

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

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

1055 MORRO AVENUE  
MORRO BAY, CALIFORNIA

WEDNESDAY, JANUARY 30, 2002

9:07 a.m.

Reported by:  
James A. Ramos  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Michal Moore, Commissioner, Presiding Member

William J. Keese, Chairman, Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Gary Fay, Hearing Officer

Terry O'Brien, Adviser to Chairman Keese

STAFF AND CONSULTANTS PRESENT

Caryn Holmes, Staff Counsel

Kae C. Lewis, Project Manager

Jim Buntin, Vice President  
Brown-Buntin Associates, Inc.

Steven J. Brown, Principal  
Fehr & Peers Associates, Inc.

James Fore

APPLICANT

Jeffery D. Harris, Attorney  
Christopher T. Ellison, Attorney  
Ellison, Schneider and Harris

Andrew L. Trump, Director of Business Development  
Western Region  
Duke Energy North America

Peter Okurowski, Senior Associate  
California Environmental Associates

Bob Mantey, Principal Consultant  
Alliance Acoustical Consultants, Inc.

Christopher Cannon

Michael S. Pollack  
Project Director

INTERVENORS

Robert Schultz, City Attorney  
City of Morro Bay  
Steven J. Elie, Attorney  
Musick, Peeler, Garrett, LLP  
representing City of Morro Bay

Henriette Groot, President  
Bonita L. Churney, Attorney  
Gordon Hensley  
Pamela Soderbeck  
Coastal Alliance on Plant Expansion

Joan Carter

Betty Winholtz

Colby Crotzer, Member  
Morro Bay City Council

ALSO PRESENT

Mandy Davis

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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P R O C E E D I N G S

9:07 a.m.

HEARING OFFICER FAY: This is a continuation of the evidentiary hearings in the Morro Bay Power Plant project AFC proceeding. I'm Gary Fay, the Hearing Officer. And to my left is the Presiding Member of the Committee, Michal Moore. And to my right is the Chairman of the Energy Commission and Second Member of the Committee, William Keese. And to his right is Chairman Keese's Advisor, Terry O'Brien.

We took introductions yesterday so I won't go back over that. But before we get started I'd just mention our first topic today is noise and vibration. And are there any preliminary matters before we begin taking evidence? Any housekeeping matters?

Okay, I don't see anybody indicating they'd like to address that. So I'll turn to the applicant and ask Mr. Ellison if he's ready to proceed.

MR. ELLISON: Yes, we are. I'd like to call Mr. Bob Mantey to the stand.

HEARING OFFICER FAY: I believe Mr. Mantey needs to be sworn, is that correct? Could



1 applied acoustical engineering and noise control,  
2 most of which has been from a consulting  
3 standpoint.

4 The last 11 years specifically dealt  
5 almost exclusively with large industrial complex  
6 noise control including refineries and power  
7 plants.

8 Q Do you have any changes, corrections or  
9 clarifications that you'd like to make to your  
10 prefiled testimony?

11 A Yes, I have three relatively minor  
12 typographical type corrections. On page 56 the  
13 very last line at the bottom of the page there  
14 should be a comma after Highway 1.

15 On page 58, the first full paragraph,  
16 third line, the sentence reading: However Duke  
17 has substantive concerns... The word requiring  
18 should be stricken, there's two verbs there.

19 And on page 59 under NOISE-10, the third  
20 line: Duke recommends that this inconsistency be  
21 resolved, not by resolved.

22 And those are the only corrections that  
23 I have noted.

24 Q And with these changes are the facts  
25 contained in this testimony true to the best of

1 your knowledge?

2 A Yes, they are.

3 Q And are the opinions contained in the  
4 testimony your own?

5 A Yes.

6 Q Do you adopt this testimony as your  
7 testimony in this proceeding?

8 A Yes, I do.

9 MR. ELLISON: For the record, at the  
10 beginning of page 54 and continuing through page  
11 55 is a list of various exhibits in this  
12 proceeding that are incorporated by reference in  
13 this testimony, including portions of exhibit 4,  
14 22, 34, 37, 51, 52, 53, 58, 70 and 90.

15 HEARING OFFICER FAY: Mr. Ellison, if I  
16 may interrupt you, is Mr. Cannon also going to be  
17 available as part of a panel?

18 MR. ELLISON: Mr. Cannon is available as  
19 a support witness if there are questions  
20 appropriate for him. We can have him join Mr.  
21 Mantey as part of the panel. Mr. Mantey is  
22 certainly the lead witness on this subject --

23 HEARING OFFICER FAY: Okay.

24 MR. ELLISON: -- and we felt that he  
25 could handle, we believe, all the questions that

1 are appropriate. But if there are questions that  
2 go to the specific work that Mr. Cannon did, we'd  
3 be happy to have him up here.

4 HEARING OFFICER FAY: Mr. Cannon, have  
5 you been sworn already?

6 MR. CANNON: No, I have not.

7 HEARING OFFICER FAY: Please, why don't  
8 we do that now, and then if any questions do come  
9 up they can be directed to him immediately.  
10 Please stand and be sworn in.

11 Whereupon,

12 CHRISTOPHER CANNON

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

16 HEARING OFFICER FAY: And if you could  
17 take a seat over there in case any questions do  
18 come up that you're more comfortable answering  
19 than Mr. Mantey. It will save us time.

20 Proceed.

21 MR. ELLISON: Thank you.

22 BY MR. ELLISON:

23 Q Mr. Mantey, could you describe how you  
24 went about analyzing the noise and vibration  
25 impacts from the proposed Morro Bay Modernization

1 project?

2 A Yes. In conjunction with working with  
3 the engineering contractor for this project, which  
4 is Duke Fluor Daniel, I gathered the known list of  
5 equipment items that are proposed for this  
6 project. I gathered noise emissions information  
7 about those pieces of equipment.

8 I took that information, including the  
9 geometrical location of those equipment with the  
10 preferred layout and used those to create input  
11 files for noise modeling program.

12 I ran the noise modeling program  
13 iteratively several times using recognized noise  
14 control and noise reduction methodologies so that  
15 the proposed project, in its final configuration,  
16 would be compliant with all applicable LORS.

17 Q In doing your analysis did you make any  
18 significant assumptions which you believe should  
19 be described as part of this testimony?

20 A Yes. I generally tend to be pretty  
21 conservative when it comes to doing my noise  
22 modeling. But I also tend to be realistic in how  
23 I assign the noise levels and how I do the actual  
24 analyses.

25 In regard to this project the

1 conservative aspects were including the RV park as  
2 a sensitive receptor, although it's transient  
3 occupancy where people would only be expected to  
4 be there a matter of a few days, it was still  
5 considered with the same weight as a normal  
6 permanent residential receptor.

7 Also, I conservatively neglected any  
8 propagation reduction due to intervening  
9 structures between the power plant and the City  
10 receptors, or any intervening topographical  
11 effects.

12 And lastly, the other conservative  
13 approach was to assume full load operations of the  
14 plant for 24 hours a day, which is the worst case  
15 noise emission situation for this type of a  
16 facility.

17 Q Could you briefly describe how you got  
18 the input assumptions that you used for your  
19 modeling?

20 A I used noise emissions ratings from  
21 equipment that have been specified and procured in  
22 past projects by Duke Fluor Daniel. And that have  
23 known noise control methods available for them,  
24 and known noise emissions factors. So I was using  
25 realistic, real world data from past experience.

1           Q     How will the noise and vibration from  
2     the proposed project, compared to that from the  
3     existing Morro Bay project?

4           A     In almost all cases the proposed plant  
5     will have lower noise levels than the existing  
6     plant.  Upwards, in some cases, of 20 db or more,  
7     at some locations.  In general, the noise from the  
8     new plant being modern state of the art will be  
9     much better than the existing plant.

10                  The only exception to that is the RV  
11     park, which is anticipated to have slightly higher  
12     noise levels only because the proposed plant is  
13     much closer to that particular receptor than is  
14     the existing plant.

15           Q     With respect to the slight increase in  
16     noise at the RV park, could you describe the  
17     magnitude of that increase and whether residents  
18     of the RV park will be able to perceive it?

19           A     The projections for that particular  
20     receptor show on the order of a 2 db increase over  
21     what they're experiencing now.  And that's  
22     commonly held to be well below the threshold of  
23     perceptibility for community noise, which is  
24     usually considered to be 3 db.

25                  So, in all practical purposes it's

1 essentially unlikely that the -- if people were  
2 there between now, between experiencing the  
3 existing plant and experiencing the future plant,  
4 they would not be able to tell the difference in  
5 that 2 db increase.

6 Q With respect to the other locations in  
7 the City where you described a reduction in noise  
8 levels as a result of the modernization, could you  
9 describe the significance of that and whether  
10 people will be able to perceive that difference?

11 A As I said, in some of the closer  
12 locations, especially in the tourist areas, along  
13 the Embarcadero, out by Morro Rock, along the  
14 beach, we're predicting noise level reductions  
15 between the proposed plant and the existing plant,  
16 between 9 and 23 decibels, which is a dramatic  
17 decrease. Especially across the street at the  
18 nearest Embarcadero venues, the predictions are on  
19 the order of 20 db reduction, which is very  
20 drastic.

21 Q So is it fair to say that people in the  
22 City will experience either no change or a  
23 significant improvement in noise levels as a  
24 result of the modernization project?

25 A Yes, it is.

1           Q     Given these results, what were your  
2           conclusions regarding significant environmental  
3           impacts under CEQA and compliance with applicable  
4           laws, ordinances, regulations and standards?

5           A     The pertinent LORS in this project are  
6           the City of Morro Bay noise element and the CEC's  
7           threshold of significance, which is plus 5 db over  
8           the existing late night ambient, as defined by the  
9           lowest L90 level.

10                  Both those conditions are shown in the  
11           AFC to be met by the proposed project at all  
12           locations under analysis.  And therefore,  
13           compliance with the LORS was shown to be predicted  
14           for the plant.

15                  Since the CEQA baseline is the existing  
16           plant and the proposed project will be quieter,  
17           there is actually a CEQA benefit from the proposed  
18           project.

19           Q     Have you had an opportunity to review  
20           the Energy Commission Staff's final staff  
21           assessment with respect to noise and vibration?

22           A     Yes, I have.

23           Q     Do you agree with the staff's  
24           conclusions regarding CEQA impacts and compliance  
25           with applicable laws?

1           A     Yes, I do.

2           Q     Have you also had an opportunity to  
3 review the staff's proposed conditions of  
4 certification?

5           A     Yes.

6           Q     Could you briefly describe your  
7 agreement or disagreement with those conditions of  
8 certification?

9           A     We agree completely with conditions  
10 NOISE-1, 2, 3, 5 and 7, as stated in the FSA.

11                     However, we have some suggested changes  
12 or modifications to conditions 4, 8, 9, 6 and 10.

13           Q     Would you briefly describe the proposed  
14 changes that you just mentioned?

15           A     With respect to NOISE-6 there's three  
16 issues there. The first is qualifying the  
17 definition of legitimate complaint to include as  
18 determined by the CPM.

19                     Second issue on NOISE-6 is the inclusion  
20 of measurement location at Delmar School; and that  
21 is stipulated we will do that.

22                     The third issue on NOISE-6 is either  
23 dropping location six, which happens to be right  
24 outside this building. Or substituting location  
25 three, which is probably a more indicative

1 location to make that measurement for assessing  
2 noise impacts to residential receptors to the  
3 south of the project site.

4 NOISE-9 is also with regard to the  
5 measurement position location six or location  
6 three.

7 NOISE-10, we suggested including a  
8 clarification point about the nearest residential  
9 receptor to say including the RV park.

10 NOISE-4, again there's two issues there.  
11 The first of which is we would like to follow the  
12 Morro Bay Municipal Code for construction  
13 activities which limits the construction from 7:00  
14 a.m. to 7:00 p.m., which is a bit broader than was  
15 in the FSA.

16 The second issue on NOISE-4 was the  
17 stipulation or the qualification that for  
18 temporary line-cleaning steam blows during  
19 construction that Duke would meet the requirement  
20 of 70 dba at the residential receptors if there  
21 were commercially available standard silencers  
22 that could be used to attain that level of  
23 quieting.

24 NOISE-8 is also the 7:00 a.m. to 7:00  
25 p.m. issue which follows the City code for

1 construction activities.

2 And NOISE-9 dealt with changing some  
3 wording. Specifically during the measurement  
4 period reasonable mitigation measures per the  
5 concurrence of the CPM shall be implemented to  
6 reduce noise level of compliance with this limit  
7 to the fullest extent practical.

8 So, mostly these are -- the conditions  
9 in the FSA are mostly procedural restrictions,  
10 rather than noise control or noise mitigation  
11 features which are already included in the  
12 proposed project. And our disputes here are  
13 simply clarifications or suggested improvements to  
14 these procedural conditions.

