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P R O C E E D I N G S

HEARING OFFICER FAY: Good morning.

Today we will continue taking evidence in the Metcalf Energy Center AFC case. We will begin with the cross examination of Dr. Ken Lim by the City of San Jose.

Just for -- for the record, the Committee indicated that Dr. Lim would be made available if any party felt the need to conduct further cross examination.

The parties present, when the evening -- when Dr. Lim gave his direct testimony, did conduct cross examination. Only one party indicated the need to have Dr. Lim return, and that was San Jose, and so San Jose will be allowed to cross examine Dr. Lim.

MS. DENT: Thank you, Dr. Lim, for agreeing to come back, and Mr. Kwong, for coming back also.

And thank you, Commissioners, for providing me with the opportunity to cross examine Mr. Lim. I'll try to keep it real brief. Dr. Lim, I'm sorry.

DR. LIM: Not a problem.

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TESTIMONY OF

KENNETH J. LIM

called as a witness on behalf of Commission Staff,
having been previously duly sworn, was examined
and testified further as follows:

CROSS EXAMINATION

BY MS. DENT:

Q Dr. Lim, just so that I can sort of
orient ourselves back to your testimony, I'm going
to start by summarizing what I understood to be
your verbal testimony when you testified here
before. And you expressed two concerns, as I
understood it, with diesel generators.

One -- the first concern you expressed
was with the operation of diesel generators during
power outages. Was that the first concern that
you expressed?

A Yes, I believe I said power outages and
power interruptions.

Q And that's with the air emissions from
the diesel generators, specifically during power
outages. That's your specific area of concern.

A Yes, that was one of those. Yes, one of
the two areas.

Q And the other area of air quality

1 concern that you had with diesel generators was
2 with their maintenance operation, that they are --
3 with the emissions that occur when they are
4 regularly required to be maintained. Was that the
5 other area of concern that you also addressed?

6 A May I ask a clarifying question on that?

7 Q Sure.

8 A These are the only two areas that you
9 are going to summarize?

10 Q Those are the only two I'm going to ask
11 questions about.

12 A Okay. Just a clarification on the
13 second area. It was related to the particulate
14 emissions from these diesel engines, including the
15 time that they're maintained or tested, which is a
16 routine procedure for backup generators.

17 Q Now, I -- I believe you included --
18 you've testified and it's on page 90 of your
19 testimony, at lines 5 and 6, that there were
20 approximately 2,000 to 3,000 backup generator
21 units in operation in the Bay Area. Do you recall
22 that testimony?

23 A Yes.

24 Q And I believe you testified that you
25 really didn't know how much of that current backup

1 generation capability was diesel versus other
2 types of backup generation, but that you thought
3 most of it was diesel. Is that accurate?

4 A Right, it was my opinion, and also the
5 opinion of agencies that had conducted surveys,
6 including California Air Resources Board, that the
7 -- the dominating, large, overwhelming dominating
8 infraction was diesel fired.

9 Q And that's -- those are existing units
10 that are currently in now. That's your estimate
11 of existing units currently in now, two to 3,000
12 for the entire Bay Area?

13 A That's correct.

14 Q And have many of those units been
15 installed for a long time, they've been in
16 existence for a long period of time?

17 A Yes.

18 Q So diesel generators are common,
19 historically, in certain types of buildings and
20 facilities. Is that accurate?

21 A Yes.

22 Q And are the types of facilities that the
23 diesel generators are most commonly installed in
24 facilities such as hospitals, police stations,
25 that need to ensure that they have power in the

1 event of any interruption in power, is that a
2 common installation of that type of generator?

3 A Yes, that -- that would be among the
4 very common one. But typical businesses would
5 have them, as well.

6 Q Some businesses have them, as well.

7 A Yeah, large scale businesses. Yes.

8 Q Now, I know you weren't here during the
9 testimony on the area that we're talking about
10 today, so -- and there's some confusion about the
11 area, but if I were to ask you if you knew how
12 many of those two to 3,000 generators -- again,
13 not knowing whether they're diesel or not diesel
14 -- are located in South San Jose, would you have
15 any estimate about how many of those are located
16 in South San Jose versus the entire Bay Area?

17 A No. One would have to do a survey, at
18 least a preliminary survey of how much business
19 there is and a San Jose company's location, that
20 kind of thing.

21 Q Now, the Bay Area Air Quality Management
22 District's jurisdiction, I think, is the nine
23 counties in the Bay Area. Am I right about that?

24 A It includes seven counties, all of seven
25 counties, plus portions of two remaining --

1 Q So --

2 A -- in the North Bay.

3 Q I'm sorry.

4 A So you're correct that it includes all,
5 or most of nine counties. Yes.

6 Q So your two to 3,000 estimate of backup
7 generators is for all of the Bay Area. I believe
8 that was your testimony.

9 A That's correct.

10 Q And you don't know how much of it's
11 located in San Jose versus San Francisco, versus
12 San Mateo.

13 A No, but certainly San Jose is a large
14 urban area, and I would expect at least a
15 proportionate number would be located in the San
16 Jose area.

17 Q Would you expect more to be located in a
18 denser urban area than in a less dense urban area?

19 A Generally, yes.

20 Q And would -- again, would you expect
21 that the type of uses that would common -- that
22 would most commonly be served by backup generators
23 would first of all be uses that serve emergency
24 needs. Secondly, would be uses where there's a
25 commercial need for backup generation for -- for

1 all time available generation, and, of course,
2 residential uses you would not expect them to have
3 backup generators, would you.

4 A No, but we are concerned that more and
5 more people want to go down to their local Costco
6 and buy these little Hondas. Not -- I don't mean
7 to mention a specific name, but that kind of
8 generators.

9 Q Okay. Now, you also testified that
10 emissions are higher on a per kilowatt hour basis.
11 And, again, you -- your testimony about that was
12 just on diesel generators, and we don't know how
13 many of the generators are diesel. But your
14 testimony was that the emissions are higher on a
15 per kilowatt hour basis for diesel generators. Is
16 that correct?

17 A That's correct.

18 Q Now, the -- you're not -- the per
19 kilowatt hour basis for estimating the emissions
20 recognizes that no backup generator runs for very
21 many hours at a time. I mean, that's why you used
22 the per kilowatt hour basis for estimating the
23 higher emissions, isn't it?

24 A With -- with a associated comment that
25 more and more of these engines are operating

1 longer and longer hours than the historical norms.

2 Q So let's talk for a minute about the
3 heavier operation during the summer, which I think
4 was mentioned on page 100 of your testimony.
5 Yesterday, we heard some testimony about rolling
6 block power outages on June 14th of last year.
7 And we were -- the testimony was to the effect
8 that the rolling block power outages were for one
9 hour outages in different segments of the
10 community. That's what a rolling block power
11 outage is. So that one particular customer would
12 only be out for an hour, and then it would roll on
13 to another customer, and they'd be out for an
14 hour. Do you understand that concept?

15 A I understand the concept, yes. I
16 understand that more recent outages, for example,
17 that occurred in January, were longer, on the
18 order of an hour and a half. But that's still in
19 the ballpark of what you're saying.

20 Q So --

21 A Our concern is that these hours of
22 operation would be extended. In other words, we
23 anticipate, the Governor anticipates much more
24 severe problem this coming summer. In other
25 words, the problem is exacerbating.

1 Q So you -- so far, what you've seen,
2 though, is outages of an hour to an hour and a
3 half, and the emissions that would be associated
4 with outages from an hour to an hour and a half,
5 even assuming that all 2,000 or 3,000 of these
6 backup generators are diesel generators, the
7 emissions from those generators wouldn't come
8 anywhere near the emissions from a power plant
9 that's operating 24 hours a day, seven days a
10 week, would it?

11 A No, it would not.

12 Q Now, I want to talk a little -- just a
13 minute about the regular operation for testing and
14 maintenance. I think the estimate in your
15 testimony was 30 to 50 hours. It's on page 108 of
16 your testimony.

17 I'm assuming that was an annual
18 estimate, not monthly or weekly. You didn't
19 really say, but I'm assuming that's your estimate
20 about the testing and maintenance on an annual
21 basis for a particular generator?

22 A Yes.

23 Q Now, as long as someone has a diesel --
24 as long as someone has a generator, they're going
25 to have to test it and maintain it. Is that true?

1 A That's correct.

2 Q So unless you can get rid of the
3 generators entirely, you're going to have that 30
4 to 50 hours of testing and maintenance.

5 A That's correct.

6 Q A power plant doesn't have any impact on
7 getting rid of generators for backup purposes,
8 such as interrupted power supply because a line is
9 cut, does it?

10 A I'm not sure I understand the question.
11 Would you mind repeating it?

12 Q Well, let's -- let's do it this way.
13 Backup generators are installed for a variety of
14 reasons. There are a variety of emergencies that
15 can cause power to go out. Isn't that true?

16 A Yes.

17 Q And, let me give some examples.
18 Earthquakes can cause power to go out. Correct?

19 A Yes.

20 Q Weather can cause power to go out. A
21 distribution line can go down because the wind
22 knocks it over. Correct?

23 A Yes.

24 Q Accidents can cause power to go out. An
25 automobile can hit a power line. Correct?

1 A Yes.

2 Q And construction workers can cut power
3 lines. That happens sometimes, too. That's
4 another example of an accident, right?

5 A Yes.

6 Q Now, all of those types of situations
7 where power might go out are reasons for
8 hospitals, police stations, and businesses to have
9 backup generators; correct?

10 A Yes.

11 Q And none of those are going to go away
12 if a power plant's built.

13 A That's correct.

14 Q So we're still going to have the backup
15 -- the diesel generators after the power plant's
16 built.

17 A Yes.

18 Q And so we're still going to have the
19 same operation and maintenance on the diesel
20 generators after the power plant is built, because
21 they're going to be there.

22 A Yes.

23 Q All right. I want to ask you just a
24 minute about your testimony, pages 101 to 102, on
25 the ISO load shedding agreements. Are you really

1 familiar with the ISO's RFB process for load
2 shedding agreements? Do you have a lot of
3 familiarity with that?

4 A I'm not a bidder on that process, if
5 that's the question. However, I have seen
6 examples of those requests for bids for load
7 shedding, and I have spoken to people in the ISO
8 involved with that program.

9 Q Well, is it your understanding that only
10 diesel generators can be bid for load shedding?

11 A No. Any number of electric generation
12 equipment can be, but backup generators is one of
13 the targeted markets, so to speak, that the ISO is
14 aggressively pursuing.

15 Q Now, have they actually -- have they
16 actually put out an RFB for load shedding by
17 backup generators?

18 A Not exclusively. It's a comprehensive
19 request for backup -- for, excuse me, for load
20 shedding operation. But I do know that they
21 actually recruit and are seeking out backup
22 generators to operate.

23 Q Now, do you also understand that their
24 RFB process requires that anyone that submits a
25 bid, that in order to be selected for a load shed

1 agreement you have to be able to be operating your
2 generation equipment in accordance with Air Board
3 permits? Do you understand that to be a
4 requirement?

5 A We understand that, but I -- we also are
6 aware that, for example, in the San Joaquin Valley
7 Air Pollution Control District, which is next
8 door, which has the --

9 MS. DENT: I'm going to object to the
10 witness answering questions without --

11 HEARING OFFICER FAY: Well, it's your
12 question --

13 MS. DENT: It's not in the scope of his
14 direct.

15 HEARING OFFICER FAY: I'm going to allow
16 the response. Your objection is overruled.

17 MS. DENT: Well, I -- fine, go ahead.
18 Let's talk about the San Joaquin Valley.

19 MS. CORD: How long are we going to be
20 here today? Do we have to talk about San Joaquin
21 Valley?

22 MS. DENT: Mr. Fay wants to hear about
23 it, let's go.

24 HEARING OFFICER FAY: San Jose asked Dr.
25 Lim to return. So we're going to hear Dr. Lim's

1 -- or San Jose's cross examination of Dr. Lim.
2 And then we're -- then we're going to return to
3 cross examination on Alternatives.

4 MS. CORD: Well, I understand that, but
5 as interesting as San Joaquin Valley is, I'm not
6 sure that it's --

7 HEARING OFFICER FAY: Well, if we'd stop
8 talking about it, and just let him briefly answer
9 the question, we'll move on.

10 Dr. Lim, go ahead.

11 DR. LIM: Excuse me. I -- I'm not
12 naming San Joaquin to discuss their air quality
13 problem. I'm just using an example of where the
14 ISO has aggressively marketed -- I use that term
15 advised, marketed such a load shedding type of
16 program. And as a result of that, many of these
17 backup generators did indeed operate for long
18 hours, many hours, perhaps a large fraction of a
19 day, in violation of their operating permits. And
20 the local prevailing controlling district was not
21 aware of it until they found out on their own.

22 And -- and I cite that just as an
23 example where we are concerned that that kind of
24 activity could occur. And with that many
25 generators, we would not be aware of what all

1 these generators are doing.

2 BY MS. DENT:

3 Q So you're aware of the problem, though,
4 now. You're aware of the -- you've just testified
5 you're aware of the RFB, and the backup
6 generators, diesel backup generators may be
7 applying for load shedding agreements. You're
8 aware of that, you just testified to that.

9 A Yes.

10 Q And you're aware that they are required
11 to operate in accordance with their Air Board
12 permits. You're aware of that.

13 A Yes.

14 Q Okay. So let me spend a minute now on
15 -- on your testimony about distributed generation.
16 I think you -- your written testimony indicated
17 that you've provided expert commentary on
18 expansion of distributed power generation. And I
19 think that on page 388 of the transcript, you
20 provided some testimony on distributed power
21 generation.

22 A I'm sorry, Molli. What -- what page was
23 that?

24 Q I think it's maybe 388, 389 -- 389.
25 It's 389, lines 14 to 19. And I think just the

1 sentence that I'm looking at is, given the choice
2 of, say, some distributed generation option versus
3 a clean central power plant, seeing most cost
4 effective and most -- protect of the environment
5 to require major controls on a central power
6 plant, that meets the latest modern control
7 technology.

8 My question is, your use of the word
9 "distributed generation" there really references
10 these diesel generators. You weren't referencing
11 other types of distributed generation, were you?

12 A May I read that --

13 Q Sure.

14 A -- particular section?

15 (Pause.)

16 DR. LIM: My reference there probably
17 needs clarification. And distributed generation,
18 there's a wide range and a wide definition, and
19 many examples, different kinds of distributed
20 generation. Because of the tone of these
21 questions, it was more in line with diesel
22 engines, and certain other options.

23 But I must also clarify that statement,
24 that there are much cleaner options for
25 distributed generation.

1 BY MS. DENT:

2 Q In fact, there are -- there are options
3 for distributed generation that have no air
4 quality impacts at all. For example,
5 photovoltaics, or -- or battery storage.

6 A Right. And, in fact, I mentioned that
7 in my written testimony, though I did not use the
8 term "distributed generation" in that specific
9 reference, but I did, for example, talk about wind
10 power and solar voltaic as being --

11 Q And so --

12 A -- options.

13 Q -- there are also backup capabilities
14 that involve the same sort of very clean
15 technologies. There are battery backup -- backup
16 capabilities, there are photovoltaic backup
17 capabilities that also involve cleaner generation
18 than -- than diesel, too. Is that correct?

19 A Yes, those -- there are options
20 available in some limited applications, due to the
21 limited capacity of, for example, photovoltaic
22 cells. So the actual practice and implementation
23 of these cleaner alternatives is -- is a very,
24 very tiny fraction of the installed base of backup
25 generation. And, in fact, it is a small fraction

1 of the new installed, only a very small fraction
2 of new installed, as well.

3 Q Well, let's talk about distributed
4 generation, just for a minute, from the aspect not
5 of backup generation but actual distributed
6 generation, which would you understand to mean the
7 power user has their power source onsite and under
8 their control. That is one type of distributed
9 generation, isn't it?

10 A Yes.

11 Q Now, where a power user has their power
12 onsite and under their control, they're not
13 subject to power outages from a power plant going
14 out, are they?

15 A That's correct.

16 Q And so under those circumstances, some
17 of the reasons for having backup generators are
18 gone, at least that reason for having a backup
19 generator is gone. You don't have to have a
20 backup generator to cover a power outage because
21 you're not subject to a power outage from the
22 power plant.

23 A Correct.

24 Q And some of these cleaner options for
25 backup generation get rid of the need for backup

1 generators entirely, don't they?

2 A The -- your question is, if a facility
3 has its own generation, that would eliminate some,
4 or many, or all of the need for a backup
5 generator. Is that your question?

6 Q No, I -- no.

7 A I'm sorry.

8 Q No, I'm sorry. I switched. Cleaner
9 types of backup generators, backup generation with
10 no air quality impacts, going back to the
11 photovoltaics, the fuel -- the battery storage,
12 and that sort of thing.

13 A Uh-huh.

14 Q That gets rid of the air quality impacts
15 from diesel generators entirely, doesn't it?

16 A If they don't -- if -- if the backup
17 generator -- the cleaner alternatives you
18 mentioned have sufficient voltage and power
19 capacity, that you will not need a diesel
20 generator, certainly that would get rid of the
21 diesel problem at that facility.

22 Q So, now, going back to the two problems.
23 The problem that you identified with the
24 operations and maintenance of the backup
25 generators and the air quality impacts of

1 operating and maintaining, or testing, I'm sorry,
2 testing and maintaining, not operating. But the
3 -- the air quality impacts of testing and
4 maintaining the backup, the diesel backup
5 generators. Those air quality impacts can only be
6 addressed if you find a way to eliminate the
7 diesel backup generators. Isn't that true?

8 A They can be minimized. There are steps
9 to minimize those impacts, but if you want to get
10 rid of them completely, obviously you need to
11 remove the diesel generators.

12 Q Right. And if you -- and removing the
13 diesel generator would be through some alternative
14 type of backup generation. That would be one way
15 to remove the diesel generator.

16 A Yes.

17 MS. DENT: Thank you. That's all I
18 have.

19 MR. WILLIAMS: Mr. Fay.

20 HEARING OFFICER FAY: Yes, Mr. Williams.

21 MR. WILLIAMS: I would appreciate
22 between five and ten minutes of time, since these
23 gentlemen have come all the way from San
24 Francisco, to -- I want to be really clear on
25 this, and I was -- had that time for my cross of

1 the other panel. And I'd appreciate your
2 indulgence, and asking that -- a brief three
3 questions of these people.

4 HEARING OFFICER FAY: I'd love to
5 indulge you, but the rules of the game are that we
6 made it clear, when Dr. Lim was here before, that
7 people could cross examine him then, and that if
8 they notified the Committee by Wednesday of the
9 week following, then they could -- we would recall
10 him. And nobody notified us by Wednesday, but on
11 Friday, the City of San Jose called, and out of
12 deference to them as a jurisdictional agency, we
13 informed Dr. Lim that he should be available
14 today.

15 But I'm going to hold to that. That's
16 what we -- we told them, and -- and that's really
17 the rules of the game.

18 Is there any redirect?

19 MR. RATLIFF: Yes.

20 HEARING OFFICER FAY: Okay. Now, what I
21 will explain, in fairness to all the parties, is
22 that while cross examination today was limited to
23 San Jose, since redirect could've been conducted
24 when Dr. Lim was -- was first here, any of the
25 parties present at that time could have conducted

1 recross within the scope of the redirect that's
2 about to be asked.

3 So, what that means to you is that any
4 of the parties here, if they have recross
5 examination within the scope of the redirect, may
6 -- may ask Dr. Lim those questions. But I will be
7 strict about the scope.

8 Any questions about how that works?
9 Okay.

10 MR. RATLIFF: I'm sure, Mr. Williams,
11 this will probably give you a chance to ask a
12 question, Dr. Lim a question.

13 DR. LIM: Mr. Fay, I'm not familiar with
14 this next step in the process. May I have 30
15 seconds to discuss this with Mr. Ratliff?

16 HEARING OFFICER FAY: Sure. Let's take
17 a couple minutes.

18 DR. LIM: Thank you.

19 (Off the record.)

20 HEARING OFFICER FAY: Mr. Ratliff, do
21 you have redirect examination?

22 MR. RATLIFF: Yes.

23 HEARING OFFICER FAY: Of Dr. Lim?

24 Proceed.

25 MR. RATLIFF: Okay.

1 REDIRECT EXAMINATION

2 BY MR. RATLIFF:

3 Q Mr. Lim, when you were cross examined
4 you were asked by the City of San Jose whether or
5 not typically hospitals and fire stations have
6 diesel generators as backup power. And I believe
7 your answer was yes.

8 And the question that you got that --
9 after that was so don't we still have the same
10 number of diesel generators. Do you remember that
11 question?

12 A Yes.

13 MS. DENT: I don't think that he
14 remembers that question. It wasn't asked, but I
15 think the record will reflect that.

16 MR. RATLIFF: Okay.

17 BY MR. RATLIFF:

18 Q Now, you've -- the electricity supply is
19 subject to increasingly -- an increasing number of
20 interruptions and an increasing amount of
21 unreliability. Would you expect that the use of
22 such generators would actually increase
23 dramatically?

24 A If the present pattern of increased
25 strains on the electrical supply grid continues,

1 and all the experts in Sacramento and elsewhere
2 seem to indicate so, yes. I would expect there
3 would be more backup generator use.

4 Q So there's a relationship between the
5 reliability of the supply and the attractiveness
6 of diesel backup generators. Is that correct?

7 A Yes.

8 Q Now, you heard also the question that
9 the use of all these diesel backup generators have
10 fewer emissions than a power plant running seven
11 days a week, 24 hours a day. Do you remember that
12 question?

13 A Yes, I believe the question was based on
14 a total mass tonnage output.

15 Q And your answer to that was yes, in
16 total mass. Is that correct?

17 A That's correct.

18 Q Is there a difference in terms of the --
19 where the emissions from diesel engines typically
20 are from those of -- of a large-scale power plant?

21 A Yes, certainly. Diesel engine emissions
22 tend to come at ground level, where it has the
23 greatest impact on the nearby population. As
24 opposed to the tall stacks which tend to disperse
25 the emissions from the central power plant.

1 Q Do they often exist in close
2 juxtaposition to sensitive receptors?

3 A The -- the ground level generators, yes.
4 Diesel generators.

5 Q And what are -- what might -- would that
6 include, in your -- in your experience, would that
7 include residences and daycare centers and
8 schools?

9 A Yes, that's definitely a possibility.

10 Q So what is the relative impact in terms
11 of toxic air contaminants of a large-scale power
12 plant and 2,000 backup diesel generators, in your
13 opinion?

14 A Well, the diesel generators tend to have
15 a much more pronounced local adverse air impact,
16 because the -- the particular emissions from these
17 diesel engines are declared a -- a rather severe
18 toxic air contaminant with a high unit risk factor
19 for capture potency. And as such, they have a far
20 more disproportionate higher impact, an adverse
21 impact, than the emissions from the power plant.

22 So that higher risk factor from the
23 diesel particulate emissions, when combined with
24 the low release level of these emissions, have a
25 particularly exacerbated problem.

1 Q In response to other questions you
2 acknowledged that there are cleaner methods of
3 providing backup generation. Is that correct?

4 A That's correct.

5 Q Are these usually required by permitting
6 agencies?

7 A Typically, as long as the -- would you
8 repeat the question, please.

9 Q Are cleaner forms of backup typically
10 required by permitting agencies, local
11 governments, for instance. When they're
12 permitting projects that require backup generation
13 would they require --

14 A Typically, these cleaner alternatives
15 are not required, so long as the -- the proposed
16 generator meets the minimum requirements.

17 Q Are these cleaner alternatives more
18 expensive?

19 A Generally they are far more expensive,
20 and they have generally less capacity, in terms of
21 hours availability, as well as overall power
22 voltage, current, wattage, that sort of thing.

23 Q Are there safety and reliability issues
24 that favor diesel generators over these
25 alternatives?

1 A Certainly the -- the reliability
2 question is one that attracts facilities to get
3 diesel generators as opposed to the alternatives
4 which have not been proven, such as fuel cells and
5 other such advanced technologies.

6 MR. RATLIFF: Okay. No other questions.

7 HEARING OFFICER FAY: All right.

8 MR. KWONG: I have one question to ask
9 the witness.

10 HEARING OFFICER FAY: Oh, all right.

11 Mr. Kwong.

12 MR. KWONG: Just one set of questions
13 here.

14 REDIRECT EXAMINATION

15 BY MR. KWONG:

16 Q Dr. Lim, you were asked a series of
17 questions regarding load shedding and the use of
18 diesel backup generators. And the question
19 contained a inquiry as to whether or not
20 requirements would have to be followed for the use
21 of these backup diesel generators pursuant to air
22 quality regulations. Could you elaborate on your
23 answer? You said yes to that, but could you
24 elaborate from the Bay Area AQMD point whether or
25 not AQMD permit conditions would necessarily

1 control the emissions from the use of diesel
2 backup generators?

3 A In my earlier response I indicated an
4 example where even -- even if a backup generator
5 has an operating permit condition limiting them to
6 use in an emergency, there have been several
7 instances where those requirements were ignored.
8 Furthermore, because the -- of the emergency
9 nature of these engines, in the past they have
10 historically been exempt from permit requirements
11 in conformity with state guidelines.

12 That was not a problem years ago, but in
13 the current electricity crisis, that is
14 anticipated to be a much more severe problem
15 because being exempt, they have no operating
16 permit condition limits, and since they tend to be
17 hidden, so to speak, they have avoided scrutiny.
18 We are concerned about their operation and
19 associated emissions.

20 Q And, Dr. Lim, those conditions that they
21 are exempted from, these emergency backup
22 generators that may be used in this load shedding
23 format, those conditions, or the district would
24 normally place upon them, are those conditions
25 designed to protect public health and the air

1 quality?

2 A Yes.

3 MR. KWONG: No further questions.

4 HEARING OFFICER FAY: Okay. Can I have
5 an indication of --

6 MS. DENT: I have some recross.

7 HEARING OFFICER FAY: -- okay -- of who
8 all has recross? Let's see, Applicant, San Jose,
9 Williams, Garbett. Yeah, I got you.

10 MS. DENT: You can have recross.

11 (Inaudible asides.)

12 HEARING OFFICER FAY: Well, yeah,
13 recross. But as I explained earlier, recross is
14 limited to just the subjects that were just
15 covered on redirect. So you -- you can't ask
16 about anything else.

17 All right. Let's start with San Jose.

18 RECROSS EXAMINATION

19 BY MS. DENT:

20 Q I want to start with what we left off
21 with, the load shedding agreements. The load
22 shedding agreements provide for -- or load
23 shedding arrangements with the ISO, provide for
24 generators who get a load shedding contract to
25 come on before there is an emergency condition.

1 Is that your understanding? In other words, it's
2 not in response to a power outage, but it is to
3 avoid a power outage.

4 A Anticipated, perhaps, outage.

5 Q Correct. So it's not an -- there is not
6 an emergency, they're not turning their generator
7 on because the power is out; they're turning them
8 on in response to an ISO request for interruption.

9 A That's correct.

10 Q Now, the air district is the regulatory
11 entity with the authority over the diesel
12 generators, isn't it?

13 A Yes.

14 MS. DENT: I don't have any other
15 questions.

16 HEARING OFFICER FAY: All right.

17 Mr. Harris.

18 MR. HARRIS: Yes, two quick questions.

19 RE CROSS EXAMINATION

20 BY MR. HARRIS:

21 Q Dr. Lim, my understanding is that one of
22 the reasons diesels are a preferred means for
23 backup power is that they're -- they're quick
24 starting features. Is that consistent with your
25 understanding?

1 A Yes.

2 Q In fact, some of these are referred to
3 as -- as quick start diesels; is that correct?

4 A Correct.

5 Q In the high tech industry, there's a
6 term called I think six nines of reliability. And
7 99.99999 percent reliability. Isn't it true that
8 one of the reasons that the high tech firms tend
9 to use diesel is to meet that six nines of
10 reliability?

11 MS. DENT: I'm going to object to the
12 question on the ground that it assumes a fact not
13 in evidence, and it wasn't part of recross.

14 MR. HARRIS: It was certainly part --

15 MS. DENT: I mean part of the redirect,
16 I'm sorry.

17 MR. HARRIS: It was certainly part of
18 the redirect.

19 HEARING OFFICER FAY: Well, the redirect
20 certainly addresses the -- the choice of diesel,
21 the reason that -- that a company chooses diesel.

22 MS. DENT: There has been no -- there's
23 been no testimony so far about high tech
24 businesses choosing diesel. There's been no
25 testimony of that --

1 HEARING OFFICER FAY: Well, we're going
2 to overrule that. That -- that is nitpicking.

3 MR. HARRIS: My last question. That is
4 my last question.

5 HEARING OFFICER FAY: Go ahead.

6 MS. DENT: That's fine. I've been
7 overruled. Go for it.

8 BY MR. HARRIS:

9 Q Do you need me to restate the question?

10 A Please.

11 Q Okay. One of the reasons that high tech
12 firms use fast start diesels is because of their
13 need for six nines of reliability. Is -- is that
14 your understanding, as well?

15 A Yes.

16 MR. HARRIS: That's all I have. Thank
17 you.

18 HEARING OFFICER FAY: All right. Mr.
19 Williams.

20 MR. WILLIAMS: Thank you, sir.

21 RECROSS EXAMINATION

22 BY MR. WILLIAMS:

23 Q My first question relates to the
24 discharge of diesel generators that you referred
25 to. Does the Bay Area Air Quality Management

1 District have the authority to set limits on the
2 discharge from diesel generators?

3 HEARING OFFICER FAY: Asked and
4 answered. The answer -- he gave that answer
5 already. They do.

6 MR. WILLIAMS: They do. Thank you. I
7 missed that.

8 BY MR. WILLIAMS:

9 Q Well, do you have the authority to --
10 (Parties speaking simultaneously.)

11 DR. LIM: May I --

12 HEARING OFFICER FAY: You answered the
13 question.

14 DR. LIM: I answered the question --

15 HEARING OFFICER FAY: You --

16 DR. LIM: -- I just wanted to see if I
17 could expand on that answer.

18 HEARING OFFICER FAY: That's fine.

19 DR. LIM: The question was that the Bay
20 Area Air Quality Management District have
21 authority to set limits on these diesel
22 generators. Was that the question?

23 MR. WILLIAMS: Yes, that is my question.

24 DR. LIM: And the -- Mr. Fay is correct
25 that the general answer is yes. I -- I just

1 wanted to add further clarification, it is within
2 certain limits. For example, if the generators
3 are already existing, there are limits to which we
4 can apply. We cannot retroactively put the latest
5 requirements on existing engines that are already
6 in place.

7 So there are limits to our authority.
8 That's the only clarification I wanted.

9 BY MR. WILLIAMS:

10 Q I do appreciate that clarification.

11 Are you at liberty to require best
12 available control technology on diesel generators?

13 A If they -- if it's a new source within
14 the Bay Area, yes.

15 Q Yes.

16 A And that -- that they are above our
17 exemption levels, yes.

18 Q Are you at liberty to require lower
19 limits based on the potential health effects of
20 the discharge? The -- the discharge of
21 particulate near the ground, and potential
22 proximity to schools and residences.

23 A Yes -- yes, we are, but I -- to clarify
24 that answer, I think, I believe in my testimony
25 almost two weeks ago, that one of the reasons we

1 are concerned about these diesel engines is that
2 even if we put best available control technology,
3 there is still a significant residual toxic risk,
4 adverse toxic risk, increased cancer potency, that
5 has an impact on the local residents in the area,
6 even if we put in the best available control
7 technology.

8 Q Well, wouldn't -- wouldn't -- isn't the
9 economic model of regulation if you require that
10 someone lower discharge limits, it might force the
11 Applicant to use something like a fuel cell and
12 the increased application of fuel cells would make
13 them more reliable and more economic, in much the
14 same way that catalytic converters on automobiles
15 initially started at a high level, and then went
16 to a lower level of emissions.

17 A These are applications for generation
18 now. We can't be -- the district does not have
19 authority to impose a technology that has not
20 necessarily been proven for the -- for the
21 reliability and use and capacity at the -- at the
22 time now. In other words, we can't force a
23 requirement on engines now if the technology will
24 not be fully demonstrated for some time to come.

25 Q Well, my reading of the Supreme Court

1 report, the report of the recent Supreme Court
2 decision in the paper, said that the health effect
3 standards could be set independent of the cost of
4 compliance, if there was a bona fide reason to
5 protect public health and safety.

6 MR. RATLIFF: Objection. That's outside
7 the scope.

8 HEARING OFFICER FAY: Yeah. Sustained.

9 MR. WILLIAMS: Well, thank you.

10 I would just end, then, with a request
11 that the -- because the Supreme Court decision has
12 been docketed, that that be moved into the
13 evidentiary part of the testimony for this -- this
14 record. Either that, or take judicial notice of
15 it.

16 HEARING OFFICER FAY: Well, the
17 Committee can take notice of what the Supreme
18 Court has ruled, and I'm not going to make a call
19 on that now, unless Commissioner Laurie wishes to.
20 Okay. It -- it remains the law of the land,
21 published decisions of the Supreme Court. So your
22 point is taken.

23 MR. WILLIAMS: Thank you, sir.

24 HEARING OFFICER FAY: All right. Is
25 that it, Mr. Williams?

1 MR. WILLIAMS: One more -- one more
2 question, I think.

3 BY MR. WILLIAMS:

4 Q Is it your testimony that cleaner backup
5 power technology is available, but it is more --
6 it is -- comes in smaller sizes, and is more
7 expensive?

8 A The --

9 Q The conventional diesel generators.

10 A There are other alternatives, but these
11 alternatives generally have limits which have made
12 them less attractive. There is not a single
13 answer, because there are many different
14 technologies, and they all have their limits and
15 advantages.

16 Q But if you could elaborate on that.
17 What -- is the main limit the size and the cost?

18 A That's among them. Another limitation
19 is, for example, the ability to quick start, for
20 example. A combustion gas turbine could supply
21 adequate capacity in size to a facility, but they
22 take tens of minutes, sometimes almost a full hour
23 to get up to speed, and many companies -- most
24 companies could not tolerate that delay.

25 Q Well, in a -- in a local application, US

1 Dataport is using a flywheel to bridge that gap.
2 Is that a feasible technology, in your opinion?

3 A US Dataport is examining other -- many
4 alternatives, including flywheels for transitional
5 support, but these are flywheels, I believe, for
6 use prior to even the diesel engine starting up,
7 which is already a relatively quick start, so.

