

COMMITTEE STATUS CONFERENCE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification ) Docket No.  
for the Duke Energy Morro Bay ) 00-AFC-12  
Power Plant )

MORRO BAY ELEMENTARY SCHOOL AUDITORIUM  
1130 NAPA AVENUE  
MORRO BAY, CALIFORNIA

TUESDAY, APRIL 24, 2001

6:15 p.m.

Reported By:

James Ramos

Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Michal C. Moore, Commissioner, Presiding Member

Terry O'Brien, Commissioner Advisor

Gary Fay, Hearing Officer

STAFF PRESENT

Caryn Holmes, Staff Counsel

Kae C. Lewis, Project Manager

APPLICANT

Christopher T. Ellison  
Ellison, Schneider & Harris, LLP

Jane Luckhardt  
Downey, Brand, Seymour & Rohwer

Andrew L. Trump, Project Manager

Wayne Hoffman, Environmental Manager

Robert E. Cochran

INTERVENOR

Henriette Groot  
Tom Laurie  
Coastal Alliance on Plant Expansion

Babak Naficy  
Gordon Hensley  
Environmental Defense Center

PUBLIC ADVISER

Roberta Mendonca, Public Adviser

## I N D E X

	Page
Proceedings	1
Introductions	1
Statement of Public Adviser Mendonca	5
Status Reports	
Applicant	7
Staff	21
Coastal Alliance on Plant Expansion	46
Coastal Alliance on Plant Expansion Motion to Compel Answers	
Babak Naficy, Environmental Defense Center	70
Jane Luckhardt, Downey, Brand, Seymour & Rohwer	76
Public Comment	
Rebecca McFarland, San Luis Obispo County Office of Education	88
Dan Chia, California Coastal Commission	91
Hank Lewis, IBEW Local 639	97
James Pauly, Resident	98
David Nelson, Resident	101
John Barta, Resident	105
Arby Kitzman, Morro Bay Chamber of Commerce	109
Bill Woods	110
Nelson Sullivan	111
Joseph Holifield	112
Barbara Jo Osborne	115

## I N D E X

	Page
Public Comment (continued)	
Bonnie Pierce, Salinan Nation	119
Roberta Mendonca, Public Adviser	128
Agency Comment	
Gary Fuz, City of Morro Bay	130
Gary Willey, Air Pollution Control District	140
Adjournment	143
Certificate of Reporter	144

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PRESIDING MEMBER MOORE: Good evening.

Hello, my name is Michal Moore. I'm a Commissioner with the California Energy Commission, and I preside over the Committee that is addressing the issue of the proposed new power plant construction here in Morro Bay.

I'm joined on the dais by Gary Fay, my Hearing Officer, and by Terry O'Brien, who is representing Chairman Keese, who is not here this evening.

And we're here about the status of the ongoing investigation into the plant, and the nature of the information that's been generated so far. And we're here also to hear from the parties about data requests, as well as future scheduling issues.

So I'll be sharing the dais here with my Hearing Officer, Gary Fay, and we will be trying to address these questions sequentially. We're going to proceed to some introductions, and then we're going to invite various parties to speak before us.

Mr. Fay, I'm going to turn it over to you. You've got some of the points in mind.

1 HEARING OFFICER FAY: Thank you,  
2 Commissioner Moore.

3 Good evening, everybody. I just want to  
4 note that today's Committee Status Conference was  
5 published with a notice dated April 9th, and  
6 identified this meeting. And also included with  
7 the notice was a copy of the schedule published by  
8 the Committee previously, and issued with the  
9 scheduling order.

10 What I'd like to do first is take formal  
11 appearances, so if the parties could please  
12 identify themselves, starting with the Applicant,  
13 then Staff, and then Coastal Alliance. And then  
14 we'll see if any agencies are represented here, as  
15 well.

16 Mr. Ellison.

17 MR. ELLISON: Thank you. Is this on?  
18 Christopher Ellison, Ellison, Schneider, and  
19 Harris, on behalf of Duke Energy North America, on  
20 behalf of --

21 PRESIDING MEMBER MOORE: I think,  
22 counsel, you're going to have to speak very close  
23 to that mic.

24 MR. ELLISON: Is that better?

25 Chris Ellison, Ellison, Schneider and

1 Harris, on behalf of the Applicant, Duke Energy  
2 North America. To my left is Jane Luckhardt,  
3 Downey, Brand, Seymour and Rohwer, also counsel to  
4 Duke.

5 To my right is Andy Trump, who is the  
6 Project Manager on the Morro Bay Project for Duke.  
7 And heading towards the counsel table --

8 (Laughter.)

9 MR. ELLISON: -- without his tie, is  
10 Wayne Hoffman, who's the Environmental Manager for  
11 Duke.

12 HEARING OFFICER FAY: Thank you. Ms.  
13 Holmes.

14 MS. HOLMES: Good evening. My name is  
15 Caryn Holmes, I'm the counsel for the Energy  
16 Commission Staff. To my right is Kae Lewis, who's  
17 the Energy Commission Staff Project Manager for  
18 this project.

19 HEARING OFFICER FAY: All right.

20 Ms. Groot, for the Coastal Alliance.

21 MS. GROOT: My name is Henriette Groot.  
22 I'm President of the Coastal Alliance on Plant  
23 Expansion. I hate to tell you, but it's very hard  
24 to hear in here. If there's anything you can do  
25 about that, I would appreciate it.

1                   With me, from the Coastal Alliance here,  
2                   I have Tom Laurie. He's our technical advisor.  
3                   Also with me is Babak Naficy from the  
4                   Environmental Defense Center, our legal counsel.  
5                   And over there to the left is Gordon Hensley.  
6                   He's a biologist, also with the Environmental  
7                   Defense Center.

8                   HEARING OFFICER FAY: Thank you.

9                   Are there representatives from any  
10                  agencies present, who are involved in the case?

11                  Yes, could you please identify yourself  
12                  at one of the microphones?

13                  MR. CHIA: My name is Dan Chia, with the  
14                  California Coastal Commission.

15                  MR. CARR: I'm Bob Carr, with the Air  
16                  Pollution Control District, and Gary Willey, our  
17                  Project Engineer, is supposed to be here. I trust  
18                  he'll show up.

19                  PRESIDING MEMBER MOORE: Welcome.

20                  MS. SEALE: Tammy Seale, with the City  
21                  of Morro Bay Public Services Department. Greg Fuz  
22                  will be here.

23                  Is that on?

24                  Tammy Seale, with the City of Morro Bay  
25                  Public Services Department, and Greg Fuz, our

1 Director, will be here soon.

2 HEARING OFFICER FAY: Thank you.

3 Any other agencies?

4 All right. What I'd like to do is note  
5 on behalf of Ms. Mendonca, our Public Adviser,  
6 that we do have a sign-up sheet, sign-in sheet,  
7 and we'd like everybody to please sign in. The  
8 sheets will be circulated, and it just helps us  
9 keep track of who was present, and just in case  
10 there's any follow-up information that you might  
11 like, we'll know which meeting you are referring  
12 to.

13 She also -- Ms. Mendonca, why don't you  
14 come up and give a brief statement to the audience  
15 so they know how we do things with the little  
16 cards.

17 PUBLIC ADVISER MENDONCA: Thank you.  
18 I'm Roberta Mendonca, the Energy Commission Public  
19 Adviser. And I've come to the microphone to  
20 explain to the public the use of the blue card.

21 We would ask, if you're planning to make  
22 a comment this evening that you fill out the blue  
23 card. It's not necessary that you have it  
24 completely filled out at this moment, but I'll  
25 keep watching as the evening goes along, and come

1 by and collect them.

2 It allows for the Commission to have an  
3 orderly meeting, to know who wants to speak and to  
4 be able to call on you.

5 So thank you very much.

6 HEARING OFFICER FAY: Thank you.

7 PUBLIC ADVISER MENDONCA: One comment  
8 about the sign-in sheet. The Public Adviser is  
9 always looking for new names to add to our mail  
10 list, so you can give us your e-mail or your  
11 regular mail address, and we will add you to the  
12 mailing list for this project.

13 HEARING OFFICER FAY: Thank you.

14 I'll take just a moment and review our  
15 proposed agenda for the evening.

16 Basically, we are going to receive a  
17 summary and updates on status reports that the  
18 three parties have already filed with the Energy  
19 Commission. These were filed on Friday, and there  
20 may be some late-breaking news that brings those  
21 reports more current.

22 And after we go through the status  
23 reports from the parties, and the Committee may  
24 have questions about some of those things in terms  
25 of how various reports, et cetera, might affect

1 the schedule, then we will hear oral argument on a  
2 petition from the Coastal Alliance, essentially a  
3 motion to compel answers on some data requests  
4 that they made, and the Applicant has objected to.

5 So we're using this opportunity to  
6 address that, as well.

7 And then at the end we will certainly  
8 have a chance for anybody to make public comment,  
9 if they wish.

10 All right. Anything from you now?  
11 Okay. With that, I'd like to begin, then. Mr.  
12 Ellison, anything to add to your Status Report  
13 that you filed?

14 MR. ELLISON: Let me ask Mr. Trump to  
15 introduce our report to the Committee.

16 MR. TRUMP: I just thought we would  
17 touch upon a couple of things, just provide some  
18 quick -- quick updates and status on a couple of  
19 items.

20 One is the update on the data requests  
21 -- has provided us with a summary on the status of  
22 that. We had a question about the Visual  
23 Workshop, specifically around the timing of that.  
24 We have a very brief update on the -- the  
25 synchronized schedules between the water -- the

1 water board and the CEC process. Wayne Hoffman  
2 will present that. And also just a quick update  
3 on the status of the consultation process, the  
4 processes of the various agencies, primarily on  
5 the terrestrial biology side of things.

6 So we -- those are the couple of areas  
7 we're going to touch upon.

8 MS. LUCKHARDT: Okay. Just to give a  
9 quick summary of where we are on data requests and  
10 responses. We filed quite a few, some of which  
11 have been filed yesterday and today. According to  
12 my list, some of the outstanding responses are  
13 Biological Resources 31 through 34. We've got --  
14 in fact, those will come as part of the  
15 consultation process, and we hope to provide those  
16 as soon as we can get input from Fish and Game and  
17 Fish and Wildlife.

18 We have a historic survey which I  
19 believe is underway, and that we will provide as  
20 -- as soon as possible. We have been working with  
21 Staff to resolve some questions about two Soil and  
22 Water data responses. The experts have talked to  
23 each other. We believe we may have come to a  
24 resolution on that, and expect to, in any event,  
25 here shortly.

1                   We should be providing additional  
2 information in response to the other outstanding  
3 requests shortly. I can go through them, if  
4 anyone's interested.

5                   The only other outstanding request --  
6                   HEARING OFFICER FAY: Excuse me, Ms.  
7 Luckhardt. Could you get closer? They're having  
8 trouble hearing you.

9                   MS. LUCKHARDT: Okay, I'm sorry. I'm  
10 trying to read --

11                   HEARING OFFICER FAY: Closer to the  
12 microphone, that is.

13                   MS. LUCKHARDT: Okay. In response to  
14 CAPE, the CAPE data request, other than the ones  
15 that are currently the subject of the objection,  
16 we have responded to three-quarters of the air  
17 quality requests, and there are, I think, an  
18 additional 30, maybe 40 requests outstanding that  
19 we are in the process of preparing at this time.  
20 There were 108 data requests on Air Quality, so  
21 we've provided the first through 65 or 66, and the  
22 remaining are being prepared as we speak.

23                   HEARING OFFICER FAY: That's it? Okay.

24                   MR. TRUMP: Just a quick note on the  
25 Visual -- Visual Workshop, which is proposed for

1           May 15th. While we -- we support the opportunity  
2           at the appropriate time to solicit additional  
3           input on a variety of different features of the  
4           facility, specifically the sound wall, the paint  
5           treatment, the landscaping, et cetera, the bridge,  
6           we're just noting a -- a concern whether or not  
7           the 15th is a little bit too early for that. We  
8           actually think it might be a little bit more  
9           productive a little bit later in the process.

10                        We're not indicating that we won't move  
11           forward to support that workshop on the 15th. We  
12           just think it may be more helpful to have that  
13           kind of input later on. And I'm not quite sure  
14           exactly when that might be, but we're thinking  
15           after the PSA.

16                        HEARING OFFICER FAY: To the extent that  
17           it is impractical to have every detail nailed down  
18           before certification in some of the aesthetic  
19           areas, is it feasible to have a condition that  
20           would require the city to review and comment on,  
21           and agree to certain aspects of that plan, with --  
22           with perhaps a safety that if there's inordinate  
23           delay, the Staff would arbitrate, or something  
24           like that.

25                        My -- my thinking here is to allow

1 maximum time for maximum local input, since these  
2 are the aesthetics that the locals will be looking  
3 at.

4 MR. TRUMP: My -- my initial reaction to  
5 that is that might be a workable proposal from our  
6 standpoint, assuming that there's a boundedness to  
7 a delineation of different kinds of project  
8 features that are being discussed. So it's not  
9 open ended to ill-defined broad things like  
10 architectural treatment.

11 And then I think, secondly, I think we  
12 would -- the second reaction is that that might be  
13 workable, from our standpoint, assuming there was  
14 a clear decision pathway, assuming there was not  
15 meaningful feedback that could actually be  
16 actionable, coming down to that workshop  
17 proceeding. So those were my two initial  
18 reactions.

19 HEARING OFFICER FAY: Well, maybe that's  
20 something that the parties can consider. Not --  
21 not to put off the decision, but that if -- if it  
22 looks like it's difficult to -- to have final  
23 details agreed upon, or acceptable to the  
24 community, that -- that at least have a process by  
25 which proposed plans would be reviewed, and the

1 city would -- would make a call on that, that type  
2 of thing. Within -- within the timeframe that is  
3 feasible.

4 MR. ELLISON: We're certainly prepared  
5 to consider those kinds of proposals. I think our  
6 preference, of course, and I think -- I assume  
7 everybody else's preference would be to resolve as  
8 many issues as can be resolved in this proceeding,  
9 and we're working very hard to do that.

10 HEARING OFFICER FAY: Okay. Good.  
11 Anything more on Visual? Okay.

12 MR. TRUMP: We have a quick update on  
13 the Water permit schedule.

14 MR. HOFFMAN: Good evening, Chairman  
15 Moore, and Mr. Fay. Thank you for this  
16 opportunity this evening to bring you up to date  
17 on where the project is.

18 In terms of the relationship between the  
19 process now before the Regional Water Board, the  
20 preparation of the NPDES permit, and the various  
21 studies underlying that permit, we have used a  
22 schedule which is pursuant to the recently adopted  
23 expedited schedule for CEC certification for this  
24 project in October. And we believe that as far as  
25 the water process is concerned, and I'm confident

1           that should be stay on the schedule we're on now  
2           and continue making the progress we've been  
3           making, the water board would agree with this, we  
4           expect to not be holding up this process because  
5           of any issues related to the water permit.

6                         And pursuant to that, we have recently  
7           -- we have released in the last few days the draft  
8           final 316B Resource Assessment for the entrainment  
9           and impingement side of the water analysis,  
10          including the thermal -- I mean, the sampling,  
11          source water sampling and in front of the intake  
12          sampling, which is taking place to evaluate the  
13          potential effect on larval species of fish and  
14          shellfish.

15                        We've completed, several months ago, a  
16          year-long entrainment study, or impingement study  
17          that is the effects of adult species being caught  
18          on the traveling screens in front of the cooling  
19          water system intake system, and these studies are  
20          in a draft final form at this point. They will be  
21          taken up and largely finalized at a Technical  
22          Working Group meeting next Monday.

23                        I would point out that there will  
24          probably not be a completely final analysis of all  
25          the alternatives at that time. Most of the

1 cooling water system alternatives will have been  
2 looked at in fairly substantial detail, including  
3 cost evaluations and a look at the feasibility of  
4 these from an environmental standpoint.

5 On the other hand, there are still  
6 alternatives being looked at that may well provide  
7 an adequate and a reasonable response to any  
8 effects that we see from the entrainment of larval  
9 species at this facility that could potentially  
10 preclude the necessity for financial mitigation,  
11 such as was the case at Moss Landing. And I won't  
12 say that all of those answers will be defined and  
13 available in time for the Preliminary Staff  
14 Assessment on May 22nd, but there certainly will  
15 be substantial material available to virtually  
16 complete that.

17 We, of course, as I'm sure the Committee  
18 would prefer, hope to have as much of that as we  
19 can by then, but I think, given that it's less  
20 than a month away now, it would be unreasonable to  
21 expect to have absolutely everything. I do  
22 anticipate that we should be in a position to have  
23 clarified all of these issues in time for the  
24 Final Staff Assessment, which under that October  
25 schedule would occur in early July.

1                   And also, because we would expect, by  
2                   mid to late June to have the final 316B resource  
3                   assessment and the formal compliance report, the  
4                   formal compliance report is 99 percent complete at  
5                   this time, and is simply awaiting final review by  
6                   the Technical Working Group next Monday. And  
7                   these reports will be timely for the completion of  
8                   the NPDES permit by June, which would then enable  
9                   the water board to undertake its public review  
10                  period and to establish a reasonable schedule for  
11                  adopting their permit in a timeframe which is --  
12                  I'm not sure if that's coming from this mic or  
13                  somewhere else -- which is consistent with the  
14                  schedule. That's the -- the update.

15                  I'll now mention briefly the status of  
16                  the consultation with the federal agencies on the  
17                  terrestrial biological issues. We're forwarding  
18                  to EPA, which under the PSD, Prevention of  
19                  Significant Deterioration, on the air quality side  
20                  permit, which must be granted by EPA, enables EPA  
21                  to act as the -- what we call the federal nexus  
22                  under the federal Endangered Species Act, to  
23                  establish a consultation process between EPA and  
24                  the two other federal agencies involved in  
25                  reviewing issues with this project.

1                   The Coast Guard will be the other agency  
2                   in consultation, because we are looking to secure  
3                   a permit for the bridge across Morro Creek and we  
4                   need a Coast Guard permit for that. And these  
5                   agencies will be consulting with the Fish and  
6                   Wildlife Service to determine, or rather,  
7                   regarding any potential effects that the project  
8                   might have on list species.

9                   I would point out that after the  
10                  preparation of what one might consider to be two  
11                  thorough EIRs, one having been prepared and  
12                  withdrawn over a year ago, and a second having  
13                  been submitted as the application last October,  
14                  that there's probably been more biological surveys  
15                  and assessments done on this site than practically  
16                  any other one you can find in California.

17                 Notwithstanding that analysis, there are  
18                 no -- there have been no findings of any listed  
19                 species on this site, particularly on the site  
20                 where any construction impacts are expected to  
21                 occur. The only listed species that's been  
22                 identified anywhere on the Duke property is the  
23                 steelhead in -- in Morro Creek.