15 Q Let me focus your attention on the issue  
16 you mentioned with respect to NOISE-4 and the 70  
17 dba standard, and ask first, this is a condition  
18 that concerns only the construction period, is  
19 that correct?

20 A Yes, it is.

21 Q And if I understand your position it is  
22 that Duke should be required to meet this 70 dba  
23 standard provided that a silencer that does so is  
24 commercially available. But if there is not a  
25 commercially available silencer that will meet the

1 standard during the construction period, it would  
2 not be met, is that correct?

3 A Yes, it is. And the reasoning behind  
4 that is not so much trying to duck the 70 dba. We  
5 agree that that is the applicable limit. It's to  
6 protect ourselves from being hamstrung with a  
7 custom-made application silencer that will only be  
8 used for a few weeks during this temporary  
9 condition.

10 Q Thank you.

11 MR. ELLISON: That concludes Mr.  
12 Mantey's testimony. I understand that exhibits  
13 are being moved after the direct testimony. If  
14 that's appropriate I would move the admission of  
15 the noise and vibration portion of exhibit 134,  
16 including the exhibits incorporated by reference  
17 therein at pages 54 and 55.

18 HEARING OFFICER FAY: Is there any  
19 objection?

20 MS. HOLMES: No objection.

21 HEARING OFFICER FAY: All right, I hear  
22 no --

23 MS. CHURNEY: I have just one point of  
24 clarification on exhibit 58. In looking at that  
25 exhibit it appeared to be primarily a visual

1 exhibit with the exception of only a small part of  
2 it relating to the demolition.

3 If it's only with respect to that last  
4 part, the demolition schedule, I have no problem.

5 HEARING OFFICER FAY: Mr. Ellison, can  
6 you help us with a clarification there?

7 MR. ELLISON: We just handed Mr. Mantey  
8 a copy of the exhibit, and I'd like him to take a  
9 quick look at it. I believe that that demolition  
10 schedule is the reason that it was incorporated  
11 here, but I'd like Mr. Mantey to confirm that.

12 HEARING OFFICER FAY: Okay.

13 MR. MANTEY: Yes, the pertinent part of  
14 that that relates to noise is the revised  
15 demolition schedule. So we were including that  
16 just as the ability to put that schedule into  
17 evidence with respect to the noise concerns.

18 MR. ELLISON: Let me ask CAPE's attorney  
19 a question. Are you objecting, at this time, to  
20 the introduction of the entire exhibit, or would  
21 you just like it clarified, which we'll be happy  
22 to do, that the portion that is relevant to noise  
23 is the construction schedule?

24 MS. CHURNEY: The clarification is  
25 sufficient.

1                   MR. ELLISON: Thank you. In that case  
2 we would move exhibit 134, beginning at page 53,  
3 noise and vibration, including the exhibits  
4 incorporated by reference therein.

5                   HEARING OFFICER FAY: Okay. And with  
6 that explanation, we will direct that that be  
7 entered into the record at this point.

8                   And the witness is now available for  
9 cross-examination? All right. Ms. Holmes.

10                  MS. HOLMES: No questions.

11                  HEARING OFFICER FAY: No questions.

12 Does the City have questions?

13                  MR. ELIE: Briefly.

14                                   CROSS-EXAMINATION

15 BY MR. ELIE:

16                  Q     Mr. Mantey, if you could look at page 57  
17 of your testimony, at the top of the page, first  
18 full sentence reads in part: Part of this  
19 positive result is due to a decision that was made  
20 by Duke Energy as a result of meetings with the  
21 public to use a special quiet pile-driving  
22 technique.

23                                   Do you see that?

24                  A     Yes.

25                  Q     And Duke is still agreeing to do that,

1 correct?

2 A Yes.

3 Q I think it's called the auger method?

4 A Yes.

5 Q Would you have a problem with that  
6 method, with a requirement in the COCs to use that  
7 method?

8 MR. ELLISON: When you say COCs, you  
9 mean conditions of certification?

10 MR. ELIE: Correct.

11 MR. MANTEY: Insofar that it's already  
12 in the AFC and has been committed to in that  
13 venue, I would think that that would be  
14 sufficient.

15 MR. ELLISON: Let me say that we do not  
16 have a problem with the concept. We'd certainly  
17 want to see the wording of the condition.

18 MR. ELIE: Okay. That's all I have,  
19 thank you.

20 HEARING OFFICER FAY: Okay. And does  
21 Coastal Alliance have any questions?

22 MS. CHURNEY: Yes.

23 CROSS-EXAMINATION

24 BY MS. CHURNEY:

25 Q Mr. Mantey, could you clarify, the

1 current plant, the plant that's in operation now,  
2 operates in excess of the City of Morro Bay's  
3 noise ordinance, is that correct?

4 A At some locations, yes, it does.

5 Q And on page 56 of your testimony  
6 regarding construction demolition noise, you state  
7 that the results of your analysis indicate that  
8 the noise levels for the onsite tank demolition  
9 stage of the construction will generally be  
10 comparable to existing ambient noise levels  
11 throughout the City. But that occasionally noise  
12 levels louder than existing ambient noise levels  
13 will result from the actual disassembly of the  
14 tanks.

15 Could you help the residents of Morro  
16 Bay get some understanding of how often and how  
17 loud these levels might be?

18 A At this point it's a little difficult to  
19 say, and I'm not trying to avoid the question.  
20 It's more a function of I am not intimately  
21 familiar with the techniques and the progression  
22 of those techniques in the demolition of the tank,  
23 tank farms.

24 It's my understanding that most of the  
25 tanks will be cut away, so that there will be

1 large metal-cutting machines that will basically  
2 slice it open like a tin can, if you will.

3 After the tanks are removed there will  
4 be the foundations that need to be broken up, so  
5 that will mostly be jackhammering type noise.  
6 These activities will probably only last a matter  
7 of days, or at most a few short weeks for each  
8 tank would be my estimation.

9 As far as the levels that are associated  
10 with those activities, again depending on how  
11 extensive they want to break up the pad for each  
12 tank, and how many pavement breakers or  
13 jackhammers they use at any given time, that the  
14 levels could vary depending on the mix of  
15 equipment that was used.

16 Q So you, at this point, don't have an  
17 estimate of how loud it will be, or whether it  
18 will exceed the City's ordinance?

19 MR. ELLISON: Objection, that  
20 mischaracterizes his testimony. The question  
21 about whether it will exceed the ordinance was not  
22 a part of the earlier question. And was not a  
23 part of his answer.

24 BY MS. CHURNEY:

25 Q But you have not been able to place a

1 definite decibel level on what the deconstruction  
2 or disassembly will entail?

3 HEARING OFFICER FAY: That objection was  
4 sustained. And I just wanted to get that ruling  
5 in.

6 (Laughter.)

7 MR. ELLISON: Thank you.

8 HEARING OFFICER FAY: But your follow up  
9 is appropriate.

10 MR. MANTEY: Could you repeat the  
11 question, please?

12 BY MS. CHURNEY:

13 Q Right. At this point you're not able to  
14 put a specific decibel level on what the  
15 disassembly or deconstruction of the tanks will  
16 entail? And we're looking for a maximum here.

17 A In the AFC analysis, in the technical  
18 appendix, there was a discussion of predicted  
19 noise levels for various stages of construction  
20 including the tank demolition.

21 And to the best of technology and  
22 predictive analysis the noise levels that are in  
23 the AFC for that phase of construction are the  
24 best that can be predicted at this point.

25 Q Okay, well, let's refer to that, then.

1 We those predictions made using LMAX, L90 or LEQ  
2 metrics?

3 A I believe the standardized tables for  
4 construction noise emissions at 50 feet are in  
5 terms of LMAX. But I would have to look up the  
6 original citation to verify that.

7 Q And is there an indication as to how  
8 often there would be noise levels that would  
9 exceed the City's noise element? Was that an  
10 analysis made in the AFC?

11 MR. ELLISON: Again, the question  
12 assumes violation of the noise ordinance, and Mr.  
13 Mantey did not testify to that.

14 PRESIDING MEMBER MOORE: That's  
15 sustained.

16 MS. CHURNEY: Well, let me ask it this  
17 way, then. I'll withdraw that question.

18 BY MS. CHURNEY:

19 Q Does the AFC indicate how often the  
20 City's noise ordinance will be exceeded during the  
21 deconstruction period with respect to the tank  
22 farm?

23 A I don't believe the City's noise  
24 ordinance deals with limitations to construction  
25 noise.

1 MS. CHURNEY: May I place a page from  
2 the AFC on the overhead projector?

3 HEARING OFFICER FAY: Certainly.

4 (Pause.)

5 HEARING OFFICER FAY: Can we get a  
6 reference, Ms. Churney.

7 MS. CHURNEY: This is table -- it's page  
8 6, it's 6.12-36 from the application for  
9 certification.

10 BY MS. CHURNEY:

11 Q And is this the table that you were  
12 referring to?

13 A Yes, this is the table that is commonly  
14 used to estimate construction impacts and it  
15 establishes commonly held noise emissions factors  
16 for typical construction pieces of equipment.

17 Q It looks from the table that rack drills  
18 are at 98 decibels, is that correct? Maybe it's  
19 rock drills, it's hard to see from here.

20 A It does say rock drills, yes.

21 Q Thank you. And is it your position that  
22 the City of Morro Bay's noise ordinance would  
23 allow 98 decibels?

24 A Yes, it is. But to clarify, I was just  
25 informed that my recollection was faulty and that

1 the foundations to the tanks are not concrete.  
2 They're made of sand, so the whole issue of rock  
3 drills or pavement breakers is irrelevant because  
4 they would not be used for those foundations.

5 Q But wouldn't the rock drills be used for  
6 deconstructing any other concrete elements of the  
7 current plant at some point during the  
8 deconstruction?

9 A Yes, they may be used for the demolition  
10 of the existing turbine hall building. May. I  
11 would think it would be more likely that pavement  
12 breakers, which are noted as 82 dba, would be more  
13 likely to be used for the main turbine hall  
14 demolition.

15 I can't really envision that rock drills  
16 would be used at any point in this project.

17 Q With respect to some of these other  
18 noises listed, do you agree that some of these  
19 noises could be particularly bothersome for those  
20 trying to concentrate or work at that school?

21 MR. ELLISON: Objection, the question is  
22 ambiguous as to the distances involved between the  
23 source of the noise and the receptor.

24 HEARING OFFICER FAY: Sustained. Can  
25 you be more specific so we can quantify this in

1 terms of distances?

2 BY MS. CHURNEY:

3 Q Well, let's use the example of the high  
4 school, and if you have an awareness of the  
5 distance of the high school from the tankfarm site  
6 where the deconstruction would occur, are some of  
7 these sounds going to be bothersome? Or would you  
8 agree that they would be bothersome to students  
9 attempting to concentrate?

10 A Given the distance from the demolition  
11 site at the tankfarm to the Morro Bay High School,  
12 although it's not 2000 feet, you can see in table  
13 6.12-6 that there's a significant reduction in  
14 levels going from the standard 50 feet to 2000  
15 feet.

16 That coupled with the classroom  
17 environment is indoors and the exterior to  
18 interior transmission loss through most school  
19 construction would, in my opinion, reduce the  
20 noise levels from this activity to inaudibility  
21 inside the classroom.

22 Q Is it your testimony that these noises  
23 would never cause a problem for the students at  
24 the Morro Bay High School?

25 A Never? I think that's a little -- I

1 don't subscribe to absolutes, so I can't say  
2 never.

3 Q So, it's fair to say that there will be  
4 some disruption for the students at Morro Bay High  
5 School?

6 A No, I don't believe it is fair to say  
7 that.

8 Q Well, you're not willing to say that  
9 there's never going to be a disruption, so it  
10 would seem that your testimony then is you're  
11 leaving open the possibility that there will be a  
12 disruption. Or might be.

13 MR. ELLISON: Is that a question?

14 MS. CHURNEY: Yes.

15 MR. ELLISON: Could you restate it,  
16 please?

17 BY MS. CHURNEY:

18 Q It is your testimony that there is a  
19 possibility that there will be disruptions for the  
20 students at Morro Bay High School as a result of  
21 these noise levels and activities.

22 A It's my testimony that given the  
23 distance, given the levels involved, given the  
24 shielding by the existing berm, giving the  
25 exterior to interior transmission loss for typical

1 classroom structures, that the likelihood of  
2 disruption or distraction is extremely, extremely  
3 remote.

4 Q On page 57 of your testimony you  
5 indicate that the construction of the new plant,  
6 itself, will have the most intense noise occurring  
7 onsite, and that your analysis shows that  
8 construction noise will be at or slightly above  
9 the existing ambient noise levels in areas close  
10 to the plant.

11 What do you mean in that testimony?  
12 What do you mean by intense?

13 A I'm not finding that particular  
14 citation. Could you -- what line is that, please?

15 Q Let me get the specific line for you.

16 HEARING OFFICER FAY: Yeah, page,  
17 paragraph and line, if you would for us all.

18 MS. CHURNEY: Sure. It's page 57, and  
19 it's the first line.

20 BY MS. CHURNEY:

21 Q The question, to be more specific, is  
22 are you referring to a decibel level? Are you  
23 referring to a quality of noise? What is it?