8 Q Yes. So there are ways of bridging the
9 gap to meet the quick start capability with other
10 technologies. Diesels are not uniquely required
11 because of their quick start capability. Is that
12 correct?

13 A Well, I just stated that the quick start
14 bridge that you indicated still use diesel
15 engines.

16 Q But they would work with gas turbines as
17 well; isn't that correct?

18 A It depends on the application. The
19 flywheels and -- and batteries may not be adequate
20 to cover the -- the full length of the start-up
21 requirements.

22 Q But in some instances, they would. Is
23 that fair to say?

24 MR. RATLIFF: Asked and answered.

25 HEARING OFFICER FAY: I think we've

1 covered that.

2 MR. WILLIAMS: Thank you, sir.

3 HEARING OFFICER FAY: Thank you.

4 All right. Mr. Garbett.

5 RECROSS EXAMINATION

6 BY MR. GARBETT:

7 Q Yes. Mr. Lim, you talked about the
8 periodic testing of these backup generators by
9 companies. Today happens to be a Wednesday, and
10 it happens to be between 10:00 a.m. and noon. At
11 95 Almaden in San Jose, the City of San Jose,
12 there exists a telephone office, central office,
13 that routinely tests their backup generator during
14 this period. If you'd look to the north, even out
15 the window you might even see the little wisp of a
16 black plume going up into the air.

17 Ninety-five Almaden does have backup
18 power capabilities, 48 volt batteries, a basement
19 full and then some. But the power process they
20 use just doesn't happen to be a diesel like you're
21 talking about. This is a gas turbine generator.
22 Is this what other, shall we say entities, are
23 using over a long period of history, rather than
24 diesel?

25 MR. RATLIFF: Objection. Outside the

1 scope.

2 HEARING OFFICER FAY: I'm going to allow
3 it. I disagree, counsel. Go ahead, Dr. Lim.

4 DR. LIM: I am not familiar with that
5 facility that you mention. I mean it's -- but
6 yeah, you're saying that they operate a combustion
7 turbine?

8 BY MR. GARBETT:

9 Q Yes, they do.

10 A And what fuel do they burn?

11 Q Regular jet fuel.

12 A Jet fuel.

13 Q Or what you would call aviation type
14 fuel, is what they --

15 A I understand. That would be a rather
16 unusual -- well, perhaps unusual is wrong. That
17 would be a most unlikely -- I have no doubt
18 whatsoever that you are correct that they are
19 using that, but that's not very commonly -- it
20 would -- I would have to search a large number of
21 facilities to find a fraction that would use that
22 capability.

23 Q Mr. Lim, would it surprise you --

24 A I -- I am not aware of what the specific
25 requirements, backup requirements for that

1 facility are, so.

2 Q Mr. Lim, would it surprise you to say
3 that telephone companies are a standard utility
4 that is found not only in California, but
5 nationwide, telephone -- telephone companies --

6 A Companies, yes.

7 Q -- public utilities. Over the past many
8 years, they typically, in ancient days, used
9 diesel generators as a backup to their batteries,
10 but they've almost exclusively changed to gas
11 turbine generators because of what you call a
12 fairly quick response of coming online. Would
13 that surprise you, being that this here has been
14 in effect over the past, probably 30 or 40 years?

15 A Other alternatives other than diesel are
16 being used, and you're citing a good example. But
17 percentage-wise, it's a very small fraction of our
18 existing installed base.

19 Q Okay. Mr. Lim, would it surprise you --
20 you mentioned Hondas for the home. Would it
21 surprise you to -- to know that, for instance, I'm
22 just an individual sitting here at the table like
23 anyone else, just a private citizen as well as an
24 Intervenor. Would it surprise you that I have
25 backup generation at my home?

1 A I -- I would not be surprised.

2 Q Okay.

3 A One way or the other. Obviously, I
4 don't know you and what your tendencies are.

5 (Laughter.)

6 BY MR. GARBETT:

7 QQ Thank you.

8 A And I say that with the most respect.
9 Yes.

10 Q Mr. Lim, would it surprise you that
11 since I use what you might call conventional
12 fuels, maybe with a snort of MTBE for flavor, and
13 using perhaps tertiary fuel such as propane, the
14 next backup generator that I get, which will be a
15 backup for the backup, would probably be a diesel,
16 down, dirty, and cheap, like you say?

17 A I'm -- I don't know what your plans are,
18 sir.

19 Q Okay. Is it possible to go and shift,
20 for instance, from these diesels to gas turbine
21 generators, which can ramp up fairly quickly, as
22 the telephone company and utility experience has
23 been? Is it possible to, you might say, direct
24 the Bay Area to go to, for instance, turbine
25 generators, even such as Calpine is attempting to

1 use, Calpine/Bechtel, excuse me.

2 A Facilities can seek other alternatives
3 if it meets their specific needs. I don't know
4 what the specific needs of that telephone
5 switching operation is, and how quickly they have
6 to respond. Other facilities cannot tolerate any
7 interruption, according to their business.

8 Q Okay. In recent years --

9 A So your question is could we require
10 company to switch from a diesel generator --

11 Q Or what you might call a preferred
12 source as a recommendation of the district.

13 A Certainly if -- if, speaking in general
14 terms. If a source or an engine, a generator is
15 already operating, unless we have a state mandate,
16 we cannot arbitrarily just walk in and say --
17 demand that they switch. However, if the company
18 comes to us and asks for a recommendation, as you
19 say, yes, we certainly would recommend an
20 alternative, a cleaner alternative than diesel
21 engine.

22 Q Okay. Mr. Lim, Silicon Valley Power,
23 some years back, had a project where they were
24 actively generating power using fuel cells. Would
25 this be what you might call a best available

1 technology today?

2 A You -- you put the term testing fuel
3 cells, and I think that's -- I'm not aware of that
4 specific project, but I -- I would imagine that
5 was a demonstration and a test, and until it has a
6 proven track record we cannot label it as best
7 available control technology. Certainly it sounds
8 like a promising -- under development, but we
9 cannot call it best available because best
10 available requires long term demonstration and
11 achievement practice.

12 Q Mr. Lim, would it surprise you that this
13 generation was for a period of over one year, and
14 the commercial power was sold to customers within
15 their distribution area?

16 A That would not surprise me. One
17 successful test does not make a total
18 demonstration for all applications. For that one
19 application, it sounds like it was a success, and
20 that's great.

21 Q Okay.

22 PRESIDING MEMBER LAURIE: I'll give you
23 one more, Mr. Garbett.

24 MR. GARBETT: That concluded the cross
25 exam.

1 HEARING OFFICER FAY: Okay. Thank you.
2 Mr. Ratliff, do you have anything
3 further?

4 MR. RATLIFF: No.

5 HEARING OFFICER FAY: Mr. Kwong?

6 MR. KWONG: No, I don't have anything
7 further.

8 HEARING OFFICER FAY: Nothing further?
9 Okay.

10 MR. BOYD: I just wanted to ask one or
11 two questions real quick.

12 HEARING OFFICER FAY: We asked who was
13 going to have redirect, and you didn't respond.

14 MR. BOYD: I asked you, and I --

15 HEARING OFFICER FAY: Okay. All right.
16 Briefly.

17 PRESIDING MEMBER LAURIE: Mr. Boyd, were
18 you here during the -- Mr. Ratliff's --

19 MR. BOYD: I was here for Mr. Lim's --
20 the last time Mr. Lim --

21 PRESIDING MEMBER LAURIE: No. No, this
22 -- no. The question deals with Mr. -- help me out
23 -- Mr. Ratliff's redirect. Did you hear the
24 redirect? You were not here, and so you don't
25 know the scope of Mr. Ratliff's redirect question.

1 This is not the scope of the original direct
2 examination.

3 MR. BOYD: Frankly, the whole problem is
4 that this meeting, this hearing --

5 (Parties speaking simultaneously.)

6 PRESIDING MEMBER LAURIE: Sir, I don't
7 care about the whole problem.

8 MR. BOYD: -- notice on any agenda
9 anywhere --

10 PRESIDING MEMBER LAURIE: Okay, fine.

11 MR. BOYD: -- it's supposed to be at
12 2:00 o'clock.

13 PRESIDING MEMBER LAURIE: Strike that.
14 Fine. You're out.

15 MR. BOYD: And anything that you do --

16 PRESIDING MEMBER LAURIE: You -- sir,
17 you are --

18 MR. BOYD: -- can be challenged --

19 PRESIDING MEMBER LAURIE: -- you are --

20 MR. BOYD: -- because you're in
21 violation of the Bakely-Keene Act.

22 PRESIDING MEMBER LAURIE: You -- you
23 are --

24 MR. BOYD: You didn't notice this in
25 advance ten days.

1 PRESIDING MEMBER LAURIE: I will give
2 you thirty seconds, or you can leave the room.

3 MR. BOYD: And what are you going to do,
4 arrest me if I don't leave the room?

5 PRESIDING MEMBER LAURIE: I will have
6 you --

7 MR. BOYD: You're trying to -- you
8 stomped on --

9 PRESIDING MEMBER LAURIE: -- I will --

10 MR. BOYD: -- the public's right to be
11 heard.

12 PRESIDING MEMBER LAURIE: I will have
13 you removed.

14 MR. BOYD: You don't have it noticed.

15 HEARING OFFICER FAY: Mr. Boyd, you're
16 out of order. You can bring this to the attention
17 of the Commission --

18 MR. BOYD: That's why I didn't have an
19 opportunity, because you didn't notice this, so I
20 had no way of knowing this was going on.

21 HEARING OFFICER FAY: This was -- this
22 was noted at the hearing --

23 MR. BOYD: It's not publicly noticed,
24 and I requested in writing to --

25 PRESIDING MEMBER LAURIE: Sir, lower --

1 MR. BOYD: -- be noticed ten days in
2 advance.

3 PRESIDING MEMBER LAURIE: -- lower your
4 voice now.

5 MR. BOYD: Fine. I'll lower my voice.

6 PRESIDING MEMBER LAURIE: For you --

7 MR. BOYD: This morning was not properly
8 noticed according to the Bakely-Keene Act.

9 PRESIDING MEMBER LAURIE: Your -- your
10 note is recorded. Mr. --

11 MR. BOYD: It wasn't yesterday in the
12 morning.

13 PRESIDING MEMBER LAURIE: That's enough.
14 Mr. Ajlouny, do you have any questions?

15 MR. AJLOUNY: I -- I just want to talk
16 about the redirect. I just -- this should be real
17 quick.

18 RE CROSS EXAMINATION

19 BY MR. AJLOUNY:

20 Q The emissions of the diesel that we were
21 talking about, if it was just for -- you know,
22 high peak is normally where you would think this
23 crisis would be where diesel generators would be
24 used, at a high peak time, like, you know, when
25 it's hot in the summer. Correct?

1 A It's actually a two pronged problem.
2 You are correct in that the ozone precursor
3 emissions, nitrogen oxides would -- would have the
4 biggest problem during the peak summer months,
5 during hot days, for generation of urban smog from
6 emissions from these generators. And also, second
7 -- the second problem is the particulate
8 emissions, the PM10 and finer particulate
9 emissions, which are toxic air contaminants. And
10 that's a year-round problem.

11 Q And, I'm sorry, because I'm trying to be
12 quick. I -- I didn't ask my question correctly.

13 The time these generators would probably
14 be used, that I understand your great concern is
15 when power from the utilities is not available so
16 people would have to use their generators. And my
17 question is, would -- so would that lead me to
18 believe, or is that true that your concern about
19 generators really being used is during the peak
20 times, which is usually the summertime? Did I --
21 is that clear?

22 A I'm sorry. I would like to clarify my
23 answer, I think in response to this -- your
24 question, then.

25 Q Okay.

1 A The response is yes, peak times,
2 electric outages certainly is one of the two areas
3 of concern. The other time is throughout the
4 calendar year, not just peak times, but during the
5 times of operation of the engines, be it not peak
6 time. In other words, these engines typically
7 require 30 to 50 hours of testing and maintenance
8 during the course of the year. And based on those
9 hours along, forgetting the peak times --

10 Q Yes. Okay.

11 A -- that is a health concern because of
12 the particulate ground level emissions.

13 Q But that has nothing to do with the
14 loss, or not enough electricity in the grid, or,
15 you know, utilities being able to provide the
16 power. That's just a process that people test
17 their generators because when they need them, they
18 need them. Like hospitals have a law, every week
19 they have to test them. So it's not geared to
20 because there's no power.

21 I guess MEC is not going to fix that
22 problem. People are still going to test their
23 generators.

24 A You are correct that people are going to
25 test their engines whether or not there is an

1 outage. However, the fact is that the -- the
2 increased frequency in outage leads people to
3 purchase and install these engines, which, I mean,
4 once they do that, then they must continue to
5 test.

6 Q Good point. Good point. You made a
7 very good point there.

8 Do you realize that the soonest this
9 could come online is probably the summer of 2003?

10 A It would take, I would say a minimum of
11 one and a half years to two years --

12 Q Okay.

13 A -- after final go ahead, before --

14 Q So --

15 A -- a plant can go online.

16 Q Okay, I'm sorry. So with that in mind,
17 if, hypothetically, an alternate came up and took
18 a little longer, and maybe got in by the summer of
19 2004, we're only looking at emissions for one
20 summer. Is that true? Of these generators?

21 MR. RATLIFF: I believe this is outside
22 the scope of the testimony. And the direct
23 examination.

24 MR. AJLOUNY: What's that?

25 MR. RATLIFF: This is outside the scope

1 of his direct examination.

2 MR. AJLOUNY: Well, he -- well --

3 HEARING OFFICER FAY: I'm going to allow
4 it because I do think that Dr. Lim has testified
5 on the use of these, as related to reliability.
6 If reliability changes, that is relevant.

7 BY MR. AJLOUNY:

8 Q Do you have the question in mind? Do
9 you need the question repeated?

10 A Yes, I would appreciate that.

11 Q Okay. I wish I was better at this.

12 Let me ask you this way. Would one
13 summer of emissions of diesels be a huge crisis or
14 a significant impact on this community? Just one
15 summer.

16 A If it was based on just the specific
17 engines that we're talking about, for example that
18 we were discussing, I believe, the -- solely as an
19 example, the diesel engines at the proposed CVRP
20 project -- proposed engines, I should say. Would
21 a difference of one year in the overall scheme,
22 over the lifetime of an individual, the answer is
23 no.

24 Q Okay. So with that in mind, one summer
25 would not be significant impact. Do you agree

1 that if an alternative site was built and online
2 by the summer of 2004, we're only looking at one
3 summer not having the power that MEC would
4 provide, and it wouldn't be significant then?

5 MR. RATLIFF: I'll make a standing
6 objection to questions that are outside of the
7 scope of this witness' testimony, and the direct
8 examination --

9 HEARING OFFICER FAY: I am going to
10 sustain that. I think --

11 MR. AJLOUNY: I think I'm done. I don't
12 want to waste any time.

13 HEARING OFFICER FAY: Yeah, I thought
14 you were talking the general situation. I think
15 it's --

16 MR. AJLOUNY: I'm happy.

17 HEARING OFFICER FAY: And I want to
18 follow up.

19 Dr. Lim, if the recent events have
20 caused you to believe that more of these diesels
21 -- recent loss of reliability has caused you to
22 believe that more of these diesels are being
23 installed, as the system reliability increases
24 would you expect the reverse to happen, that
25 there'd be fewer diesels available, or are there

1 other factors that would continue to cause people
2 to -- to install diesel backup?

3 DR. LIM: As the reliability increases I
4 would expect far fewer applications and
5 installations of existing engines -- of new
6 engines, and I would also expect that, over time,
7 some of these existing engines, if it is found to
8 be not necessary, they would be perhaps removed or
9 replaced with cleaner alternatives.

10 HEARING OFFICER FAY: Okay. Thank you.

11 Anything further, Mr. Ratliff?

12 MR. RATLIFF: No. Except that we need
13 to move his evidence into the record. It was
14 marked, but the determination was made at the last
15 hearing to wait until any additional cross
16 examination was completed before it was entered
17 into the record. I think we need to do that.

18 HEARING OFFICER FAY: All right.

19 MR. RATLIFF: So I would move that at
20 this time.

21 HEARING OFFICER FAY: Do you have the
22 exhibit number handy, of Dr. Kwong's testimony?

23 MR. RATLIFF: It's Exhibit 143.

24 HEARING OFFICER FAY: Okay. Counsel has
25 moved admission of Exhibit 143, Testimony of

1 Kenneth Lim, sponsored by Staff. Is there
2 objection?

3 MR. BOYD: I object, because this
4 meeting wasn't noticed properly.

5 HEARING OFFICER FAY: Okay. Mr. Boyd
6 objects.

7 MR. BOYD: The document is invalid
8 evidence.

9 HEARING OFFICER FAY: All right. And
10 anything further?

11 MR. GARBETT: My objection is strictly
12 to the amount of testimony that he gave at his
13 prior hearing, and I had made an objection there
14 only to the fact that it was done by surprise, and
15 only that portion of his verbal testimony on the
16 record.

17 HEARING OFFICER FAY: Okay.

18 MR. GARBETT: Not his written.

19 HEARING OFFICER FAY: All right. The
20 two objections are overruled.

21 In the case of Mr. Garbett's, the
22 Committee believes that the -- any concern was
23 addressed by making Dr. Lim available at this
24 time, after posting on Monday last -- a week ago
25 Monday, his -- the transcript of his direct

1 testimony. So that was available to the parties.

2 Mr. Boyd's objection is overruled,
3 because this was a continuation of a noticed
4 hearing, and we announced at that time that Dr.
5 Lim could be available if the Committee was
6 notified, and so people were on notice of that.

7 All right. I'd like to take a -- a
8 short break now, just long enough for Staff to get
9 its Alternatives panel back on. And we will
10 continue with Mr. Williams' cross examination of
11 the Staff panel.

12 (Off the record.)

13 HEARING OFFICER FAY: The Staff panel on
14 Alternatives, and Mr. Williams, you indicated 30
15 minutes.

16 MR. WILLIAMS: Yes. I'll try to be more
17 -- complete my questioning more quickly than that.

18 First, I'd like to express my thanks
19 both to the Hearing Officers and to the panel.
20 Just when I think this process is not
21 accommodating public participation, I very much
22 appreciated your patience and indulgence
23 yesterday, and I particularly appreciated the
24 forthright testimony of Mr. Walker and other
25 members of the panel. So thank you.

1 TESTIMONY OF
2 GARY WALKER
3 JOE DONALDSON
4 RICK TYLER
5 PETER MACKIN

6 called as witness on behalf of Commission Staff,
7 having been previously duly sworn, were examined
8 and testified further as follows:

9 CROSS EXAMINATION

10 MR. WILLIAMS: My first questions are
11 intended to address the no plant option. I want
12 to just briefly ask -- and forgive me, I don't
13 want to keep mispronounce your name. Do you
14 pronounce is Mackin or --

15 MR. MACKIN: Mackin.

16 MR. WILLIAMS: Mackin. Thank you. I
17 know Mackin, like Mack Truck. Okay.

18 So if you would envision the year 2000,
19 summer of the year 2000, I would -- and imagine
20 that the Metcalf transformer upgrade has occurred,
21 and that somehow the Metcalf plant has not been
22 built by the summer of 2003. If I said 2000, I
23 meant to say 2003.

24 MR. MACKIN: Okay.

25 MR. WILLIAMS: Further, you might have

1 to cast us forward another year into 2004,
2 depending on what happens at Moss Landing, but
3 assume for the moment Moss Landing has the
4 capability of 2500 megawatts of generation. Could
5 you indicate the part of the Bay Area that would
6 be the service area of the Moss Landing plant?

7 MR. MACKIN: Are you asking can I create
8 a natural service area of Moss Landing?

9 MR. WILLIAMS: Yes. With Moss -- well,
10 let me be more direct. With the Moss Landing
11 power supply, the so-called Metcalf natural
12 service area.

13 MR. MACKIN: There will be some power
14 from the Moss Landing Power Plant that will flow
15 into the Metcalf natural service area, through the
16 Moss Landing Metcalf 230 lines and the
17 transformers.

18 MR. WILLIAMS: Yes. Now, since Moss
19 Landing is intended to be a 2500 megawatt plant,
20 what are the main transmission lines that carry
21 that plant into the California grid?

22 MR. MACKIN: There's the Moss Landing to
23 Los Banos 500 kV line; Moss Landing to Metcalf,
24 500 kV line; Moss Landing to Metcalf 1 and 2 230
25 kV line; and there is the Moss Landing to Green

1 Valley 1 and 2 115 kV lines.

2 MR. WILLIAMS: Okay. And what -- what
3 is the approximate megawatt rating for the supply
4 to the Metcalf substation, and what is the
5 approximate rating for the lines leading to the
6 Los Banos substation in the event the Metcalf
7 lines are interrupted?

8 MR. MACKIN: Okay, I guess I'm not sure
9 I follow.

10 MR. WILLIAMS: I'm asking how much power
11 could get out to the Los Banos if the 230 and the
12 500 kV lines to Metcalf are disrupted.

13 MR. MACKIN: The rating of the Moss
14 Landing to Los Banos 500 kV line is, I believe, 24
15 -- well, it's 2400 amps, so you have convert that
16 to megawatts. It's going to be I believe a little
17 bit less. So probably around 2200 megawatts or
18 so. But -- but that doesn't take into account the
19 fact that when you have those outages, you're
20 going to have some major 115 kV overloads, and
21 you're going to have to do some other things to
22 fully utilize that 500 kV line.

23 MR. WILLIAMS: Okay. Well, I -- I don't
24 want to then belabor the total transmission
25 engineering, but is it fair to say that the Moss

1 Landing plant would serve as a source of power for
2 the so-called Metcalf natural service area in the
3 event the Metcalf plant is not built?

4 MR. MACKIN: Can -- can you ask that
5 question one more time? I'm sorry.

6 MR. WILLIAMS: Is it fair to say that
7 the Moss Landing plant will supply the Metcalf
8 natural service area?

9 MR. MACKIN: It will supply some power.
10 It's not adequate to completely serve the Metcalf
11 natural service area. But it will provide some
12 power to that service area.

13 MR. WILLIAMS: Well, the Metcalf service
14 area, you -- you currently describe -- I see what
15 you're saying. Is 3,000 or -- either 2700 or 3200
16 megawatts, depending on the year. And so is that
17 your reason for saying the Moss Landing plant
18 would not completely supply the Metcalf service
19 area?

20 MR. MACKIN: No, my -- my reason for
21 saying that is there is always the possibility of
22 losing the 500 kV line from Moss Landing to
23 Metcalf, and if that happens the only thing that's
24 left are your 230 kV lines and your 115 kV lines,
25 and the total rating on those lines is less than

1 1,000 megawatts, which means that, you know, under
2 that contingency, you're not going to see more
3 than probably 1,000 megawatts coming, you know,
4 from Moss Landing serving the Metcalf natural
5 service area.

6 MR. WILLIAMS: Well, if -- in the event
7 of that contingency, wouldn't some power travel to
8 Los Banos and then north to Tesla, come back into
9 the Bay Area through Newark and then to the south?
10 I agree it would be a long and tortuous path.

11 MR. MACKIN: Yes, some will, but -- but
12 how much of that -- you know, again, you get into
13 this can you code the electrons thing, and it
14 would be very difficult to say, you know, X
15 percent of Moss Landing under that contingency
16 situation flowed, you know, around the horn to
17 Tesla and then back into Newark, and served, you
18 know, Metcalf through Newark. It would be
19 difficult to determine that.

20 MR. WILLIAMS: Okay. It could be done
21 with a system study. You just haven't done such a
22 study?

23 MR. MACKIN: I guess it -- well, how
24 could you do it.

25 MR. WILLIAMS: Let's run through a --

1 MR. MACKIN: Well, but how would you --
2 you know, I guess my -- I'm at a loss at this
3 point as to how I would do it. I mean, I suppose
4 it could be done, but I'm not -- I'm not
5 completely clear how I would do it. I mean, I
6 probably could, but I'd have to think about it.

7 MR. WILLIAMS: I thought you could do
8 virtually anything, Mr. Mackin.

9 MR. MACKIN: No, no, no. Remember --
10 remember, yesterday I said I don't know
11 everything, so.

12 MR. WILLIAMS: Okay. Well, thank you.
13 I won't belabor that point too much further.

14 I'd like to shift gears to Mr. Walker,
15 and ask some general questions about the long
16 table, which I believe starts on page 714. I
17 think this table is an excellent summary of the --
18 of the Alternatives analysis, and I'd like to
19 offer my personal thanks and appreciation.

20 But let me --

21 MR. WALKER: Correction, it starts on
22 713.

23 MR. WILLIAMS: Forgive me. Yes, it
24 does. I'm sorry.

25 My questions relate to the

1 characterization of the proposed site, the Metcalf
2 site at Tulare Hill in the first column. Based on
3 that characterization -- well, could I persuade
4 you that the -- some of the characterization may
5 be optimistic, based on the hearings and the
6 evidentiary record?

7 MR. WALKER: Could you be more specific?

8 MR. WILLIAMS: Well, for example, the
9 area of Air Quality, there is a potentially
10 significant impact, but expected to be mitigated
11 to less than significant.

12 MR. WALKER: Yes.

13 MR. WILLIAMS: You would agree that that
14 might be an optimistic statement then, at this
15 point?

16 MR. WALKER: It's beyond the scope of my
17 specific testimony, and the input that I got from
18 technical staff.

19 MR. WILLIAMS: Okay. So --

20 MR. WALKER: The input that I got was
21 what it says right here.

22 MR. WILLIAMS: Yes, I understand that.
23 The place I'm going with these questions is to ask
24 at some point, I would allege and make a case in
25 my brief to the Siting Committee that the

1 situation with respect to Metcalf is worse than
2 stated here. Would it be fair to select one of
3 these alternatives as a preferred alternative?
4 Seems to me your testimony yesterday said that
5 some of the alternatives, in your opinion, already
6 were preferred alternatives.

7 MS. WILLIS: I'm going to ask for
8 specific questions. I mean, this sounds like kind
9 of a general --

10 HEARING OFFICER FAY: Mr. Williams, let
11 me -- sir, are you saying that if some of the
12 factors changed, would the analysis produce the
13 same result as it does now?

14 MR. WILLIAMS: No, I'm asking -- let me
15 be more direct. Doesn't CEQA ask that -- in
16 trying to do this analysis, you select a preferred
17 alternative? I'm not a CEQA expert, but it's my
18 understanding that it does.

19 MR. WALKER: CEQA requires that we
20 compare -- attempt to identify alternatives that
21 could avoid or substantially reduce one or more of
22 the potential significant environmental impacts of
23 the proposed project. In doing so, we did make an
24 overall assessment of whether the alternative
25 sites would do that. And that's presented in this

1 testimony, and we found that for four of the
2 sites, that they could.

3 MR. WILLIAMS: Thank you. I won't
4 belabor that point further, then.

5 I would like to ask the same question
6 with respect to page 759, which is just the
7 beginning of the discussion of the no project
8 alternative. It appears to me that the no project
9 alternative by definition would have no -- no
10 impacts, and therefore would also be preferable to
11 the Metcalf options. Is that correct?

12 MR. WALKER: Not necessarily, because
13 the no project alternative does not -- only
14 addresses the impacts of the proposed project
15 where the proposed project would be, the
16 environment that it would affect. It doesn't
17 address other effects that would occur if -- if
18 the project is not built. And the testimony goes
19 on to discuss that in the next several pages. The
20 environmental impacts of the no project
21 alternative starts on page 762.

22 MR. WILLIAMS: And you're saying the --
23 the changes to the transmission lines, and what
24 have you, have to be considered as an impact of
25 the no --

1 MR. WALKER: Not so much that, but if
2 you look at the information regarding the effects
3 regarding the lack of the generation, the local
4 system effects --

5 MR. WILLIAMS: Yes.

6 MR. WALKER: -- information from the
7 ISO, and then there's a comparison there of the
8 proposed project and the no project alternative in
9 regard to environmental impacts, starting on 764.
10 And so.

11 MR. WILLIAMS: Okay. Now, that's why I
12 began my questioning with the Moss Landing option.
13 Back on -- I think it's Table 6, on page --
14 wherever the alternatives green table is --

15 MR. WALKER: That's Table 4.

16 MR. WILLIAMS: Table 4? Thank you.

17 MR. WALKER: 713.

18 MR. WILLIAMS: Yes. Moss Landing was in
19 there, and -- let me ask my question directly.
20 Doesn't Moss Landing, the fact that it's now ahead
21 of the Metcalf Center in terms of construction
22 schedule, and because it is such a big plant,
23 doesn't it mitigate most of the impacts of the no
24 project option?

25 MR. WALKER: Mr. Mackin, can you help me

1 out in terms of the effect of the Moss Landing
2 plant?

3 MR. MACKIN: I guess for -- are you
4 talking about the effect of the Moss Landing
5 plant? I mean, in the local system effects and in
6 the transmission electrical system effects of the
7 alternatives, the Moss Landing plant was assumed
8 to exist in all of the cases. So --

9 MR. WILLIAMS: Starting at which year?

10 MR. MACKIN: It was not at 2002, but it
11 was in the 2005 model. So -- but it was
12 consistently there or not there in all of the
13 alternative analyses.

14 MR. WILLIAMS: And was it there in its
15 full rating of 2500, or --

16 MR. MACKIN: Yes.

17 MR. WILLIAMS: -- I thought --

18 MR. MACKIN: Full rating.

19 MR. WALKER: I might add that the
20 discussion in -- on pages 762 to 764 about the
21 offsite impacts of the no project alternative
22 includes the information developed by and
23 subsequently added to by Mr. Tyler regarding the
24 public health effects of the no project
25 alternative.

1 MR. WILLIAMS: Well, thank you. I --
2 the next question I'd like to pursue is I think
3 the table is excellent, but if -- an additional
4 analysis, in my opinion, might help correlate
5 certain policy factors. For example, alternates
6 five and six are in a rural area, while alternates
7 one, two, three and four are essentially in an
8 urban area. So would it be fair to show the -- a
9 credit for alternatives five and six, in terms of
10 the rural site?

11 MR. WALKER: Our approach did not give
12 any preference to rural versus urban sites. It
13 addressed, in terms of environmental effects it
14 addressed the potential for significant
15 environmental impacts, whether they would occur in
16 a rural or an urban setting.

17 MR. WILLIAMS: I realize that. Now,
18 it's my opinion that it's good policy to site
19 power plants in rural locations. Do you share
20 that opinion?

21 MR. WALKER: No, not necessarily. It
22 depends upon the site specific circumstances,
23 whether it's better in a rural or an urban
24 situation.

25 MR. WILLIAMS: Okay. If the ambient air

1 quality were better in the rural situation, and
2 there is more margin before you exceed state
3 limits, would the -- from the perspective of air
4 quality, would the rural location be better?

5 MR. WALKER: That's beyond the scope of
6 my technical expertise to answer.

7 MR. WILLIAMS: Is there anybody here
8 today who could offer their opinion on that? Mr.
9 Tyler?

10 MR. TYLER: My belief is that it would
11 be -- it would depend on the circumstances. I
12 have seen cases where a rural power plant may
13 contribute more to downwind violations of ozone.
14 If you're talking about direct pollutants, then
15 maybe that's somewhat true. But I think the big
16 question is how does -- how do the precursors, the
17 ozone and secondary pollutants, PM10 and so on,
18 where do they form. And I don't think -- I don't
19 think it's clear that you can make an easy
20 distinction between rural and urban.

21 MR. WILLIAMS: Okay. Only if the
22 ambient quality were better than the -- you would
23 have more margin before you reached the limit?

24 MR. TYLER: You're assuming that the --
25 the assumption you're making --

1 MR. WILLIAMS: No, the assumption I'm
2 making --

3 MR. TYLER: -- I think is maybe
4 incorrect, because you have to look at where the
5 -- where the pollutants are transported. And I'm
6 not saying it wouldn't necessarily, but I don't
7 think you can make that generalization, is all I'm
8 saying.

9 MR. WILLIAMS: Well, I -- I appreciate
10 that information, clarification.

11 The next area of questioning relates to
12 the local versus distant generation, and the
13 reliability effect, and the cost of power. Remind
14 me, did reliability get into your table here, or
15 is it --

16 MR. WALKER: No, it's not in the table.

17 MR. WILLIAMS: Was there a particular
18 reason for that?

19 MR. WALKER: Well, because, as the title
20 says, it's comparing the sites with regard to
21 impact significance and land use conformance. It
22 didn't intend to include other than LORS
23 compliance and environmental effects.

24 MR. WILLIAMS: Okay. Now, we can do
25 this as a hypothetical, just so we don't have to

1 argue about the precise numbers. But there was a
2 recent article in the San Jose paper showing the
3 cost of natural gas in northern California was
4 \$11.50, and in southern California it was only
5 \$5.20. So if there are places -- and this is
6 either for you, then, or Mr. Mackin. If it were
7 cheaper to generate power by a factor of two in
8 the fuel cost in southern California, as compared
9 to the Bay Area, wouldn't the policy of the ISO in
10 those circumstances generate the power in southern
11 California and transmit it to northern California?

12 MR. MACKIN: Okay. I guess the answer
13 is the way the market works, it's based on the
14 price bid by the generators. So in your
15 hypothetical situation, if the fuel cost was half
16 the cost, you know, if the southern California
17 fuel cost was half that of northern California,
18 it's highly likely that the generators in southern
19 California would bid lower and would be dispatched
20 first.

21 The problem you get into is then you're
22 going to run into your Path 15 constraint, which
23 I'm sure everyone heard about recently.

24 MR. WILLIAMS: I didn't know precisely
25 what it was. Is that the transmission line?

1 MR. MACKIN: That's the two 500 kV lines
2 between Los Banos and Gates. It's around Fresno,
3 it's a little bit north of Fresno. And so what
4 happens is if you try to generate too much power
5 in the south and transport it to the north, you
6 bump up against the limit of that path and you can
7 get no more. And then you have what's known as
8 transmission congestion, and then you have to
9 dispatch the -- the northern generators anyway,
10 even though they're more expensive.

11 MR. WILLIAMS: Well, just to further
12 pursue my hypothetical, then. There's a boundary
13 on the Oregon border for the natural gas
14 transmission. I don't recall the precise name of
15 it, but I think it's around -- maybe you can help
16 me.