24                 So where we are now is we are wrapping  
25                 up all the final protocol surveys for any species

1           that could possibly exist there, because of even  
2           the presence of a low quality habitat. We are  
3           going to use the biological studies that are  
4           derived from those surveys and previous biological  
5           studies, maps of where areas are being defined,  
6           and point that, in fact, the gentleman from the  
7           Coastal Commission, along with another biologist  
8           from the Coastal Commission, will be touring the  
9           site tomorrow to firm up those boundaries.

10                         And we're moving forward with these  
11           agencies on the consultation, and we believe that  
12           the status of that process is consistent with the  
13           normal process of preparing the Preliminary Staff  
14           Assessment and -- and the Final Staff Assessment.

15                         That concludes my update on these  
16           issues.

17                         HEARING OFFICER FAY: Mr. Hoffman,  
18           forgive me if I go over some things you've already  
19           mentioned, but I -- I had made some notes in your  
20           status report.

21                         The -- the draft 316B studies, were  
22           those filed on April 20th, as -- as planned?

23                         MR. HOFFMAN: They actually went out a  
24           day or two late. And, but they've been sent to  
25           the -- they would've been received this morning,

1 at the latest. And our general policy with the  
2 working group is to try to have these reports to  
3 them approximately a week before their meetings,  
4 which we were able to do.

5 HEARING OFFICER FAY: Okay.

6 MR. HOFFMAN: Portions of them were  
7 available earlier, but the bulk of it just went  
8 out.

9 HEARING OFFICER FAY: And you still  
10 assume that the -- that the 316 -- well, the  
11 thermal discharge assessment report would be  
12 submitted to the water board and the Commission on  
13 May 18th?

14 MR. HOFFMAN: Well, that report actually  
15 is virtually complete now, and was submitted in --  
16 in draft form over a month ago, and the final  
17 draft of the thermal report was -- is in -- in the  
18 Technical Working Group's and the board staff's  
19 hands now, and will be, I assume, finalized on the  
20 30th of April.

21 HEARING OFFICER FAY: So that will  
22 probably be ahead of schedule, then.

23 MR. HOFFMAN: Yes, that will somewhat  
24 ahead of schedule. I -- I would also point out,  
25 although I -- I don't know, I didn't read this

1           thoroughly to see if it was in here, that -- that  
2           the State Water Board and the regional board staff  
3           have clarified some very important issues here in  
4           the -- in the process of determining that the  
5           discharge, which is the primary area of concern  
6           with the thermal issue, is now defined as an  
7           existing discharge and will be evaluated under the  
8           criteria applicable to that in the California  
9           Thermal Plan.

10                       HEARING OFFICER FAY:   And that was just  
11           last week, wasn't it?

12                       MR. HOFFMAN:   It was very recent, yes.

13                       HEARING OFFICER FAY:   Thanks.  Anything  
14           further?  While I have your attention, are you  
15           aware of any areas where the Committee might be of  
16           assistance to move things along, or clear things  
17           up, if there's any -- any delays you're aware of?

18                       MR. HOFFMAN:   Not in -- I don't believe  
19           so, in the area of water, at this point, or -- or  
20           biology.  I -- I would caution, however, that it  
21           has been our experience in previous projects that  
22           the challenge in securing meetings and expediting  
23           the processes with the Cal Fish and Game and the  
24           U.S. Fish and Wildlife has always been a schedule  
25           challenge for us.  And while we have not moved far

1 down the path of actually conducting those  
2 meeting, because we -- we were awaiting the data  
3 and the research, I may have a different answer in  
4 a few weeks, or months.

5 HEARING OFFICER FAY: Well, we'll have a  
6 lot more influence over the California Department  
7 of Fish and Game than we will over U.S. Fish and  
8 Wildlife Service, based on prior experience.

9 MS. LUCKHARDT: Okay. I'd just like to  
10 clarify quickly that we were waiting for a  
11 determination in order to initiate those  
12 consultations, a decision from the city on how and  
13 why they wanted the bridge over Morro Creek, and  
14 that's what's held up our ability to do our  
15 consultations with Fish and Wildlife and Fish and  
16 Game.

17 Again, I'd also like to ask that the  
18 Committee, if possible today, if they can move on  
19 the objections to Kae's data request.

20 PRESIDING MEMBER MOORE: Say that again?  
21 Rule on --

22 MS. LUCKHARDT: Kae's petition, and our  
23 objections to the data requests.

24 HEARING OFFICER FAY: You're asking for  
25 a ruling tonight, or you're asking for an

1 expedited ruling?

2 MS. LUCKHARDT: If you can rule from  
3 there, that'd be great.

4 HEARING OFFICER FAY: Okay. Anything  
5 further from the Applicant?

6 All right. Thank you.

7 Ms. Lewis or Ms. Holmes, anything to add  
8 from the Staff's point of view?

9 MS. LEWIS: Probably a few things. As  
10 was mentioned, the Staff had sent the Applicant  
11 two sets of data requests for information. We  
12 have nearly all of that at this point. And as was  
13 mentioned, we expect to have answers to the second  
14 set of data requests today or tomorrow.

15 These -- the second set --

16 HEARING OFFICER FAY: Let me interrupt  
17 you. Is --

18 MS. LEWIS: Sure.

19 HEARING OFFICER FAY: Is that on  
20 schedule, the responses that they anticipate today  
21 or tomorrow?

22 MS. LUCKHARDT: Yes, that is on  
23 schedule.

24 HEARING OFFICER FAY: Okay. All right,  
25 thanks.

1 I'm sorry, go ahead.

2 MS. LEWIS: The -- an updated item is  
3 that since we have put out the status report Staff  
4 has received data requests from CAPE, which we  
5 received yesterday. We haven't had the Staff  
6 review those yet, but we don't anticipate a  
7 problem with dealing with those in a timely  
8 manner.

9 Since the information hearing, we have  
10 held three days of workshops. Staff is -- now has  
11 under consideration the Visual Workshop, which was  
12 just mentioned. We are also considering holding a  
13 workshop with the regional board, once the 316  
14 Biological Studies are completed.

15 We'll hold workshops again starting  
16 probably around May 30th, after the PSA is  
17 completed. Those ought to continue through the  
18 first two weeks of June.

19 It was mentioned by CAPE that we hold  
20 other workshops. Public Health was a topic that  
21 was mentioned in their petition. We've decided to  
22 hold other workshops after the PSA is out. By  
23 then we'll have answers to all data requests, as  
24 well as the PDOC will also be available.

25 The second reason for waiting until the

1           PSA to hold any further workshops is because the  
2           -- with the accelerated schedule, the Staff is --  
3           is busy doing their PSAs.

4                        Other events that have happened is that  
5           our Cultural Resources Staff had met with the  
6           Native American groups, and they'll have one more  
7           engagement with the Santa Inez Elder Council on  
8           April 23rd.

9                        The issues that were mentioned in the  
10          status report, I'll just give some updated  
11          information. We covered the technical areas of  
12          Biological Resources, Cultural Resources, Land  
13          Use, Soil and Water Resources, and Visual  
14          Resources. The issues were primarily -- the  
15          reason why we -- we targeted things as issues in  
16          the status report is that there was some lack of  
17          resolution, but mainly due to a lack of complete  
18          information that was needed for decision making on  
19          impacts and mitigation options.

20                        At this juncture, we don't think any  
21          issue is unresolvable or unmitigable.

22                        PRESIDING MEMBER MOORE: So, Kae, does  
23          that take you away from, in your mind, where you  
24          say the technical areas which are not likely to be  
25          complete, so now we will place the not likely to

1 be complete with likely to be complete?

2 MS. LEWIS: No. There's two different  
3 things. Some of those still will not be complete,  
4 because they don't have all the information.  
5 We're just not foreseeing a major roadblock.

6 HEARING OFFICER FAY: Can -- in terms of  
7 -- since the PSA traditionally has been a draft of  
8 the Staff analysis for the public to look at and  
9 comment on, do you think even in those five areas  
10 that there will be enough specificity to -- to  
11 make a section on those subjects useful to the  
12 public?

13 MS. LEWIS: Yes. The only one that may  
14 be completely outstanding is Visual. The others  
15 will have --

16 HEARING OFFICER FAY: By outstanding,  
17 you mean inadequate?

18 MS. LEWIS: Right. We may not have  
19 adequate information at all for Visual.

20 PRESIDING MEMBER MOORE: And that's  
21 because the workshops are taking place so late on  
22 that, or --

23 MS. LEWIS: And they're still gathering  
24 information from data requests.

25 HEARING OFFICER FAY: So in the other

1 areas, would it be fair to say that it -- it might  
2 be more preliminary than Staff would normally  
3 like, but that there would still be some  
4 information the public could react to, say, for  
5 instance, in Biology or Cultural Resources, that  
6 type of thing.

7 MS. LEWIS: Right. There will be some  
8 information to react to. But, for instance, like  
9 in Cultural, we don't -- they won't a historical  
10 survey. But they'll -- they'll be able to produce  
11 at least a halfway complete, maybe more.

12 HEARING OFFICER FAY: Okay. And I think  
13 if we indicated in the scheduling order the pace  
14 at which topics like these five that -- that are  
15 awaiting further information, the pace at which  
16 those topics will proceed to final hearings, will  
17 depend a lot on -- on how things develop, and, you  
18 know, whether you have to supplement the PSA or --  
19 or require extra time until you get all the data.

20 PRESIDING MEMBER MOORE: So let's take  
21 that a little bit farther. Kae, are you -- if you  
22 listed these out, are you anticipating that there  
23 is a date for each one of these that are -- is now  
24 a new target date? Do you have it in your own  
25 Staff memos, a target date? For instance,

1 finishing up Visual.

2 MS. LEWIS: Yes, I do. I have -- I have  
3 sections that Staff has told me that -- that they  
4 will have all information by mid-May, and -- and  
5 will be able to -- or early May, actually, and  
6 will be able to give me what they consider a  
7 complete PSA, meaning they have all the  
8 information that they need at that point in time.

9 The sections I'm saying are not complete  
10 are those which will -- will not have all of their  
11 information, and the different levels of their  
12 completeness. And -- and the Staff sometimes can  
13 tell me just how complete it'll be, because  
14 they're working on it right now, and because the  
15 data requests that are coming today or tomorrow  
16 cover ten areas. So in some cases that's a lot of  
17 information, and in some of them it's just one or  
18 two answers and they can incorporate them very  
19 quickly. The others they're not sure how complete  
20 at this point they --

21 HEARING OFFICER FAY: Would -- would it  
22 be reasonable to ask Staff to be very self-  
23 conscious in qualifying any preliminary opinions  
24 that, you know, if it's -- if it's based on  
25 current information, but X information is missing,

1           you know, to add a little clause like that, so  
2           that any statement is understood as, you know, not  
3           being a fixed opinion, fully informed, as yet. I  
4           think it might avoid some confusion --

5                     MS. LEWIS: Sure. They typically do  
6           that in the PSA.

7                     HEARING OFFICER FAY: Right. Because in  
8           the past, people have been frustrated where a  
9           position is changed, even if it was very logical,  
10          because new information came in. But if we can  
11          just be sure folks understand the preliminary  
12          nature, if it is that, of certain preliminary  
13          findings, that would help, I think.

14                    PRESIDING MEMBER MOORE: Just extra  
15          qualifiers, I think -- yeah, careful.

16                    MS. LEWIS: The Staff will do that.

17                    MR. ELLISON: Commissioner, may I  
18          intrude for just a moment, and ask a question and  
19          make a comment.

20                    The comment that I feel obliged to make  
21          is that Ms. Lewis mentioned some new CAPE data  
22          requests that she had just received. I want to be  
23          clear that we were unaware of those data requests,  
24          have not seen them. I believe that CAPE files  
25          with the Energy Commission under financial

1 hardship status. The Energy Commission, in turn,  
2 serves us and other parties. So I do want to be  
3 clear that in our discussion of the status of data  
4 requests, we omitted any discussion of that, and  
5 this is the first we've heard of that.

6 The second thing I want to ask Staff,  
7 you now, we are filing a number of responses  
8 tomorrow, including, I think, everything on Visual  
9 except for one data request. If you were to  
10 assume that all, or substantially all of the  
11 outstanding information is in those data requests  
12 coming in tomorrow or the day after, would that  
13 change your assessment of the ability to complete  
14 these sections on time?

15 MS. LEWIS: I'm basing my judgment on  
16 what these PSA sections can possibly look like by  
17 May 22nd, with -- on what Staff tell me, and how  
18 long they think it's going to take to incorporate  
19 information, also based on the fact that they're  
20 dealing with more than one case at a time. I  
21 cannot answer that. They're going to have to take  
22 a look at what they've received thus far, and  
23 we're going to have to size up the information  
24 which we may or may not have, because a Visual  
25 Workshop does or does not happen, and then answer

1           that question.

2                       MR. ELLISON:   Okay.   Well, perhaps I --  
3           I could suggest to the Committee that it might  
4           make sense to -- for the Committee to be updated  
5           on the status of these sections after Staff has  
6           had a chance to review the -- this information  
7           that we're going to file.

8                       HEARING OFFICER FAY:   When would that  
9           be, Ms. Lewis?

10                      MS. LEWIS:   You're -- what specifically  
11           are you asking for?

12                      HEARING OFFICER FAY:   Well, it sounds  
13           like -- Mr. Ellison, correct me if I'm wrong --  
14           but you have the impression that you are bringing  
15           the Staff fully up to date with your responses  
16           that you plan to file.   And you want to know if --  
17           if they agree that that's the case, and therefore  
18           they'll be moving apace.   And if it's not the  
19           case, you want the Committee to know.   Is that --

20                      MR. ELLISON:   Well, I might put it a  
21           little differently.   We -- we've been working very  
22           hard to respond to these data requests in the hope  
23           of staying with the schedule and getting the Staff  
24           the information they need for May 22nd.   As I  
25           mentioned, particularly since Visual was

1 highlighted as the one where the most information  
2 was missing, you know, we believe that we're  
3 responding in the next day or two to everything  
4 except one data request on the Visual. Ms.  
5 Luckhardt can address where we will be with  
6 respect to some of the other areas.

7 But the kind of overarching point that I  
8 want to make is that the Staff is -- is responding  
9 to the Commission -- Committee's request on  
10 scheduling issues right now, without having seen  
11 this information that's coming in in the next day  
12 or so. And I would hope that when they see that  
13 information, that it may be that they can move  
14 some of those issues that are currently scheduled  
15 to miss the 22nd day, to the 22nd. But that's, of  
16 course, a judgment Staff needs to make.

17 I just wanted to highlight that we -- at  
18 least we think that's a possibility. That's what  
19 we've been working hard to achieve, and it may be  
20 appropriate for the Committee to give Staff an  
21 opportunity to update where -- where they stand  
22 with respect to these issues after they've had  
23 that opportunity.

24 HEARING OFFICER FAY: Well, the  
25 schedule, I'll highlight for everybody, does call

1 for all parties to file a second status report on  
2 May 18th. Is there a chance that you might have  
3 feedback from -- from your people on these  
4 subjects before that time?

5 MS. LEWIS: Updating the Committee on  
6 the status of the PSA sections at that point  
7 should certainly be possible.

8 HEARING OFFICER FAY: You think probably  
9 not before, or -- I'm just wondering if --

10 MS. LEWIS: Probably not before.  
11 There's --

12 HEARING OFFICER FAY: Staff needs to --

13 MS. LEWIS: -- there's more that goes  
14 into this. They have to take a look at answers to  
15 data requests, and get those, in some cases, into  
16 their -- their own analysis at that point. Doing  
17 additional modeling, for instance, which they do  
18 have to do in case of Visual. So it's, you know,  
19 it's just not that simple.

20 But certainly by the 18th, we should  
21 have a pretty good idea of just how complete all  
22 the sections will be. Obviously, just a few days  
23 before the PSA.

24 HEARING OFFICER FAY: Yeah. I -- that  
25 is close before the PSA, but we do have that

1           locked in. Does that meet your concerns, do you  
2           think?

3                         MR. ELLISON: Well --

4                         PRESIDING MEMBER MOORE: Mr. Ellison, if  
5           I'm -- I'm going to paraphrase you, what you're  
6           asking from Ms. Lewis is that if any of this is  
7           done ahead of time, that the Committee be notified  
8           and that we then notify the Applicant to say that  
9           one came back on the list, whatever that one is.  
10          You'd like to be notified early.

11                        MR. ELLISON: Well, to be, you know,  
12          perfectly clear, you know, we were somewhat  
13          concerned, of course, when we saw the number of  
14          issues that were not going to be on schedule. At  
15          the same time, we know that Staff has not seen  
16          this data that we're going to be filing in the  
17          next day or so. After we file this data, we  
18          expect to sit down with Staff and review, as  
19          quickly as Staff is able, where we stand, what  
20          additional information, if any, is required, and  
21          where we are with respect to schedule.

22                        If we wait until the 18th before the  
23          Committee has any understanding of where we are  
24          with respect to that, obviously the 22nd is only  
25          four days beyond the 18th.

1                   PRESIDING MEMBER MOORE: Well, let's--  
2                   let's try to --

3                   MR. ELLISON: It really doesn't provide  
4                   an opportunity for -- for the Committee to take  
5                   any action as a whole until the 22nd day, with  
6                   respect to any issue.

7                   PRESIDING MEMBER MOORE: Well, let me --  
8                   let me try this. Ms. Lewis, would you consider  
9                   the courtesy of a meeting with the Applicant after  
10                  you've had a chance to digest this, and tell him  
11                  what the -- what the status is, which -- which  
12                  items got moved to the front of the queue as a  
13                  result of that, prior to the 18th, if you can  
14                  manage that?

15                  HEARING OFFICER FAY: Well, it might be  
16                  easier and more appropriate if -- if you could  
17                  post something to the Web that would inform the  
18                  Committee, and also the public --

19                  MS. HOLMES: I think it's really -- I  
20                  think it's really a question of -- of when you  
21                  want the update. I mean, obviously, an update  
22                  that's filed on the 18th is much more likely to be  
23                  reflective of -- of what actually gets filed in  
24                  the PSA if you ask -- if you asked for one next  
25                  week, because Staff will not have had a chance to

1 perhaps both review the data.

2 There's also a number of areas where  
3 Staff's waiting for information from other  
4 agencies, as well. And we don't know when that's  
5 going to come in, or what form it necessarily is  
6 going to be coming in. So it's really just a  
7 question if you were picking the date, and we're  
8 happy to tell you where we are as of any specific  
9 date.

10 PRESIDING MEMBER MOORE: Actually, I was  
11 suggesting for those items that -- that you came  
12 to a conclusion were complete, where you might  
13 notify early. Otherwise, I'd be looking to the  
14 18th as the day for -- so this is -- for  
15 notification. So this is if something came to the  
16 -- came to the fore, was resolved in your mind,  
17 would you mind picking the date when it is  
18 resolved and perhaps post it up on the Web.