24 MR. ELLISON: For the record, in my copy  
25 I believe it appears at the bottom of page 56.

1 Are you referring to the sentence, second phase of  
2 construction the installation of the new combined  
3 cycle units will have the most intense noise  
4 occurring onsite? Is that the --

5 MS. CHURNEY: That's correct.

6 MR. ELLISON: -- the reference?

7 MR. MANTEY: I thought it was just me  
8 that couldn't find it. Thank you.

9 MS. HOLMES: In the docketed version of  
10 the testimony, the one with the docket stamp on  
11 it, it is on page 56.

12 HEARING OFFICER FAY: Page 56, bottom  
13 paragraph, about five lines from the bottom.

14 MR. MANTEY: Thank you. What I meant by  
15 the word intense there was level of activity. The  
16 amount of people, the amount of construction,  
17 equipment pieces onsite, the general hubbub of  
18 activity.

19 BY MS. CHURNEY:

20 Q And you also state that at the high  
21 school, along the Embarcadero and along the public  
22 shoreline the construction noise will be lower  
23 than the existing ambient noise levels.

24 Does that mean that no one at the high  
25 school or the Embarcadero or beach will ever hear

1 any of the construction noise above the current  
2 hum of the existing plant?

3 A No.

4 Q How often will the noise levels be  
5 noticeable or detectable?

6 A That cannot be ascertained, in my  
7 opinion. It depends on each person's  
8 perceptibility and threshold. It depends on how  
9 attuned they are to the particular noise sources.  
10 And it very much depends on the level of activity  
11 at any given time during those processes.

12 Q So you can't put a number on what the  
13 LMAX levels of noise will be during this period?

14 MR. ELLISON: That was not his  
15 testimony.

16 BY MS. CHURNEY:

17 Q Well, can you? Can you put a number on  
18 what the LMAX levels of noise will be during this  
19 period?

20 A At what receptor?

21 Q The beach, the Embarcadero and the high  
22 school.

23 MR. ELLISON: And for clarification,  
24 counsel, are you referring to the LMAX levels  
25 predicted for the new project, as opposed to the

1 ambient noise level?

2 MS. CHURNEY: It would be during the  
3 construction, the period during the construction.

4 MR. MANTEY: Well, I believe I  
5 associated predicted noise levels for construction  
6 activities in table 6.12-8, 6.12-9, 6.12-10 and  
7 6.12-11 in the original AFC.

8 BY MS. CHURNEY:

9 Q In table 6.12-8, for example, the column  
10 had a predicted high as to aggregate construction  
11 noise. It's the second from the right, do you see  
12 that?

13 A Yes.

14 Q Is that LMAX levels?

15 A I believe so, predicated on my  
16 recollection that the standardized baseline noise  
17 levels that are shown in table 6.12-6 are LMAX.

18 Q Although you indicate that auguring  
19 technique will be less noisy than the traditional  
20 pile-driving method, you don't indicate in your  
21 testimony what the expected noise levels will be  
22 from auguring. What will that noise level be?

23 A I believe that's given on table NTA3-7  
24 in the noise technical appendix to the AFC, where  
25 it was shown that -- it's called pile driving

1 activities on that particular table. They were  
2 shown to be 95 dba as an aggregate.

3 And then the analysis further on in that  
4 table gave the resultant noise levels at pertinent  
5 receptors throughout the City.

6 And that table also shows that the  
7 foundation activities are 2 db higher than the  
8 pile installation activities.

9 HEARING OFFICER FAY: And that does  
10 reflect the auguring technique rather than the  
11 traditional pile driving technique?

12 MR. MANTEY: Yes, it does.

13 BY MS. CHURNEY:

14 Q And for how long of a period will that  
15 go on?

16 A In conversations with our team members  
17 it appears that those activities for the  
18 anticipated level of pile installation will  
19 proceed for three to four months is our best guess  
20 at this point.

21 Q AFC table 6.12-8 on page 6.12-39  
22 addresses construction noise levels at certain  
23 receptor locations. The column that we had just  
24 looked at that predicted highest aggregate  
25 construction noise column, does that refer to the

1 period when auguring will be occurring?

2 A No.

3 Q What period does that refer to?

4 A That refers to foundation which was  
5 found to be the highest, and therefore the worst  
6 case. Since auguring is anticipated to be 2 db  
7 lower on an aggregate basis that the auguring, if  
8 you want to focus just on the auguring activities,  
9 they would be anticipated to be 2 db less than the  
10 numbers shown in table 6.12-8.

11 Q Could the data that you present or that  
12 is presented on this table be modeled graphically  
13 to demonstrate the curve of the noise under  
14 anticipated construction conditions? For the LAQ,  
15 for example, a graph, the Y axis.

16 MR. ELLISON: Do you understand the  
17 question, Mr. Mantey? Because I don't.

18 MR. MANTEY: No, I don't understand the  
19 format that you're --

20 BY MS. CHURNEY:

21 Q Well, a graph with a Y axis of LMAX  
22 noise level, for example; and an X axis of the  
23 averaging period to show the curve of the noise.

24 A I'm not clear as to what you mean by  
25 averaging period.

1 Q The averaging period for the LAQ.

2 A I'm still not clear as to how that  
3 parameter, I'm not sure what you're trying to  
4 graph there. Sorry.

5 Q I'm going to put up another figure from  
6 the AFC -- it's on page 6.12-21, and it's figure  
7 6.12-6 -- to show you what I'm trying to get at.

8 A Okay, that helps clarify. What you have  
9 there on the X axis is not an averaging period,  
10 it's the actual time history over, in this case,  
11 24 hours at this particular measurement location.

12 Could you please reask your question now  
13 that I have a better sense of what you're trying  
14 to project?

15 Q Could you do the same sort of graphic on  
16 a one-hour basis?

17 MR. ELLISON: I'm sorry, when you say  
18 over a one-hour basis, you mean 60 minutes, the  
19 total graph of one hour, is that what you mean?  
20 Or do you mean a series of hours?

21 MS. CHURNEY: No. Yeah, 60 minutes,  
22 correct.

23 MR. MANTEY: If you're asking if I could  
24 do this on a predictive basis I would say it would  
25 be -- I could, but it would be almost meaningless

1 in that any given construction period, whether  
2 it's an hour or a day, will be different than any  
3 other given construction period.

4 And one plant could potentially be very  
5 different than another plant. So anything that I  
6 could synthesize would be just as right as just as  
7 wrong.

8 Could this kind of a graph be generated  
9 on a measurement basis, yes.

10 BY MS. CHURNEY:

11 Q Also on page 57 of your testimony, and I  
12 think this is now the real 57, regarding the  
13 demolition noise resulting from the removal of the  
14 stacks, you indicate that the noise level for this  
15 stage of construction will be intermittent with  
16 occasional high noise levels associated with the  
17 cutting and breaking process.

18 How often will the occasional high noise  
19 levels occur, for example, during a one-hour  
20 period, or an eight-hour period?

21 A That's difficult to say at this time  
22 because I have no way of speculating how many  
23 actual pieces of breaking equipment will be used;  
24 where they will be oriented and located throughout  
25 the site. There's just too many unknowns and too

1 many variables to be able to definitively say.

2 Q I'm just trying to get an idea for the  
3 residents here in Morro Bay what intermittent  
4 means, and what they can expect during the course  
5 of the construction, and during the course of  
6 these various periods of construction and  
7 demolition.

8 And there's no way to give us a better  
9 idea of what we can expect or what the parameters  
10 might be?

11 A Well, again I refer to the tables that  
12 deal with demolition noise and construction noise.  
13 And the basic premise behind those tables and the  
14 analysis that went into those results assumes a  
15 certain typical or nominal amount of equipment of  
16 a certain type that is consistent with that  
17 construction or demolition activity.

18 And it uses the noise levels for each of  
19 those pieces of equipment, aggregates them as a  
20 whole, and propagates those out to the nearest  
21 receptors.

22 So, at this point, given the information  
23 and the likely distribution of equipment and  
24 activities for each of those construction and  
25 demolition phases, that is our best estimate as to

1 what the noise level will be.

2 Q Also on page 57 of your testimony you  
3 discuss operational noise, and you indicate that  
4 the noise levels at the Embarcadero once the new  
5 plant becomes operational will decrease by 20  
6 decibels from the existing 67 decibels.

7 Are you referring to the LAQ metric or  
8 LMAX or L90?

9 A LEQ.

10 Q What's the existing ambient noise level  
11 at the Embarcadero when the existing plant is not  
12 running? Do you know that?

13 A Table 6.12-14 shows measurement data for  
14 the Embarcadero position both during the daytime  
15 and nighttime. The daytime was measured at  
16 approximately 67, as was the nighttime at  
17 midnight.

18 I do not have in front of me the  
19 operating conditions of the plant when those  
20 measurements were made. So I can't say what the  
21 existing plant was doing at that period.

22 Q Is it on the table that's on the  
23 overhead projector currently?

24 A No. That is at the Radcliff and Berwick  
25 location, which is the hillside across the highway

1 overlooking the plant site.

2 Q Is there a line on that graphic for  
3 operations?

4 A No, that graph is measurement data of  
5 existing conditions; existing ambient at the time  
6 those readings were taken, which I believe was the  
7 summer of 1999. I'm sorry, January 1999.

8 Q If the Embarcadero ambient noise  
9 currently is at 67 decibels, both day and night,  
10 as indicated in the AFC at page 6.12-55, would  
11 there, in fact, be an overall reduction in ambient  
12 noise to 46 decibels at the Embarcadero with the  
13 new plant, night and day?

14 A Where did you get the 46 number?

15 Q Okay. I believe the same site in the  
16 AFC indicates that the existing plant running at  
17 only 10 percent capacity at night.

18 A I'm sorry, where are you looking to find  
19 that 10 percent capacity?

20 Q On page 6.12-55 you'll see the reference  
21 to the 44 decibels, first of all. Do you see  
22 that?

23 A Yes, I see it says predicted project  
24 contribution of approximately 44.

25 Q Right.

1           A     I believe you said 46 earlier, which is  
2     what threw me.

3           Q     Yeah, I'm sorry, I misspoke earlier. It  
4     is 44. On page -55 it refers to the part, but  
5     then going to page 57 there is a reference to 46,  
6     actually, again for the park.

7           A     The 46 is with respect to Coleman Park,  
8     which is a little further down Embarcadero, just  
9     past the curve as you head towards Morro Rock.  
10    That's not the same location as the Embarcadero  
11    position, which is right across the street from  
12    the existing plant.

13          Q     Okay. Turning to page 58 of your  
14    testimony in the fourth bullet point, is the  
15    improvement that's referenced referred to in  
16    nighttime noise entirely related to reduced  
17    annoyance from the fan whine or the transformer  
18    hum? Or are you referring to some other  
19    reduction?

20          A     That bullet point was intended to  
21    address more the perceptual impressions of local  
22    nearby residences to the project site, as opposed  
23    to talking purely about the amplitude numbers of  
24    the predicted project results.

25                    So I was trying to give a sense of the

1 noise quality with the respect to the comparison  
2 between the existing plant and the new plant. How  
3 the new plant will be absent of the tonal  
4 components that have bothered the residences from  
5 the existing plant heretofore.

6 Q Because of the anticipated levels of  
7 operation of the new plant at 90 percent, will the  
8 overall sound levels at night be similar to or  
9 higher than the existing levels when capacity  
10 generally drops to 10 percent?

11 MR. ELLISON: Objection, both of the  
12 capacity levels for both the new plant at 90  
13 percent, and the existing plant at 10 percent, do  
14 not reflect this testimony, nor any testimony in  
15 this proceeding.

16 HEARING OFFICER FAY: Sustained.

17 BY MS. CHURNEY:

18 Q Do you know what the typical or normal  
19 operating capacity of the existing plant currently  
20 is at nighttime?

21 A Not definitively. I have a general  
22 sense from my discussions with plant personnel.

23 Q And what is that?

24 A That it typically goes to a low level of  
25 background operations just to maintain heat and

1 energizing of electrical equipment in anticipation  
2 of ramping up the following morning when the  
3 demand calls for increased production.

4 Q Well, given that knowledge, do you have  
5 an opinion as to whether with the new plant it can  
6 be expected that nighttime levels will, in fact,  
7 exceed current noise levels for the old plant?

8 A I think the AFC shows that at some  
9 locations the noise levels may be expected to be 1  
10 or 2 db higher than the existing plant. But again  
11 that incremental increase would not be anticipated  
12 to be perceptible.

13 And more importantly, the levels that  
14 are projected for the proposed plant are within  
15 compliance of both the City's noise element and  
16 the CEC's significance criteria.

