actually the payments that the
11 applicant made were voluntary. We entered into the
12 agreement before there was any finding or suggestion on this
13 record that there was a significant adverse impact on the
14 people of San Joaquin County. It was a voluntary agreement
15 we entered into.

16 HEARING OFFICER CELLI: Okay, I was speaking in
17 very general terms. I wasn't, I must have missed something.
18 What are you speaking to exactly, Mr. Wheatland?

19 MR. WHEATLAND: Well he was indicating why was the
20 agreement entered into. It wasn't entered into as a
21 mitigation agreement with the District, it was a voluntary
22 agreement we entered into.

23 HEARING OFFICER CELLI: Oh, with San Joaquin.

24 MR. WHEATLAND: With the San Joaquin Valley Air
25 Pollution Control District, yes.

1 HEARING OFFICER CELLI: Okay.

2 MR. SINGH: So as I mentioned to you, you know,
3 mitigation money is a white collar crime, you know. That's
4 a period. You know, you shut the people down, pay them the
5 money and get the agreement and let thousands of people,
6 they suffer from this all smoke and get the diseases, you
7 know, get into their body.

8 Now as I was talking about this hole in the system
9 last comment I will --

10 HEARING OFFICER CELLI: I just have to say that I
11 don't agree with those premises.

12 MR. SINGH: Well, you know, I have the freedom of
13 speech to say that.

14 HEARING OFFICER CELLI: Right.

15 MR. SINGH: Yes.

16 HEARING OFFICER CELLI: I'm just saying that just
17 because you are saying it doesn't mean that the Committee
18 agrees.

19 MR. WHEATLAND: Mr. Singh is an elected public
20 official and he has the responsibility in this proceeding to
21 speak the truth. And the allegations of fraud, crimes, have
22 been repeatedly stated throughout this proceeding to the
23 point of ad nauseam without any supporting evidence
24 whatsoever at any point in the case. And I really think
25 that at this point that he ought to be told right now, put

1 forward the evidence he has or quit making these false
2 allegations. Because it has been repeated and incessant and
3 it is very wrong.

4 HEARING OFFICER CELLI: And you say you are an
5 elected official?

6 MR. SINGH: Well, I will definitely.

7 HEARING OFFICER CELLI: Are you an elected
8 official, Mr. Singh?

9 MR. SINGH: But I am fighting here as a common
10 resident, you know.

11 HEARING OFFICER CELLI: That's how you entered as
12 an intervenor, I wasn't aware that you were an elected
13 official.

14 MR. SINGH: No I did not come here as elected
15 official to basically oppose power plant. But I am elected
16 official in this community.

17 HEARING OFFICER CELLI: In what capacity?

18 MR. SINGH: As a Board of Director of this
19 community.

20 HEARING OFFICER CELLI: So you're on Mountain
21 House Community Services District?

22 MR. SINGH: Yes I am.

23 HEARING OFFICER CELLI: I did not know that.

24 MR. SINGH: So another hole in the system that I
25 was talking about, my whole point is how we can fix these

1 holes in the system which feeds to. And one of the system
2 is that why don't you look into and identify some of the
3 areas and tell these applicants, go and build those power
4 plants there. Not for their profitability and where they
5 see the cost of building the power plant is the least and
6 build there.

7 So let us say if the infrastructure of water, the
8 creek is not there in Alameda where they build the power
9 plant, they see the viable option of building it because
10 they can immediately supply the energy there. So I think
11 one of the system hole I was talking about is that why don't
12 you go ahead and identify those areas. That should be the
13 real work of CEC. Okay, these are the areas that we suggest
14 and build those power plants.

15 Look at the Internet revolution. The lines are
16 going in such a way everywhere the fiber is distributed.
17 That now give the grid in the area, supply those imported,
18 all money in supplying those grids. So that give them the
19 alternate method of putting their power plant there to
20 supply the energy on those grids and which is away from the
21 population. And that will save a lot.

22 So anyway, I am pretty sure that if EJ would have
23 been considered right at the beginning of the application
24 that the decision would have influenced in the other way.
25 But all the time we were all forced to consider EJ in the

1 last, the minority population here.

2 HEARING OFFICER CELLI: You wanted us to jump to
3 the conclusion that this was an EJ community?

4 MR. SINGH: And anyway, you know, as I tell you,
5 Mr. Celli, that we discussed in the workshop that the
6 decision has been made. Whatever beans or templates or
7 whatever we have here --

8 HEARING OFFICER CELLI: Can I ask you something?
9 As a public official don't you have to deliberate? Don't
10 you actually have to hear evidence and then decide, in your
11 capacity as a public official?