19 MS. HOLMES: That's an excellent idea.  
20 We'd be happy to do that.

21 MR. O'BRIEN: I have a question on that.  
22 Isn't it reasonable to assume that if the data  
23 requests that the Applicant submits are  
24 incomplete, or Staff has problems with those,  
25 won't Staff hold any data response workshop with

1 the Applicant at the earliest possible  
2 convenience? And for those responses that are in  
3 fact complete, from Staff's perspective, I would  
4 assume that information would get folded into the  
5 PSA section, assuming Staff has adequate time. If  
6 Staff doesn't have adequate time, then I would  
7 assume Staff would inform the Applicant of that,  
8 and would put that in the FSA.

9 Isn't that kind of a reasonable  
10 expectation, in terms of how things will proceed?

11 MS. HOLMES: Well, I think you're  
12 raising two issues. First is if the information  
13 is complete, Staff is obviously going to attempt  
14 to fold it into the -- into the PSA. But there  
15 may be information that's outside of these data  
16 requests. For example, Ms. Lewis referred to some  
17 modeling that Staff is doing itself on Visual  
18 Resources, information from the regional boards,  
19 and so it's not simply a question of getting  
20 complete information from the Applicant.

21 With respect to information that's  
22 incomplete, I think it would be -- it might create  
23 more of a problem to assume that we need to hold a  
24 workshop if there's an incomplete response, given  
25 the amount of time that it takes to get Staff to

1 and from a workshop down here, as opposed to  
2 working on the PSA. What we have been doing, and  
3 I would prefer to do in the future, is that it can  
4 simply be handled by us contacting the Applicant  
5 and saying hey, we're missing such and such data,  
6 or hey, we meant X, not Y, and simply report that  
7 as a -- as a conversation in the record, sort of  
8 proceed with that.

9 So you won't expect to see a document  
10 like that in the record, should there be  
11 incomplete data. I think that unless there's  
12 major glitches, holding another workshop is going  
13 to take away more time than it's going to add to  
14 the PSA.

15 PRESIDING MEMBER MOORE: No, I'd prefer  
16 the latter.

17 MR. NAFICY: Excuse me. Could I ask a  
18 question at this point? Would that be  
19 appropriate, regarding the scheduling of the PSA.

20 HEARING OFFICER FAY: Sure. Please  
21 identify yourself.

22 MR. NAFICY: Sure. My name is Babak  
23 Naficy. I'm a staff attorney at the Environmental  
24 Defense Center.

25 We're also very concerned that if the

1           PSA does not contain complete information on some  
2           of these areas, and then if there is an attempt  
3           made to stay with the original schedule, then the  
4           members of the public will be deprived of the  
5           period of time that was originally deemed to be  
6           sufficient to comment, to analyze and comment on  
7           the PSA.

8                         So I want to know how we're going to  
9           address the issue of this shortness -- shortening  
10          of time for the public to assess the PSA on time,  
11          should it not be complete on the 22nd.

12                        HEARING OFFICER FAY:  What the Committee  
13          anticipated and -- and tried to make clear in the  
14          scheduling order is that -- that the entire  
15          schedule would only be foreshortened if everything  
16          was able to move forward on the same schedule.  So  
17          if there's some significant information missing  
18          and Staff is not able to complete its analysis, it  
19          will -- it may cause a delay.

20                        Now, I don't know how Staff would --  
21          would present the later analysis, whether they  
22          would supplement the PSA, or -- or have the FSA  
23          available for a longer period of time.  But the  
24          objective was not to short-change the public if  
25          some of this information was late, but, rather, to

1 take full advantage of -- of the time to move  
2 forward on topics that were ready to move forward  
3 on.

4 So we may have some early hearings and  
5 some later hearings, but we do want to get going  
6 on as many hearings as possible, or in as many  
7 topic areas as possible, at the earliest time.

8 MR. NAFICY: I appreciate your comments.  
9 I wasn't involved in the Moss Landing hearing, but  
10 my understanding was that there, there was some  
11 information that was supposed to be, you know,  
12 provided at the last minute, and the public was,  
13 in fact, deprived. And I think that the --

14 PRESIDING MEMBER MOORE: And the public  
15 what -- I'm sorry, the public what?

16 MR. NAFICY: Was deprived of a chance to  
17 fully analyze and --

18 PRESIDING MEMBER MOORE: That's not  
19 true.

20 MR. NAFICY: Well, I -- be that as it  
21 may, I was -- I think it might be appropriate to  
22 set out what we -- how we will deal with any  
23 possible scheduling issues that will come up, as  
24 long as we're discussing the issue of the PSA and  
25 whether or not it will contain all of the relevant

1 information.

2 PRESIDING MEMBER MOORE: Well, we'll  
3 take up all the relevant information, and I think  
4 the -- the key word to keep in mind is what Mr.  
5 Fay said, and that is significant issues. We'll  
6 make sure that every significant issue is resolved  
7 before it comes up for discussion. For things  
8 that are procedural or administrative, obviously,  
9 they can be allowed to lag a little bit.

10 But we'll make sure that there's ample  
11 time under our rules for every one of the issues  
12 to be debated within the public forum. That's --  
13 that's the way we handled Moss Landing, and if  
14 there are or were objections, I'm unaware of them.  
15 And I served on that Committee, and I was simply  
16 not aware that there were -- if there were, I --  
17 they didn't come to me for any -- for any  
18 resolution.

19 So we will -- we will take that into  
20 account, but I think that in the interest of  
21 trying to make sure that the hearings are  
22 manageable, we'll take the bulk of those issues  
23 that are complete at the earliest possible date,  
24 and we'll lag those that are -- where the data is  
25 incomplete or -- or the responses are incomplete,

1           until such time as they are, and then take them  
2           up. But we won't delay the entire schedule in  
3           order to have a totally complete package. We'll  
4           take those items that are complete, at the  
5           earliest possible date.

6                         HEARING OFFICER FAY: And I -- and I  
7           think we probably will not be able to identify  
8           that precisely tonight, because a lot of it  
9           depends on how the Staff analysis unfolds, how  
10          they perceive the data responses that are coming  
11          in in the next few days, et cetera. So the  
12          Committee, if you will, will have to play it by  
13          ear. But we will keep you informed.

14                        MR. ELLISON: Mr. Fay, if I could just  
15          offer one comment on this question.

16                        First of all, I think it is right that  
17          the Committee will have to play it by ear, and I  
18          think all the parties will need to take each issue  
19          as it comes. It's not that productive to talk  
20          about this in the abstract.

21                        But there is one point that I think is  
22          important, which is that in every case that I am  
23          aware of, and I'm very familiar with Moss Landing,  
24          there are always some changes between the PSA and  
25          the FSA. There's some -- that's the whole point

1 of a Preliminary Staff Analysis and a Final Staff  
2 Analysis, and there are multiple opportunities for  
3 comment in the Energy Commission process.

4 And because there are multiple  
5 opportunities, there are, of necessity, some  
6 changes as that process moves forward between  
7 Staff's analysis and ultimately the Committee's  
8 Proposed Decision. So with the caveat that, you  
9 know, the word significant, and all of the  
10 discussion that you just had, I think it's  
11 important for the public to understand that in  
12 every case that I know of, there are -- there is  
13 some, by definition, evolution between the PSA and  
14 the FSA, and I'm sure that'll be the case in this  
15 proceeding, as well.

16 HEARING OFFICER FAY: Okay. Further  
17 things, Ms. Lewis?

18 MS. LEWIS: Most of the items were  
19 mentioned by the Applicant. I will talk a little  
20 bit about Cultural, because it's not mentioned.  
21 As you know, the Morro Bay Power Plant was located  
22 on land that was once inhabited by various groups  
23 of Native Americans. And previous evaluations  
24 have certainly given reason to believe that Native  
25 American artifacts and remains to be encountered

1 by the project.

2 The -- in anticipation of this, Duke had  
3 made arrangements with -- they ran up an agreement  
4 with the San Luis Obispo County Chumash Council.  
5 And as was mentioned in the issue report that we  
6 did in February, the Staff was concerned because  
7 non-SLOCCC Native American groups were perceiving  
8 this as exclusion from the process. So the CEC  
9 Staff has been working with other Native American  
10 groups, as well as the SLOCCC, the Chumash  
11 Council, and they have met with them and have been  
12 trying to work with their concerns and  
13 preferences.

14 This gives a couple of challenges to --  
15 to the Staff. For instance, a very key concern of  
16 these groups is the ultimate disposition of any  
17 artifacts and remains that are found on the site.  
18 A challenge has been that in talking with these  
19 different groups, many of them have preferences  
20 that are in conflict with each other, or may not  
21 be consistent with federal and state laws that  
22 must guide the Staff in their determination of  
23 impacts and mitigation.

24 Secondly, monitoring and mitigation  
25 plans for Cultural Resources, while we'd like them

1 to be appropriately inclusive of the appropriate  
2 Native American groups, they also have to be  
3 efficient for the project.

4 And so we have been working with the  
5 Native American Heritage Commission to help  
6 resolve these issues, but I wanted to bring those  
7 up.

8 HEARING OFFICER FAY: Are they assisting  
9 you?

10 MS. LEWIS: Yes, they are.

11 HEARING OFFICER FAY: Okay. So you  
12 anticipate that with their help you will make a  
13 judgment call on how to address these challenges?

14 MS. LEWIS: Yes.

15 HEARING OFFICER FAY: Okay. Good.

16 And are you on schedule on the Cultural  
17 studies? You indicated expectation of survey  
18 results in late May.

19 MS. LEWIS: Yes. There's a historical  
20 survey results.

21 HEARING OFFICER FAY: Anything further?

22 MS. LEWIS: Let's see. Land Use, we are  
23 still waiting for a complete assessment of the  
24 project's consistency with the local coastal plan  
25 and the City of Morro Bay's General Plan. They

1           have submitted to us an initial land use  
2           consistency report, which was approved by the  
3           Morro Bay Planning Commission. And for our  
4           Staff's needs, they are going to provide a  
5           consistency report in other areas.

6                       HEARING OFFICER FAY: Okay. And --

7                       MS. LEWIS: We hope that'll be  
8           forthcoming in the next few weeks.

9                       HEARING OFFICER FAY: The next few  
10          weeks. And maybe we can hear from Morro Bay as to  
11          their estimate on the schedule for that. That  
12          would -- we'd appreciate that.

13                      Let me -- we'll just address you in  
14          turn, if that's all right. But I'm going to mark  
15          that down.

16                      The timing on the information about the  
17          MTBE contamination. Is there -- do you have a  
18          date when you expect information on that?

19                      MS. LEWIS: We have received the data  
20          that the -- was requested of the Applicant. We  
21          are still waiting for some information from the  
22          agencies, the regional board, primarily.

23                      HEARING OFFICER FAY: And --

24                      MS. LEWIS: And I don't have a date for  
25          that yet.

1 HEARING OFFICER FAY: All right. Is  
2 anybody here from the regional board tonight? All  
3 right.

4 If you could get us word of when you get  
5 an estimate from the board on -- on when they  
6 expect to have that in, we'd appreciate that, to  
7 -- just to know if that would be a trailing  
8 matter.

9 At this point it sounds like you're not  
10 able to comment if any of those nine topics would  
11 -- would change status; is that correct? The --  
12 the nine topics that are not likely to be  
13 complete?

14 MS. LEWIS: The -- are you talking about  
15 the technical areas for --

16 HEARING OFFICER FAY: Yes.

17 PRESIDING MEMBER MOORE: That are listed  
18 in the project schedule.

19 MS. LEWIS: No, I don't -- I don't want  
20 to at this point, because in every one of those  
21 they're dealing with information coming in in the  
22 second set of data requests, which, obviously, no  
23 one has seen them.

24 HEARING OFFICER FAY: Okay. Fine.  
25 Anything further, then, before we move on?

1 MS. LEWIS: No, I think that's all.

2 HEARING OFFICER FAY: Okay. All right.

3 Thank you.

4 Let's move to the Coastal Alliance,  
5 then. If you could highlight or update anything  
6 in your status report that you'd like to bring to  
7 the Committee's attention.

8 MS. GROOT: Yes. Thank you, Mr. Fay and  
9 Commissioner.

10 Before I go into our status report, I  
11 would like to mention for Mr. Ellison's benefit  
12 that even though we filed our petition, and I'm  
13 not doing the 11 copies, whenever we send a copy  
14 of anything to the CEC, we send a courtesy copy to  
15 Duke, directly to Duke. And I hope that it's  
16 receiving it.

17 HEARING OFFICER FAY: Since you raise  
18 that, is that why your proof of service only shows  
19 the Staff and Duke, because you have hardship  
20 status?

21 MS. GROOT: That's correct. We were  
22 granted that status.

23 HEARING OFFICER FAY: And -- and does  
24 the Staff distribute them to relevant agencies, as  
25 -- as appropriate?

1 MS. LEWIS: Right. We make sure that  
2 Staff --

3 HEARING OFFICER FAY: Okay, good. Thank  
4 you.

5 MS. GROOT: Yes, thank you, Kae.

6 The Alliance filed its first set of data  
7 requests on March 8th, and there were 287 items on  
8 that list. Of those, Duke objected to 12. They  
9 said 13, but they only find -- found 12 items on  
10 the list. That must have been a miscount.

11 We submitted our status report in good  
12 time, actually early. The -- then we received  
13 responses to our data requests to all but 77, by  
14 my count. The -- from what I understand, the air  
15 issues, the air data requests, only item number 1  
16 through 31 were responded to. I may have to  
17 double-check that, but that's different from what  
18 Ms. Luckhardt was stating earlier.

19 Now, the responses to our data requests,  
20 some of them were quite informative. Many of them  
21 referred us to the 316B report, and I'd like to  
22 point out that as yet we have not received even  
23 the -- that copy. We certainly would like to see  
24 that before at least Monday's meeting.

25 Some of the responses we've gotten were

1 incorrect. Some of the responses required  
2 clarification and considerable follow-up. And  
3 we'll go into that more in a moment.

4 The second set of data requests were --  
5 our second set of data requests were filed March  
6 21st, as well as five data requests addressed to  
7 the CEC on March 23rd. We received the Staff  
8 status report, and on March 24th, we received  
9 Duke's status report and the new thermal draft.  
10 With the incomplete information we have, we will  
11 try to give what input we can to the Preliminary  
12 Staff report, but I would like to point out that  
13 we are disappointed that the areas of greatest  
14 interest to us, of greatest concern to us, Water  
15 Resources, Biological, Air, are not available at  
16 this time.

17 Also --

18 HEARING OFFICER FAY: Excuse me, Ms.  
19 Groot, for interrupting you. I need to stop you  
20 there.

21 The way the process is designed to work  
22 is that the Staff creates its Preliminary Staff  
23 Assessment so that the public and other parties  
24 can react to it. Did I just hear you say that you  
25 feel the need to have input before Staff publishes

1 the PSA?

2 MS. GROOT: We would certainly like to  
3 let Staff know, as much as we can, where we stand  
4 at this point, how -- how we respond to what we  
5 see before us. Yes, we would like to do that.

6 HEARING OFFICER FAY: Right. I'm sure  
7 that if --

8 MS. GROOT: Is that not appropriate?

9 HEARING OFFICER FAY: If they are able  
10 to, I'm sure they'll look at your input. However,  
11 that's not the way the process is designed. And I  
12 -- I'm not discouraging you from sending something  
13 in to the Staff. I just want you to realize that  
14 the PSA is -- is the first expression, if you  
15 will, by the Staff of their reaction to the  
16 Applicant's application, as modified by the data  
17 responses.

18 So that's conceptually how the process  
19 is supposed to work.

20 MS. GROOT: Thank you for that  
21 clarification. And may I ask this. Is -- is the  
22 Staff likely to look at the responses to our data  
23 requests?

24 MS. LEWIS: We definitely do. Those get  
25 distributed to our technical staff.

1 MS. GROOT: Okay. Well, then, again,  
2 it's too bad that those responses won't be in yet.  
3 Okay, I'll drop that point.

4 Another point of this -- another item  
5 that disappointed us was to see that the health  
6 issue was listed as something that was not going  
7 to be under contest. Now, as Kae knows, I  
8 requested a -- we requested a workshop on Health,  
9 Air, and Noise. And to us, there are many  
10 questions of concern on health issues, so I don't  
11 see how that could be called an area that's not  
12 under contest at this point.

13 HEARING OFFICER FAY: Could we stop you  
14 just a moment. Ms. Lewis, are you comfortable  
15 characterizing or responding to that? How -- how  
16 is it that Staff is -- feels they can go forward  
17 on the health issue?

18 MS. LEWIS: Well, I think her main  
19 concern is with criteria pollutants, which is not  
20 handled in our Public Health section. It's  
21 handled in Air Quality. So I think we do capture  
22 her concerns in -- as -- in an area where we're  
23 still doing additional work.

24 HEARING OFFICER FAY: Okay. So maybe  
25 it's just a question of terminology.

1 MS. GROOT: Yeah, I -- I see. I'm not  
2 up to the CEC lingo, not as much as I thought I  
3 was.

4 Okay. Let me just say this, that  
5 despite our limited resources we have been prompt  
6 in whatever we did, and we have been working hard.  
7 We take our job seriously. We asked a number of  
8 substantive questions, as you can well see from  
9 the few objections from Duke. We feel that what  
10 we discovered, what we are trying to discover,  
11 will aid the Commission in eventually making an  
12 informed decision about the project. And so my  
13 plea is please let us do our self-assigned job.

14 Now, to get back to the area of problems  
15 with responses to our data requests, I'd like to  
16 give the mic to Tom Laurie here, who has more  
17 technical input on these -- on these issues.

18 HEARING OFFICER FAY: Is this in  
19 general, or is this regarding the -- the motion to  
20 compel answers?

21 MR. LAURIE: The motion in general.

22 HEARING OFFICER FAY: Okay. Go ahead.

23 MR. LAURIE: Am I here? Clearly,  
24 there's a lot of pressure on the CEC and Staff to  
25 speed this thing along, but I think it's important

1 for you to keep your eyes open when you're in  
2 Morro Bay and realize that you're siting a new  
3 power plant in the smallest estuary on the West  
4 coast, the smallest tidal estuary, and the  
5 smallest body of water in the National Estuary  
6 Program.

7 And we have a -- we have problems with  
8 our technical data requests, because there's two  
9 sets of numbers being used. There's a set of  
10 numbers that Duke is submitting to the Water Board  
11 for their maximum flows, their maximum velocities,  
12 and a set of numbers that they have in the AFC for  
13 their maximum flows and maximum velocities. So if  
14 we asked questions using our numbers, which we  
15 have taken from the Water Board numbers, the  
16 response we get back can't be clear, because  
17 they're using different numbers. That's one basic  
18 problem.

19 And in a lot of the cases, we've asked  
20 technical questions and got answers back from a  
21 \$500 load area. So -- and we also think that the  
22 -- the Applicant is forcing Morro Bay to fit their  
23 studies, rather than designing a study to fit  
24 Morro Bay and its acute areas.