17 Q What levels of operation were assumed in  
18 making that assessment?

19 A Full load, full capacity generation of  
20 electricity.

21 Q A hundred percent capacity?

22 A Hundred percent.

23 Q Regarding conditions of certification  
24 NOISE-6 and issue 1, which is on page 58, Duke is  
25 requesting that the term legitimate be deleted.

1 Would Duke object to language that refers  
2 generally to any complaint that is due to noise  
3 from project activity?

4 MR. ELLISON: I'm sorry, counsel, you're  
5 referring to issue 1 under NOISE-6, is that  
6 correct?

7 MS. CHURNEY: Yes.

8 MR. ELLISON: We are not proposing that  
9 the word legitimate be deleted. We are simply  
10 proposing that legitimate complaint be modified  
11 with the language as determined by the CPM.

12 MS. CHURNEY: Okay, thank you.

13 BY MS. CHURNEY:

14 Q On page 59 of your testimony you refer  
15 to condition 4. Hasn't Duke provided evidence  
16 that with the silencer the anticipated noise level  
17 of the steam blow should be no more than 40  
18 decibels?

19 A The AFC mentions that silencing could  
20 reduce those noise levels to 40, on the order of  
21 40 dba at those receptors.

22 Q So shouldn't this condition likewise be  
23 set at 40 decibels rather than 70?

24 A No. Because the pertinent requirement  
25 is in the Morro Bay noise element, and deals with

1 maximum noise level of 70 dba. Because these  
2 steam blow activities are not continuous, they are  
3 not subject to the continuous noise limitations in  
4 the noise element. They're subject to the maximum  
5 noise level limitations which are 70 dba during  
6 the daytime and 65 at night.

7 Q Even with the silencer and steam blows  
8 at 40 decibels, can these be heard above higher  
9 ambient levels given their more louder intrusive  
10 nature?

11 MR. ELLISON: I'm sorry, I object to the  
12 question as ambiguous. Could you restate the  
13 assumptions that you've made here? A silencer;  
14 dba's at 40?

15 MS. CHURNEY: Right.

16 BY MS. CHURNEY:

17 Q Can it be heard above ambient noise?

18 HEARING OFFICER FAY: And how about  
19 locating ambient to just try to focus this a  
20 little more. Can you give us an example of  
21 ambient where?

22 MS. CHURNEY: The closest receptor.

23 MR. MANTEY: I think the AFC  
24 measurements at Scott Street, for example, which  
25 is one of the nearest permanent residential

1 receptors, shows that the ambient there is on the  
2 order of mid 40s.

3 So if these steam blow activities were  
4 silenced to the same mid 40s it would be  
5 comparable to the existing ambient at that  
6 location.

7 BY MS. CHURNEY:

8 Q So it won't be detectable at all above  
9 existing noise levels?

10 A It may be detectable in that it's a  
11 different sound than what the typical ambient is  
12 at that location, which I would think would be  
13 partly urban, just general urban noise and partly  
14 Highway 1 traffic noise. So somebody may be able  
15 to discern it because it's a different type of  
16 noise; it has a different sound quality than the  
17 typical exiting environment.

18 Q On pages 59 through 60 of your  
19 testimony, and again the page numbering may be  
20 slightly off, but it's in that general vicinity,  
21 you indicate that Duke believes that NOISE-8 is  
22 too restrictive compared to Moss Landing.

23 What are the respective population  
24 levels within a two-mile radius of Moss Landing  
25 and the new Morro Bay Power Plant? I mean how do

1 they compare, if you know?

2 A I do not know that.

3 Q Do you know how the character of the  
4 surrounding communities differs with the two  
5 locations, Moss Landing and Morro Bay?

6 A What do you mean by character?

7 Q Well, are there more residences, for  
8 example, in and around the Morro Bay Power Plant  
9 as compared to Moss Landing?

10 A Yes, there are.

11 Q And do you know whether the topography  
12 is the same or dissimilar?

13 A By my recollection I believe that Moss  
14 Landing is a bit flatter than Morro Bay.

15 Q Both the FSA part one, and the AFC at  
16 page 6.12.2.3 discuss three or four types of steam  
17 discharges from the new power plant.

18 First, during the commissioning and the  
19 initial startup phase, Duke describes the  
20 commissioning and startup steam blows that must be  
21 done to rid the new turbines of accumulated  
22 construction waste.

23 It's this type of steam blow that lasts  
24 two or three weeks, I believe, according to the  
25 testimony. That Duke is agreeing to use a

1 temporary silencer, is that correct?

2 A Yes, they are.

3 Q And just --

4 MR. ELLISON: Counsel, let me ask you a  
5 question. When you say the steam blows last two  
6 or three weeks, you mean episodically during that  
7 period?

8 MS. CHURNEY: It's during that period of  
9 time.

10 MR. ELLISON: Just wanted to be clear.

11 MS. CHURNEY: I would hate to think of a  
12 two- to three-week steam blow.

13 (Laughter.)

14 BY MS. CHURNEY:

15 Q Just to be clear, what is the decibel  
16 level without the silencer for these types of  
17 steam blows?

18 A I stated that noise levels unsilenced  
19 from the discharge end of these pipe runs under  
20 steam blow conditions can be 100 to 110 dba at 10  
21 to 12 feet. And that's kind of just a typical  
22 number for that kind of activity.

23 Q And how does that compare to steam blows  
24 with the current plant?

25 A Totally unrelated because what you're

1 asking is in terms of line-cleaning steam blows.  
2 And your last question was with respect to normal  
3 operation steam discharges. So they're apples and  
4 oranges.

5 Q So you're saying that the sound quality  
6 or the level is not comparable? I'm just trying  
7 to --

8 A The sound quality would be similar just  
9 because it's high pressure steam venting directly  
10 to atmosphere. But the level is certainly not  
11 comparable.

12 Q Okay, so it would be lower then?

13 A What would be lower? Sorry.

14 Q The steam blows with respect to using  
15 the temporary silencer for the new plant.

16 HEARING OFFICER FAY: Would be lower  
17 than?

18 MS. CHURNEY: The current -- see, I'm  
19 just trying to establish for the residents, who  
20 are fairly familiar with steam blows that occur  
21 periodically with respect to the old plant, I'm  
22 trying to clarify what it's going to sound like  
23 with, you know, compared to that.

24 MR. MANTEY: I do not believe that I  
25 have any data on what the steam releases from the

1 current plant are at the various receptor  
2 locations. So I can't really contrast that with  
3 the information I have.

4 BY MS. CHURNEY:

5 Q Also during this period there may be  
6 what are referred to as trip releases, is that  
7 correct?

8 A Um-hum, yes.

9 Q What are the decibel levels that may  
10 occur from these types of releases? And, again,  
11 if you have the data or information, will they be  
12 similar or dissimilar to levels of trip releases  
13 for the existing plant?

14 A Again, the sound quality would be  
15 similar, but I can't comment definitively on a  
16 comparison in the levels. I can say that from my  
17 understanding of the current proposed project and  
18 the steam system, and the releases of the steam  
19 system, that there will be fewer vent openings and  
20 less steam in general that will be discharged from  
21 the proposed plant as compared to the existing  
22 plant.

23 And that's for two reasons, one of  
24 which, it's a more modern plant, and there's  
25 better controls on where the steam goes and where

1 it shouldn't go.

2 And the second reason is with modern  
3 design of this kind of facility you do everything  
4 you can to prevent steam from going away. That's  
5 a valuable commodity and you hold onto it.

6 So there'll be less -- in general there  
7 should be less vents and steam discharge with the  
8 proposed plant compared to the existing plant.

9 Q With respect to the unvented steam blows  
10 that you just mentioned, can these unsilenced  
11 ventings be heard throughout Morro Bay? Is it  
12 anticipated that they'll be able to be heard  
13 throughout the City?

14 A If they were unsilenced, yes, they  
15 potentially could be. But they will be silenced.

16 Q What about the emergency ventings?

17 A Emergency discharge vents are safety  
18 relief vents and are typically not silenced  
19 because of safety concerns. If you put a silencer  
20 on that kind of a vent, you will be potentially  
21 defeating the safety aspects of it, and it may not  
22 operate properly.

23 Because of that, and because of the  
24 amount of steam that could potentially go through  
25 in an emergency situation, the noise levels from

1 such a vent could be quite loud. And, yes, could  
2 be potentially heard throughout the community.

3 But, again, with a modern plant like  
4 this, and the design and process controls that are  
5 in place for this kind of a plant, the likelihood  
6 of an emergency situation that would require that  
7 kind of large stem vent to the atmosphere is very  
8 very low.

9 Q The AFC also discusses steam blows  
10 during normal operations including planned steam  
11 vents, discharges limited to controlled startups.  
12 How many of these controlled startups are  
13 permitted each year per turbine?

14 A I'm not familiar with the exact numbers  
15 of that. Somebody else on the team would be a  
16 better candidate to ask that question to.

17 Q So you don't recall what you used in  
18 your modeling in that regard?

19 MR. ELLISON: That was not what he  
20 testified to. You mentioned an AFC, or reference  
21 to AFC. Could you give us a citation on what  
22 you're looking at, please?

23 MS. CHURNEY: We'll look for that. In  
24 the meantime I'll continue.

25 HEARING OFFICER FAY: Ms. Churney, --

1 MS. CHURNEY: Yes.

2 HEARING OFFICER FAY: -- let me just ask  
3 you, you estimated half an hour of cross-  
4 examination, and --

5 MS. CHURNEY: Right, and I'm --

6 HEARING OFFICER FAY: -- we're beyond  
7 that. Can you give us an idea of how much more  
8 you have?

9 MS. CHURNEY: A few more questions.

10 HEARING OFFICER FAY: A few more  
11 questions.

12 MS. CHURNEY: I'll try to consolidate  
13 them, and --

14 HEARING OFFICER FAY: Okay.

15 MS. CHURNEY: -- move through quickly.

16 Thank you.

17 BY MS. CHURNEY:

18 Q The third type of steam blows mentioned  
19 in the AFC is the emergency events that you have  
20 dealt with a little bit.

21 What are the anticipated maximum noise  
22 levels expected from these vents, do you know?

23 A In the technical appendix of the AFC I  
24 believe it mentions 110 to 130 potential, dba  
25 potentially, 10 to 12 feet from vent openings for

1 safety relief vents.

2 Q Okay. And going back to my prior  
3 question, we have found the reference in the AFC  
4 that we were looking for. And it's page 6.12-58,  
5 paragraph two. And it's the first sentence.

6 A Okay, could you repeat your question  
7 with respect to that?

8 Q Yes. What did your model assume in  
9 terms of the number of startups?

10 A Number of startups is not included in  
11 the modeling process. The modeling process only  
12 includes noise sources and their emissions  
13 factors. And how those noise emissions propagate  
14 out into the community.

15 Q How loud will these startups be per  
16 turbine, do you know, at the highest receptor  
17 area?

18 A I'm sorry, you're talking about startup  
19 vents?

20 Q Yes.

21 A I believe I used a factor of 100 to 110  
22 dba at 10 to 12 feet for a trip-related steam  
23 vent, which is the factor that would be used for  
24 startup conditions.

25 Q And what if two turbines were in the

1 startup mode at the same time, would there be a  
2 cumulative effect?

3 MR. ELLISON: Actually, let me ask, Ms.  
4 Churney's prior question asked about the nearest  
5 receptor. And, Mr. Mantey, I believe your answer  
6 was the dba level at 10 to 12 feet. Am I correct?

7 MR. MANTEY: Yes, that's what I  
8 answered. I was talking about the baseline noise  
9 emissions for that particular noise source. I was  
10 not talking about what the projected noise would  
11 be at any given receptor.

12 MR. ELLISON: Okay, just wanted to be  
13 clear.

14 BY MS. CHURNEY:

15 Q And did your model include the worst  
16 case combination of overall startup and operating  
17 noise it did, according to your model?

18 A No. The modeling was for steadystate  
19 normal operations at full load.

20 Q If there were two turbines in startup  
21 mode at the same time, is there a cumulative  
22 effect on the noise levels?

23 HEARING OFFICER FAY: Can we first  
24 determine that that is a feasible scenario?

25 MS. CHURNEY: The FDOC does allow two

1 turbines starting up at the same time.

2 HEARING OFFICER FAY: All right.

3 MR. MANTEY: In consultation with people  
4 that are more familiar with the operations of the  
5 plant, they inform me that typically you would  
6 bring one turbine up at a time and get it  
7 stabilized before you start bringing up subsequent  
8 trains.

9 So I guess the answer to your question  
10 is it's unlikely that you would be in that  
11 scenario of having two coming up at the same time.

12 BY MS. CHURNEY:

13 Q Did your analysis include looking at  
14 that possibility?

15 A No.

16 Q On page 6.12-59 of the AFC  
17 meteorological conditions are discussed. What  
18 conditions result in the loudest effect?

19 A Over a consistent, long-term basis, the  
20 conditions that were used in the model would  
21 result in the loudest noise levels. Those  
22 conditions are standard day conditions under  
23 stable atmospherics.