17 MR. MACKIN: Well, natural gas is kind
18 of outside my area of expertise. I mean, I know
19 there is a gas line --

20 MR. WILLIAMS: But the --

21 MR. MACKIN: -- that comes in from the
22 north, but --

23 MR. WILLIAMS: There were places -- the
24 boundary of California and Oregon where natural
25 gas is only \$5, wouldn't it make sense then to

1 generate power outside the Bay Area and
2 transmitting it to the Bay Area?

3 MR. MACKIN: Well, again, if there were
4 generators up there that ran on natural gas, and
5 I'm not aware that there are a lot of northern
6 California generators north of the Bay Area that
7 run on natural gas. Most of it's hydro.

8 MR. WILLIAMS: Well, it would be prudent
9 to site them, because otherwise --

10 HEARING OFFICER FAY: Mr. Williams, let
11 him finish the answer.

12 MR. MACKIN: Well, I'm trying to -- the
13 -- if there were generators sited, then yeah, they
14 would -- potentially they could -- they could run,
15 if they could get the gas cheaper. But again,
16 depending on resource availability, there are
17 already limits on northern California imports from
18 the Northwest also. There's transmission
19 constraints there. We haven't seen those a lot
20 recently because there's sort of a resource
21 deficiency everywhere. But they -- we have hit
22 those limits in the past, so, you know, in some
23 cases you may find you've got, you know, extra
24 generation in the Northwest, but you can't get it
25 in anyway, because, again, you have transmission

1 constraints.

2 So there's -- it really depends on the
3 situation.

4 MR. WILLIAMS: I'm just about through.
5 But I would appreciate it if you could just give
6 me a rough approximation of what is the magnitude
7 of the upgrade to Path 15, the transmission line
8 between Fresno and Los Banos, that would relieve
9 the constraint between northern and southern
10 California?

11 MR. MACKIN: One -- one potential
12 upgrade, I mean, this hasn't been -- to my
13 knowledge it hasn't been decided what the
14 preferred alternative is, I think it's still being
15 looked at. One potential upgrade is to build
16 another 500 kV line between Los Banos and Gates,
17 and I believe it's somewhere in the neighborhood
18 of \$100 million, or more, to do that.

19 MR. WILLIAMS: Would this be like a high
20 voltage DC line between somewhere in the --

21 MR. MACKIN: No, it would be 500 kV AC.

22 MR. WILLIAMS: And that's because it
23 would integrate with the other transmission
24 network and --

25 MR. MACKIN: Correct. The distance is

1 only about 80 miles. It's really too short to do
2 DC. It's -- DC's not economic for that distance.

3 MR. WILLIAMS: Understand. Let me just
4 consult my notes briefly here. I think I'm almost
5 through.

6 Oh, there is one thing I overlooked.
7 Beginning at 2004 -- this is, again, of Mr. Mackin
8 -- are there facts in evidence that show there is
9 a high probability of a major outage in the Bay
10 Area, a blackout, as cited by Mr. Tyler?

11 MR. MACKIN: In 2004?

12 MR. WILLIAMS: Beginning 2004, 2005. I
13 would refer you, for example, to the PG&E -- or to
14 the Armour studies, for example, that were
15 included in the application --

16 MR. MACKIN: Right. Well, I guess
17 the --

18 PRESIDING MEMBER LAURIE: Wait a minute,
19 Mr. Mackin. Mr. Williams, your question was is
20 there evidence in the record. That's not an
21 appropriate question.

22 MR. WILLIAMS: Is there --

23 PRESIDING MEMBER LAURIE: What are you
24 trying to ask?

25 MR. WILLIAMS: I want to ask in his

1 opinion, what is the probability of a major --

2 MR. MACKIN: Okay.

3 MR. WILLIAMS: -- blackout in the Bay
4 Area.

5 MR. MACKIN: Well, and I guess that's --

6 MR. WILLIAMS: That would be based on --

7 MR. MACKIN: Yeah, I guess actually the
8 Armour studies, I think some of them were
9 submitted as testimony, or appendices to
10 testimony.

11 MR. WILLIAMS: Yeah.

12 MR. MACKIN: But the Armour studies did
13 not look at the kind of outages that -- that we're
14 considering here for the, you know, the
15 catastrophic outages. The Armour analysis only
16 looks at fairly likely contingencies, because what
17 we're looking at is with Armour contractual
18 arrangements with generators to make sure that
19 they're available when needed, to preserve
20 reliability. Under catastrophic conditions, the
21 -- and also, it was to mitigate market power, I
22 need to mention that, too.

23 So the -- under catastrophic situations
24 that are not as likely, the decision was made with
25 Armour to not -- more units in -- those

1 situations, and to just pay market rates, even
2 though market rates might be very expensive.
3 Because those contingencies only occur rarely it
4 would be okay to -- to pay a high price, because
5 overall, it was cheaper than the contracts.

6 MR. WILLIAMS: Okay. So -- forgive me.
7 Did you want to --

8 MR. MACKIN: So to -- to answer your
9 question, the -- those contingencies, so in other
10 words, those contingencies weren't looked at.
11 Now, I guess you were asking were those
12 contingencies -- well, maybe I don't know exactly
13 what you were asking. But for 2004, 2005, even
14 2003, the analysis that -- that we did, well, we
15 didn't do specific analysis of that outage, me,
16 personally. The ISO did look at it, and the ISO
17 integrated our control grid study this year. The
18 Applicant looked at it, also, and we both found
19 that there was a significant benefit to having
20 Metcalf there to mitigate that outage.

21 MR. WILLIAMS: I -- my question, though,
22 with the risk to the public, the likelihood of
23 this --

24 MR. MACKIN: Of the outage?

25 MR. WILLIAMS: -- catastrophe that we

1 kill 450 people because of heat stroke. So if I
2 make this contingent to give you the context,
3 isn't this somewhat akin to the possibility of an
4 earthquake such as we saw in 1989, where 400
5 people were killed by the collapse of an old
6 freeway that had not been upgraded.

7 MR. TYLER: Would it be okay if I
8 address this, because I think this is actually my
9 testimony.

10 MR. MACKIN: Yeah, I mean -- yeah, you
11 can. Let me just -- if I could just say one
12 thing.

13 You know, the only -- the only area of
14 expertise I have in this is -- is basically on the
15 probability of transmission outages occurring.
16 And so I gathered that information and relayed it
17 to Rick, so he's the one that did the analysis of,
18 you know, take -- given that probability, then
19 what would -- what would the consequences be.

20 MR. WILLIAMS: Now, let me, though,
21 continue and then I'll ask Mr. Tyler for his
22 answer.

23 In the olden days there used -- referred
24 to the loss of load probability. And that was a
25 figure inherent with PG&E and other generators.

1 Is that still used today? What is -- what is the
2 loss of load probability in the Bay Area?

3 MR. MACKIN: I don't know what that
4 number is. I believe that number is still used,
5 but there's also things like -- there are other --
6 there are other reliability indices that are also
7 used. But I'm not aware of what the actual
8 numbers are for those indices.

9 HEARING OFFICER FAY: Mr. Williams, last
10 question.

11 MR. WILLIAMS: Well, Mr. Tyler, do you
12 care then to --

13 MR. TYLER: Basically, I -- my -- my
14 conclusions were drawn based on the unprecedented
15 nature of the shortages that are expected in the
16 near future, and the fact that there's such a huge
17 imbalance between indigenous generation and load
18 within this area. The report I quoted
19 specifically addresses that and points to the fact
20 that the redundancy associated with having
21 transmission as well as generation significantly
22 reduces the risk of that occurring.

23 I -- I made an attempt to look at
24 probabilities, but in the context of -- of the
25 shortages that may exist in the near future. I --

1 I don't think anybody can really make an accurate
2 prediction of that, but I certainly don't think
3 it's implausible. And certainly higher than the
4 risks we talked about many -- associated with many
5 other aspects of the project.

6 MR. WILLIAMS: But wouldn't you agree
7 that it's about the same likelihood as a magnitude
8 7 earthquake risk, such as the Loma Prieta
9 earthquake?

10 MR. TYLER: No, I wouldn't. I would
11 consider it much higher in light of the situation
12 that we have, in terms of load and the lack of
13 supply. And the constraints that that puts on the
14 system in -- in any kind of disturbance --

15 PRESIDING MEMBER LAURIE: Mr. Tyler,
16 that -- that's fine. Thank you, Mr. Williams.
17 We're going to move on.

18 MR. WILLIAMS: Thank you, Commissioners.

19 HEARING OFFICER FAY: All right. It is
20 now Mr. Garbett's time.

21 MR. GARBETT: Yes, William Garbett,
22 speaking on behalf of the public.

23 CROSS EXAMINATION

24 MR. GARBETT: On the questions I have to
25 answer, some of the things that may be a little

1 bit trite there. I -- sometimes I try to be a
2 little bit computer literate, some people call me
3 illiterate because I have the -- when I start
4 counting, you know, the -- goes and says KP01, and
5 I think KP00, because in computer language you
6 start off with zero to one, two, three, four, and
7 they are numbered, and so forth.

8 So sometimes I start off at ground zero,
9 in some respects.

10 Mr. Walker, you basically started doing
11 alternatives analysis, oh, over a year ago, almost
12 two years ago now, did you not?

13 MR. WALKER: On this project?

14 MR. GARBETT: Yes.

15 MR. WALKER: It's been over a year and a
16 half.

17 MR. GARBETT: Yes. During that time,
18 prior to the public becoming an Intervenor, you
19 were out of your office in Sacramento and down
20 here in the Bay Area, doing due diligence, and ran
21 into me, oh, several different times around the
22 area, as you were doing your job.

23 MR. WALKER: Yes.

24 MR. GARBETT: Okay. This indicates some
25 due diligence that you're not a bureaucrat from

1 Sacramento, but actually a field person that finds
2 the information first-hand.

3 And of that information, at the
4 preliminary hearings, the first public meetings
5 and workshops thereafter, the Commission solicited
6 any inputs on alternative sites that they might
7 have, and of those, some of those sites you did
8 explore. I think you did look at 16 different
9 sites --

10 MR. WALKER: Seventeen.

11 MR. GARBETT: -- or 17? All
12 probability. One of those sites we specified was
13 next to what we call GE nuclear, which is the --
14 one of the largest customers that actually has to
15 call up for power for the grid before they use it,
16 and so forth. That had potable water, recycled
17 water, natural gas, and electricity all right in
18 front of the site. Was that correct, down in --
19 by Curtner Road in Monterey?

20 MR. WALKER: Well, it's my understanding
21 that -- that it was not close to a 230 kV line,
22 which was one of the criteria. But yes, it did
23 have the other infrastructure.

24 MR. GARBETT: Yes. That Curtner Road
25 just goes on down the road to Tulley road, and

1 most recently in a legal newspaper of general
2 circulation, the Mercury News, we heard that the
3 city might want to go and allow a power plant down
4 in Seventh near Tulley, which is actually an
5 extension of Curtner, which is about a half-mile
6 from the site that you looked at previously. Is
7 that correct?

8 MR. WALKER: Approximately.

9 MR. GARBETT: Okay. Was that -- the
10 presumption was, is that you looked at what you
11 might call available sites, and you found out that
12 that site supposedly was on the market, and was
13 unacceptable for reasons of that nature.

14 MR. WALKER: Which site are you
15 referring to?

16 MR. GARBETT: The one at Curtner next to
17 GE nuclear.

18 MR. WALKER: Yes. I contacted the real
19 estate agents for the property, and they said it
20 already had been committed to other projects.

21 MR. GARBETT: Okay. And basically, that
22 was in a redevelopment area of the City of San
23 Jose; is that correct? Or do you know?

24 MR. WALKER: I'm not sure about that.

25 MR. GARBETT: Okay. With those

1 particular realizations, it became very important
2 that the real estate agent had said it had been
3 committed to other projects. In the specific
4 Applicant's property, Calpine/Bechtel, the Metcalf
5 Energy Center, in the beginning of the application
6 time, about this time, did they have a commitment
7 to the full amount of land on the property, did
8 they have it in fee simple, or in any other
9 arrangement, to your knowledge?

10 MR. WALKER: I don't know their precise
11 arrangement at the time.

12 MR. GARBETT: Okay. At some point in
13 time, they managed to get some control over the
14 property and present that information to the
15 Commission. With that, on doing the other sites,
16 basically, did you do what you call a cookie
17 cutter approach? You took the site from the
18 application of the Applicant, and you merely
19 placed it up on other sites for your comparisons,
20 without trying to reconfigure or do anything else,
21 just cookie cutter fashion?

22 MR. WALKER: No. I -- I -- it was not
23 obvious that a site could accommodate the specific
24 arrangement that Calpine/Bechtel had used. I took
25 the various components of that project and

1 rearranged them to some degree, in what seemed
2 like a feasible fashion from my experience of
3 different plant layouts in the past.

4 MR. GARBETT: Okay. Looking at plant
5 layouts in the past, isn't it true that although
6 you was asked previous questions by other
7 intervenors regarding, shall we say, a probable
8 timeline that the availability of capital, the
9 availability of long lead time, manufactured items
10 such as turbines from a limited number of
11 manufacturers, play a very important criteria in
12 the project, as well as a motivation to get an
13 applicant to apply?

14 MR. WALKER: That's beyond the scope of
15 my testimony.

16 MR. GARBETT: Okay. Would it be a
17 natural conclusion that you have to get an
18 applicant to apply before you can do your job?

19 MR. WALKER: Yes.

20 MR. GARBETT: Okay. Thank you.

21 With the application, one of the first
22 things the Commission does is they look the
23 application over for credibility, and at some
24 point in time they certify that application being
25 complete. Is that a true statement?

1 MR. WALKER: Yes, there's a data
2 adequacy review of the application to see if it
3 meets the requirements specified in the
4 regulations.

5 MR. GARBETT: Okay. Once that is found,
6 is, shall we say, the die cast or cast in iron
7 where, for instance, the components of the
8 application that you may or may not rearrange in
9 these is basically fixed as of the time the
10 application is complete, that you use for your
11 studies?

12 MR. WALKER: Well, we evaluate the
13 project as proposed, yes.

14 MR. GARBETT: And that is a proposal at
15 the time it is certified on the timeline?

16 MR. WALKER: At the time it is
17 certified?

18 MR. GARBETT: Yes. As being complete
19 and data adequate.

20 MR. WALKER: Oh, being determined to be
21 data adequate? Yes, that's the submittal as the
22 Applicants have provided for in their application,
23 plus any additional information that was required
24 to deem it data adequate, that -- we look at that
25 proposal. Unless the proponents subsequently

1 modify that proposal.

2 MR. GARBETT: Okay. If the proponents
3 subsequently modify it to the point that the
4 majority of it, for instance, like you strike over
5 half of it prior to basically adding on any
6 modified data, don't you lose the significance of
7 that certification?

8 PRESIDING MEMBER LAURIE: Mr. Garbett.

9 MR. GARBETT: Yes.

10 PRESIDING MEMBER LAURIE: I find that to
11 be totally irrelevant to the issue of
12 alternatives, so unless you can provide a quick
13 explanation of why our application process is
14 relevant, I'm not going to allow any more of this
15 line of questioning.

16 MR. GARBETT: Mr. Laurie, the line of
17 questioning was to determine at which components
18 frozen at which point in time does he use for
19 making his evaluations. Was it the application as
20 it was immediately certified --

21 PRESIDING MEMBER LAURIE: Or as
22 modified.

23 MR. GARBETT: -- or was it later on, as
24 modified, even though that -- most of the original
25 certification had been lost.

1 PRESIDING MEMBER LAURIE: So is -- is
2 your testimony that the application, or your
3 analysis is conducted at -- upon the application
4 as it may exist at the time of your analysis, and
5 is updated as the project might be further
6 amended?

7 MR. WALKER: Yes.

8 MR. GARBETT: Okay. To your knowledge,
9 was the amendments to the project ever certified?
10 Or re-certified as being --

11 MR. WALKER: That's not a term that's
12 used with regard to modifications to the project.
13 Certified is only used in terms of the actual
14 decision.

15 MR. GARBETT: Okay. In the introduction
16 to the FSA, it makes reference to the authority of
17 the California Energy Commission either to be --
18 to approve or deny the application. Is that
19 basically your understanding of the process, the
20 authority is to either approve or deny an
21 application from the Commission?

22 MR. WALKER: It can deny or approve, or
23 approve with conditions.

24 MR. GARBETT: Okay.

25 MR. WALKER: Typically, that's what is

1 done. If it's approved, it's approved with
2 conditions.

3 MR. GARBETT: And the conditions are
4 actually written in to the FSA as conditions, or
5 basically added by the Commission at their final
6 decision hearings. Is that correct?

7 MR. WALKER: The Staff typically
8 recommends conditions, but it's the Committee and
9 then the Commission who decides which conditions
10 should be included in the decision.

11 MR. GARBETT: Because this is a CEQA
12 process that we're doing in the FSA, or we're
13 trying to do, I think CEQA basically stems from
14 NEPA, and in California the CEQA process is
15 basically under the Governor's Office of Planning
16 and Research, and they do have a state clearing-
17 house. Is that a --

18 MR. WALKER: Yes, I'm aware of that.

19 MR. GARBETT: During the scope of
20 looking around the area, I found that the
21 northeast San Jose transmission reinforcement
22 project was a very important criteria, because one
23 of the things that you had cited in looking at the
24 various sites is the fact that there was a
25 transmission substation or something nearby, and

1 the Los Esteros substation became an apparent
2 advantage, or necessary ingredient, for instance,
3 for the sites in North San Jose. Is that true?

4 MR. WALKER: It would be a necessary
5 ingredient. That's true.

6 MR. GARBETT: In the course of attending
7 the hearings and seeing the people at the
8 hearings, was it your opinion that there may be
9 some environmental justice issues due to the
10 ethnic or the makeup of the people who live in the
11 nearby area, including their engagement in
12 agriculture?

13 MR. WALKER: Which nearby area?

14 MR. GARBETT: The Los Esteros.

15 MR. WALKER: Los Esteros. Staff
16 recognized that potential and addressed it in its
17 assessment.

18 MR. GARBETT: Okay. You have cited that
19 on Sites 3 and 4, that one of the issues that
20 might be needed would be a variance regarding the
21 height of the stacks. Is that true?

22 MR. WALKER: An exemption from the
23 height limitation. Yes.

24 MR. GARBETT: Could that also be
25 achieved by some other testimony that was given

1 by, for instance, changing the design of the stack
2 such as a foyned rocket nozzle type of stack that
3 would shorten it, and provide the same
4 efficiencies as a means of avoiding a variance by
5 making a site design, shall we say, modifying or
6 amending the application so that it would not be
7 necessary to achieve a variance?

8 MR. WALKER: That's beyond the scope of
9 my expertise.

10 MR. GARBETT: If that were possible,
11 would that be a more likely scenario than going
12 through the public process --

13 MS. WILLIS: I'm going to object. He
14 already expressed it is beyond the scope of his
15 expertise.

16 HEARING OFFICER FAY: Sustained.

17 MR. GARBETT: During the initial
18 hearings, the workshops, there was mention of
19 other, quote, alternatives that should be
20 considered in -- in the CEQA document regarding
21 the fuel sources and the types, the cooling,
22 whether it be dry cooling, potable water, or
23 recycled water, and also as a catalyst, whether it
24 be SCR, or some other best available technology
25 such as SCONOX.

1 In the alternatives, was any of these
2 things ever looked at as alternatives? Or was it
3 confined to real estate only?

4 MR. WALKER: We looked at alternative
5 technologies. The alternative of dry cooling was
6 not pursued because the Applicant stated that the
7 site was not large enough to accommodate dry
8 cooling for their project.

9 In regard to emission control, air
10 emission controls, that was dealt with in the air
11 quality analysis, because it wasn't considered to
12 be an alternative to -- that would mitigate the
13 significant impact. It was addressed more under
14 mitigation than under alternatives.

15 In regard to alternative fuel sources,
16 because of the immediate availability within a
17 short distance of the natural gas supply, we did
18 not pursue other alternative fuels.

19 MR. GARBETT: Because this is a single
20 source of fuel, one pipeline, did you consider any
21 other sources or backup supplies for reliability
22 in any alternatives analysis?

23 MR. WALKER: No, we did not. I did not
24 examine reliability, per se, that would be --

25 MR. GARBETT: That is a different --

1 MR. WALKER: Yes.

2 MR. GARBETT: In the preparation of your
3 documents, coming up with the final FSA, we
4 basically have in the CEQA process what you might
5 call a draft document that was submitted, called a
6 PSA. Is that true?

7 MR. WALKER: Yes.

8 MR. GARBETT: Okay. And then we have
9 the FSA, is that correct?

10 MR. WALKER: The Final Staff Assessment,
11 yes.

12 MR. GARBETT: Okay. Would that be
13 equivalent to a final environmental impact report?
14 Or the equivalent or quasi equivalent of a final
15 impact report?

16 MR. WALKER: I -- perhaps the attorneys
17 should actually explain the legal definitions of
18 -- as I know it, the entire siting process at the
19 Energy Commission has been determined to be
20 functionally equivalent to the CEQA process. And
21 it's that process, rather than specific documents,
22 that are considered to be equivalent to any
23 documents in the CEQA process.

24 MR. GARBETT: Would that mean that the
25 CEQA process would be, quote, a final document, is

1 only in that final document being the decision of
2 the Commissioners at the end of the process?

3 PRESIDING MEMBER LAURIE: Sir, that --
4 that's not an appropriate question for this
5 witness. If you want to ask a procedural question
6 of the Committee, ask a procedural question of the
7 Committee. This is an alternatives expert. He's
8 not -- he's not a Energy Commission process
9 expert.

10 MR. GARBETT: Okay. With the real
11 estate that you looked at, of those, and
12 considering the, shall we say, massive attendance
13 at some of the public meetings, would it have been
14 fair to say that there would be more encouragement
15 towards suburban or remote sites, rather than an
16 urban placement of a power plant?

17 MR. WALKER: In terms of the opinions
18 expressed at the meetings by the public?

19 MR. GARBETT: I'm sure they were very
20 pointed at the time. I'm sure --

21 MR. WALKER: Is that what you mean?

22 MR. GARBETT: Yes, they are memorable,
23 aren't they.

24 MR. WALKER: Yes, that was the general
25 preference that I perceived to be indicated by

1 members of the public.

2 MR. GARBETT: Okay. With the particular
3 meetings that you attended on the northeast San
4 Jose transmission reinforcement project, they came
5 up with a document which they call a Final
6 Environmental Impact Report. One of the things
7 inside the cover that we see, with the state
8 clearing house, it says application number 99-09-
9 029. This affords legitimacy that it was
10 registered with the Governor's Office of Planning
11 and Research, at the state clearing house.

12 MS. WILLIS: I'm going to object. I'm
13 not sure which meeting you're talking about. This
14 wasn't as part of the CEC process. This document
15 is not one of our documents.

16 MR. GARBETT: I -- I understand that. I
17 am trying to make a comparison.

18 In the -- Mr. Walker, in the FSA I have
19 looked for an application number, with the
20 Governor's Office of Planning and Research, the
21 state clearing house, for an application number
22 under CEQA, as required in the state. I haven't
23 found one. Did you find any in your reading of
24 the FSA?

25 MR. WALKER: No.

1 MR. GARBETT: Okay.

2 HEARING OFFICER FAY: It's -- it's --
3 just take a minute. The process is a CEQA
4 equivalent process. It's -- it's a -- and
5 certified by the Secretary of Resources as such.
6 And so what the Commission does to satisfy the
7 requirements is that the decision is filed with
8 the state clearing house after rendered by the
9 Commission. But the -- the entire process is the
10 EIR equivalent, and that's been certified by the
11 Secretary of Resources.

12 It's -- it's not a detail that the panel
13 is testifying on, and if you need to know more
14 about that, you can contact the General Counsel's
15 office. But -- or the Public Advisor's office
16 would be the best spot. But this -- it's not a
17 productive avenue of questioning for this panel.

18 MR. GARBETT: Okay. Well, going back to
19 the FSA and the CEQA process that was attempting
20 to be accomplished in this document, there's -- is
21 there a no project alternative in your evaluations
22 of the sites?

23 PRESIDING MEMBER LAURIE: Mr. Garbett,
24 the -- the reason I'm taking time with this is you
25 know the answer to that. Don't ask that -- that

1 question. Of course there's a no project
2 alternative. You can ask him about the no project
3 alternative. But I don't want to take all of our
4 time answering questions that we all know the
5 answer to.

6 MR. GARBETT: Well, starting in these
7 tables on page 693 in the FSA, I did not -- or
8 after page 693. I did not notice any no project
9 alternatives as the various sites were basically
10 listed across the pages.

11 MR. WALKER: Well, a no project
12 alternative is not a site so, of course, it would
13 not be listed in the comparison of sites.

14 MR. GARBETT: Okay.

15 MS. WILLIS: Mr. Garbett, I'd refer you
16 to page 759 of the FSA.

17 MR. GARBETT: 759.

18 MS. WILLIS: There's a complete
19 discussion of the no project alternative.

20 MR. GARBETT: Okay. Mr. Walker, in your
21 evaluation, did you do anything on the no project
22 alternative?

23 MR. WALKER: I did some of the work.

24 Yes.

25 MR. GARBETT: Okay. In -- or there was

1 some testimony yesterday regarding the particular
2 change in your documentation that was done, let's
3 call it an administrative cleaning. Is that -- is
4 that true?

5 MR. WALKER: I wouldn't characterize it
6 that way.

7 MR. GARBETT: Okay. It's characterized
8 by many as an administrative cleaning. But in any
9 case, this was just a normal, what you might say a
10 second person double checking or other staff
11 people checking each other's work, including
12 supervisors and/or legal counsels. Is that
13 correct?

14 MR. WALKER: I wouldn't characterize it
15 as a checking, so much. Yes, there is checking
16 for accuracy, but there is more than that.
17 There's more review of the particular points made
18 and the particular way they're expressed. And so
19 it's not just checking.

20 MR. GARBETT: Was there an embodiment
21 during this process, at one point in time you had
22 a PSA out which was a particular complete volume
23 that was publicly circulated, but in between the
24 FSA, was there a draft FSA circulated internally?

25 MR. WALKER: Not as an entire document,

1 but there were sections.

2 MR. GARBETT: Okay.

3 MR. WALKER: That's what's typically
4 done, is Staff will reconsider what it wrote in
5 the Preliminary Assessment, based on any
6 additional information, and further review and
7 analysis. And then, if appropriate, they will
8 revise the section and send it out for review.

9 MR. GARBETT: Okay. In these cases, at
10 each time you had an incomplete document, you did
11 not have a particular meeting, for instance, of
12 more than three people. It wasn't publicly
13 noticed at any time, did you?

14 MS. WILLIS: I'm --

15 HEARING OFFICER FAY: That's irrelevant.
16 There's no requirement that that be done.

17 MR. GARBETT: Okay.

18 HEARING OFFICER FAY: That's irrelevant.

19 MS. WILLIS: He's talking about a Staff
20 review.

21 MR. GARBETT: We're trying to get at
22 just is there a, quote, documents that would be
23 what you might call in a finished form that might
24 be obtainable --

25 PRESIDING MEMBER LAURIE: Well, sir,

1 we're not going to use this opportunity to go on a
2 fishing expedition.

3 MR. GARBETT: Well --

4 PRESIDING MEMBER LAURIE: His testimony
5 is his testimony. Cross examine on that
6 testimony.

7 MR. GARBETT: I was pulling my line out
8 of the water at that last one. If you can
9 understand that. It had been fished out before.
10 What happens is we didn't get a bite, and I wanted
11 to make sure.

12 HEARING OFFICER FAY: Well, move ahead.
13 We're going to hold lunch until you're finished
14 with your questions, so please be as efficient as
15 you can.

16 MR. GARBETT: Okay. I just have a few
17 questions, I guess, under the -- probably be
18 addressed, you might say, under override
19 considerations regarding the CEQA process, and
20 that -- I guess that's an appropriate time to do
21 it.

22 HEARING OFFICER FAY: In terms of
23 alternatives.

24 MR. GARBETT: Yes. And with
25 alternatives, I have basically concluded my

1 questions. Thank you.

2 HEARING OFFICER FAY: All right. Okay.

3 So at this time we're going to break for lunch. I
4 understand that there's food in the other room, as
5 we've done before. And we'll return at 1:00
6 o'clock.

7 (Thereupon the luncheon recess was
8 taken.)

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1 AFTERNOON SESSION

2 HEARING OFFICER FAY: Your cross
3 examination.

4 MS. DENT: Okay. I think I'll wait for
5 Mr. Walker to sit down.

6 Okay. Thank you. I'm -- I'll let any
7 of the panel members answer my questions, but I
8 think they're mainly going to go to you, Mr.
9 Walker.

10 CROSS EXAMINATION

11 BY MS. DENT:

12 Q First of all, I want to make sure that I
13 understand and am capturing the alternatives
14 analysis. And it looks -- it appeared to me that
15 you had identified an environmentally superior
16 alternative. You're familiar with that term under
17 CEQA.

18 A I'm familiar with the term.

19 Q That you had identified, I believe, four
20 environmentally superior alternatives, Sites 1
21 through 4 were identified as environmentally
22 superior.

23 A That term, that actual wording doesn't
24 appear in the Final Staff Assessment. There is --
25 there were found -- four sites were found to avoid

1 one or more significant impacts of the proposed
2 project, all 1, 2, 3 and 4. And Sites 3 and 4
3 were found to avoid all the potential significant
4 impacts of the proposed project, and Staff didn't
5 expect them to cause any significant impact. So
6 they were the two best sites, environmentally.

7 Q In the Preliminary Staff Assessment,
8 though, the term environmentally superior
9 alternatives is used to describe all four;
10 correct?

11 A Three and four.

12 Q Three and four --

13 A Yes.

14 Q -- as well. And I believe was the term
15 environmentally preferable used to describe Sites
16 1 and 2 in the Preliminary Staff Assessment?

17 A Let me check the wording.

18 (Inaudible asides.)

19 PRESIDING MEMBER LAURIE: Ms. Dent, was
20 your question PSA or FSA?

21 MS. DENT: My question is on the PSA.

22 PRESIDING MEMBER LAURIE: Okay. Thank
23 you.

24 MR. WALKER: Yeah, that's a summary
25 paragraph in the beginning of the PSA, it says, at

1 that point, several alternatives were found to be
2 environmentally preferable at that time. It
3 included the no project alternative, a smaller
4 power plant, and Alternatives 1, 2, 3 and 4. And
5 then it Sites 3 and 4 were found to be the
6 environmentally superior alternatives.

7 BY MS. DENT:

8 Q And is that still your opinion, in terms
9 of environmental superiority and environmental
10 preferability of the four sites, Alts 1 through 4?

11 A Well, I still find that those four sites
12 are environmentally preferable to the proposed
13 project.

14 Q And is it still your testimony that 3
15 and 4 are environmentally superior to the proposed
16 project?

17 A I think that that wording was changed in
18 the FSA because of the particular legal
19 connotation to the word "superior", and whether
20 that has to be determined.

21 Q Well, I'm asking for your opinion.

22 A Oh, okay. Yes.

23 Q And, in fact, the -- the site was also,
24 and I think this probably goes to Mr. Mackin,
25 looking at the Table 2 on the comparative local

1 system effects for the four sites versus Metcalf -
2 - or the six sites, I'm sorry, versus Metcalf
3 Energy Center, I'm coining a phrase, but it
4 appears that the Alts 1 through 4 are electrically
5 superior, as well. They seem to, on your chart,
6 rate as better in every aspect on your chart than
7 Metcalf Energy Center. Is that accurate?

8 A I guess what I'd have to say is that
9 they're, as indicated on the table, they're
10 somewhat better, because I'm not sure what the
11 word "superior", you know, how that would be taken
12 in this process. I would hesitate to say superior
13 for --

14 Q I can --

15 A -- projects, for those sites.

16 Q I can appreciate that. Now, if I
17 understand, going back to just basic CEQA, Mr.
18 Walker, is it your testimony, then, that you
19 evaluated the six sites, Alts 1 through 6, and
20 the no project alternative, fully as alternatives
21 pursuant to CEQA?

22 A Fully, in terms of what's required for
23 an alternatives analysis. Not for an AFC level of
24 detail.

25 Q For an alternatives analysis under CEQA?

1 A Yes.

2 Q The six sites, plus the no project
3 alternative.

4 A Yes.

5 Q And you applied what are known as the
6 CEQA screening criteria to screen out other
7 alternatives to the project; correct?

8 A Yes, I did.

9 Q Okay. And I believe the screening
10 criteria are indicated on page 695 of your
11 testimony; correct? I think it's at the top of
12 the page, the second paragraph.

13 A No, those aren't the actual criteria.
14 That's what the CEQA and the regulations discuss,
15 but the -- that's not the screening criteria per
16 se.

17 Q Okay. Why don't you point me to where
18 you think the screening criteria are, then, in
19 your testimony.

20 A They're mentioned in detail on how the
21 sites compared to the criteria, the six sites,
22 starting on page 707.

23 Q Well, now, that's going back, though, to
24 the sites that you did evaluate. I'm talking
25 about the sites that you screened out.

1 A Oh, okay.

2 Q I'm not talking about the sites that you
3 evaluated. I'm --

4 A All right.

5 Q -- talking about the sites you screened
6 out.

7 A The sites that I screened out are
8 discussed in Appendix A.

9 Q I understand they are. I'm talking
10 about -- I'm talking about how you screened those
11 sites out. The criteria you used to decide to
12 eliminate those sites from full alternatives
13 analysis.

14 A Okay.

15 Q And if I understand your testimony on
16 page 695, you would consider under CEQA that you
17 needed to do a full alternatives analysis on site
18 -- on alternatives, not sites, but on alternatives
19 that could feasibly obtain most of the basic
20 objectives of the project, and on -- on
21 alternatives, not just sites, but alternatives
22 that would avoid or substantially lessen any of
23 the significant impacts of the project.

24 A One or more.

25 MR. RATLIFF: Objection. I don't

1 believe his testimony is that he would do a full
2 CEQA analysis on any alternative.

3 MS. DENT: I --

4 MR. RATLIFF: I think he testified that
5 he would do a screening level analysis for
6 alternatives. Is that correct?

7 MS. DENT: I'll restate my question for
8 you.

9 BY MS. DENT:

10 Q My question for you is your expert
11 opinion on how you select the alternatives for
12 which you need to do the full CEQA analysis.