25 The -- the big issues in Morro Bay are

1 the volume of water that's in it, and the amount  
2 of ocean water that mixes with it, and --

3 PRESIDING MEMBER MOORE: I'm sorry,  
4 could you say that again? The amount of water and  
5 --

6 MR. LAURIE: The -- the biggest issues  
7 in Morro Bay that we have are the volume, the  
8 steady volume of water which Morro Bay contains,  
9 and the amount of water that is said to be mixing  
10 -- the amount of ocean water -- which is said to  
11 be mixing with water in the estuary. And the  
12 Applicant's data is a little bit schizophrenic on  
13 this. Some of the data suggests there's a lot of  
14 mixing. Some of the tests that have been -- or  
15 some of the algorithms that they offered suggest  
16 that there's a whole bunch of ocean water coming  
17 into the bay, and some of them suggest that  
18 there's a plug of estuary water right at the  
19 entrance to the bay that keeps anything from  
20 coming in.

21 In fact, I'm sure that TetraTech did not  
22 do this on purpose, but some of their data  
23 actually suggests that the discharge is  
24 circulating and getting plankton back into the  
25 entrance of the harbor, and the tidal currents are

1 taking it in and it's being counted twice.

2 So -- and the other issue is that all  
3 hydrodynamic and current data for Morro Bay have  
4 been derived from a study of Morro Bay which was  
5 produced for the National Estuary Program's  
6 predecessor, which I think was -- anyway, the  
7 TetraTech study was never meant to be used for  
8 regulatory purposes. It was a planning document,  
9 and it was written specifically for the NEP. But  
10 Duke has attached themselves to this study like it  
11 was some lost pages of the Dead Sea Scrolls, and  
12 they're using every bit of information in it.

13 And we have big disputes, you know,  
14 about the technical aspects of this setting, and  
15 we've asked several questions of the Applicant  
16 about it, and we've made some suggestions about  
17 what they should do to remedy.

18 And, finally, you know, of course, this  
19 -- this is business. The data requests, you only  
20 get what you ask for. For example, we -- we were  
21 curious about one impingement study that was  
22 performed in the middle of summer, when the  
23 sampling was shut down because of debris. In  
24 other words, they couldn't take the -- from the  
25 screens safely because the screens were constantly

1 tripping under pressure differentials, which is  
2 what they're designed to do when -- when debris  
3 plugs them up.

4 So we were curious about that, because  
5 it was in the middle of summer and it wasn't  
6 raining, and usually it's only when it's raining  
7 that you get any debris of those amounts in the  
8 trailing screens. And I was thinking it was eel  
9 grass, but the response we got was that it was  
10 jellyfish, and there were -- there were enough  
11 jellyfish in the -- in the mechanism that day to  
12 just shut down their sampling.

13 But our -- our concern was that they  
14 called the jellyfish debris, but they were  
15 animals. So, you know, that gives us some, you  
16 know, that makes us wonder what the other  
17 incidents were where the plant was shut down, or  
18 the -- or the operation was shut down because of  
19 debris. For all we know, it could be skinny sea  
20 otters squeezing through.

21 So you only get what you ask for, and I  
22 think it takes time to get these answers correct.  
23 So if Duke is willing to open their books to us, I  
24 think that would speed things along, too.

25 Thank you.

1                   HEARING OFFICER FAY: One of the things  
2 we learned during the Moss Landing case was the  
3 advantage of having a Technical Working Group that  
4 involved not only representatives from the  
5 Applicant, but representatives, experts hired by  
6 the public, as well, the Commission and the Water  
7 Board. And so I'm sure you realize we're going to  
8 be relying a lot on the judgment of the Technical  
9 Working Group to sort out many of these technical  
10 issues. So it's not simply an argument between  
11 parties.

12                   And I imagine that area that you're  
13 citing is one that the Technical Working Group  
14 will probably make a call on as to what they think  
15 the appropriate data is. And you would certainly  
16 be able to challenge that, if you wish. But we  
17 will be using their expertise in this case, at  
18 least as much as we did in the Moss Landing case,  
19 I assume.

20                   Anything further, then?

21                   MR. HENSLEY: Yes, Commissioners.  
22 Gordon Hensley. I'm the Environmental Analyst for  
23 the Environmental Defense Center.

24                   I have one more specific issue about  
25 potential data or information gaps. We're raising

1           these issues basically because we don't have a  
2           direct contact to the Technical Working Group, and  
3           we're looking to you to direct some of these  
4           questions back to them.

5                       My comments specifically are about the  
6           TetraTech study, and its use. And I'm sorry, I  
7           only have a xerox copy, so it doesn't look exactly  
8           like this. It is a colored cover. This was  
9           produced in 1999. At that time I was a member of  
10          the -- of the Technical Advisory Committee that  
11          was reviewing this document, and the Alliance is  
12          currently concerned about what to extent this  
13          study is being used as a foundation for the data  
14          analysis.

15                      The model that was completed in '99 by  
16          TetraTech is not an adequate representation of  
17          what is actually going on in the bay. At the risk  
18          of boring you over the statistical ins and outs of  
19          it, the R-2 value, the confidence value, is only  
20          26 percent on that model.

21                      That means that the question that you're  
22          really asking of the model is how well do you  
23          represent reality, nature. The answer is 26  
24          percent of the time. So our -- our concern is  
25          that this model not be used as a -- as a basis for

1 the volume which leads to the amount of  
2 impingement and entrainment impact that the plant  
3 might have. It's simply not an adequate basis for  
4 that. In fact, the TetraTech workers assured the  
5 National Estuary Program at the time that they  
6 completed that in '99 that this document is not to  
7 be used for regulatory purposes. It's simply not  
8 appropriate.

9 And we would like to see you direct  
10 Staff to find out from the Technical Working Group  
11 to what extent they're using this document for  
12 their -- as underlying their -- their work.

13 PRESIDING MEMBER MOORE: So the R-  
14 squared value that you came up with is quoted in  
15 that report, they used --

16 MR. HENSLEY: No, it is not.

17 PRESIDING MEMBER MOORE: That's --  
18 that's your secondary analysis of the data, and  
19 you -- you created the R-squared value yourself.

20 MR. HENSLEY: That -- that is correct.  
21 And the TetraTech workers confirmed that.

22 PRESIDING MEMBER MOORE: In writing?

23 MR. HENSLEY: I'd have to go back and  
24 look at that. I don't have it with me tonight.

25 PRESIDING MEMBER MOORE: So you used

1           their statistics and -- and recalculated, in order  
2           to come up with that --

3                       MR. HENSLEY: That is correct.

4                       PRESIDING MEMBER MOORE: -- calculation.

5                       HEARING OFFICER FAY: Has Staff head  
6           this before?

7                       MS. HOLMES: I haven't.

8                       MS. LEWIS: No, I haven't. It's  
9           possibly in Biology.

10                      HEARING OFFICER FAY: Have you shared  
11           this with -- with Dick Anderson, the Staff  
12           biologist?

13                      MR. HENSLEY: No, actually I've only  
14           become aware within the last couple of days that  
15           this study might actually be -- be used by the  
16           Technical Working Group as a basis for their  
17           calculations on volume and -- and the like.

18                      PRESIDING MEMBER MOORE: Well, I think,  
19           among other things, to come up with a -- come up  
20           with a challenge that suggests a statistical  
21           difference, or R-squared that's that low, I'd  
22           certainly like to see your statistics. So if  
23           you've got those runs, you should probably submit  
24           them to the docket and make sure that the Staff  
25           has access to them.

1                   MR. HENSLEY: I can -- I will submit my  
2                   comments that I submitted to TetraTech at the  
3                   time. I suggest that just on the grounds of  
4                   fairness and trying to avoid any dispute, that you  
5                   ask the Technical Working Group to run those  
6                   figures themselves.

7                   HEARING OFFICER FAY: Well, if you could  
8                   put that in writing to -- to the Staff or the  
9                   Committee, so it goes to the docket, and it'll get  
10                  to the Technical Working Group at least through  
11                  the Staff biologist.

12                  But -- but let me ask if Applicant has  
13                  people who are familiar with the work being done  
14                  by the Technical Working Group, and see if they  
15                  have any response.

16                  MR. HOFFMAN: Again, Wayne Hoffman, with  
17                  Duke Energy.

18                  I won't attempt to characterize the  
19                  details of how this issue has been presented to  
20                  and resolved by the Technical Working Group, but  
21                  it certainly has indeed been looked at in fairly  
22                  substantial detail. Dr. David Kaye, a scientist  
23                  with the Oregon Research Institute, has conducted  
24                  fairly extensive research on the topic of the  
25                  hydrodynamics of Morro Bay. One of the resources

1 and studies which he looked at in his evaluation  
2 was certainly the TetraTech study. That's only  
3 natural, given that it's the most recent, the most  
4 current evaluation of its type of Morro Bay.

5 I would -- he indicated that he did a  
6 fairly substantial visual presentation before --  
7 and written presentation to the Technical Working  
8 Group, as well as to the Environmental Leaders  
9 Group that has met somewhat regularly over the  
10 last several months in Morro Bay. And I can't  
11 speak, again, specifically to the details of how  
12 he resolved this, but I know that, in fact, this  
13 was not the only basis, or perhaps even the  
14 primary basis of his determinations on the source  
15 water volumes and the tidal prism and the tidal  
16 exchange in Morro Bay.

17 He has looked at this in a number of  
18 different ways. The scientists, particularly Dr.  
19 Raimundi, from UC Santa Cruz, is the independent  
20 consultant of -- of the regional water board, has  
21 questioned and evaluated this subject in some  
22 detail, and the Technical Working Group has -- has  
23 reached an agreement about what the appropriate  
24 source water volume number is for the evaluation.

25 By the way, that's a number really

1           that's only relevant to the entrainment analysis,  
2           not to impingement. But, anyway, that -- that's  
3           where that stands, as far as we know.

4                       PRESIDING MEMBER MOORE: Okay. Let's  
5           just make sure. If there's going to be dispute  
6           over someone's regressions, and you're going to do  
7           your own set of regressions, then submit the  
8           regressions, submit -- and submit the cross  
9           correlations, whatever you're coming up with, and  
10          let's -- let's have that fairly adjudicated in an  
11          impartial environment, and at that point, when the  
12          Committee gets it, we'll be capable of looking at  
13          those statistics and understanding them, as well.

14                      So let's make sure, if you're going to  
15          argue those, make it very clear where -- what the  
16          parametrics are, and how you're coming to  
17          conclusions, on both sides.

18                      HEARING OFFICER FAY: Yeah. And -- and  
19          I think if you would, Mr. Hensley, submit  
20          something in writing. That way, at least through  
21          the Commission's representatives on the Technical  
22          Working Group, they will know that there's a  
23          challenge to heavy reliance on that report, and  
24          they can expect that to come up in the Evidentiary  
25          Hearings, I presume. And, you know, they -- they

1 can decide what to do with that information.

2 All right. Anything further --

3 MS. GROOT: I hope you understand that  
4 we are not trying to hold things like that back  
5 and bringing -- let them jump up at you. As soon  
6 as we find these things out, we try to share them.  
7 But these are new things that become apparent from  
8 our discovery.

9 PRESIDING MEMBER MOORE: That's --  
10 that's clear. All I'm saying is it won't do any  
11 good to say we're got an R-squared of .26, and  
12 toss that out on the table, and it's -- that's not  
13 going to work in these hearings. You have to  
14 submit the regressions along with it, and the  
15 place to do that is in the Technical Working  
16 Group, so that it comes to us in a -- in a fairly  
17 adjudicated way.

18 MS. GROOT: That will be done. Now, I  
19 hope you realize our counsel will have some  
20 comments to make now.

21 MR. NAFICY: Well, much of what I wanted  
22 to talk about was already addressed in the earlier  
23 discussion about the timing. I do want to point  
24 out that when this group was referring to  
25 providing some input before the PSA, it was --

1           these are the sorts of information we'd like to  
2           provide.  So it's not always in the posture of  
3           reacting to something that we are presenting.  We  
4           would like to present substantive information at  
5           the point where the Staff can make use of it in  
6           formulating their opinions, rather than getting  
7           entrenched in an opinion and then reacting to it.

8                         So we think it would be important for us  
9           to try to get as much to the Staff in advance of  
10          the PSA.

11                        I guess you sort of had two different  
12          accounts of where the data requests are, before  
13          our presentation.  My analysis of the data  
14          requests has revealed problems and issues that  
15          will require discussions with Duke and the Staff,  
16          and likely additional questions being directed by  
17          either the Staff or Duke in order to address  
18          those.  The jellyfish issue, for example, that  
19          kind of brings up a host of other questions.

20                        And we are not as optimistic that the  
21          whole process of data requests is going to be  
22          completed with such expediency as you have been  
23          led to believe up to this point.

24                        We are also concerned about not having  
25          some of the original information, you know, at our

1 disposal, and rather were given a lot of secondary  
2 documents. So we're trying to work with Duke on  
3 that. In fact, you're going to be likely ruling  
4 on some of those issue in the context of our first  
5 sets of data requests tonight.

6 But we think that that's going to be an  
7 ongoing issue, but we're asking for original  
8 documents, and -- and the raw data.

9 I won't repeat myself and bore you, but  
10 I just want to state again my concern about the  
11 timing. You've heard us, and I trust that you  
12 will take the appropriate steps to make sure that  
13 members of the public have sufficient time to  
14 analyze and comment on the PSA as it comes out, so  
15 that the final document is as good a document as  
16 it can be, to allow you to make as good a decision  
17 as possible.

18 HEARING OFFICER FAY: And, yes, that is  
19 our goal. And, of course, one of the things that  
20 we learned about the use of the Technical Working  
21 Group during the Moss Landing case was that -- and  
22 in fairness to that process, the Technical Working  
23 Group was not designed to -- in that case, to come  
24 forward as really an evidentiary body. They were  
25 consulting with other things in mind, but it

1           turned out that they were very helpful in that  
2           way.

3                           And so the Committee recommended, and I  
4           think the parties agreed, that the Technical  
5           Working Group in this case should start working  
6           early and periodically go public with -- with  
7           their findings, as they developed. And the idea  
8           there was so that the public could understand the  
9           -- the logic process being used by the Technical  
10          Working Group, how they were putting their studies  
11          together, parameters, et cetera, rather than  
12          having a finished product of the Technical Working  
13          Group surface late in the case where people would  
14          not really understand how the end product was  
15          derived.

16                           So we're trying to make it as open as  
17          possible, and yet still give the Technical Working  
18          Group the freedom to -- to consult as experts on  
19          this. And we hope that it's very informative for  
20          the public, as well as for the Committee.

21                           MS. LUCKHARDT: Commissioner Fay --  
22          Commissioner. Hearing Officer Fay, I just would  
23          like to ask one question of the Intervenors. We  
24          Federal Expressed the 316B study to I believe  
25          David Nelson's house today, and it's my

1           understanding from talking to the consultant that  
2           that did go out last night.  If that has not been  
3           received, we would like to know that.

4                        What we received today was the -- the  
5           thermal study, not the 316B.  I don't believe that  
6           -- was the thermal study --

7                        MR. HOFFMAN:  The thermal study was  
8           definitely sent out.  I'm also certain the 316B  
9           study was sent out.  I'm not sure it was also sent  
10          to David's house, though.

11                       MS. LUCKHARDT:  No, I tried --

12                       MR. HOFFMAN:  So he'll still receive  
13          that.

14                       MS. LUCKHARDT:  -- I talked to Dave  
15          today.  I think he said that --

16                       MR. HOFFMAN:  Well, I will call him as  
17          soon as we get out of here.

18                       PRESIDING MEMBER MOORE:  So the answer  
19          is the 316B did -- report did not make it to --

20                       MS. LUCKHARDT:  Not yet.

21                       PRESIDING MEMBER MOORE:  -- that you  
22          know of.

23                       MR. NELSON:  I'm David Nelson.  Today we  
24          got the thermal plan and a status report --

25                       PRESIDING MEMBER MOORE:  Please, you're

1 going to have to come up and speak into the  
2 microphone.

3 MR. NELSON: Today Fed Ex delivered the  
4 thermal plan and Status Report Number 2, and  
5 that's all.

6 MS. LUCKHARDT: Well, we'll check on the  
7 316B.

8 HEARING OFFICER FAY: Would it help your  
9 group if the 316A and B studies were posted on the  
10 Commission's Web site for the -- for the case?  
11 That was done at the request of intervenors in the  
12 Moss Landing case, and it gave instant access to  
13 the studies.

14 MS. GROOT: I think that would be very  
15 helpful, yes, indeed. But we'd also like a hard  
16 copy, by the way.

17 HEARING OFFICER FAY: Sure. Is that a  
18 reasonable request of the Staff --

19 MS. LEWIS: It was done for Moss?

20 HEARING OFFICER FAY: Yes, it was.

21 MS. LEWIS: Okay. Well, I will  
22 certainly request that they do that.

23 HEARING OFFICER FAY: Okay, good. So  
24 when you do get it, try to post it on the Web.  
25 That gives more access to everybody.

1                   PRESIDING MEMBER MOORE: Certainly more  
2 instantaneous.

3                   HEARING OFFICER FAY: Yes. All right.

4                   MR. NAFICY: Excuse me. Could I also  
5 ask that when the PSA comes out, that that'll be  
6 posted, as well?

7                   HEARING OFFICER FAY: Oh, we will. That  
8 -- that happens automatically. Yes. The Web site  
9 for the case, for all our cases, usually includes  
10 all the documents produced by the Commission, by  
11 the Committee and by the Staff. You'd be at a  
12 loss for documents produced by other parties,  
13 although not always. But since you're an  
14 Intervenor, you would get them directly through --  
15 through the mail.

16                   Okay. At this time, we'd like to allow  
17 a little time for oral argument on the Coastal  
18 Alliance's motion to compel answers. They  
19 referred to it as a petition, but I think it is  
20 essentially the same thing. And since this came  
21 up in -- in a timeframe that allowed us to use  
22 this opportunity tonight to address the matter, we  
23 thought we would do so.

24                   So if the Coastal Alliance would like to  
25 proceed, and can you -- can you address this

1 matter in no more than 15 minutes?

2 MR. NAFICY: I think I can.

3 HEARING OFFICER FAY: All right.

4 MR. NAFICY: Now, we have not received a  
5 formal response to our petition. We -- I did have  
6 an opportunity, after discussing the matter with  
7 yourself, to -- to talk with Ms. Luckhardt in an  
8 attempt to resolve some of the issues that were  
9 raised in our petition.

10 I would have to say that it was a, you  
11 know, for the most part, we were unable to resolve  
12 our differences, so the issues remain outstanding,  
13 for the most part.

14 I think the core of our -- the theme of  
15 our requests that were objected to is an intention  
16 on our part to present as complete picture of the  
17 estuary as it can be, and also a full alternatives  
18 analysis. There are other issues and I'll get to  
19 those, but I think those two are at the core, at  
20 the heart of the request here.