12 MR. SINGH: Very much. But --

13 HEARING OFFICER CELLI: You don't just walk in as
14 a public official and say, this is my point of view and
15 everybody, you're going to live according to my point of
16 view.

17 MR. SINGH: Let me tell you the system that I'm
18 talking about.

19 HEARING OFFICER CELLI: I have just explained why
20 EJ went the way, we had to take evidence. We have to make
21 the decision based on evidence. And until we had the
22 evidence we couldn't make a determination. So in all those
23 times early on when you were talking about, we're an EJ
24 community, and I would, we haven't made that determination
25 yet.

1 MR. SINGH: You would have made the determination
2 had you looked into better data.

3 HEARING OFFICER CELLI: We made that
4 determination.

5 MR. SINGH: Well, it was too late. Anyway, you
6 know, whatever the bands, you know, we play here, it's not
7 going to change your decision. But we are trying our best.
8 And one of the systems which government has put in place
9 with CEC is that to save themselves. CEC is saving
10 themselves involving people like us to go and do the study
11 and tell us where the things are wrong so that you guys can
12 monitor the things, put into the documentation and make a
13 perception. And this is the things as off. So we are
14 assisting you, basically, instead of you putting a task
15 force and having all the billion dollar money coming to you
16 from the taxpayer money.

17 And again, there is no need of energy there.
18 There is no energy analysis being done. Why don't you go
19 guys and change the law. Well, in future we want to see if
20 there is a need of energy then only the power plant will be
21 built. The fixed cost of the power plant goes and paid by
22 the taxpayers.

23 MR. WHEATLAND: wrong. Excuse me.

24 MR. SINGH: They are sitting on a --

25 (Messrs. Singh and Wheatland both spoke at once.)

1 MR. WHEATLAND: Excuse me, that is just not
2 correct. There is no taxpayer money going to this facility,
3 not a penny. And it is wrong to say there is.

4 MR. SINGH: So --

5 HEARING OFFICER CELLI: And that is the state of
6 the record.

7 MR. SINGH: Sarvey, it's not true that the
8 taxpayers pay the fixed cost?

9 MR. SARVEY: Ratepayers.

10 HEARING OFFICER CELLI: I want to make a --

11 MR. SINGH: Ratepayers.

12 HEARING OFFICER CELLI: You know something,
13 Mr. Singh. I wonder if you can kind of get to the point.
14 Because the fact is we have received all the evidence and
15 the evidence is closed. Now we have made the decision that
16 was made and it was based on the evidence. We weighed it
17 all, considered it all and made the determination. We can't
18 consider now after we have closed the record, unless we
19 reopen the record but we're not going to.

20 MR. SINGH: That's fine. So what is the need of
21 May 18th's meeting or today's meeting? You have made your
22 decision, then why do you waste our time?

23 HEARING OFFICER CELLI: Well, the purpose of today
24 was to present the PMPD and to present to the public what
25 the PMPD says. And what the comments in terms of the Errata

1 were on the PMPD and then listen to your comments on the
2 Errata to see whether you agree with them or any changes
3 that you felt we needed to make. So that was the purpose of
4 today's conference.

5 MR. SINGH: And well anyway, you also understand,
6 you know, this is the second meeting we are having here on
7 this power plant. Most of the meetings were conducted in
8 Byron. This is the first one. But earlier was a small
9 workshop that Ms. Jennifer -- that doesn't count.

10 And today you are coming here to hide or to save -
11 - I'm not able to get the right word. To save yourself
12 that, okay, they did not come here. Anyway, so we know your
13 decision. I don't think even if we do anything. But the
14 only thing we have to now think about is going and put a
15 lawsuit in the state and federal, that's it. If that is
16 what the legislature will kick in and can help us as a
17 minority community here.

18 So thank you very much and I hope you will fix the
19 holes in the system. That's very important. You are the
20 educator. Go and change those laws. Tell them, those
21 buffoons who has put the laws and that created the holes for
22 all those reasons to play the tricks on the normal
23 residents, the normal population of Americans of this
24 country. Thank you very much.

25 HEARING OFFICER CELLI: Thank you for your

1 comments. Who is that?