13 A Right.

14 Q How you do that first level of
15 screening, not going to look any further, these re
16 on the side of the table I'm not going to look at.

17 A Okay.

18 Q And you screen out, according to this
19 language on page 695; correct?

20 A It's actually on page 700. That's where
21 it says -- that's alternative site identification
22 process.

23 Q Well, now, that's a site identification
24 process.

25 A That's the --

1 Q I'm not talking about sites. I'm
2 talking about alternatives. There are
3 alternatives that are not --

4 A That's true.

5 Q -- site based, are there not?

6 A That's true. Yes.

7 Q Okay. So --

8 A And the result -- yes, those were the
9 criteria, as you mentioned before, about avoiding
10 or potentially reducing one or more of the
11 impacts, significant impacts, and basically
12 accomplishing most of the basic project
13 objectives. And the -- there is a -- also a
14 chart.

15 Q There is. There's a table.

16 A A table, that shows why each of the
17 alternatives did not satisfy the screening
18 criteria.

19 Q Well, you can tell what I'm going to
20 spend my time on now.

21 A It's in Table 1.

22 Q I see that table. So now I want to ask
23 you just a little -- a quick question about your
24 understanding of the term, an alternative that
25 could feasibly obtain most of the basic objectives

1 of the project.

2 You've indicated that the basic
3 objectives of the project are -- I think it's on
4 two places in your testimony, page 693 and page
5 696. The primary objectives for the project. You
6 -- so call these the Applicant's primary
7 objectives. I'm assuming you accepted those as
8 the primary objectives of the project.

9 A We accepted these. They had other
10 objectives that we did not accept.

11 Q But these are the ones you used?

12 A Yes.

13 Q Then online by the summer peak of 2002,
14 and I understand that that's been, I guess,
15 amended, if you will, through this process, to as
16 soon as possible?

17 A Yes.

18 Q Next, providing the San Francisco Bay
19 Area electric grid reliability benefits.

20 A Yes.

21 Q And next, mitigating transmission
22 congestion into the area.

23 A Yes.

24 Q And so now, is your testimony, then,
25 that you applied -- you looked at whether or not

1 all of the alternatives that are listed on page
2 698 of your testimony, and you looked at whether
3 or not they would achieve those three project
4 objectives we've just stated?

5 A No, because those weren't the only
6 screening criteria.

7 Q But you would at least, first you would
8 have to apply those screening criteria, would you
9 not?

10 A I wouldn't have to provide -- evaluate
11 all the objectives. If they failed some other
12 screening criteria, there's no point in doing
13 that.

14 Q Okay. So the other screening criteria,
15 again, going back to your testimony, is whether
16 you avoid or substantially lessen the significant
17 effects of the project. So if one of the
18 alternatives that you screened out did not avoid
19 or substantially lessen the significant effects of
20 the project, you would screen it out on that basis
21 alone. Is that your testimony?

22 A If it did not, that -- that would -- it
23 would not qualify.

24 Q Right. Well, let's -- let's run through
25 them, using your table, then, and comparing the

1 CEQA screening analysis to them.

2 Now --

3 A Well -- okay.

4 Q Let's look at demand side management.

5 That's the first one. I'm not going to do all of
6 them.

7 A Okay.

8 Q Just so that you people don't think I'm
9 going to take forever here. Let's look at demand
10 side management. Your definition of demand side
11 management in your testimony was conservation.
12 You indicated that -- I believe in the PSA you
13 indicated that you didn't think you could consider
14 demand side management because it was prohibited
15 under Warren-Alquist as a conservation program.
16 Is that accurate?

17 A Yes.

18 Q Well, not all demand side management is
19 conservation, is it?

20 A No.

21 Q Some demand side management, like real
22 time monitoring, is not -- or, metering, is not
23 conservation, it's shifting loads to other
24 timeframes.

25 A Depends on how you define conservation.

1 Q Well, you just said that not all demand
2 side management was conservation. That -- that's
3 a form that is not, isn't it.

4 A Right. Right.

5 Q And there are other forms of demand side
6 management that are not conservation.

7 A Yes.

8 Q And can you give us some of those other
9 forms, then, that are not conservation?

10 A Are you looking at Appendix A, or --
11 where are you looking?

12 Q I wasn't looking at Appendix A, because
13 I didn't really see that in Appendix A. But --

14 A Okay.

15 Q -- in terms of demand side management, I
16 didn't see anything in Appendix A. I didn't see
17 anything in any of it, except that demand side
18 management was conservation.

19 A So you're asking me if there are other
20 forms of conservation?

21 Q No. You just testified that there are
22 forms of demand side management that are not
23 considered conservation. And you just testified
24 that one of those forms of demand side management
25 that is not conservation is real time metering.

1 You said you thought there were others. I'm
2 asking you if you could identify the others.

3 A Okay. No, I cannot.

4 Q Thank you.

5 MR. RATLIFF: Could I just ask the
6 witness, did you, in fact, testify as Ms. --

7 MS. DENT: The record will speak for
8 itself as to what he testified to, and if Mr.
9 Ratliff wants to take his witness on --

10 MR. RATLIFF: I --

11 MS. DENT: -- recross, he can -- on
12 cross -- on redirect --

13 MR. RATLIFF: -- I object to counsel
14 taking a great deal of time telling the Applicant
15 constantly what his testimony was. Can you just
16 ask questions, please.

17 MS. DENT: Sure.

18 HEARING OFFICER FAY: Is there an
19 objection, Mr. Ratliff?

20 MR. RATLIFF: Yes, there is. I have an
21 objection to the continual characterization and
22 mischaracterization of the witness' testimony.

23 HEARING OFFICER FAY: Well, as Ms. Dent
24 said, the record speaks for itself, and Mr.
25 Walker's testimony is in the record.

1 MR. RATLIFF: Well, if you ask --

2 (Parties speaking simultaneously.)

3 HEARING OFFICER FAY: If you can limit
4 it just to the question --

5 MR. RATLIFF: -- a whole paragraph of
6 stating what the -- the testimony is, and then you
7 ask a question, which is related to that, and then
8 suggest that that's acquiescence in your statement
9 as your testimony, I think that's inappropriate.

10 MS. DENT: Don't worry about it. I'm --

11 HEARING OFFICER FAY: Okay. I think if
12 you can limit your questions to just enough
13 reference so that he understands what the question
14 is, that will --

15 MS. DENT: I will certainly do that.
16 I'm trying to go through this as quickly as I can.

17 BY MS. DENT:

18 Q Now, let's go back to demand side
19 management. Let's talk about real time metering.
20 You indicate that the reason that you screened it
21 out is that it's already factored in to electrical
22 system planning.

23 A Yes.

24 Q Now, in the PSA, the way that you
25 indicate that you've already factored in

1 conservation into the electrical system planning
2 is through the integrated needs assessment. And
3 I'm looking at page 483 of your PSA.

4 HEARING OFFICER FAY: Is that a
5 question?

6 MS. DENT: I'm just -- I'm asking him to
7 look at page -- will you please look at page 483
8 of the PSA.

9 HEARING OFFICER FAY: Well, again,
10 you've characterized his testimony, and I don't
11 have his response, and I want to be sure that he's
12 comfortable the characterization.

13 MS. DENT: I'll state it as a question.

14 BY MS. DENT:

15 Q Does page 483 of your PSA say that the
16 Warren-Alquist Act prohibits the agency in its
17 alternatives analysis from considering
18 conservation programs to be alternatives to a
19 proposed generation project. This is because the
20 approximate effect of such programs has already
21 been accounted for in the agency's integrated need
22 -- assessment of need. Is that what your -- the
23 PSA says?

24 A That's what it --

25 MR. RATLIFF: Objection. I'm going to

1 object and make a standing objection to further
2 cross examination of the PSA. The PSA is not the
3 testimony that is before the Commission today.
4 It's the FSA. I don't even have a PSA with me.
5 That was a draft document.

6 HEARING OFFICER FAY: Okay. That --
7 that objection is sustained. You may question him
8 about how he developed his testimony, but the
9 testimony is the FSA. That's what is in the
10 record.

11 MS. DENT: I believe I have --

12 HEARING OFFICER FAY: The PSA will not
13 be entered in --

14 MS. DENT: -- I have the right to
15 impeach the witness. Meaning no -- no disrespect
16 to the witness, but I have the right to impeach
17 the witness based on prior writings. And I will
18 continue to refer to the PSA. I will try to make
19 it relevant and useful.

20 HEARING OFFICER FAY: Keep in mind that
21 that is not part of the evidentiary record. That
22 is essentially one of his work papers.

23 PRESIDING MEMBER LAURIE: Mr. Fay, we're
24 going to take a two minute time out. I'm going to
25 have a conference with my Hearing Officer.

1 (Off the record.)

2 HEARING OFFICER FAY: Mr. Ratliff, I
3 just want to state for the record that while we've
4 made clear the PSA is not in evidence, counsel has
5 a certain right -- certainly the right to explore
6 how Staff reached its conclusion, and if she wants
7 to challenge how they did that, that is her right
8 to develop through cross examination.

9 So we'll let -- let her pursue this.

10 MR. RATLIFF: Could I -- could I
11 inquire. Respecting that right, could I merely
12 inquire as to whether we could have some idea as
13 to where -- what the direction of this is, so we
14 can know if it --

15 HEARING OFFICER FAY: Yeah, I think
16 that's fair. What --

17 MR. RATLIFF: -- with his actual
18 testimony. Because I would merely note that
19 demand side and conservation measures are in fact
20 testified to in the FSA, despite the -- the
21 passage that is being referred to in the PSA.

22 So I -- I certainly don't see what kind
23 of point is being developed here. And we're
24 sitting on hard metal chairs, and it's in the
25 afternoon. I would just like to know, you know,

1 if there is something -- some objective to this --

2 HEARING OFFICER FAY: Yeah. What --

3 what's the point --

4 MR. RATLIFF: -- examination.

5 HEARING OFFICER FAY: -- of your

6 questioning?

7 MS. DENT: It would be the -- I will

8 certainly try to confine myself to the Final Staff

9 Assessment in my questions, to the extent that I

10 can.

11 HEARING OFFICER FAY: Okay.

12 MS. DENT: The Preliminary Staff

13 Assessment does have, in some cases, more material

14 in it. I understand that. Unless I bring it out

15 here today and discuss it with the witness, it is

16 not part of the record. It is my objective to try

17 to get through this as quickly as possible. I've

18 sat here for every bit as long as Mr. Ratliff has,

19 and I really want to get on with it. So I will

20 certainly try to confine myself to the FSA, and

21 only where I think that there is information

22 missing from the FSA that appears to be in the PSA

23 will I ask the witness questions --

24 HEARING OFFICER FAY: Okay.

25 MS. DENT: -- about the PSA.

1 Thank you.

2 BY MS. DENT:

3 Q Going back to the demand side
4 management, and I'm looking now at the FSA, page
5 698. And you indicate that the only reason that
6 you -- the only reason you've given for screening
7 that out was that it was already factored into
8 electrical system planning. And my understanding
9 is that that's kind of a summary of what you said
10 in your FSA. There's not a more explicit
11 indication in the FSA of what you mean by already
12 factored into electrical system planning, is
13 there?

14 A Yes, there is.

15 Q Okay. Thank you. Good.

16 A That's in Appendix A.

17 Q And that's on demand side management?

18 A Yes.

19 Q Okay. Thank you very much. And again,
20 those are energy efficiency and conservation
21 programs; correct?

22 A Yes. Those -- all three of those were
23 essentially synonymous. I misspoke earlier.
24 Energy efficiency, conservation, and demand side
25 management are essentially synonymous programs to

1 reduce consumption -- energy consumption.

2 Q And is it your understanding that the
3 section of the Public Resources Code that you cite
4 here in Appendix A of your testimony related to
5 not needing to consider conservation as an
6 alternative, is a section of Warren-Alquist that
7 also speaks to the electrical system planning that
8 you're referencing on page 698?

9 A I think that Mr. Mackin should speak to
10 that more than myself, so --

11 MR. MACKIN: I'm sorry. What was the
12 question?

13 MS. DENT: Is the electrical system
14 planning that is referenced in the Public
15 Resources Code that is on page 1 of Appendix A,
16 25305, isn't that the needs assessment that was
17 referred to in the PSA?

18 MR. MACKIN: Yeah, I -- I really can't
19 address that. But what I can address is that when
20 we did the electrical system effects analysis for
21 the alternatives, we incorporated things like real
22 time pricing, demand side management, and other
23 effects into the low growth projections that were
24 used in the local system effects analysis. So I
25 guess Table 1 is -- is absolutely correct. It's

1 incorporated into the system models we used.

2 MS. DENT: So --

3 MR. MACKIN: It's already there.

4 MS. DENT: -- the reference, then, in
5 Table 1 to the electrical system planning is the
6 electrical system planning -- planning for this
7 particular project? Is that what Table 1 means,
8 or is it some bigger -- I'm really trying to
9 understand.

10 MR. MACKIN: Yeah. I can't say what
11 Table 1 means, but I can tell you what was done
12 for the local system effects.

13 MS. DENT: I appreciate the answer.

14 So, Mr. Walker, back to you.

15 BY MS. DENT:

16 Q What do you mean by already factored
17 into electrical system planning, as used in Table
18 1?

19 A In the sense that the section of the
20 Public Resources Code means that in 25305, in
21 saying that it should not be considered as an
22 alternate to a proposed generation project.

23 Q Okay. We're going to move on. I'm
24 going to move on to three of -- one, two, three --
25 four of the alternative sites that were screened

1 out. Applicant's alternative Site C, and Gilroy
2 is the site identified by others, the Trumble
3 Substation site, and the Scott Substation sites,
4 all, again, as identified on Table 1 of your
5 alternatives.

6 Now, for all of those sites, you
7 indicate as one of the reasons for screening them
8 out that there is insufficient land available.
9 Now, if I understood correctly, in your FSA and in
10 your Appendix A testimony, you considered that a
11 smaller site -- a smaller size project, I
12 shouldn't say a smaller site -- a smaller project
13 was a superior alternative, an environmentally
14 superior alternative to the project.

15 Is that correct?

16 A Yes.

17 Q Now, did you consider a smaller project
18 to have been screened out, or did you consider a
19 smaller project to have been subject to a full
20 CEQA analysis as performed on the six alternative
21 sites?

22 A Screened out, because it would not, you
23 know, qualify as an alternative.

24 Q And now, going back, then, to the
25 screening criteria, I want to run through why it

1 would be screened out. You've just said that it
2 was environmentally superior. So it wasn't
3 screened out for environmental reasons. Correct?

4 A Correct.

5 Q It would've been screened out because it
6 didn't meet most of the project objectives.
7 That's the only reason you would -- could screen
8 it out.

9 A Yes.

10 Q Okay. So most of the project
11 objectives, when you have three project
12 objectives, would be two out of three?

13 A Yes.

14 Q So let's go with a smaller site. A
15 smaller project. A smaller project being online
16 as soon as possible, that's debatable because it
17 hasn't been filed yet, I guess. Correct?

18 A Correct.

19 Q A smaller project would provide some
20 electric grid reliability benefits. No analysis
21 was performed to know how much.

22 HEARING OFFICER FAY: Is that a
23 question?

24 MS. DENT: Yeah, that's a question. I'm
25 sorry. You didn't perform any kind of grid

1 reliability benefit analysis on a smaller project,
2 did you?

3 MR. MACKIN: Yeah. Well, no -- no
4 analysis was done, but just from experience, it's
5 -- it's easy to say that the benefits would be
6 smaller for a smaller project.

7 MS. DENT: But it would provide some
8 benefits.

9 MR. MACKIN: It would provide some,
10 depending on location.

11 MS. DENT: Okay. And in terms of
12 mitigating transmission congestion in the area, it
13 would also mitigate transmission congestion in the
14 area depending on where it was sited.

15 MR. MACKIN: Not necessarily. Mitigate
16 means eliminate. And it wouldn't necessarily
17 eliminate it. It might reduce it, but that's not
18 mitigating.

19 MS. DENT: So your -- your definition of
20 the word mitigate is eliminate?

21 MR. MACKIN: That's my definition.

22 MS. DENT: And so it's your opinion,
23 then, that a smaller project, regardless of where
24 it was located, would not mitigate transmission
25 congestion into the area?

1 MR. MACKIN: No. My -- I haven't done
2 an analysis, so I can't really say. I said my --
3 my estimation is that it would not -- it would
4 not be nearly as effective as a larger project,
5 and it really depends on the -- on the location
6 and on doing an analysis. So to say it would or
7 it wouldn't, at this point we really can't say.

8 MS. DENT: Thank you. I appreciate that
9 clarification.

10 BY MS. DENT:

11 Q So now, going back to your screening out
12 of the alternative sites, Mr. Walker.

13 A Yes.

14 Q A smaller project by definition would
15 take less land, wouldn't it?

16 A Well, it certainly can take less, and it
17 has the ability to take less land.

18 Q So did you look at finding a smaller
19 project on Applicant's Alternative Site C, the
20 Gilroy site, the Trumble Substation site, or the
21 Scott Substation site?

22 A No, I didn't.

23 Q The last area of screened out
24 alternatives that I want to ask about is the
25 distributed generation alternative.

1 A Yes.

2 Q And your chart on page 698 indicates
3 that the reasons for screening it out were as
4 you've stated there. And I want to compare those
5 reasons for screening it out to the actual
6 screening criteria language, and run through them
7 again so that I understand how distributed
8 generation didn't get full CEQA analysis.

9 Is it your testimony that distributed
10 generation would not achieve two out of three of
11 the objectives of the project?

12 A There -- the discussion of alternatives
13 that didn't satisfy the screening criteria,
14 including distributed generation, is in Appendix
15 A.

16 Q Oh, I understand that. I'm asking
17 specifically -- I'll run through it.

18 A Okay.

19 Q Distributed generation could be online
20 much faster than a 600 megawatt major power plant,
21 couldn't it. So it would definitely meet the
22 being online soon.

23 A Depending on the types and the
24 availability of the technology, it could be.

25 Q And the same thing with providing

1 electric grid reliability benefits. Some types of
2 distributed generation would provide electric grid
3 reliability benefits and some would not, and it
4 would be different levels depending on the
5 selected type of distributed generation.

6 A Yes.

7 Q And the same thing with mitigating
8 transmission congestion in the area. Some -- some
9 types would mitigate transmission congestion into
10 the area, and some types would not.

11 A Again, I think Mr. Mackin could speak to
12 that.

13 MR. MACKIN: For mitigating congestion
14 into the area, it really depends on where it is
15 and how large it is. That -- that's the bottom
16 line.

17 MS. DENT: Right.

18 BY MS. DENT:

19 Q And the same thing with the
20 environmental impacts. The distributed generation
21 is indicated as some types could cause significant
22 environmental impacts. Of course, some types of
23 distributed generation cause very few
24 environmental impacts. Isn't that true, Mr.
25 Walker?

1 A Yes.

2 Q Now, your very first sort of reason for
3 screening out distributed generation was
4 technological market and regulatory barriers, and
5 the infeasibility is the second. Is it your
6 testimony that distributed generation is per se
7 infeasible, or that technological market and
8 regulatory barriers exist such that distributed
9 generation can't be implemented? Is that your
10 testimony?

11 A Not that they can't be, but those are
12 barriers. They are barriers.

13 Q Well, now, I -- I went on the Energy
14 Commission's Web site. This is just -- in the
15 last year, I think, in the year 2000, I saw eight
16 Energy Commission reports on distributed
17 generation. And you're aware of those. Is that
18 true?

19 A I don't know how many there were.

20 Q But do you know that the Energy
21 Commission has expended a considerable amount of
22 resources looking at, studying, and reporting on
23 distributed generation?

24 A Yes.

25 Q Including a recent report prepared in

1 December on how to streamline permitting and CEQA
2 review for distributed generation. Are you aware
3 of that?

4 A No.

5 Q So that's done by some other office --

6 A Yes.

7 Q -- other than yours.

8 MS. DENT: Anybody else here aware of
9 the Energy Commission December 2000 document on
10 distributed generation?

11 MR. RATLIFF: If I raise my hand, will
12 you cross examine me?

13 MS. DENT: I don't think so.

14 MR. MACKIN: No.

15 Any of the other panel members?

16 MR. MACKIN: I'm not.

17 BY MS. DENT:

18 Q Okay. So, but you are aware that the
19 Energy Commission has spent a considerable amount
20 of time looking at it.

21 A Yes.

22 Q The Energy Commission wouldn't spend a
23 considerable amount of time and public money
24 looking at an alternative that is completely
25 infeasible, would they?

1 (Laughter.)

2 MS. DENT: Have you been -- have they
3 been wasting our money?

4 MR. MACKIN: My understanding is that
5 the Energy Commission is expending resources in
6 regard to distributed generation in order to make
7 it more -- to reduce the barriers and make it
8 easier for it to be implemented. So if some forms
9 are not economic at this time, they're not a
10 feasible alternative to the project, because they
11 won't be built. And other forms, if they cause
12 significant environmental impacts, don't meet the
13 screening criteria.

14 BY MS. DENT:

15 Q Well, let me ask you about the
16 California Public Utilities Commission. Have they
17 been spending a considerable amount of time on
18 investigating distributed generation also?

19 A I don't know.

20 MS. DENT: Well, I'm going to read you -
21 - I don't know what the -- what the Commission's
22 rules are on taking official notice of the
23 documents of other agencies. I'm assuming that
24 you can take and will take official notice of your
25 own documents on distributed generation, and I

1 would ask that that be done for the record.

2 HEARING OFFICER FAY: Well, you'll have
3 to identify the documents.

4 MS. DENT: Well, okay. The one that I
5 have here is entitled Distributed Generation, CEQA
6 Review and Permit Streamlining. It's dated
7 December 2000. Your document number is P700 00
8 019.

9 HEARING OFFICER FAY: Right. I see no
10 problem with taking administrative notice of that.

11 MR. RATLIFF: Staff would also support
12 that request, because we think that report
13 illustrates the very regulatory barriers and
14 addresses those barriers that Mr. Walker refers to
15 in his testimony.

16 HEARING OFFICER FAY: Okay. Were there
17 other documents, as well?

18 MS. DENT: I'm going to look and see if
19 I think any of these others should be.

20 I'm not going to ask for any others at
21 this time, on distributed generation.

22 BY MS. DENT:

23 Q I'm going to ask you now a question
24 about Public Utilities Commission. You indicated
25 that you weren't aware that the Public Utilities

1 Commission has been investigating activities that
2 would make distributed generation more feasible?

3 A That's correct.

4 Q So if there was a Public Utilities
5 Commission opinion issued in 1998 about
6 distributed generation, would you have taken a
7 look at that in terms of looking at the
8 feasibility of distributed generation?

9 MR. RATLIFF: Could you describe the
10 nature of the document you're talking about?

11 MS. DENT: Sure. This is an opinion of
12 the Public Utilities Commission filed December
13 17th, 1998, in the rulemaking proceeding 99-10-
14 065, regarding distributed generation and electric
15 distribution competition. And I don't know what
16 your rules are about taking official notice of the
17 actions of other state agencies. But I would ask
18 that official notice be taken of the rulemaking
19 proceeding by the CPUC on distributed generation,
20 as well.

21 HEARING OFFICER FAY: Of the entire
22 proceeding? We can take notice of a document.

23 MS. DENT: You can take notice of the
24 opinion. It'll probably put most of that in
25 front --

1 HEARING OFFICER FAY: Yes, we can
2 administrative notice of the decision. The
3 opinion.

4 MS. DENT: The last document that I want
5 to go to and ask you if you're aware of is a
6 document dated January 2000, from the Office of
7 Ratepayer Advocates at the California Public
8 Utilities Commission, entitled Public Financing
9 for Self Generation Costs and Benefits of Onsite
10 Photovoltaic Fuel Cell and Micro-turbine Systems.

11 Were you aware that the Office of
12 Ratepayer Advocate was investigating cost -- a
13 cost benefit analysis for distributed generation
14 systems, including photovoltaic, fuel cell and
15 micro-turbine systems?

16 MR. WALKER: No.

17 MS. DENT: So if I were to -- I'm going
18 to read you -- I'm going to read you a statement
19 from the opinion regarding distributed generation.

20 The emergence of distributed generation
21 and DER as viable options is likely to change the
22 way end users obtain electricity and the way
23 generation occurs. The ability to generate one's
24 own electricity is a continuation of customer
25 choice as well as a competitive alternative to

1 bundled distribution service and direct access.

2 In addition, IOUs -- that's Industrial
3 -- that's Industrial and Utilities -- may be able
4 to use distributed generation to meet distribution
5 system needs.

6 Would you agree with me, Mr. Walker,
7 that the viability or feasibility of distributed
8 generation as an alternative, partial, perhaps, to
9 a large scale power plant is at least considered
10 to be a viable alternative by some experts in the
11 field?

12 MR. RATLIFF: Can you identify which
13 experts you're talking about?

14 MS. DENT: Well, let's talk about the
15 folks at the Public Utilities Commission and the
16 Office of Ratepayer Advocates.

17 MR. RATLIFF: And you're saying that
18 those experts have said that -- you're trying to
19 get him to agree that there are these experts that
20 you're referring to say that this is a viable
21 option today, to central power plants?

22 MS. DENT: I'm asking him a question.

23 MR. RATLIFF: I want to make sure I
24 understand what the question is, though.

25 MS. DENT: I'll state it again.

1 MR. RATLIFF: Okay.

2 MS. DENT: I'll state it again.

3 Would you agree that there are experts
4 in the field of electricity that believe that
5 distributed generation is a viable alternative to
6 large scale power plants?

7 MR. RATLIFF: I object again, because I
8 don't know what experts she's referring to, we
9 haven't got these documents that she seems to
10 think suggest that there are such experts.

11 HEARING OFFICER FAY: We -- we don't --
12 you have not established what the experts have
13 concluded, and it's -- it's not at all clear that
14 Mr. Walker is -- is knowledgeable in that area,
15 has worked in that area.

16 MS. DENT: Well, I'll ask any of the
17 members of the panel, then, if they are aware that
18 there is -- and perhaps Mr. Mackin would be the
19 best person to ask. I don't know. I'll ask any
20 of the -- I'll ask any of the members of the panel
21 if they're aware that there is a wide variety of
22 expert opinion among energy experts about the
23 viability of distributed generation. I'll say it
24 that way. Are you all aware that that's an issue?

25 PRESIDING MEMBER LAURIE: Let -- let me

1 again clarify the question.

2 Are you referring generically to the
3 question of alternative to bulk power, or are you
4 referring more specifically to the viability of
5 distributed generation as an alternative to this
6 particular project?

7 MS. DENT: Well, we'll start with
8 distributed generation generally, because
9 distributed generation, a specific distributed
10 generation proposal wasn't considered as an
11 alternative to this particular project. We're
12 still at the screening level, where distributed
13 generation was screened out.

14 So I'm asking about distributed
15 generation generally, not a specific distributed
16 generation proposal, but distributed generation
17 generally. Does that help clarify my question?

18 MR. RATLIFF: I'm sorry. Could you just
19 ask it again, please, so that I know what the
20 question is.

21 MS. DENT: Sure. Would you -- are any
22 of the witnesses on the panel aware -- I won't say
23 whether or not, I won't say that -- of whether
24 there is a variety of expert opinion in -- among
25 experts in electricity about the viability of

1 distributed generation as an alternative to power
2 plants in general, not just Metcalf Energy Center.
3 Are you aware that that's -- there's a variety of
4 expert opinion out there on that issue?

5 MR. MACKIN: Well, personally, I'm aware
6 there's a variety of opinion. I don't know -- I'm
7 not aware of any expert opinion that says that
8 today distributed generation is a viable
9 alternative to central station generation. I -- I
10 would not consider it that.

11 MS. DENT: Well, let's follow up on
12 that. Distributed generation is going on in the
13 real world today, is it not?

14 MR. MACKIN: I'm not aware of very much.
15 Very little.

16 MS. DENT: So you're -- you're not aware
17 of any smaller -- you're not aware of individual
18 power plants that produce for their own use
19 onsite?

20 MR. MACKIN: I would call that self
21 generation. I wouldn't call it distributed
22 generation, and that's usually -- in a lot of
23 cases, the generation is actually larger than the
24 load.

25 MS. DENT: So I -- if I were to tell you

1 that distributed generation as used in both the
2 CEC distributed generation report and in the
3 Public Utilities Commission report, and in the
4 Office of Ratepayer Advocate report, that the term
5 distributed generation refers to both self
6 generation and small scale generators selling to
7 the grid. That's just not your understanding of
8 what the term distributed generation means?

9 MR. MACKIN: My understanding of
10 distributed generation is small generation
11 distributed throughout the grid, not -- not just
12 self generation. Now, if that's not the correct
13 definition, then maybe I need to change my answer.
14 But --

15 MS. DENT: Okay. Well, let's -- let me
16 then ask about -- let's go to self generation,
17 then. Let's go to self generation.

18 That wasn't looked at at all as an
19 alternative to the project, was it? I mean,
20 that's not even on your screening list.

21 MR. WALKER: No, it's not.

22 MS. DENT: So is it your understanding
23 that self generation as an alternative was on your
24 screening list as some form of distributed
25 generation, or just not considered at all?

1 MR. WALKER: I received this information
2 on distributed generation from other technical
3 staff members, so I don't have specific knowledge
4 about how self generation was defined, compared
5 to, you know, to distributed generation.

6 MS. DENT: So would Mr. Mackin have been
7 the one that you were relying on for that
8 definition of distributed generation?

9 MR. WALKER: No.

10 MS. DENT: Was it somebody else, Mr.
11 Walker?

12 MR. WALKER: Yes, it was other Staff
13 that were in another office.

14 MS. DENT: And you have no
15 understanding, the, yourself, and no one on the
16 panel, then, has an understanding about whether or
17 not self generation was actually even studied on
18 the -- at the screening level?

19 MR. WALKER: No, I do not.

20 MS. DENT: Well, I want to ask you some
21 questions, then, and I'll read just a section of
22 text from the report that I just indicated of --
23 from the Office of Ratepayer Advocates, Public
24 Financing for Self Generation Costs and Benefits
25 of Onsite Photovoltaic, Fuel Cell, and Micro-

1 turbine Systems. I'll ask the same consideration
2 be given this document. It's an official document
3 of the Office of Ratepayer Advocates of the Public
4 Utilities Commission, dated January 2000, and that
5 official notice be taken of the document.

6 HEARING OFFICER FAY: All right. And
7 that's -- that's a different one from the other
8 ORA document that you --

9 MS. DENT: The other document was
10 actually a Commission opinion. This document is
11 an ORA document.

12 HEARING OFFICER FAY: All right. Yes,
13 we'll take notice of that. And, Ms. Dent, you'll
14 provide copies of these to the Committee?

15 MS. DENT: I will. I don't have
16 complete copies because they take a long time to
17 print out, and I printed them out at home, and I
18 didn't have enough paper.

19 HEARING OFFICER FAY: Okay.

20 MS. DENT: But I will certainly
21 provide --

22 HEARING OFFICER FAY: We'll need copies
23 of all the documents.

24 MS. DENT: I will certainly do that.
25 And you can tell me how many you want.

1 MS. DENT: Now, there's a cost benefit
2 analysis in the Office of Ratepayer Advocate
3 document, comparing the cost of self generation
4 versus the cost of -- the avoided cost of
5 electricity purchases from central power plants,
6 for 160 megawatts of electric load. You really
7 just didn't look at that kind of analysis at all,
8 did you?

9 MR. WALKER: No.

10 MS. DENT: The last area of my -- the
11 last area of my -- your testimony, that I want to
12 go over, is -- goes back to alternative sites.

13 HEARING OFFICER FAY: About ten minutes
14 left.

15 MS. DENT: Okay. And it goes back again
16 to the question of a smaller power plant. And in
17 Appendix A, you indicate that a smaller plant
18 would be environmentally superior, and I think the
19 size that you indicate in Appendix A is 120 to 240
20 megawatts. Am I correct?

21 MR. WALKER: Excuse me, would you repeat
22 that?

23 MS. DENT: I think the site -- the
24 smaller power plant site that you're talking about
25 is -- in your Appendix A, is 120 to 240 megawatts;

1 correct?

2 MR. WALKER: Yes.

3 MS. DENT: Now, did you take a look at
4 not just smaller power plants, but power plants
5 that would run less frequently, what are called
6 peaking power plants. Did you consider that at
7 all?

8 MR. WALKER: No, we did not.

9 MS. DENT: And if I were to reference,
10 then, you to another Energy Commission document,
11 by Mr. Keese, Chairman Keese, to the Governor,
12 dated February 21st, 2000, on Potential Peaking
13 Power Plant Sites in California, did you -- have
14 you taken a look at this document at all?

15 PRESIDING MEMBER LAURIE: is that 2000
16 or 2001?

17 MS. DENT: 2001. I'm sorry.

18 MR. WALKER: Yes, I have.

19 MS. DENT: And there are in this
20 document I think maybe half a dozen sites that are
21 indicated as meeting screening criteria for a
22 peaking power plant in the Bay Area. Is that your
23 recollection?

24 MR. WALKER: I don't recall how many. I
25 recall there were some.

1 MS. DENT: Okay. One of the sites that
2 -- and again, I'll obviously ask you to take
3 official notice of this --

4 HEARING OFFICER FAY: Are you going to
5 tie in the relevance of this? It appears to me
6 that it's completely irrelevant. The peaking
7 plants address a different part of the power
8 demand band.

9 MS. DENT: Well, I'm going to address it
10 in just -- in fact, I'll do that part.

11 HEARING OFFICER FAY: Yeah, please do.

12 MS. DENT: Okay. Let's apply the
13 screening criteria to your -- to peaking plants,
14 okay? Let's go to avoid or substantially lessen
15 the significant effects of the project.

16 Well, since they'd operate less often,
17 they would certainly avoid and lessen air quality
18 impacts. Is that true?

19 MR. MACKIN: I would say no. Because
20 you still need the megawatts from somewhere. If
21 you don't get it from a new clean power plant,
22 you're going to get it from an old dirty power
23 plant.

24 MS. DENT: Well, now, we're talking
25 about peaking power plants being operated for less

1 time by peak, than a 24/7 350 day -- 350 day power
2 plant.