21 We have asked, for example, in two data  
22 requests, 151 and 201, to get an analysis of what  
23 a healthy estuary would be, one that has not been  
24 used for cooling turbine engines for the last 50  
25 years. We think that an idea of what that could

1           be in comparison of that model with what is  
2           currently in existence would allow the Commission  
3           to have an idea of what you're really talking  
4           about here, and why an alternative may be  
5           desirable.

6                         This information I think is crucial to  
7           both the alternative site analysis and the  
8           alternative technologies analysis. And that is  
9           something that the -- that Duke has not felt that  
10          would be -- would be appropriate. They feel that  
11          they've done all that they need to do, as directed  
12          by the Technical Working Group, and that they  
13          don't really owe the Commission that kind of  
14          information. And I think it's fair to say that  
15          the heart of their contention is that because  
16          there's already a plant sitting there, that this  
17          is going to be the baseline, and we don't need to  
18          bother thinking about what the estuary might be  
19          like if we weren't withdrawing millions of gallons  
20          of water out of it for cooling engines. So we  
21          think that in order to present a full picture,  
22          that -- that information is crucial.

23                         In one -- in Data Request 192, we've  
24          asked about other impacts to the estuary, and Duke  
25          has taken the position that, again, they've done

1        what they need to do, that this has already been  
2        looked at.  And we -- I ask today that we be  
3        provided by some explanation of how is it that  
4        there's no need for looking at other impacts,  
5        because there may be impacts that are cumulative  
6        on the -- this very fragile ecological  
7        environment.  And again, that was not forthcoming,  
8        and we decided to just leave it to the Commission.

9                    There was also a dispute over the issue  
10       of alternatives.  We directed a question  
11       specifically directed at what specific alternative  
12       sites would be feasible.  And I have to point out  
13       that the Staff has directed a similar data request  
14       directing Duke to respond to that question in the  
15       context of three specific sites, but they haven't  
16       asked the more general question of please provide  
17       us with some alternative site analysis.

18                   Duke's position has been well, we're  
19       willing to respond to the CEC Staff's request, but  
20       initially they took the position that -- that in  
21       their analysis they're exempt from such analysis  
22       because this is the -- the proposed site would be  
23       related to the old site.

24                   Now, under the law, this is Public  
25       Resources Code 25540.6, the Committee -- the

1 Commission has the discretion to exempt an  
2 applicant from providing such analysis. But to  
3 our knowledge, the Commission here has not  
4 exercised that discretion. There has not been a  
5 determination that Duke is exempt from that, and,  
6 in fact, they haven't objected to the Staff's data  
7 request regarding alternative site analysis.

8 So we think that it's appropriate for  
9 Duke to respond to that, to this data request, and  
10 provide the Committee and us with a full analysis  
11 of alternative sites, as is done customarily under  
12 CEQA. I think this analysis would be very helpful  
13 to the Commission in deciding where, you know,  
14 while deciding what alternatives to consider and  
15 what might be appropriate.

16 We've also asked for some information  
17 about projection of future use and -- and various  
18 scenarios. And for -- for power use. And we  
19 asked not just for the analysis, but the data, the  
20 background data on this. Duke responded recently,  
21 in fact, that -- that their response to Data  
22 Request by the Staff, Number 23, should be --  
23 should be sufficient, and they do discuss some  
24 scenarios there. But again, what's missing from  
25 that, even -- I mean, we have problems with their

1 analysis, you know, in this response. But even if  
2 we were to take their response, it would still be  
3 incomplete. It would not be a complete answer to  
4 our request number 217, because none of the  
5 underlying documents, none of the documents that  
6 were generated in connection with this issue have  
7 been present -- have been provided to us.

8 Duke doesn't feel like they need to  
9 mitigate the noise that will be generated, and  
10 they refuse to do alternative mitigation analysis.  
11 They feel that what they've done already is  
12 sufficient. But, again, if this is -- if we  
13 follow the lead of CEQA, if you propose a  
14 mitigation measure you have to do mitigation  
15 alternative analysis. Why is this the best  
16 mitigation, why is this the only feasible  
17 mitigation. And that's absent.

18 We've also asked for, in our request  
19 number 139, we asked for all documents, work  
20 papers and data relating to the thermal plume.  
21 And they told us that, well, you know, we have  
22 some old information about PG&E, and all the new  
23 information will be contained in the new studies.  
24 But as was illustrated earlier in our  
25 presentation, there are some issues about

1       discrepancies between data sets, and on principle,  
2       we would like to collect as much of the original  
3       documents and -- and do a full analysis on all the  
4       available data to really assess the integrity of  
5       the analysis and projections that are made in the  
6       document.

7                   And I don't think what we're asking for  
8       is really beyond the pale. The standard that is  
9       set for data requests for -- in these proceedings  
10      is very low. You have to show that it's not  
11      unduly burdensome, and that it's relevant to the  
12      inquiry. And we've done that. And what we get in  
13      the set is well, we don't really need to do that,  
14      we're exempt. But, you know, it's a very low  
15      threshold. I mean, we think we've met that  
16      threshold. None of the information we've asked  
17      for is irrelevant. I don't believe any of this  
18      information is unusually difficult to come up  
19      with.

20                   Some of the studies maybe will, you  
21      know, require some work, and expert work, in  
22      particular. But again, I think this is such an  
23      important issue, both to the public and this  
24      organization, and I'm sure to the Commission, to  
25      really -- you know, look at the ecological jewel

1           that -- that's going to, if the proposed project  
2           goes through as planned, that's going to have this  
3           power plant on it for another 50 years. And we  
4           really want to make it as informed a decision as  
5           possible.

6                         And I'll sort of end here, hoping that  
7           if there's issues that come up, that I can have  
8           another minute or two to do any rebuttal, if  
9           needed.

10                        HEARING OFFICER FAY: Okay. Ms.  
11           Luckhardt, do you want to respond?

12                        MS. LUCKHARDT: Yes, I would like to  
13           respond. Let me get the mic close enough here.

14                        I guess I will respond by going through  
15           them in order, and looking at the specific  
16           request.

17                        In Request 139, they would like  
18           background information on the thermal plume. I've  
19           had an opportunity to talk with our folks  
20           regarding that. The only additional information  
21           we have, and I'm not -- I just don't know, I think  
22           that you guys have this, is the 1973 PG&E thermal  
23           study. The entire study was in the appendices of  
24           the original AFC. And so that's where that is. I  
25           believe you guys have a copy of the original AFC.

1 If you don't, we could make another copy of that  
2 particular document.

3 HEARING OFFICER FAY: By original AFC,  
4 you mean the one that was withdrawn?

5 MS. LUCKHARDT: Yes. The August '99  
6 AFC. It's Appendix 6.5, attachment 5. And that's  
7 all the information that we have. We have no  
8 other work papers having to do with the PG&E  
9 thermal study.

10 The thermal studies that are coming out  
11 at this point, I've also spoken extensively with  
12 our folks, our experts in the field, who are  
13 actually doing the work. We do not have any other  
14 draft studies. All the draft studies you guys now  
15 have. And so that information is -- is what's  
16 there.

17 The only thing that it's my  
18 understanding you don't have is the reams of data  
19 that would fill a room, I'm told, if printed out,  
20 of the thermal measurements that are taken every  
21 20 seconds, some of which for a period of a year.  
22 There are 30 separate locations, not all of them  
23 are monitored for a year. What the Technical  
24 Working Group has done is they have determined how  
25 they would like that data screened for

1 information, because they don't need information  
2 where the datapoints are below any rise in  
3 temperature. They're looking for temperature  
4 rises.

5 That all that information is collected  
6 electronically, stored electronically, and  
7 screened electronically. We do not have hard  
8 copies, and I -- I don't even think that that  
9 information necessarily is something that -- that  
10 would provide any additional information.

11 We have not collected any thermal  
12 information that is not reflected in the thermal  
13 report. The thermal reports contain documentation  
14 of all the information that we have collected. We  
15 do not have time to have our consultants preparing  
16 internal documents and internal reports. We are  
17 barely getting the documents out that we need for  
18 this proceeding. There is nothing else there.

19 In response to Number 150, which has to  
20 do with the 316B report, they had asked for  
21 additional -- any additional drafts. It's my  
22 understanding that they have all the drafts.  
23 There have been, I believe, two e-mails from Greg  
24 with comments. Those came in prior to the  
25 Technical Working Group meeting in which CAPE

1 attended, and in which all of those comments were  
2 discussed.

3 I'm having the folks who received those  
4 e-mails print those out, and we will provide those  
5 to CAPE. But there has not been written comments  
6 or communications other than that, on the 316B  
7 reports to provide to them.

8 And then I'd like to move to the three  
9 questions that deal with -- the three data  
10 responses that deal with cumulative impacts and  
11 other impacts on the estuary, items that I believe  
12 the Intervenor referred to as healthy --  
13 determining what's a health estuary. Those  
14 questions are responses -- or requests 151, 192,  
15 and 201.

16 In this instance, I would like to again  
17 refer and defer to the judgment of the Technical  
18 Working Group. I have spoken with our experts on  
19 this. They do not believe that there are any  
20 other studies that we could do. They have -- the  
21 Intervenors have presented this issue within the  
22 Technical Working Group. It is my understanding  
23 that they can do a kind of collective view of what  
24 different food chain kind of analyses are that are  
25 supposedly in the most recent versions of the

1 reports coming out of the Technical Working Group,  
2 but they cannot do -- they can do a quantitative -  
3 - they can do a quantitative analysis, but that is  
4 impossible, according to our experts.

5 And this issue has been presented to the  
6 Technical Working Group, and they have determined  
7 not to require that, based upon the fact that you  
8 just can't simply do it.

9 The claims that we have not looked at  
10 cumulative impacts and we have not looked at  
11 impacts are simply inaccurate and incorrect. We  
12 have provided extremely extensive studies dealing  
13 with water quality, the tidal prism, tidal flow.  
14 There's a hundred page study out from David Jay  
15 that was provided in our response to Intervenor's  
16 Data Request. We have done extensive studies on  
17 the 316B, and the thermal plume analysis. We are  
18 also in the process of doing a first ever, never  
19 done study on clam larvae, and -- and that is  
20 really a demonstration study.

21 We believe we have provided everything  
22 that can be done in that area, and that the  
23 Intervenor's requests just simply go beyond  
24 anything that is even possible, at this point.

25 In response to their questions on an

1 alternatives analysis, that deals with Request  
2 214. Request 214 asks us to -- to provide a very  
3 general examples of possible alternative sites  
4 near the grid. We firmly believe that as the  
5 Applicant in this case, using an existing site,  
6 that you cannot repower anywhere but on the  
7 existing site, and that we are not required to  
8 provide an alternatives analysis.

9 We have elected, due to the fact that  
10 Staff put some constraints on its request, to  
11 provide some additional response to Staff. Staff  
12 asked for information regarding sites around  
13 Gates, Los Banos, Templeton substations. We are  
14 working on that response, and offered to the  
15 Intervenor that we would be doing that work, but  
16 it's our understanding that that is insufficient  
17 at this point, and we believe that any further  
18 work is -- is beyond, definitely beyond what we  
19 are required to do under the Warren-Alquist Act.

20 And I believe that we have settled our  
21 differences in response to Request 215, where they  
22 asked us to do an analysis of increasing the size  
23 of Moss Landing. We will clarify that we have  
24 already done that. We have exercised that  
25 alternative option.

1                   In response to the comments about  
2                   Request 217, I believe his characterization was  
3                   quite inaccurate.  They request itself does not  
4                   ask for data developed in -- data used to develop  
5                   a response.  He's asking for internal projections,  
6                   work papers, memoranda, and other documents  
7                   relating to the most likely future operating  
8                   scenario of the existing facility.

9                   We believe that providing internal Duke  
10                  documents is beyond the requirements of this  
11                  proceeding, and clearly violates documents which  
12                  are privileged and provide competitive  
13                  information.

14                  We have provided an analysis in response  
15                  to Staff's data request, I believe it's 23, where  
16                  we give a high run and a low run scenario for  
17                  future operation of the existing facility.  And we  
18                  believe that that is sufficient.  Their request  
19                  for additional background data on that analysis  
20                  does not exist.  That -- the analysis that was  
21                  done is there inside that request.

22                  I think that to a certain extent, they  
23                  are reacting to the fact that PG&E hid data from  
24                  the public in the Diablo Canyon case.  We have not  
25                  done that here, and don't feel that we should be

1           punished for not doing so, or for PG&E's  
2           indiscretions.

3                       In response to Request 270, Request 270  
4           asks for every possible noise mitigation that can  
5           possibly be done in this case. We have shown  
6           clearly in our analysis that there will not be any  
7           exceedences of the ordinances, or exceedences of  
8           the CEC's standards, either. And so we believe  
9           this fishing expedition into any possible  
10          mitigation measures is clearly not required by the  
11          Warren-Alquist Act, or CEQA, and is simply  
12          irrelevant, not relevant to this proceeding  
13          because we have shown that there are no impacts.

14                      We have provided mitigation in our  
15          project design to be sure that we do not have any  
16          noise impacts. That includes a sound wall, a lot  
17          of specially designed equipment. We've done very,  
18          very extensive work on noise, and we feel that we  
19          have presented a very full and complete analysis  
20          in that area.

21                      And in closing, I would just like to  
22          note that CAPE provided 287 data requests. We  
23          objected to, as I think corrected, to 12. I think  
24          we have clearly extended ourselves in working to  
25          respond to these requests, in working to respond

1 to concerns expressed by CAPE, and I believe that  
2 we have given them an adequate and full response.  
3 They may not always agree with our response, but  
4 that doesn't mean that our response is inadequate.

5 HEARING OFFICER FAY: All right. Why  
6 don't you take, you know, five minutes for a  
7 response, if you wish to make one, and -- and --  
8 because you did --

9 MR. NAFICY: Yeah. It'll probably be  
10 less than that.

11 HEARING OFFICER FAY: -- you did shorten  
12 up your time.

13 MR. NAFICY: I -- I'm just -- Data  
14 Request 139, which relates to the thermal study, I  
15 believe, I was told that there exists some  
16 satellite thermal images that may -- that'll  
17 clearly be responsive. I think part of the  
18 frustration of Duke with some of our data requests  
19 is that we don't always know what to call them, so  
20 when we ask broad questions to try to capture  
21 responsive documents, then we're accused of going  
22 on fishing expeditions, because we're not  
23 specifically asking for this or that document.

24 We don't intend to go on a fishing  
25 expedition. We just try to cover as much possible

1 ground. So if -- if there are no documents of one  
2 type, and we've asked for it, it's not, you know,  
3 it's only because we don't know what to call it.

4 We appreciate Duke working with us on  
5 resolving some of these issues. But we -- we  
6 specifically disagree about the alternative sites  
7 analysis. I do think that that is really  
8 important, and I don't think there's been a legal  
9 problem articulated with our request. Unless and  
10 until this Commission makes a determination that  
11 they're exempt, I think we're entitled to that  
12 information, and I think that's as simple as that.  
13 The information is relevant and it's appropriate  
14 under CEQA.

15 As far as Duke's internal documents  
16 regarding projections of energy capacity, we did  
17 offer to enter into a protective, you know, enter  
18 into a protective order and respect the  
19 confidentiality of this information. That's quite  
20 common in -- in the world of litigation, and I  
21 think it would be appropriate here. We don't  
22 intend to divulge this information to third  
23 parties. But I think we -- we do need to look at  
24 the underlying basis for their projections, and in  
25 order to be able to do our own. And if there are

1 responsive documents, as, you know, as stated in  
2 our request, I think those would be appropriate.

3 Ms. Luckhardt mentioned some privilege,  
4 and I'm not sure what privilege that would be.  
5 It wasn't -- I'm not aware of a privilege that  
6 would apply here, and if it is privileged, as  
7 confidential we would be willing to enter into a  
8 protective order.

9 I think we'll leave it at that. Thank  
10 you.

11 HEARING OFFICER FAY: Okay. What we'd  
12 like to do now is take a five minute break, let  
13 everybody stretch their legs, and then we'll come  
14 back and receive comments.

15 (Thereupon a recess was taken.)

16 PRESIDING MEMBER MOORE: Let me just ask  
17 everyone to come back, take your seats. All  
18 right. We're going to move into the next phase of  
19 this discussion, and that is to entertain public  
20 comment.

21 And let me just tell you that we are --  
22 there are some people who have time constraints.  
23 We're going to try and accommodate them. I  
24 understand -- is it Mr. Spauer who was here, who  
25 had to leave? And we'll take his comments into

1 account.

2 Rebecca McFarland, we're going to come  
3 to you in just one minute. We understand that  
4 you've got a time constraint, as well.

5 But let me just say this is not an  
6 Evidentiary Hearing. We're not here to hear  
7 evidence. We don't have a case before us. We're  
8 here on a process matter, trying to make sure that  
9 the case gets developed as fully as it possibly  
10 can, and that all the information that is needed  
11 to make a good decision gets presented. So if you  
12 have comments to make about our process, or you  
13 have comments to make about the kind of  
14 information that you think either belongs in or  
15 should be fully evaluated in the report process,  
16 we'd certainly like to hear that.

17 But as far as arguing a point or against  
18 a point, this is not the forum to do that in.  
19 Believe me, we will have plenty of time to do that  
20 in the future, and some of those hearings will be  
21 pretty exhaustive. So this is more a matter of  
22 trying to get the right information out and  
23 evaluated, and that's what we're about tonight.

24 And Mr. Fay is going to go through some  
25 of the names and ask you to come up and speak.

1                   HEARING OFFICER FAY: Okay. And we ask  
2 if you will please keep your comments brief. If  
3 it becomes a problem, the Commissioner may have to  
4 limit time. But I think many people just wanted  
5 to make the Committee aware of their position.

6                   All right. Rebecca McFarland. And when  
7 you come forward, please speak directly into the  
8 microphone at the podium, and state your name  
9 first.

10                   MS. MCFARLAND: I'm going to move this  
11 up, make sure you can hear me. Is that good?

12                   Thank you for letting me go first. My  
13 husband, who's home with my baby, our baby,  
14 appreciates it, too.

15                   I'm here representing the San Luis  
16 Obispo County Office of Education, and Dr. Julian  
17 Crocker sends his regrets that he couldn't be  
18 here. He's our Superintendent. And I'm reading a  
19 letter from Celeste Royer, who's the Coordinator  
20 of Outdoor and Environmental Education. And so  
21 I'll just read her letter.

22                   On behalf of the San Luis Obispo County  
23 Office of Education, and the Rancho Alturo Outdoor  
24 School, I would like to compliment the efforts of  
25 Duke Energy to provide numerous opportunities for

1 the public to comment on the Morro Bay Power Plant  
2 Project. Public hearings such as this one hosted  
3 by the California Energy Commission are vital to  
4 the integrity of any project that has this much  
5 community interest.