2 MS. SADLER: There is a question that was asked.

3 HEARING OFFICER CELLI: Let's hear it. Who is the
4 person? What's the person's name?

5 MS. SADLER: Mr. Torres.

6 HEARING OFFICER CELLI: Mr. Torres, did you wish
7 to make a comment? Mr. Torres, can you hear me? This is
8 Hearing Advisor Ken Celli. Is it Alan Torres? Did you
9 mute? Maybe you should hit, unmute all. If you unmute all
10 maybe --

11 MS. SADLER: It's a personal mute, I didn't mute
12 him.

13 HEARING OFFICER CELLI: You know what, he's not,
14 he's got the VOIP going, he doesn't have the telephone icon.

15 MS. SADLER: He sent a chat question. Do you want
16 me to read it?

17 HEARING OFFICER CELLI: Okay, yes, please. Go
18 ahead and then we can answer it that way. So Mr. Torres, we
19 got that you sent us a chat question and we are going to
20 take the question, go ahead. Ms. Sadler, if you would read
21 it.

22 MS. SADLER: Yes. "This gentleman keeps referring
23 us to the PMPD or whatever that document is called. Why not
24 just answer the question? It seems that enough people are
25 asking the question of what the benefits are of this plant.

1 As of this moment I do not understand the benefits to us MH
2 residents, our schools, or even our local economy. It seems
3 that if the reasons are so apparent a simple answer should
4 suffice."

5 HEARING OFFICER CELLI: So, Mr. Torres, the PMPD
6 is the Presiding Member's Proposed Decision. Basically it's
7 the opinion and it's the decision that results from taking
8 the evidence from all sides having to do with whether the
9 Mariposa Energy Project should or should not be certified.

10 The recommendation of the Committee is that the
11 project can be certified because it has no significant
12 impacts on the environment and it complies with all laws,
13 ordinances, regulations and standards.

14 Now there are certain benefits in the record
15 having to do with Mountain House, we heard some tonight. Oh
16 no, that wasn't Mountain House. The school is not in
17 Mountain House. The project itself is not in Mountain House
18 and so I am not sure what those benefits might be to
19 Mountain House. But to answer the question, I'm not sure if
20 there are any. I think there was some for the fire
21 department. There was a certain amount of monies paid to
22 the fire department. I know --

23 MR. WHEATLAND: Ken, among other matters, the
24 mitigation agreement that we have, the air quality agreement
25 that we have with the San Joaquin County Air Quality Control

1 District -- or San Joaquin Valley Air Pollution Control
2 District, provides funds that will help for impacts in San
3 Joaquin County, the first priority being the Mountain House
4 Community. In addition the applicant has voluntarily agreed
5 to a payment to Tracy Fire, which will benefit the fire
6 district that serves the Mountain House Community as well.
7 So those are two right off the bat that benefit the Mountain
8 House community.

9 HEARING OFFICER CELLI: There is some of the
10 answer, Mr. Torres. But really since the project is not
11 located in Mountain House per se, it's in a different
12 county, any benefits that would flow to Mountain House would
13 have to be according to proof. And if there were any I
14 believe that we would have heard that evidence.

15 So with that we have no further comments from any
16 of the public. We have no one else on the telephone. Is
17 that correct, Ms. Sadler?

18 With that I want to thank you all. I want to
19 thank the intervenors for your participation throughout. I
20 know it has been long and hard and you have jobs and you in
21 your spare time have put in a lot of work and I do
22 appreciate it. The Committee definitely, it helped this
23 process and the Committee considered it also. I want to
24 thank you personally and I want to hand it over to
25 Commissioner Douglas to adjourn.

1 PRESIDING MEMBER DOUGLAS: Thank you, Hearing
2 Officer Celli. I would like to join you in thanking the
3 intervenors, applicant, staff and the members of the public
4 who came here. I know that many of you are disappointed by
5 the outcome of the Proposed Decision. This is coming for a
6 vote, it's not a final decision, but it is what I will be
7 recommending to the Commission. I see and I hear the
8 disappointment and I hope that we will, we have at least had
9 some dialogue tonight and that you understand better the
10 constraints that we operate under and the rationale in the
11 PMPD.

12 I know that it's a source of particular
13 frustration as intervenors try to raise the issue of need
14 our response is, we don't analyze need. We can't tell you
15 if it's needed. I can tell you broad strokes that with
16 12,000 megawatts of DG and another 10,000 of large-scale
17 solar and advances in battery and distributive generation --
18 you know, I think this kind of capability is needed but I
19 can't tell you nor do we analyze.

20 Nor can we deny a project on the basis of the fact
21 that this project right here is not needed. That is just
22 something that the Legislature took away from the Energy
23 Commission. It's actually something that we used to do. We
24 used to do that analysis; it is now done at the Public
25 Utilities Commission. So I know it is a source of

1 frustration to you.