24 Q What about at night?

25 A Again, the stable atmospherics is

1 probably the most important variable in that  
2 determination.

3 Q Well, for example on nights when there's  
4 heavy fog is it possible that the residents will  
5 not hear the plant at all? But on other nights  
6 the noise level will be particularly loud?

7 A It is possible on a night-by-night or  
8 day-by-day basis under certain weather conditions  
9 that you can have lower noise levels and you can  
10 have higher noise levels that are shown in the  
11 analysis. But those are intermittent and short  
12 term and were not considered in the analysis  
13 because they're not consistent, and they're not  
14 long term as required by a CEQA analysis.

15 Q On what basis are adverse health impacts  
16 from noise felt? For example, only over a long  
17 averaging period, or can specific one-night  
18 levels, if sleep is disrupted, do you know?

19 MR. ELLISON: Objection, ambiguous.

20 HEARING OFFICER FAY: Sustained. Can  
21 you tighten that up?

22 BY MS. CHURNEY:

23 Q What types of adverse health effects can  
24 result from noise impacts, short term and long  
25 term?

1                   MR. ELLISON:  Again, I'd have to object  
2                   on the basis that, you know, the question is broad  
3                   and ambiguous.  I don't know what noise you're  
4                   referring to.  I don't know what receptor you're  
5                   referring to.  I don't know the quality of the  
6                   noise you're referring to.  I don't think that  
7                   question can be answered in that broad way.

8                   HEARING OFFICER FAY:  I think we are  
9                   going to have to have more specificity, since  
10                  noise is a very broad topic.

11                  BY MS. CHURNEY:

12                  Q     Is there a parameter where noise at some  
13                  point disrupts sleep?

14                  MR. ELLISON:  Are you referring to the  
15                  noise from this project, as projected?  Or just --

16                  MS. CHURNEY:  The type of noise.

17                  MR. ELLISON:  -- is there any level of  
18                  noise --

19                  MS. CHURNEY:  No, the type of noise that  
20                  could be anticipated from this project.

21                  MR. ELLISON:  And the amplitudes  
22                  anticipated from this project at the nearest  
23                  receptor.  These things are important.

24                  MS. CHURNEY:  Yeah, I'd prefer the more  
25                  general response, but --

1 HEARING OFFICER FAY: Well, let's focus  
2 it by location. At the nearest receptor. And do  
3 you have the question in mind, or do you need to  
4 hear it again?

5 MR. MANTEY: I'll take a stab at it. I  
6 believe that the Morro Bay noise element  
7 restrictions are predicated on resulting in a  
8 community noise environment that is beneficial to  
9 the residents thereof.

10 And that the generation of that noise  
11 element took into account noise levels and the  
12 quality of the sounds for potential projects that  
13 might be developed under the restrictions of that  
14 noise element to include protecting the sleep  
15 disturbance and functionality of working  
16 environments, and efficacy of training at the  
17 nearby schools into account when that noise  
18 element was generated.

19 So since the plant is compliant with  
20 that noise regulation I would not expect there  
21 would be significant noise disturbance issues from  
22 the proposed project.

23 BY MS. CHURNEY:

24 Q But you have stated --

25 HEARING OFFICER FAY: Ms. Churney, let

1 me just ask. You said a couple more questions.  
2 We've gone considerably beyond that. Can you --

3 MS. CHURNEY: Okay, if I could just --

4 HEARING OFFICER FAY: -- tell me when  
5 you're going to wrap it up?

6 MS. CHURNEY: I'll attempt to wrap it up  
7 now. I just would like to follow through on this  
8 because I think this is important to residents.

9 BY MS. CHURNEY:

10 Q You stated that on some nights it will  
11 be higher, some nights lower. So there is an  
12 averaging that I think your response implicitly  
13 assumes.

14 The AFC states that noise begins to  
15 disrupt sleep at 45 -- I'm sorry, the FSA states  
16 that noise will have some effect and begin to  
17 disrupt sleep at 45 decibels.

18 And I am just attempting to pinpoint, I  
19 mean when you say that on some nights it's going  
20 to be louder and some nights less so, where it's  
21 going to fall, and whether it's going to be  
22 disrupting sleep at the nearest receptor.

23 MR. ELLISON: Objection on several  
24 bases. First of all, it's not a question. It's a  
25 statement. Secondly, it's an incorrect statement

1 of his testimony. He did not say that he  
2 averaged. What he said was he used the weather  
3 conditions that resulted in the greatest noise  
4 impact over time.

5 So I'm going to have to ask that there  
6 be a question, and that it be restated. And not  
7 simply some mischaracterization of his testimony.

8 HEARING OFFICER FAY: Yeah, sustained.  
9 Can you focus your question on -- and I understand  
10 your concern, and frankly I think it's a  
11 legitimate concern, the community's concern about  
12 being able to sleep at night during operation of  
13 the proposed project.

14 And, Mr. Mantey, can you address that  
15 matter? Will the people at the nearest receptor  
16 location be able to sleep at night given the  
17 estimated 45 db level where sleep can be  
18 disturbed, and given your knowledge of plant  
19 operating noise levels?

20 MR. MANTEY: I'm not sure where it says  
21 in the FSA that 45 will result in sleep  
22 disturbance.

23 BY MS. CHURNEY:

24 Q It's at appendix A, noise. And it's  
25 above 45 dba.

1           A     You're talking about the third paragraph  
2     on page 3.3-27 of the FSA?

3           Q     Yes.

4           A     That says noise levels above 45 dba at  
5     night can result in the onset of sleep  
6     interference effects, and the citation is USEPA  
7     1971.

8           Q     That's correct.

9           A     The inherent premise of that statement  
10    is 45 in the bedroom. We are predicting levels  
11    below 45 at the residential receptors on the  
12    exterior of the houses.

13                    So when you take into account, even with  
14    windows open in the summertime, trying to get a  
15    breeze through, if you take into account the  
16    transmission loss going from outside to inside,  
17    even with windows open, you can reduce the plant  
18    contributions by at least 15 db.

19                    So if we're predicting 45 on the outside  
20    and the plant contribution would be on the order  
21    of 30 on the inside, roughly, and that is well  
22    below the 45 that's cited here for sleep  
23    disturbance.

24           Q     And does that mean that residents will  
25    never be woken up as a result of the new plant no

1 matter what the weather conditions are?

2 A I'm sorry, again you're asking for  
3 absolutes that I can't say never. But I would say  
4 in all likelihood, with the design of the plant,  
5 they will rarely hear it. And even more rarely  
6 have the opportunity to be woken by it.

7 HEARING OFFICER FAY: Okay, we're going  
8 to take a ten-minute break now for our court  
9 reporter. At least we blame him for the need for  
10 breaks.

11 (Laughter.)

12 HEARING OFFICER FAY: So we'll return  
13 here in ten minutes.

14 (Brief recess.)

15 HEARING OFFICER FAY: Let's go back on  
16 the record. Mr. Ellison, do you have any  
17 redirect?

18 MR. ELLISON: Yes, I do.

19 REDIRECT EXAMINATION

20 BY MR. ELLISON:

21 Q Mr. Mantey, you were asked a question  
22 concerning the existing plant's violation of the  
23 City noise ordinance, do you recall that?

24 A Yes, I do.

25 Q Is the existing plant subject to the

1 noise ordinance?

2 A I do not believe that it is, because the  
3 existing plant has been in operation since the mid  
4 1950s, whereas the pertinent regulation here is  
5 the City of Morro Bay noise element which was  
6 adopted in 1993, nearly 40 years later.

7 Q You were also asked a question regarding  
8 your proposed change to condition of certification  
9 NOISE-8, and the comparison to the Moss Landing  
10 conditions, do you recall that?

11 A Yes.

12 Q Is your basis for the change that you'd  
13 like to see in NOISE-8 solely the comparison to  
14 Moss Landing?

15 A No, it's not. The comparison with Moss  
16 landing is a minor point. The main point there  
17 with the proposed change is to be consistent with  
18 the City of Morro Bay Municipal Code that  
19 regulates construction activities from 7:00 a.m.  
20 to 7:00 p.m.

21 Q You were also asked some questions  
22 concerning the fact that the existing plant tends  
23 to ramp down operations at night, do you recall  
24 that?

25 A Yes.

1           Q     Can you compare the noise from the  
2     proposed project at full load, 100 percent load,  
3     to the noise of the existing project when it is  
4     ramped down at night?

5           A     In general, at the residential receptors  
6     that were analyzed the noise from the full load  
7     proposed plant at night will be imperceptibly  
8     louder than the existing plant when it's at ramp  
9     down low load.

10          Q     So would it be fair to say that at the  
11     receptors that you referred to the citizens will  
12     not be able to tell the difference between full  
13     load operation of the proposed plant at night  
14     compared to the ramped down existing plant at  
15     night?

16          A     Yes, that is correct.

17          Q     You were also asked a couple of  
18     questions about the health effects of noise.  
19     Based on your analysis, in your professional  
20     opinion, will the citizens of Morro Bay -- will  
21     the health of the citizens of Morro Bay be  
22     adversely affected by noise from the proposed  
23     project?

24          A     No.

25          Q     You were asked a question regarding

1 sleep disturbance. Based on your analysis and  
2 your professional opinion, will the sleep of the  
3 citizens of Morro Bay be disturbed by the noise  
4 from the proposed project?

5 A No.

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

8 MS. CHURNEY: If I could just have one  
9 follow up question, then?

10 HEARING OFFICER FAY: Just a moment.  
11 Any recross, Ms. Holmes, within the scope? The  
12 City?

13 MR. ELIE: No questions.

14 HEARING OFFICER FAY: Okay, Coastal.

15 RECCROSS-EXAMINATION

16 BY MS. CHURNEY:

17 Q You indicated that with the new plant it  
18 will be imperceptibly noisier than the existing  
19 plant ramped down at night. So it will be  
20 noisier. Is it fair to say, then, that those  
21 residents who are disturbed by the current plant  
22 at night then will be disturbed or will hear the  
23 same noise level or have the same effect with the  
24 new plant as with the current?

25 A No. Primarily because the quality of

1 the noise will be different between the two  
2 plants. And that's primarily owing to the lack of  
3 tonal components in the proposed plant as compared  
4 to the existing plant.

5 I believe it's the tonal components of  
6 the existing plant are the prime contributors to  
7 the annoyance factor in the local residences.

8 Q So even though it will be noisier, it's  
9 your professional opinion that those who are  
10 disturbed at night currently with the old plant  
11 will not be disturbed with the new plant?

12 MR. ELLISON: Objection, the question  
13 misstates his testimony. He did not testify that  
14 it will be noisier. Quite to the contrary, he  
15 testified that it would not be noisier.

16 MS. CHURNEY: No, his words were that it  
17 would be imperceptibly noisier.

18 MR. ELLISON: And I think the  
19 characterization noisier does not capture the  
20 imperceptibly portion of his testimony.

21 HEARING OFFICER FAY: Okay, we'll  
22 acknowledge that. Can you rephrase the question?

23 BY MS. CHURNEY:

24 Q Will, in your professional opinion, will  
25 those who are disturbed by the current plant at

1 night no longer be disturbed at night when the new  
2 plant comes into operation?

3 A I can't say because there's so many  
4 psychological effects and subjective impressions  
5 that come into play there.

6 MR. ELLISON: For the record, although  
7 the witness answered the question, I would object  
8 to it on the basis that it assumes that there are  
9 people that are disturbed now. There's no  
10 evidence of that.

11 MS. CHURNEY: No further questions.

12 HEARING OFFICER FAY: All right. I'm  
13 going to exercise some Committee prerogative and  
14 ask a few questions of the witness that may be  
15 beyond the scope of the redirect.

16 Can you, Mr. Mantey, tell me with the  
17 situation proposed by you regarding the steam  
18 blow, if no commercial silencer is available, what  
19 then would be the proposal for reducing sound from  
20 the steam blow?

21 MR. MANTEY: Although not explicitly  
22 stated, the background assumption there is that  
23 Duke would use the most efficient and most  
24 effective commercially available silencer for that  
25 particular application in terms of the pressures

1 and the flow velocities.

2 So they would quiet it as much as they  
3 could with a commercially available silencer unit.

4 HEARING OFFICER FAY: I see, so it does  
5 not mean there would not be a silencer used, it  
6 just may not achieve 70 dba, is that correct?

7 MR. MANTEY: That is correct. The  
8 applicant has committed to using temporary  
9 silencers for that application.

10 HEARING OFFICER FAY: And am I correct  
11 in reviewing your testimony on the bottom of page  
12 56 and the top of page 57 you talk about lower  
13 than existing, the construction and demolition  
14 noises being lower than existing ambient noise  
15 levels.

16 Could you explain in lay terms what the  
17 difference is between perhaps measured levels that  
18 you would use for your analysis and the sounds  
19 that people perceive at say the nearest receptor?