6 As the coordinator of the outdoor and  
7 environmental education for the San Luis Obispo  
8 County Office of Education, I serve as the liaison  
9 between our organization and Duke Energy. Thus, I  
10 have actively followed the process of the  
11 Application for Certification for this power  
12 plant, and I am pleased with the progress made to  
13 date.

14 Duke Energy continues to demonstrate a  
15 commitment to the environment as it complies with  
16 the requirements set forth in the data adequacy  
17 portion of this process. Duke Energy is a strong  
18 advocate for the environmental education in our  
19 community.

20 Last month, thanks to the support of  
21 Duke Energy, the Rancho Alturo Outdoor School  
22 hosted all 230 eighth grade students from Los Osos  
23 Middle School for a one-day field based freshwater  
24 ecology study trip. The students tested the water  
25 quality of Pennington Creek, collected the -- and

1 identified macro-invertebrates found in the creek,  
2 and explored other parts of the environmental  
3 education campus. The day was immensely  
4 successful, as evidenced by teacher and student  
5 feedback.

6 This is the kind of support Duke Energy  
7 provides in our local community. My previous  
8 comments to the CEC have outlined other  
9 educational projects supported by Duke Energy.

10 We at the County Office of Education  
11 support the Morro Bay Power Plant modernization  
12 project, and recommend to the CEC that the project  
13 continue to move forward. The plant will generate  
14 more power to help meet California's energy needs,  
15 the reduced environmental impacts on Morro Bay  
16 will be significant, and the project will  
17 contribute to the local economy.

18 Duke Energy has been an excellent  
19 corporate partner since its arrival in Morro Bay,  
20 and we believe it will continue to support our  
21 local communities in many ways.

22 Thank you very much for the opportunity  
23 to share a few comments regarding this project.  
24 Thank you.

25 HEARING OFFICER FAY: Thank you.

1 Dan Chia.

2 MR. CHIA: It's actually Dan Chia, with  
3 the California Coastal Commission.

4 As you may know, the Coastal Commission  
5 is required by Section 30413 of the Coastal Act to  
6 provide an advisory report to the California  
7 Energy Commission with respect to power plants  
8 located within the coastal zone.

9 Typically, or in the case of the Moss  
10 Landing proceeding, we provided our advisory  
11 report in the form of a letter that the  
12 Commissioners signed off on, after the Preliminary  
13 Staff Assessment was released. Unfortunately, in  
14 the case of Moss -- the Moss Landing proceeding,  
15 the sections with respect to Biological Resources  
16 and Water Resources were, to my understanding, not  
17 present, not -- not included within the PSA, and  
18 that caused a great deal of strife and dilemmas  
19 within the staff of the Coastal Commission, with  
20 respect to our ability to make findings on the  
21 consistency of the project with the policies of  
22 the Coastal Act.

23 And I'm afraid that we're headed down  
24 that same path in this proceeding. The  
25 information that I have, if -- if the Preliminary

1 Staff Assessment comes out May 22nd without some  
2 of the key information pieces that were outlined  
3 in this status report, then we're not -- staff is  
4 not going to be able to adequately assess the  
5 project's consistency with the Coastal Act prior  
6 to bringing the project to the Commission.

7 We plan on, based on the schedule that's  
8 outlined in the -- in the latest scheduling order,  
9 we plan on bringing the report to the  
10 Commissioners June 18th. Excuse me, let me -- let  
11 me backtrack. We plan on releasing the report to  
12 the public June 18th, roughly that date, for the  
13 July Coastal Commission hearing, which at this  
14 point I believe will take place, I believe, the  
15 10th, which is, I believe, after, a day or two  
16 after the Final Staff Assessment comes out.

17 So if, in fact, the Preliminary Staff  
18 Assessment will not contain substantive  
19 information with respect to especially the marine  
20 resources, water quality, which are, I believe,  
21 the -- the issues of greatest concern to -- with  
22 respect to this project, then I request that the  
23 release date of the Preliminary Staff Assessment  
24 be pushed back until such time as to allow that  
25 information to be incorporated.

1 HEARING OFFICER FAY: Are you able to  
2 use the basic information that staff is waiting  
3 for in your staff analysis? Or are you relying  
4 only on the finished staff analysis of the Energy  
5 Commission Staff?

6 MR. CHIA: Because of limited staff  
7 resources, we have, in the case of the Moss  
8 proceeding, relied on the Preliminary Staff  
9 Assessment in order to -- to find consistency or  
10 comment on consistency with the Coastal Act.

11 HEARING OFFICER FAY: Okay. And when is  
12 -- you said the Coastal Commission would meet July  
13 -- the week of July 10th; is that correct?

14 MR. CHIA: Yes.

15 HEARING OFFICER FAY: And when is the  
16 next Coastal Commission meeting after that?

17 MR. CHIA: The Coastal Commission meets  
18 every month, so I believe either the second or  
19 third week of August.

20 HEARING OFFICER FAY: And does the  
21 Coastal Commission have special meetings when --  
22 on occasion, to address specific matters?

23 MR. CHIA: Not to my understanding.

24 HEARING OFFICER FAY: Has it taken into  
25 account the energy emergency at all, in any of its

1 scheduling? Because I know a number of the  
2 agencies that advise the Energy Commission have  
3 addressed accelerated schedules.

4 MR. CHIA: I know that the Coastal  
5 Commission and the staff of the Coastal Commission  
6 are cooperating, or we want to cooperate to the  
7 great extent -- extent feasible, with respect to  
8 the energy crisis. And we do not want to delay in  
9 any way projects that -- that will contribute  
10 substantively to the -- to the power energy grid  
11 for the state.

12 But at the same time we -- we rely on  
13 the Staff Assessment, the Preliminary Staff  
14 Assessment, when we make our findings.

15 HEARING OFFICER FAY: How long do you  
16 need from the time that you get a complete Staff  
17 Assessment from the Energy Commission to present  
18 your assessment?

19 MR. CHIA: Well, if we target our  
20 release of the -- of our staff report on June  
21 18th, then that, you know, allows us a little  
22 under a month to write our staff report.

23 HEARING OFFICER FAY: Okay. It sounds  
24 like we have some uncertain dates, and I'm not  
25 sure we can, you know, make any decisions tonight,

1           because we don't know when -- when some of these  
2           reports are coming in.

3                         MR. CHIA: I should add that in the Moss  
4           proceeding that we were able to split up various  
5           issue areas, comment initially on public access,  
6           for example, and then come back at a later time  
7           with a report on biological resources.

8                         HEARING OFFICER FAY: Okay.

9                         MR. CHIA: So in this case, we may have  
10          to operate the same way.

11                        HEARING OFFICER FAY: Do you have a  
12          suggestion, Mr. Ellison?

13                        MR. ELLISON: Yeah, let me offer just a  
14          couple of comments.

15                        One, with respect to the Moss  
16          proceeding. We are substantially ahead of where  
17          information was with respect to Moss. And it was  
18          not the PSA that was an issue in Moss, it was the  
19          FSA that was the issue in Moss, and the -- the  
20          316A and 316B studies in Moss were substantially  
21          later in the process than is the case here in  
22          Morro. And I think it's important, because those  
23          are the fundamental documents on which the  
24          biological impact analysis depends.

25                        Now, the -- the June 18th date that you

1           have proposed, based on what I know of the  
2           regional board's schedule, and Mr. Hoffman can  
3           elaborate on this, but from Duke's perspective, we  
4           think that you'll have the information that you  
5           had in Moss in advance of that time, and be able  
6           to do -- to meet that date. We can work with you  
7           further if there are any questions about that.  
8           But I think there may be some confusion between  
9           the PSA and FSA when you're comparing the two  
10          proceedings.

11                         HEARING OFFICER FAY: Okay. Let's hope  
12           it works out that way, and obviously, it is what  
13           it is, and if the Coastal Commission has enough  
14           information, then it can deliver its report in a  
15           timely way.

16                                 Anything further?

17                                 MR. CHIA: No.

18                                 HEARING OFFICER FAY: Okay. Did you  
19           have something to add, Mr. Ellison?

20                                 MR. HOFFMAN: I just wanted to mention  
21           to Mr. Chia that I think that you will have, in  
22           the reports that you receive this week, virtually  
23           all the information that -- and that the Energy  
24           Commission will, too, with the possible exception  
25           of a final determination on how the final BTA,

1 best technology available, and mitigation question  
2 is to be addressed. But other than that, I think  
3 you will have all of the information available  
4 which will be available in time for the PSA.

5 And, in fact, I think to maybe elaborate  
6 briefly on what Chris said, I think you will have  
7 as much information for the PSA on this project as  
8 there was, if not more than there was for the FSA.

9 PRESIDING MEMBER MOORE: Well, I think  
10 that's what Mr. Ellison just said.

11 HEARING OFFICER FAY: Thank you.  
12 Anything further, then?

13 MR. CHIA: No. Thank you.

14 HEARING OFFICER FAY: And I apologize to  
15 members of the public who are waiting to comment.  
16 I -- I did not intend to take the agencies ahead  
17 of you. I -- Mr. Chia's card was the next in  
18 line. So I'm going to defer the agency people in  
19 deference to members of the public.

20 Hank Lewis.

21 MR. LEWIS: Yes. I'm Hank Lewis. I'm  
22 here tonight representing IBEW Local 639 and some  
23 of the men and women who will be working on this  
24 project if it -- if it's approved.

25 I've heard a lot tonight about AFCs and

1 PSAs, and I just heard FSAs and MOAs, but I  
2 haven't heard anything about PLAs. PLA is a  
3 Project Labor Agreement. It's not an issue here  
4 tonight because well over a year ago, Duke sat  
5 down with the local Building Trades Council and  
6 negotiated a PLA, Project Labor Agreement. The  
7 negotiations were not easy, they were pretty  
8 tough. Negotiations rarely are easy. But in the  
9 end, we came to an agreement and Duke, by signing  
10 that agreement, will be providing quality jobs  
11 with good benefits and training, commitments to  
12 training to the men and women who will be working  
13 there on the construction, the deconstruction, and  
14 the maintenance of the plant.

15 And we believe this project will greatly  
16 benefit the community and we definitely support  
17 it. Thank you.

18 HEARING OFFICER FAY: Thank you.

19 James Pauly.

20 MR. PAULY: Good evening. Yeah, Jim  
21 Pauly, resident. And earlier, well, first thing  
22 this evening, I heard a proposal by Duke that the  
23 visual aspect of the plant be put off until any  
24 given permitting was done. And I think there are  
25 residents here that have a real interest in just

1           how that plant's going to look, and how it's going  
2           to affect the visual corridor.

3                       And basically, what I hear from Duke is  
4           we're going to build the plant the way we want to  
5           build it, and you can -- the city can paint it any  
6           color they want to paint it, and we're going to  
7           put it where we want to put it.

8                       And so this is a situation, and they did  
9           have nice visuals that show the impact of that  
10          plant, the new plant after it's installed, or  
11          built. But that is going to block a lot of  
12          people's view. That plant is not transparent. We  
13          can't paint it away.

14                      The real question is, is there anything  
15          that you can do to make that a more horizontal  
16          plant? Can you reduce the visibility of that  
17          plant by the way it's constructed? Right now  
18          there's tanks there that people can see over and  
19          don't have a big impact. But when they put that  
20          plant there, all of a sudden we're going to have  
21          something that's going to be blocking the view of  
22          the bay and the ocean beyond.

23                      And I don't hear anybody speaking to  
24          what can be done on the engineering. I -- they've  
25          done a lot of work, and they've done a lot of good

1 work. But I think that maybe, just like they  
2 negotiated with the union, maybe they can  
3 negotiate with some of the engineers in the city,  
4 or someplace, I don't know who has responsibility  
5 for this. But I do know that it's affecting the  
6 view of the public, of the bay.

7 And I don't know if this is the last  
8 court of appeal, or if there's going to be  
9 someplace else. I don't know where to go with  
10 this. But it'd be great if they could do  
11 something in the way of engineering to see if  
12 there's some way, you know, they can benefit and  
13 the city can benefit by redesigning the height of  
14 that plant.

15 The other thing is they talked about 145  
16 foot high stack, and that's great. The question  
17 is, how high is that going to -- what level is  
18 that going to be built on. Are they going to  
19 build up so that they can, you know, get out of  
20 the water there, you know, possible any seepage?  
21 How high is the final plant and stack going to be?  
22 How high is that building going to be, or the  
23 structure. The towers, or -- or the stacks we can  
24 see between, and that's great because you still  
25 have a corridor. But you can't see through the

1 physical plant, the bigger part of it.

2 So I appreciate the opportunity to speak  
3 up. Thank you.

4 HEARING OFFICER FAY: Thank you.

5 I'd just like to note that the -- is the  
6 Staff having another workshop on Visual in the  
7 future?

8 MS. LEWIS: We're discussing that now.

9 HEARING OFFICER FAY: There may be  
10 another workshop on Visual Impacts, and when the  
11 Evidentiary Hearings begin Visual will be one of  
12 the topics that will be heard, and I think, in  
13 fact, if it isn't going to happen anyway, I'll  
14 just direct the Applicant to have visual  
15 simulations available at the hearing of what their  
16 proposal will look like when it's -- when it's  
17 finally built, and the Staff will be analyzing the  
18 project from various key observation points and  
19 presenting that. So you want to look at the Staff  
20 documents that come out. They will include visual  
21 simulations from various parts of town, places in  
22 town, as to what the project will look like.

23 David Nelson.

24 MR. NELSON: Good evening. My name is  
25 David Nelson, and I live here in Morro Bay. I've

1 lived here for about 22 years.

2 I've been -- I am a member of CAPE and  
3 I've been working on this application since it  
4 came out, and I was working on the last  
5 application when it came out. My -- my problem  
6 with this power plant and the way it's being  
7 treated is that for 40 years PG&E was in this  
8 town, and was able to not do any studies on that  
9 estuary. So for a 40 year period, no CEQA was --  
10 had to be handled, or any reports done on it.

11 And in my findings, as I go through  
12 this, I find out that EPA now is considering  
13 legislation against this once through cooling  
14 system that's being proposed, or being used at  
15 Morro Bay. There's plenty of evidence in their  
16 files already of the devastation that this cooling  
17 system causes in other places. We have evidence  
18 from Diablo Canyon what's going on over there.  
19 Just up around the corner we're taking another  
20 billion and a quarter gallons a day out of that,  
21 out of the watersheds here. And I think that we  
22 need to consider this as a really special place.

23 It's true, there has been a plant here  
24 for 50 years, and when they put the plant here  
25 everybody was well intentioned, and we needed the

1 power. And I heard energy crisis mentioned again.  
2 And I want to stress to you, having lived here for  
3 22 years, this is a really special place. This is  
4 the last estuary in southern California that can  
5 actually be saved. If we allow 300 or 700 million  
6 gallons a day taken out of here and then vital  
7 seeds of life taken and killed for this power  
8 plant cooling system, we're going to destroy this  
9 estuary like we have many others along the coast.

10 So I'm not sure how your acts and your  
11 laws actually protect this thing, but we need more  
12 protection. We can't just go ahead and say look,  
13 we've proven that it's not hurting as of today.  
14 This is what it looks like. But we don't know  
15 what it was like 50 years ago.

16 We do know what it was like. Go around  
17 the city and talk to people who lived here in the  
18 1940's, and look at their pictures of the fish  
19 that they used to catch in this estuary, and the  
20 abalone that was abundant here. Nobody knows why  
21 everything has disappeared, but lots of stuff has  
22 disappeared. And there's a vital part of our food  
23 chain being sucked through the plant in the name  
24 of debris. And it's not debris, it's living  
25 marine life.

1                   And 50 years ago they made a mistake  
2           putting this power plant here, and now they want  
3           to do it for another 50 years because it was here.  
4           I don't know how you can direct your Staff to look  
5           at this, but like I say, EPA was taken to court,  
6           and they're right now, as of November, the first  
7           rule should be instituted to control this once  
8           through cooling system.

9                   And we heard tonight that the regional  
10          water board is considering this as an existing  
11          plant. Here again, it hurts my heart that you do  
12          this, because this should be looked at as a new  
13          system. They're building new foundations, they're  
14          putting a new plant in there. They have to dredge  
15          600 feet to the new plant, go 600 feet or more to  
16          the outfall. It's a new plant. We should treat  
17          it like a new plant, and this -- the water board  
18          saying that it's existing is really troublesome,  
19          knowing that the laws are this close to being put  
20          through to stop this once through cooling.

21                   I don't care. Let them build a 1200  
22          megawatt power plant here. But use some  
23          alternatives. Let's save the marine life, you  
24          know. And it's true, I'm not making this stuff  
25          up. I've made these reports available to

1           everybody concerned here, and we all know that the  
2           devastation is going to be legislated really,  
3           really soon. And this could be the last once  
4           through cooling system that your Committee and  
5           your -- and the Energy Commission will approve,  
6           because it won't be able to get done in a couple  
7           of years when they build this plant.

8                         So if nothing else, I wish maybe we  
9           could have a rider on whatever goes on here that  
10          when this plant, when they finally break ground,  
11          that they have to conform to all the laws that are  
12          on the books as far as EPA rules on these once  
13          through cooling.

14                        Like I say, I know that dry cooling is  
15          an option at this plant, won't take any longer to  
16          build it. Might cost a little bit more money, but  
17          in the long run we'll end up with our estuary  
18          being healthy again, instead of dead.

19                        Thank you.

20                        HEARING OFFICER FAY: Thank you.

21                        John Barta.

22                        MR. BARTA: Thank you. Good evening,  
23          Commissioner Moore, Representative O'Brien, and  
24          Officer Fay. My name is John Barta, and I'm a  
25          citizen of Morro Bay. I'm also a Planning

1 Commissioner, but my remarks this evening are  
2 personal remarks, not those of the city.

3 I'm speaking to you this evening about  
4 the issue of converting a portion of one of Duke's  
5 existing smokestacks into a lighthouse, instead of  
6 removing the stack entirely after the proposed new  
7 facility goes online.

8 This idea has a great number of  
9 community benefits, which I've already enumerated  
10 to your Staff. I will not take your time this  
11 evening with all of the benefits, since I have  
12 presented your Hearing Officer with a memo on this  
13 topic, which should be available to you.

14 I will say this. It would be terrific  
15 if Morro Bay would be able to change its image  
16 from the town with the big smokestacks into the  
17 town with the big lighthouse. The visual and  
18 economic benefits would certainly be worth  
19 millions every year to our community. We could  
20 even make the Cape Hatteras light the second  
21 tallest lighthouse in the United States.

22 I have letters of support from both the  
23 Morro Bay Chamber of Commerce and Morro Bay  
24 Merchants Associations, which I am presenting to  
25 your Hearing Officer this evening.

1 Duke is concerned that a full analysis  
2 of such a proposal would undoubtedly have the  
3 effect of unduly delaying the processing of their  
4 permit. Your Staff concurs, and does not wish to  
5 include the complete lighthouse analysis as part  
6 of its analysis, since Duke has not requested the  
7 issue to be included. Unfortunately, the permit  
8 request does include removal of the existing  
9 stacks in their entirety, as part of the  
10 application. Thus, if the permit is issued as  
11 requested, there will be no stack to convert to a  
12 lighthouse. This is a Catch-22, and we stand to  
13 lose a real gem if things continue as they are  
14 currently headed.