2 Now one thing that we are doing -- I see Mr. Singh
3 reaching for his microphone. But one thing that we are
4 doing, and this is longer term and this is maybe something
5 that you talked about, Mr. Singh, in filling some of these
6 gaps.

7 One of the questions that members of the public
8 continually ask us is, you know, with energy efficiency,
9 which is job one, and I am on the efficiency committee and
10 we have regulated TVs and we've got a proposed ruling on
11 battery chargers and we're working on building standards.
12 So with efficiency, with renewable energy, with new
13 technologies, with the need to retire the old natural gas
14 fleet, with the need to reduce our dependence on coal, with
15 the need to prepare for our long-term energy future, which
16 means, do we have nuclear power plants in California in
17 2050. With all of that analysis that we have to do it's
18 actually not a simple, analytical exercise.

19 The Legislature has the Air Resources Board, the
20 Energy Commission and other energy agencies doing a really
21 cutting edge analysis that is actually based in the South
22 Coast Air Quality Management District. And so it's testing
23 new methodologies for understanding kind of what you need to
24 maintain reliability with all of these factors in flux in
25 the energy system. How much generation in base and how much

1 peaking. What might you do if you had solar panels on the
2 warehouses around Ontario Airport. You know, what does that
3 do? Does that help you firm the system or not?

4 So there's a lot of analytical work that is going
5 to help fill in the bigger picture. But it's at the very
6 beginning stages. So it is not maybe a helpful comment but
7 it's hopefully giving you some context.

8 MR. SINGH: Yeah, but the only thing is, Miss, you
9 are the decision-makers. The influence that you can have on
10 the legislative body, that will be much more impactable than
11 any ordinary person coming off the street. Putting their
12 jobs as well their business on the stake and trying to fight
13 for it.

14 So look in the picture. You guys are all master's
15 degree, PhD, logically think about what is a viable
16 solution. How in future we can handle these type of
17 problems. These are very, very important things, you know.

18 PRESIDING MEMBER DOUGLAS: I agree with you,
19 Mr. Singh, and the issue you raised about the census. I
20 want to assure you that this committee at no time took the
21 old census data and imagined that Mountain House didn't
22 exist. So this committee at all times was looking beyond
23 the census data. But, you know, we have to look into maybe
24 empowering staff to also do that where appropriate. So
25 there are, there are definitely some things that we have

1 learned from this.

2 And the need question. This is not the first time
3 that this has arisen. This is not the first community that
4 has come to us with just blank stares, what do you mean
5 you're not going to look at the question of whether this
6 power plant is needed. I mean, I understand the frustration
7 on that.

8 MR. SINGH: And the need is the biggest thing.
9 Assess the need, that's important.

10 PRESIDING MEMBER DOUGLAS: And what we assess is
11 -- we have a planning function and a policy function in
12 which we were doing, for example, this more sophisticated
13 analysis. This analysis is geared towards how do we get to
14 our 2050 greenhouse gas goals? How do we keep the lights on
15 with the huge changes in the system that are coming? But
16 that's with our planning hats on and with our siting hats on
17 we're looking at environmental impacts. And that's the
18 process that you have lived through with us over these
19 years. It's been nose to the grindstone on environmental
20 impacts. Building a record and designing based on the
21 record.

22 MR. DIGHE: Can I make a small comment?

23 PRESIDING MEMBER DOUGLAS: Sure.

24 MR. DIGHE: So I think you just mentioned about
25 this Southern California power plant.

1 PRESIDING MEMBER DOUGLAS: Yes.

2 MR. DIGHE: Ontario and all, right?

3 PRESIDING MEMBER DOUGLAS: Right, it's a South
4 Coast Air Quality Management District area.

5 MR. DIGHE: Yes. I want to tie two things
6 together. I think like going back and forth about the
7 perception right. Like, do I eat organic food or not
8 organic food, right. I mean, people in this community want
9 to participate and become an example towards renewable,
10 right. So you know the frustration, right. So it's a
11 perception, right. It's a real perception. Because if you
12 have people in this community who want to eat organic food
13 so they go to Whole Foods, right. They don't want to come
14 close to a power plant. Live a kind of life with electric
15 cars and all. So it's a real perception.

16 And perception then becomes reality because now
17 they want to leave the community. You can debate about
18 environment and stuff and pollution but that's the way of
19 life for some individuals. The same thing as smoking,
20 actually. So what I'm saying is we here in this community
21 wanted to lead with renewable, wanted to decrease the power
22 consumption and help that AB-32 which I have been hammering
23 in the testimonies and briefings.