3 MR. MACKIN: Right. But those megawatts
4 that Metcalf would displace, those megawatts that
5 Metcalf would serve, if they're not being served
6 by the peakers, even assuming the peakers are the
7 same -- as clean at Metcalf, during the time the
8 peakers are not running, Metcalf might have been
9 running. And if Metcalf's not there, old dirty
10 power plants are running instead of Metcalf.

11 So I would say, just, you know, not
12 being a air quality expert, I would say that the
13 alternative of peakers is not as good, from an
14 environmental perspective, as Metcalf.

15 MS. DENT: From an air quality
16 perspective.

17 MR. MACKIN: From an air quality
18 perspective.

19 MS. DENT: So, of course, air quality
20 was not, I don't think, identified as a
21 significant unmitigable impact for Metcalf. At
22 least that was the testimony earlier. Visual was.
23 Well, a peaker plant located someplace other than
24 Metcalf might avoid the visual impacts of Metcalf.
25 I mean, unless you look at it where it's located,

1 you're not going to know whether it would avoid or
2 substantially lessen significant effects, are you?

3 MR. WALKER: You know, can I have one
4 question at a time? That's a long, complex
5 statement.

6 MS. DENT: Okay. I'll try it again.
7 I'm sorry. I'm trying to go quickly, because I
8 only have ten minutes.

9 A peaker plant, depending on where it
10 was located, might avoid or substantially lessen
11 the significant impacts that have -- you have
12 identified for Metcalf. Correct?

13 MR. WALKER: A particular peaker plant
14 could, keeping in mind that one, a 40 megawatt
15 peaker plant, is not equivalent to 600 megawatts
16 at Metcalf.

17 MS. DENT: Right. So then we want to go
18 to the other screening criteria, which is could it
19 be brought online sooner. Well, the peaker plants
20 that are being discussed, you would acknowledge,
21 are being discussed for being brought online
22 sooner than 2003, aren't they?

23 MR. WALKER: Yes.

24 MS. DENT: And the peaker plants that
25 are being talked about would provide electric grid

1 reliability benefits, wouldn't they?

2 MR. MACKIN: Which peaker plants, the
3 ones that are currently proposed? The ones that
4 like in response to the ISO RFB?

5 MS. DENT: Let's -- let's go -- let's go
6 and look at the February 2001 report to the
7 Governor.

8 MR. MACKIN: I don't have that. I've
9 never seen that.

10 MS. DENT: Well, Mr. Walker said he was
11 familiar with it.

12 MS. WILLIS: But we don't have that in
13 front of us. I mean, if we can get copies that
14 would be great.

15 MS. DENT: I'll just read you the ones
16 for the Bay Area. I mean, I didn't make extra
17 copies. I don't know what to say.

18 One is probably Metcalf Energy Center.
19 Existing power plant and substation sites. It
20 says it's proprietary SF Bay Area, the contact
21 person is Calpine, it's six 46 megawatt units.
22 The other is, again, proprietary, Calpine, SF Bay
23 Area, 46 megawatts.

24 Do you know where those -- do you know
25 where those sites are, Mr. Walker --

1 MR. WALKER: No.

2 MS. DENT: -- that are indicated as
3 existing power plant and substation sites?

4 MR. WALKER: No, I don't.

5 MS. DENT: Okay. So depending on where
6 they're located, they may or may not provide
7 electric grid reliability benefits.

8 MR. MACKIN: Yes. It depends on the
9 location.

10 MS. DENT: And the same thing with
11 mitigating transmission congestion.

12 MR. MACKIN: Yes.

13 MS. DENT: Okay. The next two appear to
14 me to be in the Bay Area, more or less, are the
15 Pittsburg Power Plant, and I don't think I would
16 consider Southern Delta to be in the Bay Area.
17 Are you familiar with the peaker that is -- has
18 been identified for the Pittsburg Power Plant?

19 MR. WALKER: I'm not familiar with the
20 peaker. I'm familiar -- I understand that one has
21 been identified in that report.

22 MS. DENT: And then there's one on here
23 identified as Gilroy Cogeneration.

24 MR. RATLIFF: Can I ask you what list
25 you're reading from?

1 MS. DENT: It's the -- the report to the
2 Governor from -- from Chairperson Keese, dated --

3 MR. HARRIS: Can I see that, too?
4 Because I'm confused as to whether those are just
5 a list of power plant sites or whether they're
6 proposed peakers. I think they're just lists of
7 existing power plants and substations.

8 MS. DENT: It's called potential peaker
9 power plant sites in California.

10 HEARING OFFICER FAY: Right. They're
11 potential sites.

12 MR. HARRIS: Okay. But they're not --
13 they're not applied for projects.

14 MS. DENT: No.

15 MR. HARRIS: Nobody's proposed the
16 project there, they just said there's an existing
17 substation somewhere in the --

18 MS. DENT: Well --

19 MR. HARRIS: That makes more sense.

20 MS. DENT: Some of them have had
21 applications, and some of them haven't.

22 MR. HARRIS: Are they indicated in the
23 document you have there?

24 MS. DENT: It is indicated in the
25 document.

1 MR. RATLIFF: Could I -- could I see
2 that document?

3 MS. DENT: Can I just finish? We've
4 only got ten minutes, and then you can take a look
5 at it --

6 HEARING OFFICER FAY: Let's -- let's let
7 her finish.

8 MS. DENT: -- all you want.

9 HEARING OFFICER FAY: But I hope before
10 you finish, just -- just for the sake of the time
11 you're using, that you tie in the relationship
12 between these peakers you're pursuing and the
13 project.

14 MS. DENT: I -- I --

15 HEARING OFFICER FAY: The proposed
16 project.

17 MS. DENT: -- I think I've done what I
18 -- I think I've done that -- I've done what I
19 wanted to do on the ones that I've just gone over.
20 The next one I'm going to do --

21 MR. HARRIS: Well, but -- can I -- I'm
22 sorry, but my point is that I need to see it
23 before you finish. After you finish it's not
24 really important to the record.

25 MS. DENT: Does everybody want to take a

1 break and hand it around or something? I don't
2 care. I've only got one.

3 HEARING OFFICER FAY: Mr. Harris, is
4 this essential to --

5 MR. HARRIS: Well, I --

6 HEARING OFFICER FAY: I'm inclined to
7 let Ms. Dent just finish up the questions.

8 MR. HARRIS: I'll go read over her
9 shoulder, if she doesn't mind.

10 MS. DENT: Sure.

11 MR. HARRIS: Okay. I just heard Calpine
12 mentioned, and some proposed projects, so they
13 were characterized --

14 HEARING OFFICER FAY: Okay.

15 MS. DENT: Well, it doesn't say
16 Calpine --

17 (Parties speaking simultaneously.)

18 MR. HARRIS: -- it probably should've
19 been Calpine/Bechtel --

20 MS. DENT: -- Calpine -- Jim Macias,
21 Vice President of Assets, is the contact --

22 MR. HARRIS: I'm not trying to slow us
23 down. I'll take a look over her shoulder, and
24 hopefully we'll --

25 HEARING OFFICER FAY: Yeah. We'll keep

1 moving. Go ahead.

2 MS. DENT: The next site on the list,
3 and I really do have a very specific question
4 about this site relating it to the application, is
5 identified as Gilroy Cogeneration, Santa Clara,
6 270 megawatts. And again, the contact is Calpine,
7 Jim Macias, Vice President of Assets.

8 Do you know whether or not there's a
9 peaker plant that has been identified on the
10 Gilroy Cogeneration site that is the same Gilroy
11 site that you rejected in your alternatives table?
12 Is -- is it the exact same site, or do you know?

13 MR. MACKIN: I don't know.

14 MS. DENT: I'm just going to -- you know
15 what? I've only got a couple more and then you
16 can have it.

17 Can I take a -- do you mind if he looks
18 at it? It's going to be a little bit annoying to
19 me to have him look over my shoulder.

20 HEARING OFFICER FAY: Let's take a
21 minute. Let him look at it.

22 MS. DENT: Go for it.

23 (Off the record.)

24 HEARING OFFICER FAY: We're back on the
25 record. Mr. Harris wanted to review the document

1 Ms. Dent was using to cross examine witnesses.

2 Mr. Harris, I understand you have a concern. Do
3 you want to state that for the record?

4 MR. HARRIS: My concern is about the
5 accuracy of the entire chain of questions and
6 answers associated with this document, because now
7 that I've --

8 HEARING OFFICER FAY: Which document?

9 MR. HARRIS: The document that Ms. Dent
10 has identified as being -- I think the Potential
11 Peaking Power Plant Projects in California, 2001-
12 2003, Staff Report, February 2001.

13 This document is a generic document
14 talking about siting criteria. The reason I'm
15 concerned about the validity of the -- of the
16 responses to the questions is that having now
17 looked at the document, a series of questions, at
18 least one series of questions were asked that were
19 labeled as being discussions about the Metcalf
20 Substation and the Metcalf site.

21 Having looked at the document now, those
22 documents -- or, excuse me, those sites in Table
23 1, which is listed, peaking power plant sites
24 meeting final screening criteria, the only
25 designation on there is proprietary. There's no

1 designation of any other site. Proprietary -- I
2 think it's pretty easy for an attorney to
3 understand what that means. Mr. Macias' name is
4 listed in -- as a contact person, but the
5 implication of the questioning was that these must
6 have been the Metcalf Energy Center sites or the
7 Metcalf Substation.

8 There's nothing in the document that
9 supports that line of questioning. I don't -- so
10 at least that set of questioning, in my mind, you
11 know, I applaud the witnesses for trying to answer
12 the questions, but I'm not sure they would've had
13 all the information they need to answer those
14 questions.

15 The second set of documents, again,
16 Table 2, which is listed as -- and I want to get
17 the correct table name -- Table 2 is listed as
18 Peaking Power Plant Sites Meeting Preliminary
19 Screening Criteria. Again, there are -- there are
20 sites listed as proprietary, with a Calpine
21 contact. But there's no indication as to where
22 those sites are. And again, I think there's been
23 an implication here that we somehow knew where
24 those sites were, and I find it incredible that
25 Ms. Dent didn't understand what proprietary means.

1 And I also find it incredible that her
2 questions related to this issue. To me, this is
3 the -- the quintessence of the problem, and I'm
4 very surprised on this line of questioning. Not
5 only did -- nobody else in the room had this
6 document at that time, I've obtained a copy since
7 that time, I may have had objections to the
8 questions if I had the document in front of me at
9 the time.

10 So that's the basis for my concern.

11 HEARING OFFICER FAY: Okay. You can --
12 your objections are noted for the record, and we
13 will take official notice of that report, and it
14 will speak for itself. To the extent that Mr.
15 Harris is right, then any questions that were site
16 specific are -- will be -- will be stricken.

17 MS. DENT: I'm going to ask you -- I'm
18 going to read a sentence from page 3 of the
19 document and ask you if you agree with this, Mr.
20 Walker.

21 The San Francisco Peninsula south of the
22 Martin Substation and southern end at the San
23 Francisco Bay is also a good area for adding
24 peaking plants specifically near the newer or
25 Metcalf Substations, due to the high electricity

1 load growth that has occurred in that area in
2 recent years.

3 Now, do you agree with that position as
4 stated in the Staff report?

5 MR. WALKER: In that Staff report?

6 MS. DENT: Uh-huh.

7 MR. WALKER: I think that -- I agree
8 with it.

9 MS. DENT: Thank you. So there is a
10 specific reference to the Metcalf Substation in
11 this Staff report.

12 MR. HARRIS: Not from the questions you
13 were asking at the time. You've now cured your
14 own defect.

15 HEARING OFFICER FAY: Okay. Let's --

16 MS. DENT: I thank you for bringing it
17 to my attention.

18 I want to keep going through the list
19 here. I was with the Gilroy Cogeneration Plant
20 that's listed on here as a potential peaking
21 capacity site, at 270 megawatts. And my question
22 was whether or not you knew if that was the site
23 that you screened out on your list of alternative
24 sites.

25 MR. WALKER: I'm -- I don't know.

1 MS. DENT: So you don't know where that
2 site is?

3 MR. WALKER: No.

4 MS. DENT: And you didn't include on
5 your -- even on screening, the sites that are
6 listed on here in San Mateo County, Martine,
7 Brisbane, and the San Mateo Substation. Are you
8 aware of those sites as potential peaking power
9 plant sites?

10 MR. WALKER: I'm not aware of the
11 specific locations.

12 MS. DENT: How about the East Shore
13 Substation in Hayward and the Newark Substation in
14 Alameda? Are you aware of those?

15 MR. WALKER: I am -- I recall that the
16 Newark Substation was mentioned, but I don't know
17 where the site is.

18 MS. DENT: And again, you didn't study
19 any of those as any alternative to Metcalf, or in
20 combination with any alternatives as an
21 alternative to Metcalf?

22 MR. WALKER: Since I don't recall what
23 all of those sites were, I can't tell you whether
24 any of them are the same as any of our six
25 alternative sites, or, for that matter, the 17

1 alternative sites that we looked at.

2 MS. DENT: Let's go to -- City of Santa
3 Clara. You do have the City of Santa Clara on
4 here as, I believe, three alternative sites.

5 MR. WALKER: That's correct.

6 MS. DENT: The City of Santa Clara is
7 also on as local government sites that are on, I
8 believe it's Table 1. Yeah, Table 1, as meeting
9 final screening criteria. The first is the Jenera
10 Substation. Is that one of the sites that you
11 screened out?

12 MR. WALKER: No.

13 MS.DENT: So that's a site in Santa
14 Clara that wasn't -- you didn't consider at all.

15 MR. WALKER: That's correct. I might
16 add that three sites that I did, that are in the
17 City of Santa Clara, were the ones that the
18 consultant, electrical consultant for the City of
19 Santa Clara suggested that I look at.

20 MS. DENT: Thank you. I appreciate your
21 clarification.

22 And again, just very briefly, I want to
23 go back to the screening criteria.

24 HEARING OFFICER FAY: About three
25 minutes left.

1 MS. DENT: As they apply to combinations
2 of alternatives. Is it your understanding that
3 you are supposed to look at combinations of
4 alternatives under CEQA?

5 MR. WALKER: That wasn't my
6 understanding, no.

7 MS. DENT: So if a combination of
8 various of your alternatives would meet most of
9 the basic objectives of the project and would
10 avoid or substantially lessen any of the
11 significant effects of your project, it's your
12 understanding that you would not need to look at
13 that combination of alternatives under CEQA?

14 MR. WALKER: CEQA requires that -- that
15 a reasonable range of alternatives be considered.
16 And I think that we did that, and that did not
17 include combinations of alternatives.

18 MS. DENT: The only alternatives that
19 you studied to a full level under CEQA, the only
20 alternatives that weren't screened out were
21 alternative sites. Isn't that true?

22 MR. WALKER: That's true.

23 MS. DENT: I have no further questions.

24 HEARING OFFICER FAY: Okay. Thank you.
25 Santa Teresa Citizen Action Group.

1 MS. CORD: Yes, thank you. I have first
2 some questions for Mr. Walker. I didn't want you
3 to get cooled off over there, or anything.

4 MR. WALKER: Okay.

5 MS. CORD: But I'm going easy on you.

6 CROSS EXAMINATION

7 BY MS. CORD:

8 Q My first question is, you went over a
9 scenario yesterday with Mr. Ajlouny about if a
10 project qualified for the six month expedited
11 process.

12 A Yes.

13 Q And adding about 12 months to prepare an
14 AFC, six months for an expedited process, and as
15 much as 24 months for construction, that's about a
16 two and a half year process?

17 A Let me look at my notes. That's not
18 exactly how I remember it.

19 Q Oh, okay. I think -- I think we said 18
20 months to build.

21 A It was 18 months for construction, yes.

22 Q Right. So 12 months to prepare the AFC.
23 In fact, there was discussion. Well, let me --
24 let me just change the question.

25 A Okay.

1 Q Sorry about that. I think what you --
2 what you arrived at is a end of 2003 date for that
3 process that we talked about. If I've gotten the
4 number of months wrong, I apologize. But I think
5 we arrived at December 2003.

6 A Yes.

7 Q Okay. And my only question is if this
8 hypothetical project failed to meet the expedited
9 process, and therefore took twelve months instead
10 of six months, or somewhere in between six and
11 twelve months, from December 2003, adding six
12 months would still bring it online by summer of
13 2004.

14 A Yes, if it -- if it was certified in 12
15 months.

16 Q Right.

17 A It could take less or more time than
18 that, but if it was certified in 12 months.

19 Q Right. And you know, for instance, that
20 the -- I believe it's the Mountainview Project,
21 without expedited filing, was approved in ten
22 months. Am I right, or do you know?

23 A Yes, I do know.

24 Q Okay. So let's move on. So I guess the
25 point I want to make is that if Metcalf could be

1 online at the earliest by summer of 2003, an
2 alternate site could be online by 2004, summer,
3 summer of 2004.

4 A That's what these calculations would
5 indicate.

6 Q Okay. Good, thank you. That's only one
7 -- one summer's of difference.

8 Let me ask you this. You made a
9 statement earlier, I believe, that dry cooling
10 would not fit into the proposed Metcalf site?

11 A I was relying on information from the
12 Applicant to that effect.

13 Q Okay. So there was no independent
14 analysis of the veracity of that statement?

15 A No.

16 Q Okay. Are you aware, or could it be
17 true that Applicant, Calpine/Bechtel, may have
18 options on more property adjacent to the
19 identified property site? Or do you know?

20 A The proposed site?

21 MR. HARRIS: I -- I want to object on
22 the basis I don't think that's relevant. Or in
23 evidence.

24 HEARING OFFICER FAY: I -- I think it is
25 relevant, since the question was about space. Mr.

1 Walker, if you know, answer the question.

2 Otherwise --

3 MR. WALKER: Could you repeat the
4 question, please?

5 BY MS. CORD:

6 Q Sure. I said do you -- are you aware or
7 do you know that Calpine/Bechtel may have options
8 on more property adjacent to the identified
9 project site? Sometimes known and referred to in
10 these proceedings as the Passantino property.

11 A I'm aware that Calpine has some future
12 plans regarding some of that, but I don't know if
13 they actually have options on it at all. I don't
14 know about their legal --

15 Q Okay.

16 A -- rights.

17 Q That's all I need. Thank you.

18 I think Ms. Dent covered the Gilroy
19 option pretty closely, but I guess I had a
20 question on page 6 of your --

21 A May -- can I answer that last question a
22 little bit?

23 Q Oh, sure.

24 A My understanding is that Calpine, as one
25 of the land use requirements conditions, that

1 Calpine would be providing sufficient setback on
2 some of the Passantino land to meet that setback
3 requirement. That's -- that's what I specifically
4 remember now, as far as additional land that
5 Calpine would have some control over.

6 Q Okay. But you don't know about, for
7 instance, a first option to purchase --

8 A No, I don't.

9 Q -- the Passantino property. Okay, thank
10 you for that clarification.

11 I'm looking at -- dated February 13th,
12 2001, Alternatives Appendix A. Are you familiar
13 with that document?

14 A Yes.

15 Q Okay. On page 6, right in the middle,
16 there's a section that's headed Gilroy.

17 A My Appendix A -- okay. It's a different
18 pagination, but, anyway, I see what you're
19 referring to now.

20 Q It says Gilroy. It's a -- one large
21 paragraph.

22 A Yes.

23 Q Okay. The -- I believe it's the third
24 sentence begins, Staff requested additional
25 information regarding this alternative, including

1 the acreage. Do you see that sentence?

2 A Yes, I do.

3 Q Okay. And then about two sentences
4 farther down towards the middle, it says, the
5 Applicant's response indicated that no additional
6 land is available.

7 A Yes.

8 Q Okay. And that -- that's your statement
9 today, that you were informed by Applicant that
10 there was no additional land available?

11 A Yes.

12 Q Okay. Well, then I guess I would ask if
13 you would be surprised to learn, in yesterday's
14 Mercury News, that Gilroy Foods is quoted as being
15 absolutely interested in a larger plant on its
16 land, and the company officials have stated that
17 they would support the idea of a larger power
18 plant on that site?

19 A I don't know about that -- that
20 situation.

21 Q But again, did -- Staff did not
22 independently verify Applicant's statement that
23 there was no land available at the Gilroy site?

24 A My recollection is that the Applicant
25 mentioned the possible expansion of the existing

1 plant, as opposed to building a new plant, and
2 that that's why there wouldn't be land available
3 for a new plant, because of the potential
4 expansion of its existing plant.

5 Q And would the expansion of the existing
6 plant have qualified as a -- as an alternative?

7 A No, because it -- again, we were looking
8 for a 600 megawatt plant.

9 Q Okay. Thank you.

10 A And, of course, the other reason for
11 Gilroy not qualifying is because there wasn't
12 sufficient transmission capacity for 600
13 megawatts.

14 MS. CORD: Okay. Actually, if I could
15 just switch to Mr. Mackin, briefly. You look cool
16 over there.

17 MR. MACKIN: Okay.

18 BY MS. CORD:

19 Q Have you studied transmission capacity
20 from Gilroy?

21 A I haven't studied it. I know for sure
22 you cannot get 600 megawatts out of there, though.

23 Q Right. One hundred?

24 A I don't know. One hundred, maybe. It's
25 -- it's a 115 kV connection, so, you know, it's

1 conceivable. But, you know, without looking at
2 it, we can't be sure.

3 MS. CORD: Okay. Well, we'll get to you
4 later, but I just wanted to throw that in there.
5 Thank you.

6 BY MS. CORD:

7 Q Mr. Walker, would you agree with this
8 statement, the no project alternative is feasible.
9 It is quite feasible that a substantial amount of
10 additional generating capacity will be proposed
11 even in the absence of this project. Staff can
12 reasonably expect California's need for new plants
13 to be filled with or without the proposed project.

14 MR. RATLIFF: Could you read that again
15 more slowly, please?

16 MS. CORD: Sure.

17 MR. RATLIFF: So we can actually hear
18 the various parts.

19 MS. CORD: Okay.

20 MR. RATLIFF: And then sign his name
21 underneath it in blood, I think. Right?

22 MS. CORD: Just asking if he would
23 agree.

24 The no project alternative is feasible.
25 It is quite feasible that a substantial amount of

1 additional -- excuse me -- generating capacity
2 will be proposed even in the absence of this
3 project. Staff can reasonably expect California's
4 need for new plants to be filled with or without
5 the proposed project.

6 MR. RATLIFF: Can we break those down
7 into three different statements, then. Perhaps --

8 MS. CORD: Do you agree with all of it,
9 or do you want me to break it up, or what would
10 you like?

11 MR. WALKER: I'd prefer you to break it
12 up.

13 BY MS. CORD:

14 Q Okay. The no project alternative is
15 feasible? You know, I think this really takes
16 away from the totality of the statement, to break
17 it up like this.

18 A Let me just say in general that I relied
19 on the input of other technical experts for that
20 section of analysis. And that wording is not in
21 the Final Staff Assessment, because I was advised
22 subsequent to the Preliminary Staff Assessment
23 that that was not Staff's position, that that was
24 not something the Staff wanted to support.

25 Q So you were asked to remove this?

1 A Yes, but it wasn't like it was my words,
2 and I was asked to remove it. It was from other
3 people in the first place, so --

4 Q Okay.

5 A -- and I got, you know, advice that that
6 was not appropriate and it wasn't really me taking
7 out my analysis.

8 Q So do you know of anything that changed
9 from the time this was written until the time it
10 was taken out? In terms of the total amount of --
11 wait, no. That's not what I was -- additional
12 generating capacity proposed?

13 A I don't know.

14 Q Okay. So you don't -- do you know that
15 when -- I believe at the time this was written,
16 there were about 26 projects before the
17 Commission, and now there are about 37? And would
18 that lead you to think that there's some reason
19 not to believe that there will be additional
20 generating capacity proposed?

21 A That difference in facts does not lead
22 me to believe that. No.

23 Q Okay.

24 HEARING OFFICER FAY: This is the PSA
25 you're reading from now, Ms. Cord?

1 MS. CORD: Yes, it is.

2 HEARING OFFICER FAY: Okay. And could
3 you cite the page?

4 MS. CORD: 493.

5 HEARING OFFICER FAY: Okay, thank you.

6 MS. CORD: I believe this -- actually,
7 this -- the sentences I just read to you are --
8 also appear in the Elk Hills Project FSA, which
9 was approved in 12 of 2000. So from that time
10 until -- until now, do you think anything has
11 changed that causes you to not be comfortable with
12 that statement anymore?

13 MR. RATLIFF: Which statement are you
14 referring to? The whole --

15 MS. CORD: Shall I read it again?

16 MR. RATLIFF: -- the whole three
17 sentence statement?

18 MS. CORD: Uh-huh.

19 MR. RATLIFF: You're saying that it
20 appears in a decision of the Energy Commission?

21 MS. CORD: Yeah, the -- the FSA for Elk
22 Hills.

23 MR. RATLIFF: It's in the FSA for Elk
24 Hills. Those very words are in the FSA for Elk
25 Hills. And whose testimony was it, under that --

1 MS. CORD: You mean in Elk Hills?

2 MR. RATLIFF: Yes.

3 MS. CORD: I'll have to check with my
4 staff.

5 MR. RATLIFF: So we --

6 MR. AJLOUNY: Basically, it was looked
7 up on the Web site this morning. I failed to look
8 at whose it was. It might be Gary, I think. I
9 don't know --

10 MR. WALKER: No, it wasn't me.

11 MR. AJLOUNY: Okay. Whoever -- in the
12 alternatives section, under the same part, those
13 word for words was in the FSA, April of the year
14 2000, and that project was approved December of
15 2000. And I think Ms. Cord was just wondering if
16 it was there in April of 2000, in the FSA, you
17 know, what's happened to be changing the --

18 MR. RATLIFF: I have to object on -- I
19 have to object on the grounds of relevancy.
20 That's a different case, and a different witness.
21 I can't see how --

22 MS. CORD: Well, if this is the official
23 opinion --

24 HEARING OFFICER FAY: Well, let's just
25 stick to the PSA for MEC, and ask it on that

1 basis. Because Elk Hills is -- is electrically
2 quite distant from MEC, and there's the potential
3 that -- for it being irrelevant. So why don't you
4 -- why don't you continue with your -- your
5 questions on the PSA.

6 BY MS. CORD:

7 Q So, I believe you stated earlier that
8 this wasn't actually written by you. It was from
9 another Staff.

10 A I crafted the specific wording, but the
11 ideas were not from me.

12 Q The information. Okay. And who were
13 the ideas from?

14 A They were from the -- the office that
15 works on information regarding demand.

16 Q What office is that? Sorry.

17 A I can't recall. I'm sorry.

18 Q Are they --

19 A The names have changed several times.
20 We could probably get it for you, but I just don't
21 recall it right now.

22 Q Okay. Well, I wouldn't mind getting it
23 offline, at some point. Thank you.

24 Okay. And this is going to be reflected
25 in your pay envelope, by the way, Mr. Ajlouny, for

1 not doing a good enough job.

2 Okay. My next question is another
3 sentence from that same page, 493. It follows,
4 then, that the extent to which retired nuclear and
5 fossil generation resources will be replaced by
6 new resources, can be expected to be the same with
7 or without this project.

8 Oh, I'm sorry. Are you looking for it?

9 A 493?

10 Q 493, and it's the first sentence of the
11 last paragraph.

12 A Yes, I see what you're referring to.

13 Q Okay.

14 A What's the question?

15 Q Oh, okay. Thanks for finding it. The
16 question is, is that your position today?

17 A Again, that information was from that
18 same office, and it's not my analysis, so I can't
19 directly speak to it.

20 Q Okay. From what you do know, can you --
21 is there something you can say about that?

22 A No.

23 Q Oh, I have just -- this is almost sort
24 of a procedural question. No, strike that. Just
25 -- just one second.

1 MS. CORD: Okay. I'm going to direct
2 some questions to Mr. Mackin now. Yeah, let me
3 start with that one.

4 BY MS. CORD:

5 Q I believe yesterday you were replying to
6 a question of Mr. Ajlouny's, and you may have been
7 interrupted. You were talking about preferred
8 site, assuming no time constraint. I believe you
9 said Newark. And did you say something else
10 besides that? I wasn't certain I heard all of
11 your answer.

12 A I believe the question was if there was
13 no time constraint, if -- if an alternative site
14 or Metcalf could be online at the same time, which
15 site -- and I could only pick one, which site
16 would I prefer. And I said Metcalf or Los
17 Esteros.

18 Q Okay. Thank you.

19 MR. MACKIN: Excuse me. Could you
20 repeat that answer? Metcalf -- I said -- did I
21 say Metcalf? I'm sorry.

22 MR. WALKER: Yes, you did.

23 MR. MACKIN: Newark or Los Esteros.

24 MS. CORD: I thought that -- well,
25 that's why we missed it last time, because Issa

1 was --

2 BY MS. CORD:

3 Q So the correct answer is Newark or Los
4 Esteros?

5 A Yes, since I only get one choice.

6 Q Okay. Thank you for clarifying that.

7 Okay. On page -- let's see -- wait a
8 minute -- 710 of the FSA, Mr. Mackin. Footnote 7,
9 down at the bottom.

10 A Yeah.

11 Q Looking at Alts 1 and 2, and directly
12 below that, Alts 5 and 6, and you say this is
13 based on linear multipliers. You're saying that
14 overhead line construction for Alts 1 and 2 would
15 be 840,000?

16 A Well, okay. Number one, I didn't
17 produce these estimates. These came from the CEC,
18 TSE Engineers.

19 Q Okay.

20 A It was actually, I believe it's Al
21 McCuen.

22 Q Okay.

23 A But -- but if you want to ask me a
24 question about it, I mean, I --

25 Q Okay.

1 A -- from looking at the size of the
2 costs, it does assume an overhead.

3 Q Okay. Having those two figures in mind,
4 from this footnote. that Alts 1 and 2 would be
5 840,000, according to this, and the Alts 5 and 6,
6 850,000, if you turn back to 709 --

7 A I'm sorry, which page?

8 Q Page 709. Just the other side.

9 A Okay.

10 Q It's one, two -- the last sentence of
11 the third paragraph up from the bottom. The
12 greater --

13 A Okay. Right.

14 Q -- the greater interconnection costs for
15 those alternative sites would be more than offset
16 by the substantially greater transmission line
17 reductions. Okay, that's the second thing I want
18 you to think about.

19 And then turning to page 711, if you can
20 look down at the third line of Table 3, where it
21 talks about value of estimated annual energy
22 saved.

23 A Right.

24 Q And we see the project potentially 3.8
25 million, Alts 1 and 2, 7.6 million, and 7.1

1 million for Alts 3 and 4. I guess I'm just asking
2 how those -- how those numbers correlate.

3 A Well, I mean, the numbers on line 3 of
4 Table 3 are larger than the numbers on the
5 footnote on page 210 -- or, 710.

6 Q Okay.

7 A I mean, how -- but that's the only
8 correlation there is.

9 Q Okay. So would you say that it would
10 take less than a year to recover those
11 interconnection costs, in terms of the increased
12 benefits of reduced line losses?

13 A Well, if the value of the estimated
14 energy served was captured completely by the
15 generator at the alternative site, yes. But
16 that's not necessarily the case. Because the
17 value of the energy saved is the sum of all the
18 losses, and the value of the energy saved by the
19 particular generator is going to be a function of
20 its -- another technical term here -- GMM,
21 generator meter multiplier. And so what really
22 happens is although these loss savings get
23 allocated out to generators, they're not that --
24 that dollar savings on Table 3 is not entirely
25 allocated, not necessarily entirely allocated to

1 the new generator we were looking at. It could be
2 spread out amongst all the generators on the grid.

3 So, I mean --

4 Q Well --

5 A -- as a hypothetical situation, it could
6 be that the generator at Alternative 1 or 2 may
7 see \$3 million in savings, and the 4.6 million
8 would be allocated to other generators. Or it
9 could be a different allocation. It depends on
10 the GMM, and I really don't know what the values
11 are, because I didn't -- I haven't calculated
12 that.

13 Q Okay. Let me put it this wa. We've
14 heard that reduced line loss is a benefit, so this
15 table is showing that Alts 1 through 4, for
16 instance, have twice as much savings due to
17 reduced line losses, as the project site? The
18 proposed project?

19 A Alternatives -- which alternatives?

20 Q One through 4.

21 A Yes. Well, almost twice.

22 Q Okay. Yeah, it was a general. Thank
23 you.

24 I think Ms. Dent asked you quite a bit
25 about demand side management earlier today. Was

1 she asking you those questions? Okay.

2 A Yeah.

3 Q I just wanted to draw your attention to
4 page 761, in the FSA.

5 A Okay.

6 Q This is the no project alternative.
7 It's the paragraph right above comparison.

8 A Right above comparison?

9 Q Right.

10 A Okay.

11 Q If the actions taken -- discussed above
12 are not taken. And I think we talked about demand
13 side management quite a bit. I just wanted to
14 point out additionally that whether you -- I'd
15 like to ask whether you're aware of Governor
16 Davis' executive order giving Californians who cut
17 their electricity use a 20 percent rebate on their
18 bills?

19 A I -- I've heard of it, yes. I'm aware
20 of that.

21 Q Okay.

22 A It only applies to customers of three
23 investor owned utilities.

24 Q Right. Do you think that might
25 stimulate possibly some reductions?

1 A It might. It won't, for me.

2 Q Well, I'm not sure if you live in the
3 Metcalf natural boundary service areas.

4 A Well, I -- I'm in the Roseville electric
5 service area, so I'm not eligible.

6 Q So noted. We're sure you're a paragon
7 of virtue, in terms of conservation anyway.

8 A Well, it's my wife that would suffer,
9 not me.

10 Q Okay. I'll just leave that one.

11 Let me just look up one thing. Just a
12 second.

13 (Pause.)

14 BY MS. CORD:

15 Q Let me ask you a general question. Is
16 your testimony in a very general way that adding
17 more power will be a good thing?

18 A Adding -- adding new generation to the
19 grid is a very good thing, especially --

20 Q Right, that's a good way to say it.

21 A -- right now.

22 Q Okay. Let me read you this quote from
23 today's Mercury News. It says, in January, when
24 Californians endured a series of Stage 3 energy
25 alerts and two days of rolling blackouts, even

1 though they were using far less energy than the
2 state has capacity to produce, during that month
3 even at peak demand times customers in the ISO's
4 service area never used more than about 33,000
5 megawatts of electricity. That's far less than
6 the 42,000 megawatts that plants in the ISO area
7 have the capacity to produce.