20 In other words, is it more of an average  
21 when you set these levels, as opposed to the  
22 distinct sounds that might be generated during  
23 demolition and construction?

24 MR. MANTEY: I'll answer part of that,  
25 and then maybe I'll need some clarification.

1                   The construction noise impact is  
2                   predicated not on an average, but on a reasonable  
3                   estimation of the number and types and usage of  
4                   typical construction equipment as best defined for  
5                   each phase.

6                   So in that respect it's an effective  
7                   maximum analysis for each phase and each location  
8                   of construction and demolition activities.

9                   I'm not sure I addressed everything in  
10                  your question.

11                  HEARING OFFICER FAY: So, there's some  
12                  evaluation of the equipment that's anticipated to  
13                  be used during that phase, and then you crank in  
14                  the higher sound levels of that equipment, is that  
15                  correct?

16                  MR. MANTEY: Yes. We take into account  
17                  the expected number of each type of equipment. We  
18                  take the standardized look-up tables for the noise  
19                  emissions factors for each of those types of  
20                  equipment. And we incorporate the usage factors  
21                  for those equipment that, again, from a  
22                  standardized look-up table.

23                  And you fold all that into getting an  
24                  aggregate number for construction activities at  
25                  that location. And you take that number and

1 project it out into the community.

2 So that is, to the best of my knowledge,  
3 the most efficient and accurate way of predicting  
4 construction noise impacts given the variable  
5 nature of construction activities.

6 HEARING OFFICER FAY: And just one more  
7 reference question. Can you give us an idea of  
8 the sound level difference between traditional  
9 pile-driving techniques and the auguring  
10 techniques that are proposed?

11 MR. MANTEY: On an amplitude basis it's  
12 on the order of 15 db quieter for auguring. But  
13 probably more importantly than just the amplitude  
14 is the quality of the sound, rather than the -- I  
15 think we've all somewhere in our experience heard  
16 the ka-thump, ka-thump, ka-thump of pile driving  
17 activities. You won't have that in that auguring  
18 is more of a diesel engine noise, and it's more  
19 continuous.

20 So, taking away that intermittent  
21 periodicity of the pile driving will take away some  
22 of the annoyance factor from that type of  
23 activity.

24 So it's both a reduced level and a  
25 reduced annoyance because of the type of sound

1 that's involved.

2 HEARING OFFICER FAY: Okay, thank you.

3 Mr. Ellison, any further follow up?

4 FURTHER REDIRECT EXAMINATION

5 BY MR. ELLISON:

6 Q I just wanted to clarify that the  
7 reduction that you just testified to from  
8 auguring, did you say 5-0, fifty, or 15?

9 A Fifteen, 1-5.

10 Q One-five, and is there a distance  
11 associated with that?

12 A Any distance.

13 MR. ELLISON: Okay.

14 HEARING OFFICER FAY: Okay.

15 MS. CHURNEY: Hearing Officer Fay, if I  
16 just might have one question. We have two  
17 rebuttal witnesses. I don't know whether this is  
18 the proper time, or you'd prefer to wait until  
19 later, to call them.

20 However, one of these witnesses cannot  
21 stay for much longer. And it's on the sole issue  
22 of the current noise level of the old plant.

23 HEARING OFFICER FAY: Okay, let's go off  
24 the record a minute.

25 (Off the record.)

1                   HEARING OFFICER FAY: Back on the  
2 record. Why don't you state your objection.

3                   MR. ELLISON: We object to the  
4 presentation of these rebuttal witnesses. We  
5 understand that the issue that they would address  
6 is the comparison of the existing plant noise  
7 levels to the new plant noise levels. That is not  
8 a new issue. It is the issue that has  
9 fundamentally been on the table in noise from the  
10 very outset.

11                   And to argue that somehow this is  
12 rebuttal testimony, I think, is incorrect. I  
13 think what we have here is surprise testimony on  
14 the very easily anticipated issue of noise that  
15 should have been prefiled.

16                   MS. CHURNEY: No, that's a  
17 mischaracterization of why we called these  
18 witnesses. It's on the sole issue of the noise  
19 level at night of the old plant. And whether  
20 there are complaints, whether it wakes up  
21 residents at night.

22                   And you objected to this line of  
23 questioning. One of your objections was there's  
24 no evidence that the old plant disturbs the sleep  
25 of residents at night. This is solely to respond

1 to that.

2 MR. ELLISON: So the testimony is  
3 limited clear -- just to the existing plant?

4 MS. CHURNEY: That's correct.

5 MR. ELLISON: And whether there is any  
6 disturbance from the existing plant from any  
7 residents at night?

8 MS. CHURNEY: Correct.

9 HEARING OFFICER FAY: And in that  
10 limited way, then, do you withdraw your objection?

11 MR. ELLISON: Are these witnesses going  
12 to testify as to their personal experience?

13 MS. CHURNEY: Yes.

14 MR. ELLISON: Okay, withdraw the  
15 objection.

16 HEARING OFFICER FAY: Okay, fine. And  
17 are you prepared to go ahead, Ms. Churney?

18 MS. CHURNEY: Yes.

19 HEARING OFFICER FAY: Okay.

20 MS. CHURNEY: I would call Joan Carter  
21 as a witness.

22 HEARING OFFICER FAY: Please stand and  
23 be sworn as a witness.

24 //

25 //

1 Whereupon,

2 JOAN CARTER

3 was called as a witness herein, and after first  
4 having been duly sworn, was examined and testified  
5 as follows:

6 DIRECT EXAMINATION

7 MS. CARTER: My name is Joan Carter,  
8 J-o-a-n C-a-r-t-e-r.

9 BY MS. CHURNEY:

10 Q Ms. Carter, could you please state where  
11 you live?

12 A I live at 935 Pacific Street in the  
13 Morro Heights area of the City.

14 Q And approximately how far is that from  
15 the power plant?

16 A I was just thinking about it, it's got  
17 to be about a mile, maybe more.

18 Q And how long have you lived at that  
19 location?

20 A Three years.

21 Q Has your sleep at night ever been  
22 disturbed by the current power plant in town?

23 A I know when I wake up at night, which is  
24 every night, I think about that. And I listen, I  
25 can hear the plant. And I can't say for sure that

1 is indeed what woke me up, but I do know that it  
2 is a noise in the night that I hear.

3 Q And does it prevent you from falling  
4 back to sleep or --

5 A Generally what I do is I turn on the  
6 radio or I do some distracting noise, you know,  
7 just so I won't hear it.

8 Q And how often does that occur?

9 A Almost every night. I do have an  
10 upstairs bedroom, and I do live in the Heights, so  
11 the noise goes up.

12 Q And just for the Committee's sake, could  
13 you describe what part of town the Heights is  
14 located in?

15 A Well, it's right off of Morro Bay  
16 Boulevard and Kern, which is right at that  
17 entranceway where you come into Morro Bay.

18 Q So that's --

19 A And I live about two blocks from that  
20 entrance.

21 Q It's located, your residence is in south  
22 Morro Bay, is that correct?

23 A Right.

24 MS. CHURNEY: I have no further  
25 questions.

1 HEARING OFFICER FAY: All right. Are  
2 you interested in cross-examining the witness, Mr.  
3 Ellison?

4 MR. ELLISON: I have one question.

5 HEARING OFFICER FAY: Okay.

6 CROSS-EXAMINATION

7 BY MR. ELLISON:

8 Q Given what you just testified to, would  
9 you prefer to see a quieter plant compared to the  
10 existing plant?

11 A Well, yes.

12 MR. ELLISON: That's all I have.

13 HEARING OFFICER FAY: Okay. Staff?

14 MS. HOLMES: No questions.

15 HEARING OFFICER FAY: The City?

16 MR. ELIE: No questions.

17 HEARING OFFICER FAY: All right. Any  
18 redirect?

19 MS. CHURNEY: No, thank you.

20 HEARING OFFICER FAY: All right, thank  
21 you very much, Ms. Carter.

22 And you have another witness?

23 MS. CHURNEY: Yes, I'd like to call  
24 Betty Winholtz.

25 //

1       Whereupon,

2                               BETTY WINHOLTZ

3       was called as a witness herein, and after first  
4       having been duly sworn, was examined and testified  
5       as follows:

6                       MS. WINHOLTZ: My name is Betty  
7       Winholtz. My last name is spelled  
8       W-i-n-h-o-l-t-z.

9                               DIRECT EXAMINATION

10       BY MS. CHURNEY:

11               Q     Ms. Winholtz, could you please state  
12       where you reside?

13               A     I live on Acacia Street, which is south  
14       Morro Bay, about two blocks from the state park.

15               Q     So it's in a different location than  
16       where Ms. Carter lives, is that correct?

17               A     Yes, it is.

18               Q     Approximately how far from the plant is  
19       your residence?

20               A     I would say a mile and a half to two  
21       miles.

22               Q     And is there a hill between your  
23       residence and the plant?

24               A     Yes, Cerrito Peak is on the back side of  
25       my house.

1           Q     So the hill is between you and the power  
2     plant, is that correct?

3           A     Yes, it is.

4           Q     Has you sleep ever been disturbed at  
5     night as a result of noise from the existing power  
6     plant?

7           A     Yes, it has.

8           Q     And could you describe in what way?

9           A     I tend to go to bed late, so often it's  
10    more trouble getting to sleep than being awakened.  
11    It seems around 10:00, 10:30 at night several  
12    times a month the noise just rises suddenly for  
13    several hours, maybe -- the latest incident was a  
14    few weeks ago, and it didn't drop until about 1:00  
15    in the morning.

16                   And it was very loud and I could not get  
17    to sleep that night until then.

18           Q     Have you ever complained to Duke or the  
19    City about this noise?

20           A     Yes, to both. More frequently to the  
21    City, because they're in charge of our noise  
22    ordinance. But I have on also a few occasions  
23    called the power plant.

24                   MS. CHURNEY: I have no further  
25    questions.

1 HEARING OFFICER FAY: All right. Cross-  
2 examination?

3 CROSS-EXAMINATION

4 BY MR. ELLISON:

5 Q I would just ask the same question that  
6 I asked of the prior witness. Given what you've  
7 just testified to, would you prefer to see a plant  
8 that is quieter than the existing plant?

9 A Yes, but not just as noisy, but quieter.

10 MR. ELLISON: Thank you.

11 MS. CHURNEY: I guess my follow up  
12 question is --

13 HEARING OFFICER FAY: Just a moment.  
14 Staff?

15 MS. HOLMES: No.

16 HEARING OFFICER FAY: City?

17 MR. ELIE: No questions.

18 HEARING OFFICER FAY: All right, go  
19 ahead.

20 REDIRECT EXAMINATION

21 BY MS. CHURNEY:

22 Q Just so it's clear, if the new plant  
23 were to be imperceptibly noisier, would that be  
24 acceptable to you?

25 A Was that perceptible or imperceptible?

1           Q     Imperceptibly noisier I think is the  
2     standard --

3           A     No, because the current plant is not  
4     acceptable to me.

5           MS. CHURNEY:   Thank you.

6           HEARING OFFICER FAY:   All right.   Thank  
7     you very much, Ms. Winholtz.   You're excused.

8           And I take it that concludes --

9           MS. CHURNEY:   The rebuttal, yes.

10          HEARING OFFICER FAY:   -- your witnesses?

11          MS. CHURNEY:   Yes, sir, thank you.

12          HEARING OFFICER FAY:   All right.   Then,  
13     Ms. Holmes, are you prepared to go ahead, then --

14          MS. HOLMES:   Yes.

15          HEARING OFFICER FAY:   -- with your  
16     witness?

17          MS. HOLMES:   Staff's witness on noise is  
18     Jim Buntin.   He needs to be sworn.

19          HEARING OFFICER FAY:   Please swear the  
20     witness.

21     Whereupon,

22                                   JIM BUNTIN

23     was called as a witness herein, and after first  
24     having been duly sworn, was examined and testified  
25     as follows:

1 DIRECT EXAMINATION

2 BY MS. HOLMES:

3 Q Good morning, Mr. Buntin. Did you  
4 prepare the noise testimony that's included in  
5 exhibit 115?

6 A Yes, I did.

7 Q And is a statement of your  
8 qualifications also included therein?

9 A I believe so, yes.

10 Q And are the facts contained in your  
11 testimony true and correct to the best of your  
12 knowledge?

13 A Yes.

14 Q And do the opinions contained in your  
15 testimony represent your best professional  
16 judgment?

17 A They do.

18 Q I'm going to ask you a question that I  
19 asked other witnesses yesterday about project life  
20 because the issue arose in an earlier set of  
21 hearings.

22 Duke has stated that the design life of  
23 the facility is 30 years. If the project were to  
24 operate in excess of 30 years, would that change  
25 your conclusion about the significance of impacts

1 of sufficiency of mitigation measures?

2 A No.

3 Q Thank you. Let's walk through the  
4 proposed changes that we heard Duke discuss  
5 earlier this morning and get that all out on the  
6 record.