24 And now it becomes interesting that we want to do
25 this. We want to participate and become a part of that

1 example. But you know what, they are going to take this
2 position. So it's very, very, very difficult for me to
3 explain. But I get your arguments too. And these arguments
4 probably did not exist five years before because technology
5 has changed.

6 PRESIDING MEMBER DOUGLAS: It has changed
7 dramatically.

8 MR. DIGHE: Solar panels, right? And become
9 cheaper and cheaper and becoming -- probably you can afford
10 it now. So I hope you understand that I'm getting towards
11 -- if you can tell us no project, decrease your power and
12 you accommodate it by this much amount, I will stop the
13 power plant. If you do that, I will do it. I can make sure
14 that the power consumption here in Mountain House, we can
15 decrease it by using those exactly innovations which they
16 are trying now in Southern California.

17 PRESIDING MEMBER DOUGLAS: And what we're doing in
18 Southern California is some analytical work but let me give
19 you some context about efficiency savings. So we estimate
20 that with the Energy Commission doing standards on
21 appliances beginning with refrigerators in 1978 and most
22 recently televisions. Maybe soon battery chargers if we can
23 manage through the last stage of that process. And
24 buildings. We estimated about \$58 billion worth of savings
25 in terms of money that Californians haven't had to pay for

1 electricity because we've got this out there.

2 So it's something that's bread and butter, it's
3 something that we do. And at the same time there is so much
4 potential now with maybe smart appliances and with new
5 technology that there's -- the decreased price of solar is
6 making zero net energy --

7 MR. DIGHE: I think it's possible that this
8 community can pump energy into the grid.

9 PRESIDING MEMBER DOUGLAS: Right. But the thing
10 is, you know, maybe Mountain House could become zero net
11 energy. But what this power plant is proposing is do is be
12 a peaking power plant that provides electricity when we most
13 need it, that it's off when we don't need it. It helps us
14 integrate renewable -- and that's something that --

15 MR. DIGHE: But then that's --

16 PRESIDING MEMBER DOUGLAS: Mountain House can't
17 become a peaking power plant, Mountain House could become
18 much more.

19 MR. DIGHE: We can become a solar power, a solar
20 power plant. So you got my comment.

21 PRESIDING MEMBER DOUGLAS: I hear you, I hear you.

22 MR. DIGHE: Thank you, thank you.

23 PRESIDING MEMBER DOUGLAS: We've had this long
24 dialogue. I thank everyone for your forbearance, for your
25 patience. for your courtesy as we moved through this

1 proceeding. Thank you for your participation.

2 MR. DIGHE: I really appreciate you guys coming
3 here from Sacramento. We really appreciate this, thanks.

4 PRESIDING MEMBER DOUGLAS: Good. Well, all right,
5 well thank you. We're adjourned.

6 (Off the record.)

7 (on the record.)

8 HEARING OFFICER CELLI: Speak into the mic.

9 THE REPORTER: Who are you again?

10 MR. DEVAN: Vasu Devan.

11 HEARING OFFICER CELLI: Ram?

12 MR. DEVAN: No, Vasu Devan. You got the card.

13 HEARING OFFICER CELLI: Oh, Mr. Devan.

14 MR. DEVAN: Vasu Devan, yeah. If, I mean I know
15 it's going to go through. But if this project does go
16 through, as I see there is not much of a tangible benefit to
17 the Mountain House community because the project is in
18 Alameda County. I was wondering if the applicant can come
19 up with something to mitigate and falsify this perception.

20 You know, when going through the PMPD the
21 problems, the negative impacts may be perceptual rather than
22 real. So maybe they could publicize it and sort of beat the
23 -- the -- what do you call -- self-fulfilling prophecy.

24 PRESIDING MEMBER DOUGLAS: Right.

25 MR. DEVAN: So we can probably prevent it.

1 PRESIDING MEMBER DOUGLAS: Right. Well thank you
2 for the question.

3 MR. DEVAN: Let's do that.

4 PRESIDING MEMBER DOUGLAS: Let's ask the applicant
5 if they can respond. I mean, obviously this is a --

6 MR. CURRY: I would be happy to come to Mountain
7 House anytime and talk about the project and change your
8 perception about this project.

9 PRESIDING MEMBER DOUGLAS: With that is that
10 responsive to the question?

11 MR. DEVAN: Yes, thank you.

12 PRESIDING MEMBER DOUGLAS: Okay, all right. All
13 right, then we're adjourned.

14 (Whereupon, at 7:30 p.m. the
15 Committee Conference was adjourned.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Conference; 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 conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of May, 2011.

JOHN COTA

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

RAMONA COTA, CERT**478

May 10, 2011