8 A What was the number that they were
9 capable of producing?

10 Q 42,000.

11 A Okay, that's reasonable.

12 Q Okay. So you agree, so far. Now, it
13 goes -- I'm going to ask you now about maintenance
14 schedules and scheduled outages and unscheduled
15 outages.

16 This is an ISO memo that's quoted in the
17 newspaper, saying most plant owners have been
18 required to report their maintenance schedules to
19 the ISO in advance, and the ISO memo said, and
20 here's the quote, adherence to this requirement
21 has been spotty.

22 A Okay. Well --

23 Q Do you agree with that?

24 A -- is there a question? Do I agree with
25 that?

1 Q Yes, would you agree with that?

2 A I am not -- I'm in the grid planning
3 department. I'm not in outage coordination, so I
4 really don't know if adherence to that requirement
5 is spotty or not. I mean, if the memo said that,
6 then the memo said that. But whether -- I don't
7 know if it's true or not.

8 Q Okay. Let me ask you this. If adding
9 increased energy generation to the grid is a good
10 thing, to use a simple term --

11 A Yeah.

12 Q -- would it be sort of counterbalanced
13 if that power wasn't really available because
14 generators were taking power offline?

15 A Well, if you're adding new generation to
16 the grid, my assumption would be new generation
17 would be highly reliable, and would not be subject
18 to the forced outage rates that we're seeing on
19 the old units.

20 Q Okay. And would that apply as well to
21 unscheduled maintenance?

22 A Unscheduled maintenance is a forced
23 outage.

24 Q Okay.

25 A They're the same.

1 Q And would that apply to outages that
2 aren't related to maintenance?

3 A Would -- I'm sorry, would what apply
4 to --

5 Q The statement you just made. You were
6 answering my question that having more power would
7 be limited by the amount of that power that was
8 actually available.

9 A Okay, I guess I'm -- I'm confused. Can
10 you --

11 HEARING OFFICER FAY: Do you mean --

12 MR. MACKIN: -- rephrase the question?

13 HEARING OFFICER FAY: -- do you mean
14 scheduled outages?

15 MS. CORD: Well, I think he answered
16 scheduled, and I was --

17 MR. AJLOUNY: He said unscheduled.

18 MS. CORD: Okay.

19 MR. MACKIN: It was unscheduled.

20 MS. CORD: Well, I guess both.

21 HEARING OFFICER FAY: The other kind is
22 scheduled.

23 MR. MACKIN: I guess there's two things
24 I need to clarify before I answer a question that
25 I don't understand.

1 There's scheduled outages and -- and
2 unscheduled outages that the generators are
3 required to report their scheduled outages to us.
4 They're also required to report their unscheduled
5 outages. Of course, we can see the unscheduled
6 outages because their power suddenly goes to zero,
7 so we know it's gone.

8 But -- but, you know, so -- so we know,
9 or we should know, what generators are scheduled
10 out and -- and forced out, so we know how many
11 generators are unavailable at any given time.

12 Now, the -- the reporting requirement,
13 my understanding is that's -- that's in advance.
14 So, you know, I mean, if you look at real time and
15 you say, you know, your load is 33,000 and you're
16 looking at your generation and you're looking at
17 how much generation is forced out or scheduled
18 out, we know what that is in real time. But the
19 -- the reporting requirement is so that we can
20 know ahead of time, so that we can procure
21 additional supplies from someplace else, if
22 needed, to meet the outages that are scheduled.

23 BY MS. CORD:

24 Q And this is assuming cooperation --

25 A Yes.

1 Q -- from generators.

2 A Yes. Well --

3 Q Would you say that --

4 A -- the generators are required to
5 cooperate through the tariff. They sign a PEA and
6 they're supposed to abide by all provisions of the
7 ISO tariff. They agree to do that.

8 Q And does that include reporting
9 maintenance schedules?

10 A Does that include which?

11 Q Reporting maintenance schedules.

12 A Yes, it does.

13 Q And that's the statement that an ISO
14 memo says adherence to this requirement has been
15 spotty?

16 A Right. But, you know, again, since I'm
17 not aware of the memo, and I'm not aware of
18 whether they're adhering to the requirement, all I
19 can say is they're supposed to. I am not aware of
20 whether they are or not.

21 Q Okay. So I guess what I'm saying, new
22 capacity would be offset by the amount of
23 adherence that isn't happening to these
24 requirements, that's mentioned in this ISO memo.

25 A No, I don't think so. I mean, if you

1 have the -- the existing situation where whether
2 -- whether generators are complying with the
3 requirements or not, the existing situation is
4 what it is. And if you add more generation to
5 that, then you have more generation and you can
6 serve more load. So it would still be a good
7 thing.

8 Q Okay. Let me ask you about this United
9 States of America before the Federal Energy
10 Regulatory Commission. It's filed by the
11 California ISO. I have a docket number if you
12 want me to read it. It contains the following
13 statement. I just would like to know if you agree
14 with this.

15 A Well, if it's an official ISO
16 document --

17 Q Uh-huh.

18 A -- filed by the ISO to FERC?

19 Q Right.

20 A I agree.

21 Q Okay.

22 A I don't have to hear it.

23 (Laughter.)

24 BY MS. CORD:

25 Q Let me -- let me just ask how strongly

1 you would agree with this statement. I'm going to
2 change your license plate.

3 (Laughter.)

4 MR. RATLIFF: Mr. Mackin obviously
5 doesn't work for the Energy Commission.

6 (Laughter.)

7 BY MS. CORD:

8 Q According to California generators, the
9 ISO has ignored the February 14th order by
10 continuing to insist -- this is what ISO is
11 accused of -- insist that generators supply energy
12 in real time without ensuring that all of the
13 energy produced in response to those orders will
14 be paid for by creditworthy buyers.

15 It is -- it is kind of obtuse, but --

16 A Well, can I actually see it? I just
17 can't --

18 Q Sure. Looking at it --

19 A Sure.

20 Q And -- and just draw your attention to
21 the second sentence that I'd like to point out in
22 this, which says that the ISO respectfully
23 suggests that the California generators' request
24 -- well, let me -- strike that.

25 The ISO respectfully suggests that

1 California generators have demonstrated a callous
2 attitude toward consumers that is diametrically
3 opposed to the historical primacy of reliable
4 service within the electricity industry. And I
5 can just --

6 HEARING OFFICER FAY: Ms. Cord, where --
7 where is this going? We have to determine what --
8 what's your point to this line of questioning.

9 MS. CORD: It seems to me that the ISO
10 official position is that generators are not
11 providing power because they seem to feel that
12 they might not be paid for it.

13 HEARING OFFICER FAY: Okay.

14 MS. CORD: If generators are not
15 providing power, does it matter how many megawatts
16 we have total if they're intentionally withholding
17 it?

18 HEARING OFFICER FAY: Okay. I think you
19 have the answer to that, that he said if that's
20 happening, more generation will make things a
21 little better. If that's part of the landscape
22 right now.

23 MS. CORD: If -- if power is being
24 intentionally withheld because there's a concern
25 that there won't be creditworthy buyers, will

1 adding more generation produce more creditworthy
2 buyers?

3 HEARING OFFICER FAY: Why don't you ask
4 him that question.

5 BY MS. CORD:

6 Q If power is being intentionally withheld
7 because there's a perceived lack of creditworthy
8 buyers, would adding more generation produce more
9 creditworthy buyers?

10 A Just adding generation, no.

11 Q Thank you. Well, let me -- let me just
12 ask this. Do you know if -- if prior events
13 regarding Stage 2, Stage 3, that those issues have
14 been related to concern that there will not be
15 creditworthy buyers? The power's not being
16 provided because --

17 A Again, the only thing that -- that I am
18 personally aware of is that we've had a number of
19 Stage 2 and Stage 3 alerts, and the reason we've
20 had them is because there's -- was insufficient
21 generation bid into our markets to serve the load.
22 Now, whether that generation was not available
23 because it was forced out, it was scheduled out,
24 it was unavailable, it was serving other loads, or
25 there was a credit problem or a credit concern, I

1 don't know.

2 Q So you don't know whether withholding
3 power because of fear of not being paid might've
4 contributed to those?

5 A I -- I personally don't know. If you
6 have --

7 Q Thank you.

8 A -- an official ISO document that says
9 something different, then, you know, I -- that's
10 an ISO document. I would agree with it.

11 Q Then you agree.

12 A I agree.

13 Q Thank you. Has new equipment been
14 installed to prevent a single outage of the
15 Metcalf 500 kV input lines from tripping the
16 other, causing a simultaneous N-2 outage? And
17 before I ask you to answer that, I'm going to read
18 you from the PG&E 2000 transmission assessment,
19 where it says, PG&E completed the 500 kV relay
20 replacement project for the test limit cap 500 kV
21 circuit, and the Metcalf Moss Landing 500 kV
22 circuit in 1998, which will significantly reduce
23 the chance of relay mis-operation and tripping
24 both 500 kV circuits simultaneously.

25 A Okay. So the question is?

1 Q Do you -- are you aware of that, or do
2 you agree with --

3 A I am aware of that. Yes.

4 Q Okay. With respect to the N-2 problem,
5 is there a short scheme proposed for the problem
6 of a single 500 kV line outage to instigate load
7 shedding in a controlled manner, and prevent the
8 possibility of widespread voltage collapse?

9 A For the N minus one?

10 Q N minus two.

11 A N minus two. Is there a -- is there a
12 -- I'm sorry.

13 Q Can I read you from a document and see
14 if you agree with that?

15 A Okay.

16 Q The 2000 ISO control area expansion plan
17 study report, Appendix A.

18 A Right.

19 Q Summer peak, northern system analysis.
20 Which says -- well, it's fairly long.

21 A Right. Well, I'm familiar with that
22 document.

23 Q Okay.

24 A And I'm familiar with that study.

25 Q So you do feel that there is a short

1 scheme proposed to deal with the problem?

2 A A short scheme. The -- the way I
3 understand that study, the ISO looked at the N
4 minus two contingency and found that there was an
5 under-voltage load shedding scheme in place,
6 that's in place today, that prevented catastrophic
7 cascading outages. It basically shed 466
8 megawatts of load, and preserved the
9 interconnected system, kept it from coming apart,
10 but there were still significant overloads even
11 after that load shedding occurred.

12 The Metcalf Moss Landing lines were
13 loaded to, I believe, 120 or more, 128 percent of
14 their rating, and that was even after Moss Landing
15 was back down, and that was without the Moss
16 Landing expansion project. So with the Moss
17 Landing expansion project, you'd be even in worse
18 shape than you were in that study. So.

19 Q Okay, thank you. I'm not sure if you or
20 Mr. Walker is the right person to ask this, but in
21 selecting -- let me just ask it this way. Was
22 expansion of the project ever a selection
23 criterion that you looked at?

24 A The expansion of which project?

25 Q Metcalf. Let me --

1 A You mean Moss Landing --

2 Q -- let me --

3 A -- or -- Metcalf isn't --

4 Q Metcalf.

5 A There's no -- there is no generator --

6 Q Right. Let me ask you this. If the
7 alternatives are -- are rejected, and you have
8 stated that there needs to be 1200 megawatts, 40
9 percent, if -- if that's a rule, that's -- I think
10 you called it a rule of thumb.

11 A A rule of thumb.

12 Q Then would expansion at Metcalf satisfy
13 the South Bay load?

14 A Well, as I think I stated earlier,
15 Metcalf is outside the, you know, natural service
16 area of Metcalf. It's also outside the San Jose
17 area --

18 Q No, I'm talking about Metcalf. I'm
19 talking about expanding the proposed --

20 A Oh, expanding Metcalf to 1200.

21 Q Yes.

22 A Oh, I'm sorry. Well, it would meet the
23 -- it would help meet the 60/40 rule, yes.
24 Whether it would actually work or not, I guess it
25 -- it would, but we'd not -- I shouldn't say it

1 would. It might. We haven't looked at an
2 expansion like that.

3 Q Okay. I have a question, then, about --
4 this is following up on a question I think you got
5 yesterday, it might've been from -- I forget who
6 asked it. There was a question about the board of
7 directors of the ISO and the fact that they -- the
8 entire board was dismissed, and a new board --
9 that's not the question.

10 The question is, I believe you stated at
11 that time that -- I don't remember if it was you,
12 or someone stated on your behalf, stated that
13 there's no connection between the ISO board and
14 the ISO staff. Was that --

15 A No. I mean, there's -- there's a
16 connection. I mean, the -- the board provides
17 policy direction --

18 Q Okay.

19 A -- to the ISO staff, and the ISO
20 management.

21 Q Okay. So there is a connection at some
22 level.

23 A Well --

24 Q They set policy?

25 A Yes.

1 Q Okay. And you're -- are you aware that
2 the board was asked to disband, was the word that
3 was used, by FERC, because of the number of
4 connections to the energy generating industry that
5 were represented on that board?

6 A I -- I am aware that FERC -- FERC
7 ordered the board to be disbanded. I don't know
8 exactly why.

9 Q Okay. So, but your -- your earlier
10 statement a few minutes ago, that if the ISO says
11 it, then that's what you believe, help me
12 understand how that shows any distance between the
13 board of directors and the staff.

14 A Well, the -- the memo that I believe you
15 were referring to, I don't know that that was a
16 board memo. I believe that was a -- a memo
17 written by ISO staff, or ISO management.

18 Q So would that statement equally apply to
19 Terry Winter, I believe is a member of ISO staff?

20 A He's --

21 MS. WILLIS: I object. I don't -- I
22 don't know the relevance of this line of
23 questioning.

24 HEARING OFFICER FAY: What -- what are
25 you trying to show, Ms. Cord? Where are you going

1 with this?

2 MS. CORD: I think I'll just leave it
3 there. Thank you.

4 HEARING OFFICER FAY: Okay.

5 MS. CORD: I have some questions for Mr.
6 Tyler. You're off.

7 BY MS. CORD:

8 Q You know, first of all, I'm looking at
9 your -- excuse me -- your -- what do we call this,
10 a -- no, not the declaration. The qualifications
11 that are in the FSA. I don't think there's a page
12 number. And I believe your -- your highest degree
13 is a Bachelor's in Mechanical Engineering?

14 A That's correct.

15 Q Okay. And -- and you provided input to
16 the FSA on hazardous materials?

17 A That's correct.

18 Q Okay. And subsequently you provided --
19 I don't know how to characterize this. Is this a
20 health risk something, or what --

21 A This analysis is of the health and
22 safety implications of the no project alternative.

23 Q Okay. Health and safety implications.
24 And -- and you're an expert in health and safety
25 implications?

1 A Yes. I've done considerable work in the
2 area of health risk assessment, both for toxic
3 pollutant emissions from power plants as a health
4 and safety program specialist for the Commission,
5 for many years. And also, I have done
6 considerable work in the area of accidental
7 releases of chemicals that are stored and handled
8 at facilities. And I've done considerable
9 independent study in those areas, and I've even
10 published articles. That's on my resume.

11 Q Okay. Published articles is on your
12 resume? It's not in the FSA, though. Is it?

13 A It's filed as part of the Staff's --

14 Q Okay. That's -- that's fine. Thank you
15 for pointing that out.

16 Let me ask you this. Your testimony
17 relates to the presence of air conditioning as
18 reducing mortality rate?

19 A That's correct.

20 Q Okay. And can you tell me how many
21 households in California have air conditioning?

22 A No, not offhand.

23 Q Okay. Can you tell me how many
24 households in the Bay Area have air conditioning?

25 A Not offhand.

1 Q Or the natural service boundary area for
2 the Metcalf Substation?

3 A Not offhand.

4 Q Okay. So your testimony says that air
5 conditioning -- and I'm reading from -- it's not a
6 page, but I think it's page one -- significantly
7 reduced the mortality associated with heat waves.
8 But you can't quantify that based on any number of
9 air conditioning --

10 A What the study I relied on demonstrated
11 is that in 1955, before the implementation of air
12 conditioning in the Los Angeles area --

13 Q Okay.

14 A -- there was a significant mortality
15 associated with a heat wave. The severity of the
16 heat wave associated with the 1963 event was about
17 the same, in the conclusions of the author of the
18 article I quoted.

19 Q Okay.

20 A And his conclusion was that because of
21 the relative increase in population, that he
22 estimated that the 1963 event should've caused 800
23 more fatalities than it resulted in. And his --
24 his conclusion was that the most likely reason for
25 that occurrence was that there had been

1 significant implementation of air conditioning in
2 homes in that area.

3 Q Okay. And this was based on southern
4 California.

5 A That's correct.

6 Q Okay.

7 A But it applies equally anywhere where
8 there's air conditioning.

9 Q Okay. Well, let's -- let's go with
10 that, then. Would you agree that the San Jose
11 area has less extreme heat, for instance, than the
12 Mojave Desert, the Sonora Desert, Central Valley,
13 southern portions of California? In a general
14 sense.

15 A What -- what I -- when I reviewed the
16 data, basically my conclusion is roughly that you
17 would have about the same number of severe events
18 as anywhere else in California.

19 Q Okay.

20 A There are major, major, large
21 meteorological events.

22 Q Okay.

23 A And that the mortalities would actually
24 be potentially worse in the northern areas, which
25 I testified to yesterday.

1 Q Okay. And you were saying it was worse
2 in the northern area because less -- I think you
3 said acclimatized --

4 A People are less acclimatized to it than
5 people who live in southern areas.

6 Q Okay. So the fact that there's --
7 you're saying there's more risk in the north
8 because people are less acclimatized, because it's
9 not as hot in the north. Would that lead you to
10 imagine that there might be less air conditioning
11 available in northern parts of the state? I mean,
12 since we don't have a number, can we try to --

13 A I -- I don't really know, but the other
14 part of that equation is, is that the
15 recommendations of every single organization in
16 the -- in the event that you have a problem, is
17 that individuals who do not have air conditioning,
18 who are at risk, go somewhere where there is air
19 conditioning.

20 Q Right.

21 A Either to a relative's house, or to a
22 theater, a mall, wherever they can find air
23 conditioning, and spend time there.

24 Q Right. And did you use -- I think you
25 used the people at risk. Is that elderly?

1 A That's correct.

2 Q Okay. Having been a volunteer in the --
3 with the elderly in our community for many years,
4 I'd just like to state that I don't know if you
5 know anything to the contrary, but at least the
6 ones I worked with are not really able to get out
7 of their house that much.

8 A That's why the organizations also
9 recommend that relatives, neighbors, and so on, go
10 check on those people, take them places where they
11 are -- I'd also point out that many types of
12 facilities where elderly are, such as -- such as
13 board and care homes, would have air conditioning.

14 Q Well, and -- and --

15 A Typically.

16 Q -- I won't claim to know about every
17 care facility, but I know that the senior housing
18 in Santa Teresa does not have air conditioning.

19 A Then those people obviously should be
20 moved somewhere where there is air conditioning in
21 the event, and if --

22 Q And again, these are people that have no
23 cars and are --

24 PRESIDING MEMBER LAURIE: Ask a
25 question, Ms. Cord.

1 HEARING OFFICER FAY: Questions only.

2 BY MS. CORD:

3 Q Sure. Okay. Let me see where I was.

4 Let me just ask you this. The power,
5 the availability of power to run air conditioning
6 would really only be relevant if you have air
7 conditioning? Would you agree with that
8 statement?

9 A No, for the same reasons that I just
10 said. The -- the way that every single emergency
11 response agency, FEMA, the National Weather
12 Service, the Red Cross, the CDC, in the event that
13 you have a severe meteorological event and there
14 are fatalities, they will immediately recommend
15 that people who are sensitive be moved to
16 somewhere where there's air conditioning. If
17 there is no air conditioning anywhere, they
18 obviously can't be moved to it, or within any
19 reasonable distance.

20 Q Okay. Let me -- let me go somewhere
21 else with this. Okay. So is your -- is your
22 testimony here today and yesterday limited to the
23 no project alternative?

24 A Yes.

25 Q Okay.

1 A It's the implications of the no project
2 alternative.

3 Q Okay. Okay, we'll get to that. Okay.

4 Let's see. Let's talk about mortality
5 related to extreme heat, exposure to extreme heat.
6 It's not actually the heat that causes mortality.
7 There's a physical function that happens, there's
8 a --

9 A Actually, the authors of the studies
10 that -- of the many studies I look at basically
11 said the best indicator is excess mortality from
12 all causes, because it's -- it's so pervasive in
13 the ways that it causes mortality, that it's --
14 it's very difficult to single out any one cause.

15 Q Okay. Does increasing water intake tend
16 to reduce mortality?

17 A That's a recommendation that's also
18 provided.

19 Q And does reducing activity level tend to
20 reduce mortality due to heat exposure?

21 A It can. It may not, if the person --
22 for instance, the -- what I found in looking at
23 the articles is that the vast majority of people
24 who do -- who have died in severe heat events did
25 so in their homes, and the homes were un-air

1 conditioned. And they were elderly, and they were
2 not being active at the time.

3 Q Okay. So, and again, if these homes
4 were un-air conditioned, having power to run air
5 conditioning would not necessarily have --

6 A It would --

7 Q -- changed --

8 A -- it would still mitigate the outcome
9 if those people are taken to places where they can
10 -- and, in fact, many -- many of the places where
11 this has occurred now have cooling centers where
12 they do have air conditioned environments, and
13 there's an intentional effort to bring people to
14 those areas.

15 Q And do you know of any cooling centers
16 in the Metcalf natural service boundary area?

17 A No, but there are many places that --
18 that would have air conditioning, such as malls,
19 and that would be where I would expect people
20 would be directed.

21 Q Well, again, I know the seniors I
22 volunteer never go to the mall. But maybe there's
23 other seniors --

24 HEARING OFFICER FAY: Just questions.

25 ///

1 BY MS. CORD:

2 Q Have you ever entered this testimony
3 relating to air conditioning and mortality in
4 other -- any other FSAs that you've been involved
5 with?

6 A No.

7 Q You haven't. So this is just new for
8 Metcalf?

9 A This is new in general, in light of the
10 circumstances that we're dealing with now. Not
11 just Metcalf, but in light of the energy situation
12 we're dealing with now.

13 Q You know, we -- we've been talking about
14 -- with others, and I'm just using this as an
15 example, but that line losses are bad
16 environmentally, and I'm using real general terms
17 because you're using natural resources to generate
18 power that's not being used.

19 Okay. Keeping that example in mind,
20 would you agree that -- that it's more efficient
21 to the extent that you can reduce exposure to heat
22 by using non-technology related items, like we
23 mentioned about drinking more water, reducing
24 activity level?

25 A I don't think that that -- that those --

1 that those actions in general would -- would
2 reduce mortality as much, or as effectively as air
3 conditioning.

4 Q Okay.

5 A And I think that would in general be the
6 -- be agreed, that I would be in agreement with
7 the recommendations of those agencies as well, in
8 that regard.

9 Q Okay. Are you familiar with the
10 premature mortality rates due to particulate
11 matter air emissions?

12 A Yes, I am.

13 Q Okay. And would it surprise you to
14 learn that the existing premature mortality rate
15 due to particulate matter air pollution in San
16 Jose is 35 per 100,000 per year? That's from the
17 Natural Resources Defense Council.

18 A I --

19 Q Would it surprise you?

20 A -- I haven't -- I have no knowledge of
21 that. I don't know if I would agree with it,
22 but --

23 Q Okay.

24 A -- I'd have to look at the -- the
25 analysis. Unfortunately, the -- I would -- I

1 would have to look at the studies they've relied
2 upon. I can't really tell you --

3 Q Okay. But you are here today to talk
4 about mortality and health studies, but this is
5 one that you don't feel competent to --

6 A In general --

7 Q -- comment on?

8 A -- in general, it would be my belief
9 that the mortality associated with the emissions
10 from this project, or the emissions from standby
11 generators, would be much less than the potential
12 mortality associated with heat waves, and --

13 Q Just let me ask you, before you finish.
14 Are you -- is there diesel -- did you say diesel
15 generators, is that part of your testimony? You
16 were just talking about -- were you just talking
17 about --

18 A That -- but that's what this is dealing
19 with, the PM10.

20 Q Okay. But that's not part of your
21 testimony. You're not testifying about
22 generators.

23 A No, that's not part of my testimony.

24 Q Okay. Are you familiar with the study
25 published in December 2000, by Dr. Samay, that was

1 part of Dr. Wong's testimony in these proceedings?

2 A No, I have not read that study.

3 Q Okay. It's a study of 20 U.S. cities
4 over a seven-year period, and would it surprise
5 you to learn that the abstract from this study
6 states the estimated increase in the relative rate
7 of death from all causes was .51 percent for each
8 increase in the PM10 -- PM10 level of ten
9 micrograms per cubic meter?

10 MR. RATLIFF: Outside the scope.

11 Objection.

12 MS. CORD: I thought he was here to talk
13 about mortality, and --

14 MR. RATLIFF: I just told him he
15 couldn't talk about PM10, I thought, when he --

16 HEARING OFFICER FAY: Yeah, it was not
17 -- I gather it was not part of his testimony.

18 MR. TYLER: My testimony isn't on the
19 health effects of PM10, or the potential
20 mortalities associated with PM10.

21 HEARING OFFICER FAY: Okay. That's
22 sustained. The objection is sustained.

23 BY MS. CORD:

24 Q Okay. You reference a 1955 California
25 -- southern California heat wave in your

1 testimony, a study about it. Would you agree that
2 knowledge in the area of public health practices
3 has generally increased in the 45 years since
4 that incident?

5 A I reviewed a number of articles ranging
6 from that date all the way to present. And I
7 reviewed pretty much everything I could possibly
8 find on the subject. The reason I focused on the
9 1955 and 1963 data, or the Los Angeles data, is
10 because that was the only piece of data that gave
11 me a perspective of what happens as a result of
12 loss of air conditioning.

13 Q Okay. So since that's the basis of your
14 testimony, or at least a large part of your
15 testimony, let's just go with that for a minute.

16 A And heat related mortality doesn't --
17 hasn't changed much in 40 years. The causes are
18 still very similar.

19 Q Okay. No, I didn't ask about that. I
20 asked about public health practices. And let me
21 ask more specifically. You did state that the
22 elderly are more at risk --

23 A That's absolutely true.

24 Q -- for exposure. Okay. Would you agree
25 that individuals who were elderly in 1955 were

1 born in 1890 or prior?

2 A Okay. They're -- they're elderly in --

3 Q If they're elderly in 1955, they

4 would've been born in 1890, or before?

5 A That seems reasonable. Yes.

6 Q Okay. For individuals that were born in

7 the 1890's or before, do you -- can you -- are you

8 aware of what kind of health education they

9 might've experienced? For instance, at the

10 elementary school level, at that --

11 A No, I'm not.

12 Q Are you aware that health -- that

13 elementary school level health and nutrition

14 classes were not routinely offered in public

15 schools prior to 1950?

16 A No, I'm not.

17 Q Okay.

18 PRESIDING MEMBER LAURIE: Five minutes,

19 Ms. Cord.

20 MS. CORD: Thank you.

21 BY MS. CORD:

22 Q Would you agree that in a general sense,

23 individuals educated in this century are likely to

24 receive a better education about the basics of

25 things like drinking eight to ten glasses of water

1 a day, and reducing activity on hot days? Would
2 the people -- people educated in this century
3 would be more likely to be better educated about
4 those facts than people educated in the 18 -- in
5 the century before last? Or in the last century?

6 A I'm not sure one way or another. I know
7 that mortalities continue to occur as a result of
8 a heat wave, so it --

9 Q Okay.

10 A -- I don't know that it's been terribly
11 effective.

12 Q Let me ask you this. I think you said
13 yesterday that -- I believe your testimony was you
14 don't think we can assume this Applicant or any
15 other will build on any of the alternate sites. I
16 may not be quoting exactly, but something about
17 that.

18 Since we're now operating under a free
19 market economy model for power plants, isn't it
20 true that we can assume that there -- if there's a
21 market, that a supplier will provide the energy?
22 Isn't that the basic law of the economics?

23 A I think it's much more complicated than
24 that. I think that -- that if this project is
25 rejected, that does send a message to other

1 developers. I'm not sure at all, and there
2 currently are no proposals. So my conclusion is
3 that there's going to be a delay --

4 Q Okay.

5 A -- regardless.

6 Q And when you're saying there is no other
7 project, you're not counting the 36 others that
8 are before the Energy Commission now?

9 A I'm talking about projects in this area.
10 That serve this load.

11 Q And your testimony, though, today is --
12 is limited to the no project alternative?

13 A That's correct. The no -- the no
14 project alternative to this project. To not
15 building this project.

16 Q Okay. So, yeah, I guess that -- that
17 begs the question, then, is your opinion as to
18 alternatives that are not related to the no
19 project alternative, is that also expert opinion
20 that you're offering?

21 A What alternative projects are --

22 Q Well, I-- I guess when you're -- when
23 you're stating that the business practices of
24 other developers may be discouraged, is that part
25 of your health and safety testimony?

1 A No, it's not.

2 MR. RATLIFF: That was in response to
3 cross examination.

4 HEARING OFFICER FAY: Yeah. I mean, he
5 answered the question that you posed.

6 MR. AJLOUNY: I think she's going to
7 have me finish up just this one point.

8 MS. CORD: My consultant would like
9 to --

10 MR. AJLOUNY: Yeah.

11 HEARING OFFICER FAY: You've got two
12 minutes.

13 MR. AJLOUNY: That's fine.

14 CROSS EXAMINATION

15 BY MR. AJLOUNY:

16 Q Mr. Tyler, your testimony today is on no
17 project section of the alternatives section, a
18 topic. True?

19 A It's on the health and safety
20 implications of the no project alternative for
21 this project.

22 Q That's true. Yesterday you testified,
23 and even today I think you just heard -- I just
24 heard that you said that because there's no other
25 projects in this immediate area, alternatives,

1 that you're really concerned, you really want this
2 one built. Is that true? In general words.

3 A No. I don't think I'd characterize --
4 what my concern is, is from a -- from a risk
5 assessment standpoint, is that if this project is
6 not built, I don't think we can assume that
7 another one is going to immediately take its
8 place, or that one will be permitted any time in
9 the near future. Which means the public is
10 exposed to the risk for additional years.

11 Q But -- but I just heard you say you're
12 limited to the no project piece of the
13 alternatives section. Correct?

14 MR. RATLIFF: I object --

15 MR. AJLOUNY: Gary, may -- okay, maybe
16 Gary can help.

17 MR. RATLIFF: I have two objections,
18 actually.

19 MR. AJLOUNY: Okay.

20 MR. RATLIFF: First of all, as much as I
21 enjoy Mr. Issa's -- Issa's cross examination, I
22 think once is enough for anyone.

23 (Laughter.)

24 MR. RATLIFF: And secondarily, I think
25 this question has been answered.

1 MR. AJLOUNY: Okay.

2 HEARING OFFICER FAY: The question has
3 been answered, and we've really indulged you. As
4 a party you've had more time to cross examine than
5 any other party in the case. And so --

6 MR. AJLOUNY: And also saved planned
7 time and study time, and I've kept my commitment
8 of two hours.

9 HEARING OFFICER FAY: No argument. No
10 argument. But the time for the Santa Teresa
11 Citizen Action Group is consumed, and it's over.

12 MR. AJLOUNY: Can you --

13 HEARING OFFICER FAY: I'm sorry.

14 MR. AJLOUNY: -- just clarify something,
15 then, for me?

16 HEARING OFFICER FAY: You have trouble
17 with this position that he's taking?

18 MR. AJLOUNY: No, no. No, no. I think
19 because I just want to know, the alternatives
20 piece, the way I understand the alternatives
21 section, is to look at -- look at alternatives
22 that do not have projects. And so I think it's
23 kind of -- I just feel that the witness is using
24 this topic, he said there's no other alternatives,
25 you know, these alternatives won't be built as

1 soon, and all that kind of stuff. But the whole
2 definition of alternatives that I heard Mr. Walker
3 testify earlier today, was that you can't -- you
4 pick an alternative site that doesn't have a
5 project planned. And so his statement yesterday
6 and today was that these alternatives, there's no
7 plan, these alternatives, you know, these are all
8 sites, these six sites, won't -- there's nothing
9 on the books. Well, the definition of alternative
10 is it can't be on the books or it wouldn't be
11 alternative.

12 So I just want to clarify that for the
13 record, that it's really confusing, and I think
14 it's misleading.

15 HEARING OFFICER FAY: Okay. And you
16 understand that the, quote, no project
17 alternative, is a CEQA concept. I mean,
18 obviously, no project is not necessarily an
19 alternative, but it's an analytical tool. If you,
20 instead of evaluating the project you evaluate no
21 project, and it's just an analytical tool.

22 MR. TYLER: That's one of the
23 alternatives to the project, is not building one.

24 HEARING OFFICER FAY: Okay. Mr. Tyler,
25 thank you.

1 MS. CORD: Well, I think our question
2 really is, is the definition of an alternative --
3 I mean, when they're asked to look at alternative
4 sites they don't just get out the map of the 37
5 projects and pick out six or eight of those and
6 say these are alternatives. I'm asking you, is
7 the definition of an alternative a project that
8 isn't already --

9 MR. RATLIFF: If I may, Mr. Fay. There
10 is a requirement in CEQA that you look at
11 alternatives. And that can include the kinds of
12 alternatives that -- that are not locational, and
13 it can include the kinds of alternatives that are
14 locational. And we talked a lot about those.

15 There's also a requirement that you
16 consider the no project alternative. And under
17 the no project alternative, you're obligated to
18 look at any benefits that are foregone by not
19 having the project.

20 MS. CORD: Okay, but that's not my
21 question.

22 MR. RATLIFF: Oh, I'm sorry. I -- I
23 thought I was answering your question.

24 MR. WILLIAMS: To clarify it, is it a
25 vacant site, or is it an alternative, by

1 definition of your process --

2 MR. RATLIFF: It's --- it's not a site
3 at all. It's the absence of --

4 MS. CORD: No, I'm not talking about the
5 no project -- I'm not -- what I'm saying is Mr.
6 Tyler's -- one of his last statements was that we
7 can't assume there are any projects for any of
8 these alternative sites that are planned. And
9 what I'm trying to get at is if there were a site
10 -- if there were a project already planned for
11 that site, it wouldn't really qualify as an
12 alternative. It would be one of the AFCs that's
13 already in the process.