7 A Okay.

8 Q The presentation that the applicant gave  
9 this morning was not in numerical order, but I  
10 think to make it clearer for the Committee we'll  
11 just follow it the way they did it, and jump  
12 around a bit.

13 Let's start with NOISE-6. Duke had  
14 proposed language on what they called issue one of  
15 NOISE-6, and they wanted to add the phrase: as  
16 determined by the CPM to the phrase: legitimate  
17 complaint. Is that change acceptable to staff?

18 A That's acceptable and consistent with  
19 what we're trying to do in our current approach.

20 Q Thank you. The second issue with  
21 respect to NOISE-6 had to do with measurements at  
22 Delmar Elementary School. It's my understanding  
23 that they have agreed to measure that location so  
24 there is no reason to change that in this  
25 condition, is that correct?

1           A     That's correct.

2           Q     Thank you. The third issue with respect  
3 to NOISE-6 has to do with which location for a  
4 short-term noise survey. Duke has recommended  
5 that either location 6 be dropped, or location 3  
6 be substituted for that. What is your reaction to  
7 that recommendation?

8           A     I believe that it will be acceptable to  
9 delete site 6. I don't think there's any reason  
10 to substitute site 3 as they've offered. Site  
11 number 1 is our indicator site, and if we  
12 experience any changes in noise levels due to the  
13 new project, we'll pick them up at site 1, first.

14          Q     Thank you. There was a similar question  
15 with respect to the measurement locations on  
16 NOISE-9. Does staff have the same response, that  
17 is that location 3 and 6 can both be dropped?

18          A     That's correct.

19          Q     Thank you. With respect to NOISE-10,  
20 there was an issue that came up with respect to  
21 the wording of the protocol items A and B to  
22 include the RV park. Is that a change that staff  
23 supports?

24          A     Yes.

25          Q     And I apologize, my notes were done in

1 numerical order and I'm trying to follow the order  
2 that the applicant used this morning.

3 Next, turning back to NOISE-4, there was  
4 a discussion about NOISE-4 and the availability of  
5 silencing equipment. Do you recollect that  
6 discussion?

7 A Yes.

8 Q How does staff believe is the  
9 appropriate way to approach the applicant's  
10 concerns with respect to NOISE-4?

11 A Well, it's my understanding that the  
12 concern has to do with the RV park, Morro Dunes RV  
13 Park. And the possibility that it will be  
14 difficult to meet the 70 dba standard at that  
15 location.

16 I still believe, and I think our staff's  
17 position is that the 70 dba standard is  
18 appropriate. I can appreciate if there are  
19 technical difficulties in achieving the standard.

20 However, I do believe there are some  
21 other practical measures that might be useful in  
22 this case, such as a temporary barrier near the  
23 outlet of the silencer; or perhaps an orientation  
24 of the silencer outlet to direct the sound away  
25 from the RV park.

1                   So I do believe that there will be  
2                   feasible alternatives. Perhaps the Committee  
3                   would like to consider some language that would  
4                   allow the CPM to make the final determination of  
5                   whether they've exercised all practical mitigation  
6                   measures.

7                   HEARING OFFICER FAY: Yes, and I think  
8                   it would be helpful if it included some for  
9                   instances, like you've just given us, so that  
10                  there are a number of alternative or additional  
11                  suggestions that might help achieve the goal, even  
12                  if the commercially available silencer doesn't.

13                  MS. HOLMES: I was going to ask a follow  
14                  up question on that.

15                  BY MS. HOLMES:

16                  Q     You're talking about temporary barriers  
17                  or other temporary measures that would reduce  
18                  sound levels in the event that the steam silencing  
19                  equipment is not feasible for this project?

20                  A     Right. In the event that the steam  
21                  silencing equipment is not sufficient to meet the  
22                  noise standard.

23                  Q     Thank you.

24                  MS. HOLMES: Staff can provide suggested  
25                  language to that effect in the brief, if that's

1 acceptable to the Committee.

2 HEARING OFFICER FAY: That would be  
3 good.

4 MS. HOLMES: We just wanted to let  
5 people know what our response was to the question.

6 HEARING OFFICER FAY: And let me  
7 interrupt you a second there, and I want to make  
8 it clear to all parties that if you have a  
9 recommended change to a condition of certification  
10 your briefs should show that in strike-out-and-  
11 underline in reference to the language in the FSA.

12 A general suggestion is not near as  
13 persuasive or useful as the clear strike-out-and-  
14 underline, so we can get a clear idea of exactly  
15 what changes you want.

16 Sorry to interrupt you. Go ahead.

17 MS. HOLMES: Thank you.

18 BY MS. HOLMES:

19 Q In addition, I believe that the  
20 applicant has requested that the allowable  
21 timeframe for steam blows be modified. Do you  
22 recollect that discussion?

23 A Right.

24 Q And is that acceptable to staff?

25 A That's acceptable. And I just wanted to

1 offer that at the time I made the change between  
2 the PSA and the FSA it was in response to a City  
3 comment. And I understand now that they're  
4 attempting to accelerate the construction process.

5 So, relying on the City ordinance, I  
6 believe, is acceptable.

7 Q Thank you. I believe the next condition  
8 that was discussed is NOISE-8, which has to do  
9 with noisy construction or demolition work. Do  
10 you recollect the discussion on that this morning?

11 A Yes.

12 Q And do you have a response to the  
13 proposal that Duke made this morning with respect  
14 to NOISE-8?

15 A Yes, I would agree that we qualify noisy  
16 construction by using the definition proposed by  
17 the applicant, which was derived from the Moss  
18 Landing Power Plant conditions of certification.

19 And that specific language which we can  
20 provide you is noisy construction is that which  
21 causes offsite annoyances evidenced by the filing  
22 of a legitimate noise complaint, as determined by  
23 the CPM.

24 Q And with respect to the hours that were  
25 listed in NOISE-8, does staff believe that those

1 should be changed at this time?

2 A Yes. I do think we should change the  
3 weekday timeframe from 8:00 a.m. to 5:00 p.m. to  
4 7:00 a.m. to 7:00 p.m.

5 Q But you would support maintaining the  
6 weekend and holiday time as listed in your  
7 prefiled testimony?

8 A Yes.

9 Q Thank you. With respect to NOISE-9, I  
10 believe that we've already discussed the  
11 measurements -- the measurement sites in response,  
12 you discussed the fact, I believe, that it was  
13 acceptable to delete site 6 and not to substitute  
14 site 3.

15 In addition, Duke had proposed  
16 additional language to involve the CPM to  
17 determine whether all practicable noise mitigation  
18 measures have been implemented. Are you familiar  
19 with that testimony?

20 A Yes.

21 Q And what is staff's response to that  
22 proposal?

23 A Staff believes the recommendation is  
24 valid and acceptable. I would suggest that we --  
25 and we will provide language in this regard --

1 that we modify the first paragraph in NOISE-8,  
2 condition of certification NOISE-9, to end with  
3 the phrase: except as modified by the CPM in  
4 accordance with item B, below.

5 And then under item B, to add at the end  
6 of the very long sentence there, at the very end  
7 we'll add: to the fullest extent practical as  
8 determined by the CPM.

9 Q And does staff have a recommendation  
10 about if the applicant uses low pressure steam or  
11 air blow systems whether or not NOISE-9 should  
12 include those, or does staff prefer to see those  
13 remain where they are?

14 A I think that if the applicant chooses to  
15 use a low pressure steam or air blow for the  
16 cleaning of the pipes after construction, that the  
17 noise levels acceptable for that particular kind  
18 of operation should be included in NOISE-9.

19 In other words, NOISE-9 should be  
20 amended to include the steam blows, the low  
21 pressure steam blow.

22 Q If I could ask one further question on  
23 that. NOISE-9 would include steam blows if  
24 there's low pressure steam, but NOISE-4 would  
25 address steam blows if high pressure steam blow

1 process is used?

2 A That's correct.

3 Q Thank you. Finally, with respect to  
4 NOISE-10, we've already discussed the proposed  
5 wording change to protocol items A and B, but in  
6 addition, Duke made a recommendation with respect  
7 to preparation of a vibration mitigation plan?

8 A Yes.

9 Q Does staff have a response to that  
10 proposal?

11 A Yes. We'd agree that it would be to the  
12 applicant's advantage to prepare the vibration  
13 mitigation plan. We do want it understood,  
14 however, that the vibration standard of 0.2 inches  
15 per second will be required in any case.

16 In other words, the mitigation plan  
17 should be geared to achieve end compliance in any  
18 case.

19 Q Thank you.

20 MS. HOLMES: I think those cover all of  
21 the recommendations that Duke has made this  
22 morning. And so with that I'll make the witness  
23 available for cross-examination unless you want to  
24 receive evidence at this time. Then I would move  
25 that the noise portion of exhibit 115 be entered

1 into evidence.

2 HEARING OFFICER FAY: Is there any  
3 addendum or errata to that?

4 MS. HOLMES: No, there is not.

5 HEARING OFFICER FAY: Any objection?  
6 Hearing none, so moved.

7 MS. HOLMES: With that the witness is  
8 available for cross-examination.

9 HEARING OFFICER FAY: Mr. Ellison.

10 MR. ELLISON: Just a couple of  
11 questions.

12 CROSS-EXAMINATION

13 BY MR. ELLISON:

14 Q Pertaining to the 70 dba NOISE-4 issue,  
15 your testimony a moment ago was that you believe  
16 that there were mitigation measures such as  
17 temporary sound walls or redirecting the venting  
18 that in conjunction with a commercially available  
19 silencer might achieve the 70 dba standard. Did I  
20 understand that correctly?

21 A That's correct.

22 Q Would you agree that if Duke procures a  
23 commercially available silencer and cannot meet  
24 the 70 dba standard that the additional mitigation  
25 that might be required would be the type of

1 mitigation measures that you have described here,  
2 sound walls, things other than changing the  
3 silencer, itself?

4 A Yes.

5 Q So you were not intending to require  
6 anything other than a commercially available  
7 silencer?

8 A That's correct.

9 MR. ELLISON: That's all I have, thank  
10 you.

11 HEARING OFFICER FAY: The City.

12 MR. ELIE: Thank you.

13 CROSS-EXAMINATION

14 BY MR. ELIE:

15 Q Mr. Buntin, if you could look at NOISE-  
16 10. And I wanted to know if the change the City  
17 would propose would be acceptable to staff. There  
18 are several references, beginning with the first  
19 sentence, to pile driving.

20 If we rephrase that two-word phrase to a  
21 three-word phrase of auger pile drilling, would  
22 that be acceptable to the staff?

23 A Yes.

24 Q Thank you.

25 MR. ELIE: No further questions.

1 HEARING OFFICER FAY: Thank you.  
2 Coastal Alliance.

3 CROSS-EXAMINATION

4 BY MS. CHURNEY:

5 Q Mr. Buntin, on page 3.3-3 of your report  
6 you note that the CEC has interpreted the CEQA  
7 criteria on regarding noise such that noise  
8 produced by a new plant that causes an increase of  
9 more than 5 decibels in the background noise level  
10 at a noise sensitive receiver during the quietest  
11 hours of the day is usually considered to be a  
12 significant adverse effect.

13 Has the CEC ever found increases of less  
14 than 5 decibels to be a significant effect to your  
15 knowledge?

16 A I'm not aware of any.

17 Q As someone who's looking at the sound  
18 study with a critical eye, does the LEQ or the L90  
19 metric leave more room for a smoothing effect?

20 MS. HOLMES: Excuse me, I didn't catch  
21 all of the question, I'm sorry.

22 PRESIDING MEMBER MOORE: I didn't  
23 understand it, either, sorry.

24 BY MS. CHURNEY:

25 Q You're familiar with the LEQ and the L90

1 metrics, correct?

2 A Yes.

3 Q And looking at those or comparing those  
4 two metrics, does one metric leave more room for  
5 smoothing the effects of, for example, up-and-down  
6 noise levels than the other?

7 A Yes, by definition LEQ is an energy  
8 average. It is most responsive to the loudest  
9 events.

10 Q On page 3.3-9 of table 4 of your  
11 testimony it sets forth construction noise level  
12 predictions, and you note that cumulative noise  
13 levels go up by 5.5 decibels at three locations,  
14 including Coleman Park. But these will not be  
15 significant overall because they are temporary,  
16 although they'll last for seven months, and  
17 occurring during the daytime.

18 Would your view of significance change  
19 if this occurred throughout an entire summer  
20 tourist season, for example, when the park is more  
21 heavily used?

22 MS. HOLMES: Can I ask that the question  
23 be clarified to identify whether you're talking  
24 about a 5 decibel increase at a single moment in  
25 time, or a 5 decibel increase over 24 hours a day,

1 seven days a week?

2 BY MS. CHURNEY:

3 Q I think that the metric is an LEQ that  
4 was used?

5 A Therefore, --

6 Q Are you referring to an LEQ --

7 HEARING OFFICER FAY: You have to  
8 connect that comment -- yeah.

9 MS. HOLMES: Are you talking about a  
10 change in noise levels of 5 dba using an LEQ  
11 metric over three months continually?