15 We need to put our thinking caps on and  
16 find a way to keep the possibility of a lighthouse  
17 alive, while not unduly delaying or jeopardizing  
18 the Duke application process. Luckily, there may  
19 be a way to achieve this goal. Here's a  
20 suggestion. The current proposal calls for  
21 removal of all three stacks immediately following  
22 the commencement of commercial activity at the  
23 proposed new facility. Following stack removal,  
24 there would be -- would be a period of several  
25 years when the remainder of the existing facility

1 would be removed from the landscape.

2 If two and a half stacks were removed  
3 using the current proposed schedule, and a portion  
4 of the southerly stack were not scheduled to be  
5 removed until the very end of the deconstruction  
6 phase, a large chunk of time would be carved out  
7 during which it would be possible to study the  
8 lighthouse conversion issue fully. There would be  
9 no need to include the lighthouse in the current  
10 analysis at all.

11 This would be entirely consistent with  
12 the existing application, and it would still keep  
13 the lighthouse possibility alive during most of  
14 the long deconstruction phase. If the lighthouse  
15 issue could not be resolved in an acceptable  
16 manner to all interested parties, including Duke  
17 Energy, then the stack stub would be removed as  
18 called for in the revised timeline.

19 Of course, any other workable solution  
20 that would be suggested by your Staff would be  
21 appreciated.

22 Thank you for your time.

23 HEARING OFFICER FAY: Thank you.

24 Abby Kitzman. Or Arby, Arby Kitzman.

25 I'm sorry.

1 MR. KITZMAN: That's all right.

2 Thank you, gentlemen. Commissioner  
3 Moore, Hearing Officer Fay, and Representative  
4 O'Brien. I'm here representing the Morro Bay  
5 Chamber of Commerce tonight. Our current  
6 president couldn't be here to read this letter, so  
7 I'm doing that for him.

8 As the representatives for our local  
9 business and community members, we are truly  
10 pleased to have Duke Energy as one of our  
11 neighbors. They have demonstrated a willingness  
12 to listen and work with our community in designing  
13 their power plant project. The outcome has led to  
14 a more aesthetically pleasing power plant and, in  
15 addition, is environmentally and economically  
16 beneficial to our community.

17 As we continue in this electrical crisis  
18 in California, we recognize that positive  
19 solutions are needed to alleviate this situation.  
20 The Morro Bay Chamber of Commerce wishes to  
21 support Duke Energy's efforts and plans to  
22 modernize and improve the Morro Bay Power Plant.  
23 We view this also as a step forward in helping  
24 solve the state's energy shortages.

25 Furthermore, the Morro Bay Chamber of

1 Commerce encourages both the California Energy  
2 Commission and the City of Morro Bay to act  
3 expeditiously throughout the process for Duke  
4 Energy's Morro Bay plant application.

5 Thank you.

6 HEARING OFFICER FAY: Thank you.

7 Bill Woods.

8 MR. WOODS: Commissioner Moore, and all  
9 here, I want to thank Duke and the Commission, and  
10 in the process, especially, for giving the public  
11 so generous opportunities to make comments.

12 And I want to take this opportunity to  
13 thank Duke especially for their plans for  
14 partnering with Morro Bay in the -- in this plant  
15 expansion, especially with a binding MOU --  
16 hopefully we'll learn more about that tomorrow  
17 night -- but with a binding MOU that includes  
18 financial benefits, community paths, and  
19 especially tearing down of the existing plant, and  
20 for working with us for optimizing solutions that  
21 will work for both.

22 I would, however, echo some previous  
23 concerns about the profile of the plant, and  
24 especially the intake structure which is going to  
25 be planned, from what I understand, to be extended

1 14 feet higher in height than it is now. I don't  
2 see why you have to have higher profiles of  
3 anything, with our technology and -- and equipment  
4 available today.

5 The other area which gives me a little  
6 bit of concern is flipping the ties from the plant  
7 to the switchyard to a vertical mode. I assume  
8 that is for turning corners. I know it's a lot  
9 cheaper for high lines to turn corners in a  
10 vertical mode, and I would think that if we could  
11 spend a few more bucks by keeping them horizontal,  
12 and using a little more space.

13 So thank you for your time and -- and  
14 interest.

15 HEARING OFFICER FAY: Thank you.

16 Nelson Sullivan.

17 MR. SULLIVAN: I'm Nelson Sullivan, a  
18 resident of Morro Bay for quite a few years.

19 And I'd like to repeat the premise that  
20 if the power plant wasn't here already, this  
21 project would be unthinkable because of the value  
22 arc we've had in our environmental feelings since  
23 the time it was built. And at that time, Morro  
24 Rock was a stone quarry for the Army Engineer  
25 breakwater material, and was valued as this until

1 the local residents were able to get it protected.

2 And my argument is that it's a valid  
3 comparison between the plant and the -- and the --  
4 I mean, the estuary and the rock. And it's time  
5 that the estuary is protected, after 50 years of  
6 misuse by once through cooling, by requiring an  
7 alternative method of cooling the water.

8 Thank you.

9 HEARING OFFICER FAY: Thank you.

10 Joseph Holifield.

11 MR. HOLIFIELD: Hi. I'm Joseph  
12 Holifield. I'm a resident of Morro Bay, and also  
13 I am a school psychologist, school psychologist  
14 with San Luis Coastal.

15 I'm speaking tonight not as a  
16 representative of the district, just kind of my  
17 own professional concern. I work here at Morro  
18 Elementary on a kind of a once a week, and my  
19 office is right here, so I just checked my box. I  
20 had a lot of work to do, so I won't take too much  
21 of your time.

22 My concern relates to the hazardous  
23 materials, the air quality, and public health  
24 issues. I do have a research background, training  
25 in developmental, neuro-developmental issues with

1 kids. And my -- I have a list of specific  
2 questions that I think might be important to  
3 address those specific areas.

4 One is what are -- is the specific  
5 pollutants that are actually being proposed to  
6 reduce. I think that's probably a known fact.  
7 What are the current state levels of acceptable  
8 exposure. That's probably also a known fact.

9 What -- the other concerns are kind of  
10 unknown, and I'm not familiar with them, maybe  
11 need to be addressed, are what normative sample  
12 comprises the state standards. Is it based on  
13 adults, is it based on children, is it based on  
14 the elderly. I don't know what's the normative  
15 sample. What does the data say about the  
16 frequency and duration of exposure, as well as the  
17 proximity of exposure. I think those are some  
18 things that might need to be addressed.

19 And kind of my interest and, you know,  
20 my vested interest is in children. And what we  
21 know, and given the research on exposure of  
22 environmental toxins on the neuro-development,  
23 i.e., nicotine, lead exposure, so forth,  
24 children's neuro-development is different from  
25 adult's neuro-development. And what does the

1 current research indicate regarding the potential  
2 health hazards of exposure of these pollutants  
3 that are coming out of here on child development,  
4 specifically child neuro-development. Do we know  
5 this. Is there data to support that.

6 I think those are some things that need  
7 to be addressed, especially in the proposed  
8 amounts.

9 The final thing is that, you know, I  
10 work here, and, you know, I -- the plant's right  
11 here. We're on a hill. There's been some talk  
12 about reducing stacks and reducing the amount, and  
13 so forth, of exposure to 40 percent. What data  
14 does that say about the risk factors to children,  
15 given the proximity of the school here, as well as  
16 Del Mar, which is about two and a half miles away.  
17 We have, here at Morro Elementary there's an  
18 infant development program, so I see pregnant  
19 mothers here, I see young preschoolers, sometimes  
20 here outside playing. Young infants here. What  
21 do we know about this particular substance that's  
22 coming out and its -- its potential effects, and  
23 is that acceptable.

24 So I think we need -- those things might  
25 need to be addressed, for the CEC to explore.

1 Thank you.

2 HEARING OFFICER FAY: Thank you. I  
3 believe those will be addressed in the Air  
4 Quality, Public Health and -- and Haz Mat analysis  
5 that the Staff will be doing.

6 Barbara Jo Osborne.

7 MS. OSBORNE: Hi. Thanks for coming.  
8 While you're here, I hope that you take some time  
9 to walk around the neighborhoods around the plant,  
10 just to get a sense of what it's like to live  
11 around there. You could even do it tonight, it's  
12 really safe around here, if you have limited time.  
13 But I encourage you to do that.

14 What I'm concerned about is the lack of  
15 timeliness of the Applicant in responding to the  
16 concerns of the various agencies. I think the  
17 Coastal Commission was speaking to that. I don't  
18 know if it's the same issue, but I have a concern  
19 around that.

20 I understand that this project probably  
21 is worth hundreds of millions of dollars to the  
22 Applicant, and so that's probably substantial.  
23 It's worth quite a bit of money to me, too, or  
24 whatever, but not -- I don't have hundreds of  
25 millions of dollars.

1                   What I'm talking about is I don't know  
2                   how your window of time works. But let's say you  
3                   have a window of time for this process to start  
4                   gathering information, responding back and forth,  
5                   looking at all the concerns. And if that opens  
6                   like March 1st, and closes July 1st, there were  
7                   concerns that came up in the workshops that I  
8                   heard the Applicant say we don't know, we'll have  
9                   to get back to you, we'll have to respond, and  
10                  there was no fixed timeline for them to get back.

11                  If it were me and I had hundreds of  
12                  millions of dollars at stake, I would probably not  
13                  respond on March 2nd or 3rd or 4th, or April, or  
14                  May, or June. I would probably walk it down to  
15                  the -- the last possible moment and submit the  
16                  information at that time so people could ask about  
17                  it.

18                  There were serious questions, such as  
19                  you've made a -- they've made a statement about  
20                  this, but not supported it with any fact or  
21                  fiction. It just was statements. I'm not making  
22                  -- saying that they're really bad, or anything  
23                  like that. I'm just talking about the process.  
24                  And everybody's concerned about how long these  
25                  things take. Oh, it takes so long for a power

1           plant to get approved. How long does the  
2           Applicant want the information scrutinized, and I  
3           think that's what -- that's what I see in some of  
4           this that we're dealing with.

5                     My proposal is that if the Applicant is  
6           being asked for information and they're not  
7           responding, however long it takes to respond that  
8           you extend the duration of time that amount of  
9           time, so it puts some sort of pressure on the  
10          Applicant to speed up their own process in getting  
11          information.

12                    I'm sure that they have a lot of hard  
13          time getting together this information. They're  
14          looking at every possible thing they could look  
15          at. But the agencies who have to look at that too  
16          have the same kind of problems. And I have to  
17          trust this process. I have to trust all of you.  
18          I don't have any money, so I have to just trust  
19          all of you. Anyway, even if I had money, I'd  
20          still have to trust all of you.

21                    But we need there to be something that  
22          encourages the Applicant to respond to the  
23          questions that are being asked, so the agencies  
24          have an amount of time to do it, so it doesn't  
25          look like the agencies are the ones that are that

1 are taking too much time.

2 I don't know if I made myself clear.  
3 It's clear to me. I got it. But I do think that  
4 it's really important that the time be extended so  
5 that the agencies have enough time to consider the  
6 information.

7 That's all I have to say. And thank you  
8 for coming.

9 HEARING OFFICER FAY: Thank you.

10 Essentially, what you're asking is, is  
11 the case, the burden of proof means that nothing  
12 can be granted unless the Applicant meets that  
13 burden of proof. So the onus is on them to prove  
14 that the plant is acceptable. And they have to  
15 submit adequate information to the Staff for the  
16 Staff to conduct its analysis.

17 So I think you'll see, as the process  
18 unfolds through these various preliminary and  
19 final staff analyses, that a great deal of  
20 examination will be done on these --

21 MS. OSBORNE: Can I --

22 HEARING OFFICER FAY: I'm sorry. I --  
23 we're running out of time, and I do want to -- I  
24 don't want to keep everybody else, too.

25 MS. OSBORNE: But you have a finite time

1 in this.

2 HEARING OFFICER FAY: Yes, we do. And  
3 that's required by law. So there is, I mean, you  
4 could always keep asking questions, but we do have  
5 a finite time. But within that time, the  
6 Applicant has a strong incentive to produce  
7 information.

8 Bonnie Pierce.

9 MS. PIERCE: Hello. I'm Bonnie Pierce.  
10 I'm 46 years old, so that means that's how many  
11 years I've lived in Morro Bay. I have a family  
12 group that's lived here for four generations,  
13 immediately family of about 150 people. And here  
14 we go again. We've lived here for about 10,000  
15 years. We are the Salinan Nation and we are the  
16 Native American people.

17 This is not a debate on who's who here  
18 in this territory. But it's, to me, I come  
19 tonight because I had a letter in my mail, and I  
20 came to hear what the Commission and what the  
21 people have to say.

22 Today, when I come to the meeting, I  
23 read some things in these pages and under Cultural  
24 Resources, that put a little bit concern for me,  
25 so I thought well, what do I do. And I think it's

1 important to remember that as Native American  
2 people, we tend not to be in the contemporary  
3 world of organizational structure. We tend to be  
4 in our traditional mindset, so bear with me.

5 But on page 1, I did read that the  
6 Commission has set up a meeting, which was  
7 yesterday, I guess, in April 23rd, with -- what  
8 they really are called is the Santa Inez Band of  
9 Mission Indians. And they are the federally  
10 recognized Chumash. And so I decided maybe that's  
11 what the education needs to be out there in the  
12 public forum, although I will address and follow  
13 up in letter format.

14 They are who represent the entire  
15 Chumash Nation of people. Although you'll have  
16 bands of Chumash, you'll have individuals, such as  
17 you have individuals of Salinans. The Salinan  
18 Nation represents the Nation of Salinans. The  
19 Chumash Band, down in Santa Inez, represent them.  
20 It's what we tried to explain from the very  
21 beginning, and unfortunately some confusion or  
22 miscommunication happened at the Duke Energy  
23 level, and so now we've kind of come up to this  
24 California Energy Commission level, which is kind  
25 of a shame, because if it would've been talked

1           about there I think resolution would've happened  
2           at that level.

3                         In the past, in all of our years of  
4           adulthood that I started working in this, have we  
5           ever had an issue that's gotten blown up to make  
6           it sound like we're fighting against one another,  
7           the Native Americans. I can, and I will submit if  
8           needed, through the Native Heritage Commission,  
9           which is our law of how we govern ourselves when  
10          it comes to our culture and burial sites, and we  
11          have always worked together, right here in Morro  
12          Bay, right here, as you speak, at Morro Bay  
13          Elementary and everywhere else that there's  
14          cultural sites.

15                        Because I guess what I want to say is  
16          all of us know, must know that Native Americans  
17          lived here centuries and generations ago. And if  
18          we were a contemporary society, we probably  
19          would've bought up the land and then we wouldn't  
20          have this problem at all, and Duke Energy would  
21          never even have been built. We would've continued  
22          to caretake.

23                        Unfortunately, we're not the homeowner  
24          or the landowner anymore, so we have to actually  
25          come in and ask permission to give input on our

1 cultural sites. So you look at me and you say  
2 well, how do we know you're you? Well, I can only  
3 say, fortunately or unfortunately, the mission  
4 records prove that. And the mission records are  
5 the one that documents along California that  
6 really tell us about our prehistoric and our  
7 historic culture.

8 So what I'm trying to get a point across  
9 is when you say well, historically, a certain  
10 group was here, it's like saying historically,  
11 Morro Bay was here, but then it came in with all  
12 of the people, the tourists, or whoever came here  
13 to live in this lovely town of ours, and so we'll  
14 ignore the original Morro Bay-ans, but we'll take  
15 everybody else's opinion from L.A. to San  
16 Francisco, or around.

17 We are the people that were originally  
18 here, and we've asked for a voice, and it's  
19 started. Now what we would like to also ask is  
20 that we go behind the scenes, whether it's a  
21 workshop or not. The Salinans and the Chumash do  
22 work together, and we work together very  
23 effectively. We'd like to do that, come to  
24 consensus, and then be able to present what we  
25 would like to do.

1                   For instance, you have here on page 3  
2                   that the Salinan Nation, the Playano Salinan, a  
3                   family group which is part of the Salinan Nation,  
4                   SLOC and the northern Chumash, all have had an  
5                   opportunity to talk to the Energy Commission. And  
6                   we did. There's a couple of clarifications here.  
7                   The Playano Salinan family group is my group.  
8                   It's my family. It's 200 of us that live here.  
9                   We're a social group. We enjoy getting together,  
10                  we keep our social contacts, because 200 cousins  
11                  have got to come together somehow, so we do this  
12                  sort of on a periodic basis. We were together out  
13                  at Painted Rock just this past Sunday, part of  
14                  everyone else, or a couple of Sundays ago, during  
15                  Eastertime.

16                  We are not a separate body. We are a  
17                  social group. When it comes to political things,  
18                  when it comes to our cultural protection, we come  
19                  together as a nation. The individuals that want  
20                  to speak out about a personal individual thing,  
21                  they represent themselves that way. They are a  
22                  Playano Salinan individual. So there is no family  
23                  group, and I would like that publicly known, that  
24                  comes and talks politically. We talk as a nation.

25                  Second thing that I see on this page is

1 I see that it says that Staff has to face two  
2 challenges. They need to face the one challenge,  
3 which is how do you deal with burial remains that  
4 are there, that are registered, and are on the  
5 site. How do you deal with that. And they say  
6 well, we're going to talk to the Native Heritage  
7 Commission and let them give us input. That's  
8 wonderful, if the Native Heritage Commission knows  
9 enough to ask the Salinan and the Chumash, and any  
10 other interested Native American to give them that  
11 input first. That step might not have happened,  
12 and probably does need to take place.

13 But in recorded history, and in recorded  
14 pre-history, my ancestor, 11 generations back,  
15 Maria Agata, was 100 years old, and made the  
16 statement she was Playano Salinan, and it's  
17 recorded. They went into that research and a  
18 state genealogist has certified that we lived  
19 here, my family. So I'm not talking even my  
20 Salinan people. I'm talking my direct family  
21 lived here, not only in Los Osos, to Morro Creek  
22 and all the way up to Lamaca.

23 Those village sites, by Native American  
24 Heritage Commission law says that a 12 mile  
25 radius, I have the right, if I represent it

1 respectfully, to come in and deal with my family's  
2 remains. Those are my family's remains, as far as  
3 I'm concerned, on Duke Energy. I would like that  
4 opportunity.

5 In the whole nation there are only two  
6 of us that represent most likely descendant, or an  
7 MLD. I would like that, and I would like the same  
8 for the Chumash, to bring their document forward  
9 to say who is their representative. Because if  
10 the Chumash also used this, it is a shared area,  
11 they used it like all Native Americans did use  
12 each other's territory. If they used it, bring  
13 your documentation of your village sites, and I'll  
14 be happy to share that honor with you, to talk  
15 about how we deal with the burial remains.