14 HEARING OFFICER FAY: Okay. I -- I
15 think his statement went to the timing question.
16 That is, because the alternatives that Staff chose
17 to analyze, and it was their decision, their
18 discretion, do not involve projects in progress,
19 that there is the delay of designing and licensing
20 and building, or at least designing and licensing,
21 compared to the MEC project. So that -- that was
22 the -- I think it went to the temporal thing.

23 But anyway, the -- you know, the record
24 is what was established, and his testimony is
25 there on the record, and you, you know, can argue

1 it as you wish in your briefs.

2 That concludes our -- yes, Mr. Boyd.

3 MR. BOYD: I was just -- I was just
4 wondering if I was going to have an opportunity to
5 ask any questions. I did file, back in December,
6 a allocated amount of time. I understand that
7 you, on Monday you had some kind of meeting where
8 you requested time --

9 HEARING OFFICER FAY: Yes. What we've
10 done is that at the beginning of the various
11 topics, we've gone through and, of course, the
12 amount of time people requested back in December,
13 or whatever, was only for the Hearing Officer to
14 design the hearing order, so that we knew how many
15 days would go on. If you haven't --

16 MR. BOYD: Well, the bottom line is --

17 HEARING OFFICER FAY: Excuse me, Mr.
18 Boyd, I'm speaking. We haven't held people to
19 those times. Instead, we've asked them more
20 recently, now that they know what -- what the
21 other side has filed, et cetera. And you were not
22 here when we asked for time estimates. You were
23 also not here when the panel gave its direct
24 testimony, so you haven't heard the direct
25 testimony.

1 MR. BOYD: But they have filed
2 testimony.

3 HEARING OFFICER FAY: Yes.
4 Notwithstanding those facts, we will give you five
5 minutes if you want to conduct cross examination
6 of the panel.

7 MR. BOYD: Okay. First, I'd like to
8 know why I'm being limited to five minutes when I
9 requested much in addition to that in my original
10 request, which was made on the request of the
11 Hearing Officer at that time. And also, in
12 addition to that, what you're -- when you're
13 asking for a schedule from people, basically
14 you're having a pre-hearing conference to ask for
15 that. That's what you do in a pre-hearing
16 conference.

17 HEARING OFFICER FAY: Right. And --

18 MR. BOYD: But yet that was never
19 noticed anywhere. So I never would've had an
20 opportunity to know that you were going to even do
21 that. I'm not trying to be rude, I'm just trying
22 to tell you that this is the problem that's being
23 created by failure to notice things correctly.

24 HEARING OFFICER FAY: Okay.

25 MR. BOYD: So that's why I'm asking. I

1 don't think I can do all my questions in five
2 minutes. I think maybe 15 minutes would be more
3 -- more -- a more reasonable estimate of my time.

4 HEARING OFFICER FAY: Well, what the
5 Committee did, based on all those estimates that
6 people gave, was set aside three whole days, and
7 then in addition to those three days, we added
8 another six hours or something yesterday, so the
9 Committee has extended the time even beyond the
10 amounts that everybody estimated.

11 PRESIDING MEMBER LAURIE: Mr. Boyd, from
12 day one the process we have followed was if an
13 individual had not requested time, we have
14 acknowledged that and we have provided a time of
15 five minutes. And that's what we will provide
16 you.

17 MR. BOYD: But, Mr. Laurie, I requested
18 more than five minutes back in December --

19 PRESIDING MEMBER LAURIE: Sir, that --
20 that is -- that is --

21 MR. BOYD: -- I was not notified of any
22 future requests for --

23 PRESIDING MEMBER LAURIE: Mr. Boyd, you
24 can object, and I'm not going to argue with you.

25 MR. BOYD: I don't --

1 PRESIDING MEMBER LAURIE: The ruling of
2 the Committee is we will give you five minutes.
3 You may use it or not at your discretion, sir.

4 MR. BOYD: Okay. I'll do the best I can
5 in the time you've given me. But I do object to
6 you limiting my right.

7 PRESIDING MEMBER LAURIE: So
8 acknowledged. Thank you.

9 MR. BOYD: Okay. I think I first would
10 like to start with Mr. Mackin, from the ISO.

11 CROSS EXAMINATION

12 BY MR. BOYD:

13 Q My question is, in regard to the --
14 let's see, I have to go back to -- one of the --
15 one of the project objectives is to be online by
16 summer of 2002. In your opinion, do you think
17 that's a -- a reasonable or achievable objective
18 at this point?

19 A No.

20 MR. BOYD: And I would ask the same
21 question of you, Mr. Walker. Do you believe that
22 being online by the summer of 2002 is a reasonable
23 or foreseeable objective?

24 MR. WALKER: No, and we've modified it
25 to say as soon as possible.

1 BY MR. BOYD:

2 Q Okay. Then my -- then my other question
3 to Mr. Mackin is to your knowledge, are you aware
4 of any notification by Pacific Gas and Electric to
5 the ISO of possible curtailments of natural gas to
6 the service area of PG&E?

7 A The PG&E doesn't notify the ISO on
8 natural gas curtailments.

9 Q Are you aware of -- in general
10 knowledge, that they -- that PG&E is -- have
11 noticed that they may curtail delivery of natural
12 gas in the -- in their service area?

13 A I'm not aware of it, no.

14 MR. BOYD: And I would ask the same
15 question of Mr. Walker.

16 MR. WALKER: I've heard that that might
17 happen.

18 MR. BOYD: Mr. Walker, in your analysis
19 of alternatives, you did -- did you examine any
20 alternative fuel sources to natural gas?

21 MR. WALKER: No.

22 MR. BOYD: In your opinion, is the
23 curtailment of natural gas likely or foreseeable?

24 MR. WALKER: I don't have the expertise
25 to say.

1 MR. BOYD: Is there anyone here on the
2 panel -- so you -- do you have knowledge that PG&E
3 has -- has stated that there may be a curtailment
4 of natural gas supplies, but you have -- you have
5 no formal or expert knowledge of that?

6 MR. WALKER: That's correct.

7 MR. BOYD: Okay. If -- if you had that
8 expert knowledge, would you have in any way
9 modified your analysis on natural gas as a sole
10 fuel source for this project? This is an
11 alternative fuel source. The question of
12 alternative fuel sources.

13 MR. WALKER: I can't say what I would've
14 done.

15 MR. BOYD: Okay. I think that's
16 sufficient.

17 HEARING OFFICER FAY: That's all?

18 MR. BOYD: I'm satisfied.

19 HEARING OFFICER FAY: Okay. Thank you,
20 Mr. Boyd.

21 Before I ask Mr. Ratliff about any
22 redirect, we're going to take a short break for
23 the benefit of the court reporter, and you all may
24 also take advantage of the time period.

25 (Off the record.)

1 HEARING OFFICER FAY: Mr. Ratliff. Are
2 you so enamored of our time together this
3 afternoon that you wish to extend it?

4 MR. RATLIFF: I have what I hope will be
5 a very brief redirect of the panel.

6 HEARING OFFICER FAY: Proceed.

7 MR. RATLIFF: I've been throwing out
8 questions left and right, so.

9 REDIRECT EXAMINATION

10 BY MR. RATLIFF:

11 Q Mr. Walker, yesterday there was a
12 discussion about the changes from the Preliminary
13 Staff Assessment. Do you have that -- that
14 recollection in mind?

15 A Yes, I do.

16 Q And there were questions about why
17 things changed from the Preliminary Staff
18 Assessment to the Final Staff Assessment. Is that
19 correct?

20 A Yes.

21 Q The -- can you explain just for all of
22 our benefit what the difference between the
23 Preliminary Staff Assessment is and the Final
24 Staff Assessment, and what those differing roles
25 are in the process?

1 A In a generic sense?

2 Q Yes. In a very generic sense.

3 A The Preliminary Staff Assessment is like
4 it says, it's preliminary. It's Staff's initial
5 evaluation of the project based on the information
6 that's available at that time, through the
7 application and any data responses and other
8 information that Staff has -- has gathered.

9 It's meant to be published for review by
10 the public and by parties and the Applicant for
11 comment, and consideration of that comment and any
12 additional information, and any updates to
13 circumstances, you know, beyond that, that could
14 affect that analysis, and that is reflected in the
15 Final Staff Assessment.

16 Q And is it typical in our cases, again,
17 when we publish a Preliminary Staff Assessment,
18 that we get a great deal more information as a
19 result of that, through workshops and through
20 final comments?

21 A When we file the Final Staff Assessment,
22 yes, we do have -- we often have substantially
23 more information.

24 Q Before we do the Final Staff Assessment.

25 A Before we do the Final Staff Assessment,

1 or before we complete it, anyway.

2 Q And -- and when we do a Final Staff
3 Assessment, is it typical that this is a document
4 that goes through a fairly elaborate review
5 process internally?

6 A Yes. For instance, with my work it
7 would go to my supervisor, and then to -- often to
8 an office manager, and -- and to project manager,
9 and to Staff counsel, and perhaps for a particular
10 policy issue, it might go to the head of the
11 division.

12 Q And so in this process, frequently
13 things are altered in the document itself, is that
14 correct, prior to its publication?

15 A Yes.

16 Q There's nothing unusual about that, in
17 your experience at the Energy Commission?

18 A No.

19 Q Now, in particular, your particular
20 topic here was the alternatives testimony. Is
21 that correct?

22 A Yes.

23 Q And you were testifying in essence as a
24 summary witness for all of the technical areas
25 that have any bearing on alternatives. Is that

1 correct?

2 A Yes.

3 Q And in doing so, your testimony was in
4 part original, with regard to the locations. Is
5 that right?

6 A Yes, and the infrastructure and the
7 initial identification and feasibility of the
8 sites. Yes.

9 Q And it was in part derivative, as well.
10 Is that right?

11 A Yes, because I relied on further
12 analysis by technical experts.

13 Q So there was a great deal of
14 consultation with a great number of people in the
15 development of your testimony; is that correct?

16 A Yes.

17 Q Okay. Now, at the end of the day, when
18 the FSA got published, as in the Preliminary Staff
19 Assessment, the Final Staff Assessment concluded,
20 did it not, that there was a significant visual
21 impact from the project that we've been analyzing?

22 A Yes. A significant visual impact and a
23 significant land use impact.

24 Q Right. As had concluded the Preliminary
25 Staff Assessment; is that correct?

1 A Yes.

2 Q And at the end of the day, when you
3 filed your portion of the Final Staff Assessment
4 on alternatives, it concluded that the
5 alternatives that you had looked at, at least some
6 of them were environmentally superior to those of
7 the project site itself. Is that correct?

8 A Yes. Sites 1, 2, 3, and 4 were
9 superior.

10 Q So is it your experience -- I just --
11 the reason I'm asking these questions is because I
12 thought there was some confusion about this last
13 night, and I wanted to clear it up. In your
14 experience, in 21 years of working on the Staff,
15 have you -- is it your experience in the Staff
16 culture that people are forced to testify to
17 things that they don't believe?

18 A No.

19 Q And you did not do so in this case; is
20 that correct?

21 A No, this is my testimony, and I can
22 support this testimony.

23 Q And if -- if a Staff person, in -- in
24 the Energy Commission Staff, feels uncomfortable
25 or in disagreement with conclusions of his

1 testimony, after it's been reviewed and after
2 there's been discussion of it, that person doesn't
3 have to be the witness. Is that right? In fact,
4 that person would not be the witness, typically.

5 A That's true.

6 MR. RATLIFF: And if I could ask you,
7 Mr. Tyler, is that consistent with your experience
8 on the Staff, as well?

9 MR. TYLER: Yes, it is.

10 MR. RATLIFF: Okay. Mr. Mackin, you
11 were asked yesterday -- oh, I'm sorry. I haven't
12 finished with my redirect of Mr. Walker.

13 BY MR. RATLIFF:

14 Q You were asked today if a smaller power
15 plant is environmentally superior to a larger one.

16 A Yes, I was.

17 Q And your answer was that it has lower
18 impacts; is that correct?

19 A Yes.

20 Q Would that be true if you built two
21 smaller power plants to provide the same megawatts
22 that a larger power plant would provide?

23 A Typically it would not be true. There
24 would typically be more impact, two different
25 sites, or even at the same site, for two plants of

1 the same capacity, if they were just identical.

2 Q In addition, you were questioned
3 extensively about the criteria that you looked at
4 for project objectives. Is that correct?

5 A Yes.

6 Q Were those criteria that you were cross
7 examined on all of the criteria that you used in
8 your screening and development of the Staff
9 alternatives?

10 A Not as I recall. Ms. Dent's cross
11 examination focused on the project objectives, and
12 upon the avoidance of significant impacts, as I
13 recall. But there are other screening criteria
14 that are laid out in the testimony, and that
15 affected both the initial identification of sites
16 and the screening down to a smaller number for
17 more detailed evaluation. And those, as I briefly
18 did mention, in general, during the cross
19 examination, are spelled out in several places,
20 and one of the most clear places is in regard to
21 the -- starts on page 7 of 7.

22 Q Is it possible to just summarize those
23 things very quickly?

24 A Yes, I will. And in addition to the
25 first major criteria that needs to be satisfied,

1 was meeting most of the basic project objectives,
2 which was discussed before, and those --

3 Q I'm sorry. Could you speak up just a
4 bit?

5 A Excuse me. Okay. Meeting most of the
6 basic project objectives, and those three that we
7 had identified were discussed in the cross
8 examination. But also, beyond that, was to avoid
9 or substantially reduce one or more of the
10 potential significant impacts of the project,
11 which was discussed. But beyond that, was
12 satisfying the feasibility screening criteria.
13 And for the alternative sites, that included site
14 suitability; size and configuration of the site;
15 develop all the infrastructure, which included
16 transmission lines, gas lines, and water; and the
17 availability of the site. As well as general plan
18 and zoning consistency, and not being located
19 adjacent to moderate or high density residential
20 uses.

21 Q Does that pretty much cover the
22 additional elements of the things you examined
23 when you were doing your screening analysis?

24 A Yes.

25 Q Okay. And there was one other question

1 earlier that occurred yesterday. It was a
2 question from the Applicant, concerning
3 simulations that you did for -- for the visual
4 impacts. You, I think, agreed to take some time
5 to look at the scaling of those simulations when
6 we were not in hearing. Is that correct?

7 A Yeah. Actually, it was scaling of a --
8 a figure of a -- the parcel site for Alt 4, and
9 the depiction of the site plan for the project on
10 that parcel -- on that site.

11 Q And what did you conclude?

12 A I concluded that the Applicant's review
13 of the figure was accurate, in that there -- there
14 are two figures that relate to that parcel. One
15 is Figure 1 and -- let's see, Figure 24 and Figure
16 33. And the -- there's a reduction in size of the
17 whole scale of the parcel map, on Figure 24, to
18 enable the inclusion of key observation point
19 locations. And that scale on Figure 24 is
20 different than -- from the scale on Figure 33.

21 The size of the site plan which appears
22 on 33, the elements of the site plan, is
23 proportional to the scale for Figure 24, and not
24 to Figure 33. So the --

25 Q The bottom line of the difference is --

1 A Is approximately 20 percent smaller than
2 it should appear on Figure 33. So it would take
3 up more of the site than it shows on Figure 33.

4 It was also mentioned that the cooling
5 tower would need to be oriented north/south,
6 rather than east/west, and it was brought up that
7 the east/west -- the north/south dimension of the
8 site is not substantially greater than the length
9 of the cooling tower. I figured that out and
10 there's approximately 100 feet extra beyond the
11 length of the cooling tower across that site. So
12 that would leave 50 feet on each end.

13 If that's not sufficient for the
14 Applicant's purposes, then the cooling tower could
15 be -- it's one long row of ten cells. There are
16 other cases that we are -- have evaluated, and
17 will probably evaluate in the future, that aren't
18 just one long row of cooling cells. There could
19 be two rows of five cells, such as at Pastoria.
20 So that would not present a major siting problem
21 for this project on this site.

22 And finally, the depiction of the stacks
23 in the simulations regarding this site would not
24 change because of the increase in the size,
25 relative size of the site plan prepared for the

1 parcel, because they would still be located in
2 that northeastern portion of the parcel, but other
3 -- other smaller elements would have to extend
4 farther to the west.

5 Q Thank you. Is that -- does that
6 conclude your remarks on that?

7 A Yes.

8 MR. RATLIFF: Okay. You've -- if I
9 could ask Mr. Mackin a couple of questions.

10 BY MR. RATLIFF:

11 Q Mr. Mackin, there was a rather lengthy
12 discussion during cross examination today about
13 the possibility of building peakers, and whether
14 or not they had been considered as a substitute
15 for the project. Could you discuss briefly, but
16 hopefully enlighten us about the difference
17 between a baseload power plant of the nature
18 proposed here, and the role of peaking power
19 plants?

20 A Okay. A baseload power plant is one
21 that would be running a large majority of the
22 year, oh, 8,000 hours or so. A peaking power
23 plant is a plant that runs, as its name suggests,
24 only on peak. Usually that's 500 hours or less
25 per year. So that's the major -- the major

1 difference. Peaker power plants, because they
2 only run on peak, a lot of times are not designed
3 to be as efficient as a baseload plant. Because
4 they don't run so very often, they -- they don't
5 need to be as efficient.

6 Q Can you compare the relative efficiency
7 of a typical peaker with a new modern power plant?

8 MS. DENT: I have a -- just a request
9 for clarification on the word efficiency.
10 Efficiency in terms of what? I guess I don't get
11 it.

12 BY MR. RATLIFF:

13 Q Sure. Heat rate, or --

14 A Yeah, if I were defining efficiency I
15 would -- I would do it on heat rate. I'm not -- I
16 guess I wouldn't say I'm the -- the expert on
17 power plant efficiency, but I would estimate at
18 least, you know, a simple cycle peaker would be,
19 you know, at least 50 percent less efficient than
20 a -- than a combined cycle plant.

21 MS. DENT: I'm sorry, I didn't hear it,
22 because --

23 MR. MACKIN: I say a peaker plant is
24 probably at least 50 percent less efficient. In
25 other words, for the same megawatts produced at

1 the peaker, you probably use 50 percent more gas
2 than -- than a equivalent baseload. And that --
3 that's just a rough estimate.

4 BY MR. RATLIFF:

5 Q Finally, yesterday you were asked a
6 series of questions by -- by Issa, asking you
7 which of the projects, if you were given a choice
8 between the project and the alternatives, which
9 you would find preferable. And you -- you
10 answered that in various ways, according to how
11 the -- the way the question was posed.

12 A Yes.

13 (Laughter.)

14 BY MR. RATLIFF:

15 Q And the question I guess I have to ask
16 you finally, is that from a planning perspective,
17 would you prefer a power plant at both Newark and
18 Metcalf, in terms of serving load in San Jose?

19 A If -- if I was given my choice, I would
20 prefer both, yes. Absolutely. Just as an
21 example, I looked -- at loss savings for -- and
22 these -- these numbers are not going to be
23 comparable to anything that's in the FSA, because
24 they were done on a slightly different basis. But
25 the Metcalf Energy Center, by itself, had a loss

1 savings of 54 megawatts. The Newark site, by
2 itself, had a loss savings of 63 megawatts. The
3 combined Metcalf and Newark together had a loss
4 savings of 113.8 megawatts.

5 So if you add the first two numbers
6 together, you get 120.4, so looking at that, I see
7 that there's almost twice as much benefit to
8 having both plants as to having only one plant.
9 So from a planning perspective, I would -- I would
10 love to have both.

11 Q And when you're talking -- your answer
12 to that question primarily dealt with the losses.
13 Is that correct?

14 A Yes.

15 Q Well, losses, but other -- I did not do
16 any other analysis of both plants, but I would
17 suspect that the other benefits identified from
18 the alternative sites and the Metcalf site are
19 probably -- you're going to see a similar increase
20 if you had both plants.

21 MR. RATLIFF: Okay. I have no more
22 questions.

23 HEARING OFFICER FAY: Okay. Do any
24 parties have recross, within the scope of this?

25 MS. DENT: I don't have any recross, but

1 can I ask just --

2 HEARING OFFICER FAY: Sure.

3 MS. DENT: We can go off the record if
4 you want.

5 HEARING OFFICER FAY: Is the question of
6 the Committee?

7 MS. DENT: Yeah, it sort of is. And it
8 goes to the -- I really am not wanting to be
9 argumentative, but it's about the PSA versus the
10 FSA, and the record versus out of the record. And
11 I understand the PSA is docketed of course, and
12 it's not -- but it has not been their testimony
13 today. I understand that. But I do want to just
14 note that the Applicant docketed and filed as
15 their testimony all of their comments to the PSA,
16 so I personally think it's going to be really,
17 really difficult to deal with the record when you
18 have comments on the PSA in the record, and you
19 don't have the PSA itself in the record.

20 And on that basis, I'd like to ask that
21 it be considered part of the evidentiary record,
22 and that's it.

23 HEARING OFFICER FAY: Okay. The -- it's
24 the Staff's product, and it's their decision
25 whether they want to sponsor it into evidence, and

1 from what I've seen, they haven't. They never
2 have, in the history of the Energy Commission.
3 So --

4 MS. DENT: Then I'm going to ask that
5 the Applicant's comments on the PSA, which is a
6 document that's not in the evidentiary record, be
7 stricken from the evidentiary record.

8 HEARING OFFICER FAY: Well --

9 MS. DENT: I'm done.

10 HEARING OFFICER FAY: -- what I -- what
11 I will say is that to the extent that -- that the
12 comments are only on things in the PSA that do not
13 appear in the FSA, they are not relevant. They
14 are -- you know, the FSA supersedes the PSA. So
15 we'll handle it that way.

16 All right. We've got Issa, and Mr.
17 Boyd, and Mr. Garbett, Mr. Harris, Mr. Williams.

18 All right. We'll have limited redirect,
19 since we have limited time. All right, Issa.

20 MR. AJLOUNY: Well, how much time?

21 HEARING OFFICER FAY: We -- we're not
22 asking for time estimates. It's going to be very
23 limited.

24 MR. AJLOUNY: Oh, well, who -- I'm
25 sorry. Who's cross -- redirecting? I'm trying to

1 get caught up here.

2 HEARING OFFICER FAY: Okay. I -- I --
3 this is who I have down for redirect.

4 MR. AJLOUNY: Okay.

5 HEARING OFFICER FAY: Issa, Mike Boyd,
6 Mr. Garbett, Mr. Williams, Mr. Harris.

7 MR. AJLOUNY: Okay. I would like to go
8 in the same order we did in the actual direct, the
9 cross examination, if we could. It means a lot to
10 me.

11 HEARING OFFICER FAY: You want to wait,
12 huh?

13 MR. AJLOUNY: I want to wait. Yes. I
14 definitely want to wait.

15 HEARING OFFICER FAY: All right. Mr.
16 Boyd. Mr. Boyd.

17 MR. BOYD: Okay. First, I just want to
18 note that CARE hasn't stipulated to the
19 Applicant's testimony. Just let the record
20 reflect that.

21 My first question is -- my question of
22 redirect is for you, Gary.

23 You mean recross.

24 MR. WALKER: Recross.

25 MR. BOYD: Okay.

1 A So your -- could you repeat the
2 question?

3 Q So what I'm questioning you is, is there
4 any precedents to your opinion in this case of
5 having four environmentally preferred alternatives
6 to the proposed site?

7 A There were none that came to this level
8 of the process. Let me explain a little bit. In
9 the Sepco project, near Sacramento, our
10 alternatives analysis identified several sites
11 that were environmentally preferred to the
12 proposed project at the PSA level. However, the
13 Applicant provided sufficient mitigation between
14 then and the FSA to -- for Staff to decide that
15 there would not be any significant impacts to the
16 proposed project, so Staff did not pursue those
17 alternatives at the Final Staff Assessment level,
18 so did not recommend, did not say they were
19 environmentally preferable.

20 Q Okay.

21 A And in the Three Mountain case, a
22 similar thing happened. So this is the only case
23 where the impacts, some of the impacts have
24 remained unmitigable and significant, and
25 therefore Staff has found in the FSA that there

1 are environmentally preferable sites.

2 Q So in that case it would be
3 precedential.

4 A Yes.

5 Q The case that you did cite for -- I
6 don't -- the Three Mountain case is not -- that
7 hasn't been approved yet, has it?

8 A It's in the final stages of the process.

9 HEARING OFFICER FAY: No. It's not been
10 approved by the Commission.

11 BY MR. BOYD:

12 Q The final decision is not out.

13 A No.

14 Q Okay. The other case you cited where
15 they changed the -- the mitigation, basically,
16 between the PSA and the FSA, was that one
17 approved?

18 A It was approved, but it was not
19 constructed.

20 Q That's the Hunter's Point one?

21 A No, Sepco.

22 Q Sepco.

23 A Near Sacramento.

24 Q Okay. Now I know that. Then just for
25 information, was that the one that didn't use

1 natural gas, but used some other fuel source? Was
2 it ethanol, or something like that?

3 A It produced ethanol. It used natural
4 gas.

5 Q Oh. Just trying to place it. So the
6 precedent is being set here that you have four
7 viable alternative sites. Has the -- has there
8 been any attempt to -- by the Commission Staff to
9 convince the Applicant that they should go to one
10 of these other sites, that you know of? And
11 anything on your part. Have you talked to the
12 Applicant about this?

13 A No.

14 Q So no one has even proposed this to the
15 Applicant?

16 A No. That's beyond the scope of my
17 analysis to do that.

18 Q Well, I figured you were doing the
19 alternatives analysis, that you would probably
20 talk to the Applicant about the alternatives that
21 you were considering. That's --

22 PRESIDING MEMBER LAURIE: Sir, you --
23 you know as well as anybody else in this room that
24 the very rules that provide for public
25 participation would not allow for that kind of

1 negotiation or discussion between Staff and the
2 Applicant. Certainly as a Commissioner, I would
3 not expect any of my Staff to have any of those
4 discussions with the Applicant on this issue.

5 MR. BOYD: Well, thank you for that
6 clarification. That's very helpful.

7 Okay. Then I also have a question --
8 Mr. Tyler, I have a couple of questions of you. I
9 didn't really get -- I want to ask you about --
10 you were talking about the effects of air
11 conditioning -- lack of air conditioning on
12 mortality.

13 BY MR. BOYD:

14 Q Was your analysis based on actual data
15 from specific events that occurred?

16 MR. RATLIFF: I'm sorry, I have to
17 object because I didn't redirect Mr. Tyler on --

18 HEARING OFFICER FAY: Yeah, that's true.
19 We'll have to cut that off.

20 MR. BOYD: Okay. Excuse me.

21 HEARING OFFICER FAY: Let me explain.

22 The -- the --

23 MR. BOYD: Explain to me clear why I
24 cannot --

25 HEARING OFFICER FAY: Because recross is

1 only within the scope of the redirect. He -- Mr.
2 Ratliff did not conduct any redirect of Mr. Tyler,
3 so Mr. Tyler's not available for recross.

4 MR. BOYD: So what you're -- clarify
5 what you're saying is the parties are not allowed
6 to redirect -- to recross the -- recross, unless
7 the Staff attorney recrossed.

8 HEARING OFFICER FAY: That's right. And
9 only within the scope of what he does. So even though
10 he asked Mr. Walker some questions, you are
11 limited to only those subjects that Mr. Walker
12 discussed with Mr. Ratliff.

13 MR. BOYD: Okay. My -- my talk to Mr.
14 Walker was appropriate, because those were the
15 subjects --

16 HEARING OFFICER FAY: Yes.

17 MR. BOYD: -- that -- that Dick was
18 talking about.

19 HEARING OFFICER FAY: Yes. That's why
20 we allowed it. But this is beyond the scope.

21 MR. BOYD: Okay. Thank you for the
22 explanation. I think I'm complete.

23 HEARING OFFICER FAY: Okay. So that's
24 all, Mr. Boyd?

25 MR. BOYD: Yes.

1 HEARING OFFICER FAY: Okay. Mr.
2 Garbett.

3 MR. GARBETT: Yes, William Garbett.
4 Just one question.

5 RECROSS EXAMINATION

6 BY MR. GARBETT:

7 Q You had previous testimony that you
8 gave, and in your redirect you brought up the fact
9 there are four alternate sites that are
10 environmentally superior. Is it the innuendo of
11 your testimony that the -- perhaps the Applicant
12 should go and abandon his present site and build
13 on all four sites simultaneously?

14 A No.

15 MR. GARBETT: Thank you.

16 HEARING OFFICER FAY: Okay. Mr.
17 Williams.

18 MR. WILLIAMS: Thank you, sir.

19 RECROSS EXAMINATION

20 BY MR. WILLIAMS:

21 Q First a clarification for Mr. Mackin.
22 Just for the record, you cited the efficiency of
23 large plants. It would be my understanding that a
24 gas turbine combined cycle plant would be in the
25 range of 52 to 58 percent, and if a diesel

1 generator plant for peaking service were only half
2 as efficient, that would put it at like 26
3 percent. And I thought that was a little bit low.

4 A Oh, okay. I meant -- I was working with
5 heat rate, so I was saying, say, for example, 6800
6 is the heat rate for combined cycle, then I'd say
7 60 -- 50 percent less would make it approximately
8 11,000 for a peaker.

9 MR. WILLIAMS: I'm with you. Thank you.
10 I wanted to get the absolute numbers on the
11 record, and I can't make the conversion with my
12 textbook.

13 BY MR. WILLIAMS:

14 Q Mr. Walker, back to your comments on
15 changes between the Preliminary and the Final FSA.
16 Do you recall that there were myriad comments, in
17 particular CVRP submitted a list of 64 areas where
18 the PSA required changes?

19 A I -- I recall that they had -- they
20 recommended a number of changes.

21 Q Do you recall that there was a request
22 for a second PSA because of the number of changes,
23 and the concern that the final document would not
24 be consistent?

25 A I recall there was a request for a

1 second PSA.

2 MR. WILLIAMS: Thank you. A
3 clarification on the small plant versus the large
4 plant. I think it's -- I think Mr. Mackin
5 answered this, but I didn't make that in my notes.
6 It's my understanding that for reliability
7 purposes, you view the Metcalf station as
8 essentially two parallel 300 megawatt trains, as
9 being equal to one big plant, 600 megawatts. Is
10 that a fair statement?

11 MR. MACKIN: Well, it's not really two
12 300 megawatt trains, but for reliability purposes,
13 the -- the single contingency of a generator at
14 MEC would be 300 megawatts.

15 MR. WILLIAMS: Because there are two 300
16 megawatt generators?

17 MR. MACKIN: So -- well, no, because
18 there's -- it's two on one, and if you lose -- the
19 largest single contingency would be to lose one
20 combustion turbine, and that would take half the
21 steam away from the steam turbine, and the steam
22 turbine is about one-third of the plant. So, you
23 know, you'd be left with half of it. It's a rough
24 approximation.

25 MR. WILLIAMS: Well, I just wanted to

1 clarify it. When I -- perhaps it was Mr. Walker's
2 answer, but the two small plants were more
3 environmentally damaging than one big plant, I
4 think you said earlier. And I thought they would
5 be about the same.

6 MR. WALKER: Well, the problem is if you
7 don't share any facilities between the two,
8 they're actually two separate plants, then you
9 have more facilities, and so it takes up more
10 land, it has more visual impact. That's --

11 MR. WILLIAMS: I understand. And your
12 clarification has been helpful. If there are two
13 trains at the same site or two -- then there
14 wouldn't be that impact because there would be
15 some shared infrastructure.

16 MR. WALKER: Yes.

17 MR. WILLIAMS: Those are my only
18 questions.

19 HEARING OFFICER FAY: Great. Thank you.
20 Issa.

21 MR. AJLOUNY: I'd like the Applicant to
22 go first.

23 HEARING OFFICER FAY: Well, we're just
24 -- we're going back in reverse order. So you're
25 next.

1 MR. AJLOUNY: Well, I --

2 HEARING OFFICER FAY: Go for it.

3 MR. AJLOUNY: -- I just -- well, I'll
4 just give you my feelings, in this short one
5 sentence, that I feel my recross can be
6 manipulated by the Applicant, and that's why I
7 just feel uncomfortable, just for the record,
8 that's the only reason I'm bringing it up.

9 HEARING OFFICER FAY: Okay.

10 MR. AJLOUNY: But I'll go forward, but
11 if I could have a little variance of if something
12 was discredited, I might be -- that's all. Don't
13 get mad at me, Commissioner.

14 RECROSS EXAMINATION

15 BY MR. AJLOUNY:

16 Q Okay. Gary, first I want to understand
17 something. We talked a lot yesterday, and it came
18 up today just now, so I want to make sure that I
19 understand something. The -- you mentioned the
20 word management a lot, and when -- when you
21 mentioned the things about change, or differences
22 in the FSA, PSA. And I just wanted to know the
23 definition of management before I go any further
24 with that. And it goes along with the recross.

25 So when you say management, does that

1 include Project Managers?

2 A Yes.

3 Q Does that include lawyers or counsel?

4 A It can be -- it can be defined either
5 way. It can be separate, as Staff counsel, or
6 sometimes the project management team is
7 considered both the Project Manager and the Staff
8 counsel.

9 Q Okay. So with all those words, when you
10 said management, can I just encompass that, or do
11 I have to be specific?

12 A That depends on what you want to do.

13 Q I mean as far as yesterday, was that --

14 A Oh.

15 Q -- see, I'm trying to understand, when
16 you said manager, I --

17 A Okay, I --

18 Q -- a light went on.

19 A -- I think I said management and Staff
20 counsel yesterday. But --

21 Q Oh, you did?

22 A -- if I didn't, then it could be added
23 in or construed to mean both.

24 Q Okay. So for the sake today, if it's
25 different, I'm going to use the word "management".

1 And if it's not including counsel or the Project
2 Manager, or whatever, please state that when I
3 ask.

4 A Okay.

5 Q Keep that in mind. And also, for the
6 sake of time, we talked about a lot of difference
7 between the FSA and the PSA. For the sake of
8 time, I just want to refer to that as the PSA/FSA
9 differences, okay, as a group, instead of pointing
10 out each one.

11 So the first question, keeping in mind
12 the definition of management and keeping in mind
13 of PSA/FSA differences, the number of items that
14 came up that I asked yesterday, even though it was
15 not in the FSA, is it still your expert opinion
16 that you feel that this is true today?

17 A I -- I've got that in mind. What -- is
18 what still true today?

19 Q Oh, I'm sorry. I scribbled. I'm sorry.
20 True today on the PSA/FSA differences that we
21 talked about yesterday.

22 PRESIDING MEMBER LAURIE: You've got to
23 be more specific.

24 BY MR. AJLOUNY:

25 Q Okay. Did I mess up? Okay. I guess I

1 tried to -- there was a number of differences that
2 was talked about yesterday.

3 A Yes.

4 Q And I wanted to group them all as PSA --
5 PSA/FSA differences.

6 A Yes.

7 Q For just that mention, so I don't have
8 to go through my notes --

9 A Fine.

10 Q Okay.

11 A Yes.

12 Q So keeping those differences that came
13 up yesterday --

14 A Yes.

15 Q -- I want on every one of those, as a
16 group, if you can't do it by group and -- I'll go
17 through it one by one. I'm just trying to save
18 time. Even though it was not in the FSA, is it
19 still your expert opinion that all those
20 differences that came up yesterday, which I'm
21 calling PSA/FSA differences, do you still feel
22 that it's -- those things that are -- are still
23 true today that were in the PSA?

24 PRESIDING MEMBER LAURIE: No, that --
25 that question is ambiguous.

1 MR. AJLOUNY: Okay. I'm sorry.

2 PRESIDING MEMBER LAURIE: There have
3 been -- this witness has already testified to much
4 of -- of that. That is, folks have gone back to
5 the PSA and have said do you still agree with
6 that, and this witness has said yes. And I don't
7 want to go through that again.

8 MR. AJLOUNY: Okay.

9 PRESIDING MEMBER LAURIE: But if you can
10 point out differences that you have not talked
11 about before, that were the subject of the
12 redirect, go ahead and do that.

13 MR. AJLOUNY: Okay. Okay. Because I
14 think I heard him asked about -- okay, let me ask
15 it this way.

16 BY MR. AJLOUNY:

17 Q If it was your choice, with no influence
18 from management, would the FSA in that group area
19 of those questions that I brought up -- maybe
20 there's more and I'm not smart enough to find them
21 -- would the FSA have changed at all in those
22 areas, if you had no influence from management?

23 A I'm sorry, but --

24 HEARING OFFICER FAY: Which areas --

25 MR. WALKER: -- the group is so -- I

1 don't understand.

2 BY MR. AJLOUNY:

3 Q The group is the words superior --
4 environmentally superior, on that first paragraph,
5 you know, and I've got to look through my notes
6 now.

7 A Sorry, I was just --

8 HEARING OFFICER FAY: Issa, that is --
9 that's just too vague.

10 MR. AJLOUNY: Okay.

11 HEARING OFFICER FAY: And especially in
12 light of the very specific challenges that came up
13 yesterday.

14 MR. AJLOUNY: But that --

15 HEARING OFFICER FAY: I think -- I think
16 the record's pretty -- pretty clear on these
17 differences, and -- and the way you phrased it is
18 just too vague for us to allow.

19 BY MR. AJLOUNY:

20 Q Okay. The counsel indicated in recross
21 some belief that this is normal, and -- and so
22 what I want to know is whether it's normal, it
23 happens every day, because the -- because this FSA
24 and this executive summary is so important, I want
25 to know, even though it might be normal, would he

1 have still kept it the same as it was in the PSA?

2 A I thought -- yeah --

3 HEARING OFFICER FAY: Okay. He reviewed
4 a number of inputs.

5 MR. AJLOUNY: Okay. Let me do --

6 HEARING OFFICER FAY: Are you asking him
7 if -- if he got to do -- if it was the Gary Walker
8 PSA and it just stayed that way, without --

9 MR. AJLOUNY: It was just the area of
10 alternatives --

11 HEARING OFFICER FAY: Let me --

12 BY MR. AJLOUNY:

13 Q I guess -- I don't want to irritate.
14 Let me -- real quick. Gary, the word "superior"
15 was taken out of the PSA, and if you had a choice,
16 without any management influence, would you have
17 taken that word out for environmentally superior,
18 in that first paragraph?

19 A That was asked, and I answered it
20 yesterday, and I said I would not take it out.

21 Q Okay. Well, see, maybe my memory, I
22 don't remember it. Maybe I did. Did you -- so
23 you feel that way on the other things that came
24 up, too? Let me see -- oh, my gosh. Okay. Let
25 me get off on another thing.

1 Even though you expressed management
2 chose to take those words out, I want to know, in
3 -- in all -- between the PSA and FSA, did you
4 feel, in the topic of alternatives, was it
5 expressed to you in any way that there was very
6 big concern about your alternatives analysis?

7 MR. RATLIFF: Can I just explain, Issa,
8 in a moment, the change that you're talking about.

9 MR. AJLOUNY: Okay.

10 MR. RATLIFF: The use of the term
11 "environmentally superior" there, as I recollect,
12 was removed because we were trying to do exactly
13 what CEQA required us to do, and what CEQA
14 requires you to do under alternatives is to list
15 the environmentally preferable alternative among
16 the alternatives that you discuss. And so what we
17 were trying to do was list that alternative, or
18 those alternatives which were environmentally
19 preferable, of those that we discussed.

20 And that -- that was, as I recollect,
21 the basis of the change. I -- some of these
22 things are obscure, some of them have to do with
23 the wordings of the statutes themselves, but it's
24 -- it's exhaustingly difficult to explain every
25 conceivable change that would go into a document

1 that goes through multi-person review.

2 MR. AJLOUNY: Okay.

3 MR. RATLIFF: But I -- I just wanted to,
4 I hoped, at least explain that one so you would --
5 since we've talked about it before, to try to
6 explain to you at least why that discrete change
7 was made.

8 BY MR. AJLOUNY:

9 Q Okay. And I guess this case, from what
10 I've heard and what I've read of all the other
11 FSAs, there's -- there's a lot of focus on this,
12 and because I heard yesterday the changes, I --
13 I'm really feeling that it is important -- I want
14 to know, without any interruption or encouragement
15 from management, did you express -- specifically
16 have pressure or -- to change your alternatives,
17 were you expressed that in any way, whether it's
18 e-mail, someone came into your office, to -- that
19 they were concerned about the results of the
20 alternatives, and expressed those concerns to you.

21 A I need you to be more specific, where
22 you mean concerned about the results. Can you be
23 more specific?

24 Q Well, concerned about -- about -- the
25 perception. See, I -- I -- because that I feel

1 this has been a political thing, concerned about
2 the perception that it would show how your
3 alternatives will look, and, you know -- you know,
4 what it might expose, or something. So it's the
5 whole perception, I guess, the idea of perception.

6 A I --

7 Q Your hesitation kind of answers my
8 question.

9 A Well, I can give an answer. I'm not
10 sure if perception is the right word. Concerns
11 were expressed about the way the differences
12 between the alternative sites and the proposed
13 project were characterized, and therefore there
14 was recommendations to modify the wording.

15 The general direction of that was that
16 based upon additional information since the PSA,
17 and further consideration and review by
18 management, including Staff attorneys, was that
19 the characterization of the alternative sites in
20 comparison to the proposed site made the
21 alternative sites look relatively better than it
22 should. That was the general tone of the
23 comments, and so that was the -- the
24 recommendations were to modify the language to not
25 make the alternatives appear as much preferable as

1 they had in the PSA.

2 Q And that's just the point I want to
3 make. If you didn't get that pressure, would you
4 -- do you still feel today that those words that
5 you had in the PSA, in that area you just talked
6 about, would be appropriate in your -- in your
7 section?

8 A You're talking about like superior?

9 Q Yeah. Yeah, this --

10 A Yes, I would've left it the same if I
11 hadn't had that input.

12 Q Okay. And what about the perception
13 issue -- I'm talking about the PSA/FSA, what about
14 the FSA and executive summary?

15 A I --

16 MS. WILLIS: I would object. He -- he
17 didn't write the executive summary.

18 HEARING OFFICER FAY: Again, that's
19 irrelevant. He did not draft the executive
20 summary.

21 MR. AJLOUNY: No, but I wondered did he
22 have -- did he have pressure --

23 HEARING OFFICER FAY: And he wasn't
24 questioned on that, either, so it's outside the
25 scope of the direct --

1 MR. AJLOUNY: He was questioned on his
2 changes of the FSA.

3 HEARING OFFICER FAY: Not about the
4 executive summary --

5 MS. WILLIS: I'd also --

6 MR. AJLOUNY: Let me -- let me restate
7 my question. I'm sorry.

8 MS. WILLIS: I'd also like to object to
9 the word "pressure". He never stated that he was
10 pressured. He said he had input.

11 HEARING OFFICER FAY: That's correct.

12 BY MR. AJLOUNY:

13 Q Okay. Did you feel any pressure at all,
14 Gary?

15 A What do you mean by pressure?

16 Q Did you feel more pressure in this case
17 than any other case that you've been involved
18 with?

19 A I asked you what you mean by pressure?

20 Q Management pressure of the concerns they
21 have of perception, or how it's going to look
22 between PSA/FSA, or FSA and executive summary
23 doesn't agree with your FSA.

24 A As I said, there were concerns expressed
25 about the characterization of the comparison of

1 the alternative sites to the proposed project.
2 And recommended changes, there were changes
3 recommended to address that -- those concerns.
4 And some of those changes were made.

5 Q Okay. Those concerns expressed to you
6 in this case, have you ever felt the same level of
7 concern on other cases that you felt on this one,
8 maybe?

9 A No.

10 Q Okay. So -- so what I'm hearing is you
11 felt concerns, not the word pressure, but you had
12 concerns, and this was at a higher level than what
13 the norm is of what you've ever felt before, in
14 the -- I think it was 20 years, 21 years of
15 your --

16 A Can you clarify what you mean by higher
17 level. Do you mean by a higher level in
18 management, or a higher level of concern by those
19 who reviewed it?

20 Q The second one.

21 A Well, there was a higher level of
22 concern.

23 Q Okay. Would that concern be the
24 perception that came up in your analysis? Or
25 maybe -- well --

1 A As I said, it was the characterization,
2 yeah.

3 Q Okay. I'm sorry.

4 A Of --

5 Q All right. And then I just want to make
6 sure I heard something right in the recross. And
7 I don't know why I'm doing this, but I probably
8 should leave it for the record, but I don't want
9 to waste my time in my brief.

10 You were asked by your counsel that the
11 word environmentally superior in reference to
12 Alternate Sites 1 through 4, and you said that was
13 true. So do you still feel that's -- is that what
14 I heard, your -- on your recross? You -- can you
15 look at your note and see what you said?

16 MR. RATLIFF: No, I was trying to
17 explain, for your benefit, actually, why that term
18 changed.

19 MR. AJLOUNY: But you referenced all
20 sites, 1 through 4. Alternate sites.

21 MR. RATLIFF: You're right. You're
22 right.

23 MR. AJLOUNY: Okay.

24 MR. RATLIFF: I'm sorry. I thought you
25 were talking about what --

1 MR. AJLOUNY: And Gary --

2 MR. RATLIFF: -- what my direct --
3 redirect examination of --

4 BY MR. AJLOUNY:

5 Q Yeah. So, Gary, your response to
6 environmentally superior was yes to Alternate Site
7 1, Alternate Site 2, Alternate Site 3, and
8 Alternate Site 4.

9 A Well, let me correct that slightly. I
10 said, as in the PSA, the PSA said that Staff had
11 found Sites 1, 2, 3, and 4 all preferable to the
12 proposed project. And it also said that Sites 3
13 and 4 were the environmentally superior
14 alternatives, because they are better
15 environmentally than Sites 1 and 2.

16 Q Okay.

17 A So for that distinction is what --

18 Q That's good. But in the recross, I
19 heard the question, and it was all four, and you
20 said yes, so you owe me one. But I want to ask,
21 just to make sure, would your opinion today maybe
22 have changed by that question? That -- it's all
23 four, or is it still what the PSA said, in that
24 thing you just stated?

25 A It's still what the PSA said.

1 MR. AJLOUNY: Okay. All right, good.

2 And then I just have Peter Mackin. And
3 I'm only standing up because of my leg, and I
4 apologize. I don't mean to --

5 BY MR. AJLOUNY:

6 Q Peter, you were asked a question would
7 you -- would you prefer both Metcalf and Newark.
8 I -- I didn't hear the words, so was it Metcalf
9 and Newark, 600 in each, if you had your choice?

10 A Well, I think the -- the question was if
11 -- if I had my choice, based on the -- the two
12 questions I was asked earlier, and then a third
13 alternative of a plant at Metcalf and a plant at
14 Newark, which would I prefer, and my answer was a
15 plant at Metcalf and a plant at Newark.

16 Q Okay. So with your expert opinion,
17 would you agree the more generation, the better?

18 A Within reason, yes.

19 Q Okay. So is it reasonable to assume
20 that two 600 megawatt power plants are better than
21 one, in this scenario there, that the question
22 asked?

23 A In the current situation, and in the Bay
24 Area, yes, absolutely.

25 Q Okay. But reference to yesterday's

1 question, just so I didn't misinterpret it, and I
2 can do my brief correctly, if you had to pick one,
3 and time wasn't of -- the issue, you're still
4 saying Newark or --

5 PRESIDING MEMBER LAURIE: That's already
6 been asked and answered, Issa.

7 MR. AJLOUNY: But I just wondered if he
8 changed at all by his recross, and so I'm just
9 confirming. That's my last question.

10 PRESIDING MEMBER LAURIE: The issue was
11 not brought up on redirect. It was answered
12 yesterday, and it was -- it was not brought up
13 again today.

14 HEARING OFFICER FAY: It's been ten
15 minutes, too.

16 MR. AJLOUNY: Okay.

17 HEARING OFFICER FAY: Okay. Mr. Harris,
18 do you have any recross?

19 MR. HARRIS: Just very briefly.

20 RECROSS EXAMINATION

21 BY MR. HARRIS:

22 Q I want to go back to Site 4, and the
23 facility design. I think we've cleared up the
24 issue of the scaling, so I can leave that one.
25 Thank you for taking a look at that, I appreciate

1 that.

2 In your discussion or your explanation
3 today, you've talked about a -- possibly doing a
4 two by five cooling tower as opposed to a one by
5 ten. Is that --

6 A Yes.

7 Q Okay. You didn't have an opportunity to
8 do any simulations with a two by five, right?
9 There's nothing in your testimony about a two by
10 five, is that correct?

11 A Well, I didn't, but if you look at the
12 simulation that is provided in the figures --

13 Q Let me -- I guess I wanted -- my
14 question was pretty discrete. I just -- I wanted
15 to know whether there was a two by five.

16 A Well, the cooling tower in your photo
17 simulations, and I think that one's a yes or no.

18 HEARING OFFICER FAY: Can you answer it
19 yes or no, and then explain?

20 MR. WALKER: Was there a two by five in
21 the simulation?

22 MR. HARRIS: Yes.

23 MR. WALKER: No.

24 BY MR. HARRIS:

25 Q Okay. that's fine. The only other

1 question that I have is --

2 A But I -- can I elaborate on the answer?

3 Q Well, if you can do it quickly.

4 A I will. The point was that whether it
5 was a two by five or a one by ten in figure --
6 it's on Figure 35, with the screening, you
7 wouldn't be able to see either one.

8 Q Okay. Well, let me ask you a couple
9 other questions, then. From a facility design
10 perspective, as follow up, there are limits on how
11 close together you can place two rows of cooling
12 towers. Are you familiar with the engineering
13 constraints on how close two cooling towers can be
14 placed side by side?

15 A Not as an engineer, but I have seen site
16 plans, such as for Pastoria, that show how close
17 they can be placed, and with that separation
18 neither one would be visible with the mitigation
19 in Figure 35.

20 Q Do you know whether those site
21 constraints can be site specific? Can the
22 characteristics of the site affect how close those
23 cooling towers can go together, as well?

24 A I really don't know.

25 Q Okay. That's fine.

1 A I said before, however, it appeared to
2 me, from my previous experience on these site
3 plans, that a hundred feet, 50 feet on each end
4 for the cooling tower allows sufficient access
5 around the cooling tower.

6 Q Okay. So given enough time and the
7 proper scaling, you might take another run at
8 that. But there's nothing in your testimony
9 currently along those --

10 A No, but as I said --

11 Q -- along those lines.

12 A -- it wouldn't change the simulation,
13 and it wouldn't change the visual impacts.

14 MR. HARRIS: Okay. Thank you.

15 And I think the only other thing I want
16 to ask is to help you -- join me in making sure we
17 get Jeannie's measuring tape back to her. Other
18 than that, I have nothing else.

19 HEARING OFFICER FAY: Okay. Thank you.

20 That concludes taking evidence in this
21 case, and I -- I imagine there will be --

22 MS. WILLIS: Move our documents.

23 HEARING OFFICER FAY: -- you're going to
24 move your documents at this time? Okay.

25 MS. WILLIS: We'd like to move the

1 section of the FSA entitled Alternatives, and the
2 Appendix A, I think that was marked 164, 165, and
3 166. That's rebuttal and supplemental testimony.

4 HEARING OFFICER FAY: Is there any
5 objection?

6 All right, we receive those at this
7 point, into the record.

8 (Thereupon Exhibits 164, 165, and
9 166 were received into evidence.)

10 HEARING OFFICER FAY: Mr. Williams.

11 MR. WILLIAMS: Yes. I would like to
12 move the Alternatives section of the PSA into the
13 evidentiary record, with the certification by
14 myself that it represents the material that we
15 consulted at the time of the PSA review.

16 HEARING OFFICER FAY: Okay. That motion
17 is denied. It was not your testimony and Staff
18 has not chosen to enter it in the record.

19 Any -- any other matters? Ms. Dent.

20 MS. DENT: I want to make -- I want to
21 make sure that I provide the documents that I
22 asked the Commission to take notice of, and I want
23 to make sure that I -- if I provide copies of
24 those documents to the Commission and to the
25 parties that are present, Intervenors, that I --

1 that's what you're asking. I think you probably
2 have a wider service system.

3 HEARING OFFICER FAY: I think that's
4 reasonable. Rather than the entire service list.
5 We -- we'd like to have them in the exhibit file,
6 as well as other -- other documents we've taken
7 official notice of.

8 MR. HARRIS: Do they have exhibit
9 numbers?

10 HEARING OFFICER FAY: Well, no, we've
11 not -- they're not marked as evidence. They're
12 just -- we're taking notice of them.

13 Any other matters? Mr. Harris, did you
14 -- I thought I saw your hand.

15 MR. HARRIS: I was waiting eagerly to
16 see the closing of the record, so that's --

17 HEARING OFFICER FAY: Mr. Boyd.

18 MR. BOYD: I have a question about the
19 meeting tonight. When is an appropriate time to
20 ask that?

21 HEARING OFFICER FAY: Okay. Just --
22 just a minute. Let me just get the record closed.

23 Any other questions on the evidentiary
24 record?

25 Okay. The evidentiary record is -- is

1 closed as of now, with the exception of the
2 Biological -- the final Biological Opinion from
3 the U.S. Fish and Wildlife Service, which may not
4 be available until after the Commission renders
5 its decision. If it is available prior to that
6 time, the -- it will be entered into -- into
7 evidence.

8 MR. BOYD: Point of information.

9 HEARING OFFICER FAY: We have testimony
10 on --

11 MR. BOYD: Just --

12 HEARING OFFICER FAY: Excuse me. We
13 have testimony from Fish and Wildlife Service that
14 they -- they have reviewed the Staff conditions,
15 and that the preliminary is -- is in line with
16 those. However, we will hold the record open to
17 receive the final, just in case.

18 Mr. Boyd.

19 MR. BOYD: My question is the -- my
20 understanding is that the PSD permit will have to
21 be approved by the Air District, and that won't
22 happen until the -- the Biological Opinion has
23 been signed off on by EPA Region 9. So don't you
24 still have to keep the record open for that, as
25 well? For the PSD?

1 HEARING OFFICER FAY: That's correct,
2 actually. We -- we -- thank you, Mr. Boyd.

3 MR. RATLIFF: There is no final PSD
4 permit, either, and we neglected to discuss that,
5 so the PSD comes in when the Biological Opinion is
6 made available, and I'm not certain when that --
7 that sequence of events will take place. But that
8 still has to come in.

9 MR. WILLIAMS: And to that very point,
10 there's also lacking a permit for the cooling
11 tower.

12 MS. DENT: There's -- there's not even a
13 pending PSD for the cooling tower, so are you --

14 MR. RATLIFF: Right.

15 MS. DENT: -- holding the record open
16 indefinitely for that?

17 MR. BOYD: There -- there is no PSD for
18 the cooling tower.

19 HEARING OFFICER FAY: No, but there is a
20 permit required --

21 MS. DENT: There's a permit required.

22 MR. BOYD: -- for -- from the Air
23 District. Their new regulations require any PM
24 source of over five tons a year to get a permit
25 from the Air District to do that. And my

1 understanding is that this project has more than
2 five tons a year from the cooling tower.

3 HEARING OFFICER FAY: Now, keep in mind,
4 sometimes these permit -- these trailing permits
5 are covered in a condition that doesn't allow a
6 project to begin unless the permit is issued.

7 MR. RATLIFF: My understanding was that
8 the FDOC was the full set of conditions that the
9 District intended to impose, with the exception of
10 the PSD permit, which had to remain in preliminary
11 form until there was a Biological Opinion, and
12 pursuant to an agreement with EPA.

13 This is the first time I've heard about
14 a permit --

15 MS. WILLIS: I think --

16 MR. RATLIFF: -- a separate permit
17 requirement for the cooling tower. I --

18 (Parties speaking simultaneously.)

19 MS. DENT: It's in the record.

20 MR. HARRIS: I think I can help. My
21 understanding is that the second issue, the
22 cooling tower permit, is a ministerial permit
23 that's done post certification. And I think it is
24 dealt with in the Conditions of Certification, as
25 well.

1 HEARING OFFICER FAY: Do you know which
2 condition?

3 MR. WILLIAMS: Well, I have checked
4 offline with Mr. Kwong, the attorney, this
5 morning, and he indicated that they were
6 processing a cooling tower permit.

7 HEARING OFFICER FAY: That they were, or
8 were not?

9 MR. WILLIAMS: Well, they were, and the
10 -- that left me with the impression it would be
11 forthcoming, but he didn't state a date.

12 MR. HARRIS: I can -- let me suggest
13 something, then. I guess I should -- I'm not sure
14 legally whether the PSD -- or the other permit
15 need to be in the record beforehand, though. I'm
16 perfectly willing -- we'll figure out that legal
17 issue -- to have the record closed but for the
18 Biological Opinion, the PSD permit, if necessary,
19 and the second Air District permit, if necessary,
20 for those three items. And then we can all figure
21 out when we have better legal heads around,
22 whether they are necessary. So.

23 MR. WILLIAMS: But doesn't the PSD
24 trigger the timeline for the appeals to the EPA
25 Appeals Board?

1 MR. HARRIS: Yes, 30 days. But that's
2 outside this process, though.

3 HEARING OFFICER FAY: Right. Right.
4 But yes, and so you have another --

5 MR. WILLIAMS: I think it's unfair to
6 let construction start when we still can't go to
7 the EPA National Appeals Board.

8 HEARING OFFICER FAY: Okay. Thank you.
9 That's noted.

10 MR. BOYD: I also would make a similar
11 objection to closing the record at this time, with
12 so much outstanding information still pending.

13 HEARING OFFICER FAY: Okay. Well, the
14 outstanding information that has been identified
15 can still be received into the record.

16 MR. BOYD: I can state a few others.

17 HEARING OFFICER FAY: And with the
18 exception -- with the exception that if
19 examination of the Conditions of Certification or
20 conditions that the Committee chooses to add
21 obviate the need to receive something into
22 evidence, in other words, if we put in a condition
23 preventing construction to -- from beginning
24 unless a cooling tower permit is issued, then we
25 wouldn't worry about whether or not we had the

1 permit in hand.

2 With those exceptions, then, the record
3 is closed, and -- and what I would like to do now
4 is just kind of review the plans for tonight. I
5 know there's been some confusion.

6 We are going to leave as soon as
7 possible, and for those who are interested, we
8 will return tonight at 7:00 o'clock. There'll be
9 more chairs, and there'll be no counsel tables.
10 There'll just be a podium with a table next to it
11 so that people can speak to the Committee on the -
12 - their legal and conceptual views of the override
13 process, although not arguing specific facts in
14 the case. It's just, you know, their
15 recommendation on how the Committee should
16 approach the override question.

17 And then, after that is addressed, we'll
18 entertain statements, brief statements, from some
19 representatives of various groups. Calpine has
20 given us a list of about 12 people that are going
21 to make very brief statements, a total of no more
22 than an hour.

23 PRESIDING MEMBER LAURIE: And, Mr. Fay,
24 when you said people will comment the override
25 issue, we're talking about the parties' comments.

1 HEARING OFFICER FAY: Yes, the parties.
2 Thank you. That's accurate.

3 PRESIDING MEMBER LAURIE: I understand
4 Staff does not intend to offer comment on the
5 override. Ms. Dent indicated she did not intend.
6 Applicant indicated you have what, about 20
7 minutes or so.

8 Again, the intent is not to go through
9 the record and cite pages. It's simply an
10 opportunity to express your view regarding overall
11 criteria and overall concepts, if you choose to
12 discuss them.

13 MS. DENT: I just wanted to make sure to
14 be clear. The City of San Jose isn't going to do
15 that tonight. We're going to do that next week.

16 PRESIDING MEMBER LAURIE: That's fine.

17 MR. AJLOUNY: And I've asked also, and
18 I've talked to Mr. Fay and -- because of my age, I
19 keep on forgetting to talk to you, Commissioner,
20 about the same request, not having time to prepare
21 for what I want to say. And I'm sure it won't be
22 a long speech, but I'd like to say some --

23 HEARING OFFICER FAY: On the 23rd?

24 MR. AJLOUNY: -- something educational.

25 HEARING OFFICER FAY: On the 23rd.

1 MR. AJLOUNY: On the 23rd. And -- and
2 Mrs. Cord also --

3 PRESIDING MEMBER LAURIE: Yeah. Just --
4 just be aware that we will certainly allow, if Ms.
5 Dent shows up on the 23rd, or -- I understand the
6 Mayor will, that -- that's fine. And if you do,
7 or any of the parties do, to talk about that issue
8 specifically, we will allow some time.

9 But the -- the public comment, depending
10 upon how many folks are going to be there, are
11 going to be like two to three minutes. So that --
12 that's what the deal's going to be.

13 MR. AJLOUNY: And again, we're going to
14 try to respect the time and -- and all the time
15 that we've put in here, and knowing that you
16 realize the opposition, we're not going to try to
17 do a numbers match. I -- I think you won't see a
18 great amount show up, as you have in the past.

19 HEARING OFFICER FAY: And even if --
20 even if it goes very efficiently tonight and
21 there's more time, we're not -- we've told the
22 Applicant, their speakers have to be brief. We're
23 not just going to divide up the allowed time.
24 It's -- it's going to be short.

25 MR. AJLOUNY: I thought you were

1 referring to the 23rd.

2 PRESIDING MEMBER LAURIE: The Secret
3 Service is working on my exit strategy, so
4 we're --

5 HEARING OFFICER FAY: Mr. --

6 MR. WILLIAMS: Can you clarify, just for
7 the record, where the issue of -- of discussing
8 override tonight was noticed?

9 HEARING OFFICER FAY: Yes, I can.

10 MS. DENT: I have a question. I realize
11 it's not part of the evidentiary record, but there
12 -- it will be -- it will be transcribed?

13 PRESIDING MEMBER LAURIE: It will be
14 part of the hearing record.

15 MS. DENT: Correct.

16 PRESIDING MEMBER LAURIE: Yes, ma'am.

17 MS. DENT: Thank you.

18 MR. BOYD: So in that case, it will be
19 part of the administrative record, correct?

20 PRESIDING MEMBER LAURIE: Correct.

21 HEARING OFFICER FAY: Right. The notice
22 issued by the Committee on March 7th, says that we
23 will hear that evening from the parties regarding
24 override criteria, as well as from public
25 officials, agencies, spokespersons,

1 representatives.

2 It then, on the second page, again
3 repeats that we will hear from the parties in the
4 case regarding the appropriate legal and
5 conceptual criteria for the Commission to apply in
6 considering an override of local land use
7 requirements.

8 So it was in the notice twice.

9 MS. DENT: My understanding of what
10 you're going to do, just for procedural purposes,
11 so we can be clear, you're going to continue the
12 hearing, the hearing from tonight, to next Friday,
13 for the override section --

14 PRESIDING MEMBER LAURIE: Well, we don't
15 have to continue it. The hearing --

16 MS. DENT: Is a notice --

17 PRESIDING MEMBER LAURIE: -- on the 23rd
18 is already noticed.

19 HEARING OFFICER FAY: Well, she was
20 referring to this --

21 MS. DENT: But you feel that's adequate
22 for the override part, also? Okay.

23 MR. AJLOUNY: Well, it didn't talk about
24 this Friday, but -- it talked about today, and
25 then this Friday.

1 HEARING OFFICER FAY: Right. This
2 Friday was mentioned only as a continuance, if
3 necessary. And based on the response we've
4 received, we don't think it's going to go so late
5 tonight that we'll have to go over.

6 MS. DENT: I think the point is next
7 Friday has -- hasn't probably been officially
8 noticed.

9 HEARING OFFICER FAY: Yes, it has.

10 MS. DENT: Okay. Thank you.

11 HEARING OFFICER FAY: It has been
12 noticed. The only question is that someone might
13 think, or wonder whether override could be
14 addressed. And we're -- we're making that clear
15 now, that the parties that cannot come on the 14th
16 will be given time -- the parties -- to address
17 override questions.

18 MS. DENT: Thank you.

19 MR. AJLOUNY: And we're considered the
20 parties, right?

21 HEARING OFFICER FAY: Yes. If you're an
22 Intervenor, you're a party.

23 All right. Mr. Boyd.

24 MR. BOYD: On mu lunch break today, I
25 spoke with a Mr. James Chadwick, of Gray, Carey,

1 Ware and -- who's a lawyer the California First
2 Amendment Coalition. I served on -- I docketed a
3 document on the second, a demand to correct or
4 cure violations of the Bakely-Keene Act, and that
5 this meeting tonight was not properly noticed ten
6 days in advance.

7 And I also provided on the 13th a copy
8 of a letter, a copy of the envelope with the
9 notice, which his postmarked by the bulk mailing
10 label of the Energy Commission on the 7th. The
11 7th is less than ten days in advance of the
12 meeting. Therefore, I respectfully request that
13 you cancel the meeting on the 14th and 16th until
14 they are properly noticed, in compliance with the
15 Bakely-Keene Act.

16 And in case anyone didn't get a chance
17 to review that, since you were here, I brought
18 some additional copies for you.

19 PRESIDING MEMBER LAURIE: Thank you, Mr.
20 Boyd. We -- we will not be doing that.

21 HEARING OFFICER FAY: Okay. And by the
22 way, the -- today's hearing, and extending on into
23 the evening, was -- was noticed in the notice of
24 the sixth set of evidentiary hearings, and I
25 unfortunately don't have the date on that, but you

1 can all refer to your notice. So all we did with
2 this follow-up notice is indicate that there'd be
3 an opportunity for public comment, which is, of
4 course, always allowed at any hearing.

5 So this is a --

6 MR. BOYD: Also, the parties are listed
7 on that agenda, as well.

8 HEARING OFFICER FAY: -- detail. Yeah,
9 thank you.

10 MR. WILLIAMS: The original notice, for
11 the record, was January 17th.

12 HEARING OFFICER FAY: Okay. Thank you,
13 Mr. Williams.

14 Mr. Garbett, question?

15 MR. GARBETT: Can the public --

16 HEARING OFFICER FAY: We can't hear you,
17 so you'll have to come up.

18 MR. GARBETT: Yes. Could the public
19 pass on the comments on override to the 23rd, at
20 the same time that the other Intervenors give
21 their comments on the 23rd?

22 HEARING OFFICER FAY: You -- you may, as
23 a party, yes. Thank you.

24 Okay. Any other questions?

25 MR. SCHOLZ: I would like to make that

1 same request. I was originally accommodated by
2 Commissioner Laurie because -- from the 22nd to
3 the 16th. I wasn't available the 16th.

4 Just for the record, I will physically
5 be in town today. I would like to defer my
6 comments to the -- still to the 23rd.

7 HEARING OFFICER FAY: To the 23rd. As
8 we said, any party in the case will be allowed to
9 address the override question on the 23rd, or
10 tonight.

11 Yes, sir. Mr. Murray.

12 MR. MURPHY: Murphy.

13 HEARING OFFICER FAY: Murphy.

14 MR. MURPHY: My question is about the
15 purpose of having an override hearing here, and I
16 want to ask the Commissioner if there will be
17 scheduled hearings in Sacramento on the issue of
18 override, since it's a statewide question.

19 PRESIDING MEMBER LAURIE: This is not a
20 -- it's a proper question. The answer is -- is
21 no, we do not have plans at the Energy Commission
22 to have a workshop on the override issue. The
23 sole purpose of tonight is to provide -- and we've
24 talked about this since December -- an opportunity
25 because, obviously, it is an issue in the case, to

1 provide folks an opportunity to express themselves
2 regarding, generically, criteria.

3 I would expect -- I would not expect any
4 -- any workshop, any regulation, any legislation,
5 although I'm always surprised about that, to deal
6 with the issue of override before this decision is
7 issued.

8 MR. MURPHY: Override criteria is still
9 and always will be -- in any project --

10 PRESIDING MEMBER LAURIE: Well, it is.
11 At this point, all I would reference is the
12 statute. And that's all there is.

13 HEARING OFFICER FAY: All right. Any
14 other questions before we adjourn?

15 MR. AJLOUNY: Yeah, I have one request.
16 Can we get the actual documents of the override
17 issue as a package?

18 PRESIDING MEMBER LAURIE: I don't know
19 what documents --

20 HEARING OFFICER FAY: It's a statute.
21 The Warren-Alquist Act has it in it.

22 MR. AJLOUNY: Is it online?

23 HEARING OFFICER FAY: Yes. Ms. Mendonca
24 can help you with that, get you the exact words.
25 Okay.

1 Thank you all. We are adjourned.
2 (Thereupon the Evidentiary Hearing
3 was adjourned at 5:04 p.m.)
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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of March, 2001.

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