16 The extra part on that was another  
17 section that said they have a concern, the  
18 Commission has a challenge to look at how we  
19 monitor effectively. Again, the Chumash and the  
20 Salinans have monitored. Because we're a quiet  
21 people, maybe you haven't heard it. Because  
22 there's a Chumash casino, you might've heard that  
23 more. It doesn't make it any less true that we  
24 were here, and we have documented proof that we  
25 were here, not just Bonnie wanting to say that.

1                   We're here. We've been here, and we've  
2 worked all the way back. So, in fact, I'll say  
3 again, when Portola came in the 1700's, he met  
4 Maria Agata's relatives, and he met her, from the  
5 statements that have been recorded. So, in fact,  
6 she was the first coastal person that invited the  
7 first tourist in.

8                   I'm asking that the first people here,  
9 both the Salinan and the Chumash come together  
10 with Native Heritage Commission, and the Energy  
11 Commission, as a mediator, to be able to talk  
12 behind the scenes and not out in public, come to a  
13 consensus, because I believe we've done it before  
14 in the past. We've proven that, and can provide  
15 that proof to you. And then give you your  
16 recommendations that'll help Duke Energy best in  
17 what they need to do with our cultural and burial  
18 area.

19                   The last thing is just a kind of an  
20 anecdotal comment. On page 4, there was -- it  
21 said a statement that Staff has not yet received  
22 the results of the historical resources survey. I  
23 just wanted to clarify that. I clarified it with  
24 -- with Ms. Lewis that she's talking about  
25 architecturally resources, so that has nothing to

1 do with our piece of our cultural resources. And  
2 it needs to be said that way, because we have some  
3 scholars right now that are looking at our  
4 prehistoric and our historic information to decide  
5 how we best talk about the shared territorial  
6 areas.

7 And we didn't want that to be confused  
8 that there was only going to be a historical  
9 resources, because that would, again, would be  
10 like saying when Portola was here, we'll look at  
11 those resources and we'll look at that historical  
12 data. But by the way, when Columbus was in, you  
13 know, landing on the East coast, there was still  
14 some Native American stuff happening clear back,  
15 but nobody's going to take a look at that. And  
16 that would be preposterous to me that that would  
17 even happen.

18 So I'm hoping that in time, if the 23rd  
19 the Chumash had a meeting down in Santa Barbara,  
20 obviously, if they're not here tonight, then we  
21 have had kind of a time delay. And I feel bad  
22 that they aren't here to talk also about maybe  
23 what they think on this piece of documentation. I  
24 see again that we have a May 22nd date, and unless  
25 we really get busy and do some workshops, I'm

1           wondering how our Native American culture can come  
2           together, make a decision, come to a consensus,  
3           give you folks the recommendation so that it can  
4           be included in that preliminary data resource that  
5           you're going to have. So I just ask for a little  
6           time.

7                           Thank you.

8                           HEARING OFFICER FAY: Thank you.

9                           Janice Peters. We've concluded the  
10           general public comments. No? No comment.

11                           Then -- all right.

12                           PUBLIC ADVISER MENDONCA: I have two  
13           public comments that were handed to me. Actually,  
14           one came this afternoon by fax from Senator Jack  
15           O'Connell's office, who the letter was directed to  
16           Commissioner Moore and members, and he wishes to  
17           welcome you to the meeting, and to act. He's very  
18           interested in the energy crisis. He's following  
19           it, and urges the Commission to take swift  
20           appropriate measures within the guidelines of CEQA  
21           to move this and other much needed power  
22           generation projects forward in a timely manner.

23                           The second is a letter from Dave Spauer,  
24           who is a member of the -- President of the  
25           Economic Vitality Corporation of San Luis Obispo

1 County. And the board has not yet taken a  
2 position on pro the Morro Bay Duke Energy project  
3 or not. However, he's speaking in this letter on  
4 behalf of the California Association of Local  
5 Economic Development, CALED, and they would like  
6 to encourage the expeditious process by the Energy  
7 Commission and ask that in your decision, you pay  
8 attention to the concerns of the community and the  
9 county, that you utilize the best available  
10 technology, BACT, and providing the lowest impact  
11 with the greatest return on energy production.

12 And statewide, we would prefer fewer  
13 plants, particularly the proliferation of peaker  
14 plants, and rather see high quality modern  
15 facilities providing the best impact -- the lowest  
16 impact possible.

17 And that was from David Spauer.

18 HEARING OFFICER FAY: Thank you.

19 Now, we would like to hear from the  
20 interested agencies, if they -- if they wish to  
21 comment. The hour is late, but I think this is a  
22 good opportunity to -- to check the status of the  
23 case.

24 Could the representative of the City of  
25 Morro Bay come forward? Mr. Fuz. Good evening.

1                   Do you have anything to add to the  
2 things you've heard tonight?

3                   MR. FUZ: Slowly drifting away. I'm  
4 sorry. I need to have the caffeine kick in here,  
5 and to wake up again.

6                   Thank you for the opportunity to address  
7 the Commission. I just wanted to make a few  
8 comments, and also to be available to answer any  
9 questions that you have about the schedule for any  
10 remaining city reports on the project.

11                  First, a quick overview of what we've  
12 done and where we're going, and starting with a  
13 session that we're planning tomorrow that we've  
14 invited your Staff to attend. It's a study  
15 session with our City Council to review the  
16 process for implementing the Memorandum of  
17 Understanding that we reached last year with Duke  
18 Energy regarding the project.

19                  The study session will focus on  
20 documents implementing the MOU, the schedule for  
21 completing those documents, progress to date, and  
22 any remaining key issues that need to be resolved.  
23 So it is a very important meeting, and we  
24 understand that your Staff will be attending, and  
25 we hope to report the results of that meeting

1           formally very shortly thereafter.

2                       HEARING OFFICER FAY:   Would you be  
3           sending a letter to the docket, as a --

4                       MR. FUZ:   Yes.   Certainly.

5                       HEARING OFFICER FAY:   -- report.   Good.

6                       MR. FUZ:   We would be happy to do that.

7                       We've also prepared a preliminary report  
8           regarding the project's consistency with land use  
9           designations and zoning, and we've addressed the  
10          pending question of whether the project should be  
11          considered an expansion under the terms of our  
12          local coastal program.   We've provided that  
13          analysis to your Staff, and they'll have the  
14          benefit of reviewing that as part of the PSA  
15          preparations.

16                      That report was prepared by our outside  
17          counsel, Shepard, Mullin, Richter and Hampton, and  
18          was reviewed by Coastal Commission staff, as well,  
19          and recently adopted by our Planning Commission on  
20          April the 16th.   So that report has been provided  
21          to your Staff already.

22                      We look forward to continuing to work  
23          closely with your Staff and Commission to resolve  
24          the issues of local concern.   The next analysis  
25          that we are working on with respect to the project

1 is the project's consistency with applicable  
2 policies and our coastal plan, a general plan, and  
3 that's the document that was referred to earlier.

4 HEARING OFFICER FAY: Okay. Interrupt  
5 you. The preliminary consistency report, has that  
6 been docketed at the Commission?

7 MR. FUZ: Yes, that's been provided to  
8 your Staff.

9 HEARING OFFICER FAY: Okay. I'm sorry  
10 to interrupt you.

11 MR. FUZ: Okay. It's --

12 MS. GROOT: Just a -- please. We did  
13 not receive a copy of that report. I don't  
14 understand how that might have happened.

15 MR. FUZ: Okay. It was e-mailed to the  
16 Staff several days ago, and the original hard copy  
17 was provided today.

18 PRESIDING MEMBER MOORE: All I can say  
19 is we haven't seen it either, so looks like you're  
20 going to get it about the same time that we do.

21 MS. GROOT: All right.

22 PRESIDING MEMBER MOORE: Now, is that  
23 something that Staff would normally send to the  
24 intervenors, or -- since it was not filed by the  
25 Staff or by them.

1 MS. LEWIS: We'd have to look into that.  
2 I'm not quite sure how wide distribution was for  
3 that.

4 HEARING OFFICER FAY: It may be faster  
5 for you to get it from the city. This is a public  
6 document, correct?

7 MR. FUZ: Yes, absolutely.

8 MS. GROOT: Well, we have provided the  
9 city with some of our reports. We would  
10 appreciate a reciprocal relationship.

11 MR. FUZ: Again, it was just completed a  
12 couple of days ago.

13 MS. GROOT: Okay.

14 HEARING OFFICER FAY: I'm sorry. Go  
15 ahead, Mr. Fuz.

16 MR. FUZ: So the next analysis that we  
17 are working on that was referred to earlier is a  
18 review of the project's consistency with  
19 applicable policies in our coastal plan and  
20 general plan.

21 We understand, from the comments that  
22 were made earlier, that your Commission and Staff  
23 would like to receive that analysis, if possible,  
24 prior to the completion of the PSA. And we  
25 certainly recognize the importance of maintaining

1 the project schedule and will make every effort to  
2 provide this analysis to you within the next two  
3 to three weeks.

4 We also --

5 HEARING OFFICER FAY: Let me stop you  
6 there. So that would be by -- by what date?

7 MR. FUZ: Well, our goal will certainly  
8 be prior to the middle of May.

9 PRESIDING MEMBER MOORE: So prior to the  
10 18th?

11 MR. FUZ: We will make every effort to  
12 do that.

13 PRESIDING MEMBER MOORE: Ms. Lewis,  
14 wasn't that the date that you were expecting to  
15 have all the other data in, 18 May?

16 MS. LEWIS: That was the date of the  
17 status report.

18 HEARING OFFICER FAY: That's only three  
19 days -- two working days before the -- the PSA  
20 would come out. When would Staff need that to  
21 complete their land use analysis?

22 MS. LEWIS: I'm not sure. I mean,  
23 probably to complete the PSA, we'd probably need  
24 it in another week.

25 HEARING OFFICER FAY: A week from today?

1                   MR. FUZ: We'll do the best we can.  
2                   We'll do the best we can to try to accommodate  
3                   that.

4                   HEARING OFFICER FAY: Okay. You sort of  
5                   see the constraints. If -- if at all possible, it  
6                   would certainly help if the city could make that  
7                   available, say by May 2nd.

8                   MR. FUZ: I understand. We've also been  
9                   in a continuing dialogue throughout the process  
10                  with the Applicant, Duke Energy, to reach  
11                  resolution on key issues of local concern, with  
12                  the goal of reaching tentative agreement on these  
13                  issues prior to the PSA's release, so that your  
14                  Staff and Commission could have the benefit of the  
15                  information in these agreements as your analyses  
16                  are prepared.

17                  We continue to strive toward that goal,  
18                  and tomorrow's study session will advance the  
19                  process and keep us on track, hopefully, to  
20                  achieving that goal. But at this time, there are  
21                  no agreements reached between Duke and the city on  
22                  those issues. But we remain optimistic, and again  
23                  look forward to being able to conclude tentative  
24                  agreements prior to the release of the PSA.

25                  In addition, the City Council, I'd like

1 to report the City Council on April the 9th  
2 enacted a resolution reaffirming its support for  
3 the demolition of the existing plant and the  
4 construction of the new state of the art  
5 generating facility, pursuant to the terms of the  
6 MOU.

7 As part of that resolution, the council  
8 also unanimously expressed that the city is  
9 committed to working with all parties to ensure  
10 that the project will enhance the community,  
11 particularly surrounding beach and waterfront  
12 areas, provide needed economic stability for the  
13 community, and provide increased, more efficient,  
14 and more environmentally friendly power for the  
15 benefit of all residents of the state.

16 That resolution was transmitted to your  
17 Staff about a week and a half ago, and a hard copy  
18 was again provided to you tonight.

19 We'd like to emphasize the importance of  
20 adequately addressing beach and waterfront  
21 enhancement, coastal access and recreation, as  
22 critical components of the project. And we hope  
23 to present specific recommendations for addressing  
24 these issues shortly to your Commission and to  
25 your Staff.

1                   The city has been engaged in an  
2                   intensive, unprecedented process to positively  
3                   influence and shape the basic elements of this  
4                   project, as you know. And through this process,  
5                   the project has been crafted to be essentially to  
6                   provide twice the new, more efficient generation  
7                   in half the time, compared to the original  
8                   proposal submitted by the Applicant. All that, as  
9                   well as including demolition of the existing  
10                  plant.

11                  We appreciate the cooperation and input  
12                  that we've received from Duke and other parties,  
13                  and continue to work toward the goal of making  
14                  this the best possible project that can and  
15                  ultimately will warrant the full support of the  
16                  City of Morro Bay.

17                  So that concludes my comments. I'm  
18                  available for any questions you might have.

19                  HEARING OFFICER FAY: Okay. Ms. Holmes,  
20                  do you have any questions of the city?

21                  MS. HOLMES: I just have two quick ones.

22                  First of all, we had some discussion  
23                  earlier this evening about the potential for a  
24                  workshop on visual issues to receive input from  
25                  the community. I wanted to know whether or not

1 the city needs to have that workshop process  
2 completed prior to it completing the policy  
3 consistency determination, or whether or not the  
4 workshop could trail that.

5 MR. FUZ: There are several policies  
6 that we need to evaluate that pertain to visual  
7 issues. So it would be helpful to have the  
8 benefit of the results of that workshop. That  
9 certainly won't stop us from going as far as we  
10 can with the information that we have, but we may  
11 not be able to fully complete that analysis  
12 without the benefit of that workshop.

13 MS. HOLMES: And then the other question  
14 I have is I'm not very familiar with the  
15 additional agreements that you referred to, with  
16 respect to key issues of local concern. Are those  
17 things that are going to get folded into the CEC  
18 process, things that you're going to recommend  
19 that Staff evaluate or that the Commission include  
20 in Conditions of Certification?

21 MR. FUZ: That's correct. Our goal  
22 would be to present the agreement once it is  
23 entered into, at least on a tentative level,  
24 between the city and Duke, so that your Commission  
25 can consider the specifics of that and include

1           that where appropriate in your Conditions of  
2           Certification.

3                         MS. HOLMES:   And do you have any  
4           estimate at this time as to when that's going to  
5           be?  I'm just trying to think of how Staff's going  
6           to be able to -- to take -- when Staff's going to  
7           be able to take a look at that.  So do you know  
8           when that's going to be available?

9                         MR. FUZ:   Well, at this point there  
10          isn't an agreement, and in the study session that  
11          we're having with the City Council tomorrow, we're  
12          going to be focusing on areas that remain to be  
13          resolved between the city and Duke.  Our goal is  
14          certainly, again, to be able to complete that  
15          prior to the release of the PSA, and we'll make  
16          every effort to do that.

17                        MS. HOLMES:   Thank you.

18                        HEARING OFFICER FAY:   Thanks.  Of  
19          course, the Commission has the discretion on  
20          issuing the license for the project, so obviously,  
21          to the extent that you want that agreement  
22          enforceable as part of the license, it's going to  
23          have to come in in our -- in our schedule.

24                        Does the Applicant have any questions of  
25          the city while we're -- okay.

1 All right. Thanks, Mr. Fuz.

2 Does the air district have any comments  
3 to make?

4 MR. WILLEY: Good evening. Gary Willey,  
5 Air Pollution Control District.

6 We're on schedule right now for the May  
7 9th preliminary determination of compliance  
8 document. However, in the scheduling order, I see  
9 that there's 16 days of public comment allowed  
10 between our -- well, actually, just scheduled  
11 between our preliminary determination of  
12 compliance and our final determination of  
13 compliance, and in our regulations we have a 30  
14 day public comment requirement. So I don't know  
15 how I can get there, especially if somebody puts  
16 something on the 29th day.

17 So unless there's some, you know,  
18 compelling law or something that would keep me  
19 from doing that, I would hope that we would have  
20 that 30 day public comment period and our final  
21 determination of compliance could be probably mid  
22 to late June. And I think the date listed on  
23 there is --

24 PRESIDING MEMBER MOORE: And yours --  
25 yours doesn't float by the nature of the -- or the

1 date of the hearing, it floats by the date of the  
2 completion of the PDOC.

3 MR. WILLEY: Correct. And when we make  
4 a preliminary determination, that's the --

5 PRESIDING MEMBER MOORE: That's what  
6 starts your clock, is the 30 days past the PDOC.

7 MR. WILLEY: -- 30 day clock. Right.

8 HEARING OFFICER FAY: But the FDOC date  
9 is correct; is that right?

10 MR. WILLEY: The PDOC --

11 HEARING OFFICER FAY: I mean, the PDOC  
12 date?

13 MR. WILLEY: We're on schedule for the  
14 -- the PDOC date at this point, yes.

15 HEARING OFFICER FAY: All right.

16 MR. WILLEY: There are -- there are some  
17 small issues to be worked out, but we've pretty  
18 much gone through most everything, so we feel we  
19 can make that date at this point.

20 HEARING OFFICER FAY: Okay. Thanks for  
21 bringing that to our attention.

22 MR. WILLEY: Any questions?

23 MR. ELLISON: If I could just ask a  
24 quick clarifying question. Your concern, then, is  
25 that the entire 60 days between the PDOC and the

1 FDOC is designated as public comment, as opposed  
2 to just 30 days of that period? Is that the --  
3 the issue?

4 MR. WILLEY: No. We had -- I think  
5 there was -- in our -- in our process, we have 30  
6 days, and there was only I think 16 days listed  
7 between our -- between us filing a preliminary and  
8 then a final determination of compliance in the  
9 scheduling order. So 16 won't get us there.

10 HEARING OFFICER FAY: But a 30 day  
11 difference is -- is more reasonable.

12 MR. WILLEY: Yeah. Yeah, the 30 days.  
13 And it would take us, you know, a few days after  
14 -- after the 30 day public comment period closes  
15 to wrap up any changes that might need to be made.  
16 So that's -- that's why I'm anticipating mid --  
17 mid to late June for our final determination of  
18 compliance.

19 HEARING OFFICER FAY: Okay. I'm not  
20 sure how that FDOC date got in there, because we  
21 -- we know that the district has a 30 day comment  
22 period. But thank you for bringing that to our  
23 attention.

24 MR. WILLEY: Thanks.

25 HEARING OFFICER FAY: Is the Marine

1 Sanctuary here? National Marine Sanctuary? Any  
2 representatives?

3 And how about the Regional Water Quality  
4 Board. Anybody from the water board?

5 Okay. Any closing remarks from the  
6 Applicant?

7 The Staff?

8 Coastal Alliance, anything further  
9 before we close?

10 MS. GROOT: Thank you. No.

11 HEARING OFFICER FAY: All right. Okay.  
12 Thank you all for coming. And we are adjourned.

13 (Thereupon the Committee Status  
14 Conference was concluded at  
15 9:25 p.m.)

16

17

18

19

20

21

22

23

24

25

## 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 Committee Status Conference; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of May, 2001.

JAMES RAMOS

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345