12 MS. CHURNEY: Well, let me ask him what  
13 he used, or what he assumed.

14 MR. BUNTIN: Now I'm a little confused,  
15 pardon me --

16 (Laughter.)

17 BY MS. CHURNEY:

18 Q The reference, if you want to place it  
19 or have it before you, it's table 4.

20 A Table 4, I have that. What we're seeing  
21 here is an estimate in the fourth column of the  
22 highest construction noise level in terms of LEQ.

23 And that's being compared to pretty much  
24 the quietest hours of the day under the daytime  
25 ambient noise level LEQ column, number 3.

1           So we're saying, in the worst case, we  
2           expect that those two levels would add up, would  
3           accumulative, as pointed out in the cumulative  
4           noise level column, and result in a change of 5.5  
5           decibels at Scott Avenue, Morro Dunes RV Park and  
6           the Coleman Park, site 11 on that chart.

7           So, what we would expect to occur when  
8           that happens, in other words when you have that  
9           level of activity occurring on the construction  
10          site is that that would be clearly noticeable to  
11          people who were in that area, as compared to  
12          what's there today.

13          And the question of whether it's  
14          significant or not is one that we defined earlier  
15          in saying that construction noise impacts are  
16          typically considered to be insignificant within  
17          reason, because they're temporary. These are not  
18          extreme situations; these are situations where we  
19          have a noticeable change in the noise level, not  
20          necessarily a terribly objectionable change.

21          Q     Over what period of time, that last  
22          column, what period of time are you assuming?

23          A     This is assuming that worst case hour.

24          Q     And how much of the noise will be  
25          intermittent versus constant, did you take that

1 into account?

2 MS. HOLMES: Again, just a question of  
3 clarification. Are you talking about the  
4 construction noise that's identified in this  
5 table?

6 MS. CHURNEY: Yes.

7 MR. BUNTIN: Well, I think we have to  
8 look back to what Mr. Mantey said earlier. It's  
9 hard to predict exactly what's going to happen  
10 during construction. And what he's done in  
11 calculating these noise levels, which are reported  
12 to you here, is assume a certain use factor.

13 So that in any given hour you expect --  
14 and I'll just pull something out of the air -- you  
15 might assume that a bulldozer is operating for 30  
16 minutes out of the hour. So, there's a use factor  
17 of 50 percent. And you apply that to the maximum  
18 noise level and come out with an average noise  
19 level.

20 So there's no way to predict exactly how  
21 long a certain piece of equipment will be  
22 operating in any given hour, but it is common to  
23 assume a certain percentage of the time that it  
24 will be operating.

25 //

1 BY MS. CHURNEY:

2 Q Well, using that particular example,  
3 does that mean that for 30 minutes it would be a  
4 particularly noticeable or annoying noise, and for  
5 30 minutes it wouldn't?

6 A No, I think what's fair to say is for 30  
7 minutes it would be louder -- if it's operating  
8 for 30 minutes, it'll be louder than when it's not  
9 operating for 30 minutes. I don't mean to be  
10 facetious with that.

11 So therefore the noise level during its  
12 operation will be higher during that time period  
13 than it would be -- than the average level would  
14 reflect.

15 Q Can you put a number on by how much it  
16 would be higher?

17 A No. I think you can go back, however,  
18 to the AFC and the table that you used as a  
19 demonstration earlier where you were looking at  
20 maximum noise levels. The one you had on the  
21 overhead viewer.

22 Q Right.

23 A And for example, that table had a column  
24 entitled maximum -- entitled noise level, which  
25 turns out to be maximum noise level, at 2000 feet.

1 And that's just about the distance to the high  
2 school according to one of the other AFC tables.

3 And so you can see that the equipment  
4 will be louder in the short term than it is on  
5 average.

6 Q Okay. On page 3.3-13 you discuss the  
7 noise impacts of steam blows during startup, and  
8 note that temporary silencers could reduce the  
9 noise levels from 70 to 74 decibels down to 40 to  
10 44 decibels.

11 Why does condition number 4 still allow  
12 noise levels of 70 instead of 40?

13 A For the simple reason that the noise  
14 element of the general plan for the City of Morro  
15 Bay would allow that. And therefore, one would  
16 presume that that's an acceptable noise level.

17 Q Also there are emergency pressure safety  
18 valve trips that we've heard about earlier from  
19 Mr. Mantey's testimony.

20 Even if they are only 70 to 74 decibels  
21 at the nearest receiver, would that exceed the  
22 Morro Bay noise standard of 65 decibels if they  
23 occur at night?

24 A Yes, it would if they were to occur at  
25 night.

1           Q     Turning to operational noise impacts on  
2     page 3.3-14, you note that the occurrence of  
3     occasional brief increases in noise levels  
4     associated with controlled startups or shutdowns.  
5     What is the maximum increase in noise level  
6     expected during these controlled conditions?

7           A     I think based upon some of the  
8     information I heard this morning in the testimony  
9     I heard this morning, we would expect that these  
10    trip steam releases would be in the same range of  
11    noise levels as the -- well, less than the steam  
12    blow. I believe the value that he gave was 100 to  
13    110 decibels at 10 to 12 feet.

14                If you presume that the steam blow is  
15    perhaps as high as 130 decibels at 10 to 12 feet,  
16    you can see these are quieter sources. And  
17    therefore, we would -- I think you could look at  
18    the Scott Avenue receiver, for example, that's  
19    cited in the AFC site 1, where we're expecting  
20    steam blow noise levels of 70 to 74 dba  
21    unsilenced.

22                I think the worst case situation would  
23    be if you were to receive that same noise level,  
24    however based upon what Mr. Mantey said, it looks  
25    as though that noise level could be as much as 20

1           decibels lower.

2                         And I would have to say that these  
3           projections of noise levels due to things like  
4           steam vents, are going to be highly dependent on  
5           where the steam vent is located on the structure.  
6           And whether there's, in fact, part of the  
7           structure between that source and the receiver,  
8           which way the outlet is directed, things like  
9           that.

10                        So I would consider these to be  
11           conservative estimates. In other words, worst  
12           case estimates.

13                        Q     You go on in that same paragraph on page  
14           3.3-14 to state that at other times, such as when  
15           the plant is shut down for lack of dispatch or for  
16           maintenance, noise levels would decrease. This  
17           impacts the averaging metrics, is that right?

18                        A     Yes.

19                        Q     How does this relatively infrequent  
20           absence of noise in any way smooth over what may  
21           occur during the noisiest times?

22                        MS. HOLMES: I'm sorry, I need to hear  
23           the question again.

24                        MS. CHURNEY: I'm just trying to  
25           understand the smoothing and the averaging

1 effects, again the peaks and the valleys in noise.

2 MS. HOLMES: I would request that you be  
3 very specific about which averaging you're  
4 discussing. It's not clear to me that we're  
5 discussing any particular averaging that Mr.  
6 Buntin has done in his analysis. So if we could  
7 refer to that first, that would be helpful.

8 MS. CHURNEY: Right, let's refer to his  
9 testimony which is on 3.3-14. And it's under  
10 power plant operation.

11 MS. HOLMES: I'm looking for the  
12 reference to averaging.

13 BY MS. CHURNEY:

14 Q Okay. His testimony, as I understand  
15 it, is that at times the noise level is up and at  
16 times it's down. And I'm just trying to  
17 understand what the impact that is on the  
18 averaging.

19 A I think I can answer that. In the  
20 calculations that were performed by the applicant  
21 it was assumed that the power plant ran  
22 continuously at full load. And I used those same  
23 assumptions. So there was no accounting given for  
24 shutdown.

25 Q Near the bottom of page 3.3-14 in your

1 discussion of Duke's acoustical modeling for the  
2 new plant, you note that the assumption that the  
3 plant would be operated at maximum load over a 24-  
4 hour period is quite conservative. Do you see  
5 that?

6 A Yes.

7 Q Did you take into account in your  
8 conclusion about conservatism of the modeling?

9 MS. HOLMES: I'm sorry, what was the  
10 question?

11 BY MS. CHURNEY:

12 Q Did you take into account that Duke  
13 would be running the new plant as compared to the  
14 old plant up to 90 percent of the time?

15 A I presumed what Mr. Mantey presumed,  
16 which is continuous operation at full load.

17 Q At full load?

18 A Yes.

19 Q Comparing tables 8 and 9 on page 3.3-16  
20 for nighttime predicted noise, what are the L90  
21 levels in table 8? Why are the L90 levels in  
22 table 8 for the project exactly the same as they  
23 are for the LAQ metrics in table 9?

24 A That's a good question.

25 (Laughter.)

1                   MR. BUNTIN: It appears that we're  
2                   missing some numbers, and I'm not sure which table  
3                   is correct.

4                   HEARING OFFICER FAY: Are both tables  
5                   developed by the staff?

6                   MR. BUNTIN: Yes, and they are  
7                   summarized from the AFC, so the correct values are  
8                   in the AFC. And I apologize. There should have  
9                   been a difference, and I'm sure there was at one  
10                  time. But it's not there now.

11                  MS. HOLMES: Perhaps if I could provide  
12                  the witness with a copy of the AFC that would be  
13                  helpful?

14                  HEARING OFFICER FAY: That would be  
15                  helpful, and then maybe you could just correct it  
16                  right on the record. And if that would take too  
17                  long, we'll have you follow up with a submittal.

18                  MS. HOLMES: For the record, Mr. Buntin,  
19                  can you describe which table you're looking at in  
20                  appendix 6.12-1?

21                  MR. BUNTIN: Okay, let's start with  
22                  table 6.12-4 on page 6.12-24. So the question  
23                  really is about the ambient noise level which is  
24                  the second column in both tables 8 and 9.

25                  MS. CHURNEY: Correct.

1                   MR. BUNTIN: Oh, I'm sorry. They're  
2 supposed to be the same. In both cases it's a  
3 nighttime L90 value. And if you'll notice the  
4 header, now I can see that. If we look at table  
5 8, for example, over the columns 2, 3, and 4 is  
6 the heading nighttime L90.

7                   And what I was doing in this table was  
8 adding together the ambient L90 and the project  
9 L90. And in the second case, it's the ambient  
10 L90, -- that's table 9, plus the project LEQ.

11                   Now, as it turns out in this case, they  
12 are the same because -- I don't even know why I  
13 did the double table, except to just summarize the  
14 predicted noise levels in the case of table 8.

15                   And then in the case of table 9 trying  
16 to summarize the noise levels as they relate to  
17 the noise standard of the City, noise element. I  
18 believe that's the reason for the difference in  
19 the two tables.

20                   But the values will be the same.  
21 Because when the power plant is operating, the LEQ  
22 and the L90 and the L50 and all other metrics are  
23 assumed to be the same. It's a steadystate noise  
24 level. And we're assuming no statistical  
25 variation.

1           In other words, in the worst case if you  
2           take a sound level meter and you stand out there  
3           at one of these sites and measure the plant noise  
4           level it'll be steady, continuous at one level.

5           So the real purpose of the two tables,  
6           in one case is to present the information and  
7           arrive at the CNEL value which is in the right-  
8           hand column, the far right column.

9           And then table 9 we're comparing the  
10          cumulative LEQ at nighttime with the noise  
11          standard of the Morro Bay noise element.

12         BY MS. CHURNEY:

13           Q     Condition NOISE-1 requires the giving of  
14           notice to residents within one mile of the plant,  
15           and this same issue has arisen with respect to  
16           general conditions. This being a small town is  
17           there a reason why Duke shouldn't be required to  
18           mail notice to all Morro Bay residents?

19           MS. HOLMES: I believe that staff has  
20           answered this question in its testimony on general  
21           conditions with respect to notification. So, --

22           MS. CHURNEY: Is it the --

23           HEARING OFFICER FAY: I think it's a  
24           legitimate question if it's confined to this noise  
25           aspect.

1 MS. CHURNEY: Correct.

2 HEARING OFFICER FAY: So I'm going to  
3 allow the question.

4 MR. BUNTIN: I'd have to say that the  
5 one-mile provision in here is a standard provision  
6 that was in effect when the FSA was prepared. If  
7 there is a particular concern with a neighborhood  
8 that's not included in that one-mile radius, I  
9 wouldn't have any objection to changing the  
10 radius.

11 BY MS. CHURNEY:

12 Q And then similarly for NOISE-2, copies  
13 of the complaints should be provided to the  
14 complainant at the same time that they are  
15 provided to the CPM. Does the staff object to  
16 that?

17 A Is that your proposed change?

18 Q Yes.

19 A I don't have any objection to that.

20 Q Turning to NOISE-4 on page 3.3-20 and  
21 21, the 70 decibel level should be 40 with  
22 silencing, is that correct?

23 A No. The standard that we're proposing  
24 is 70 decibels.

25 Q On NOISE-5, page 3.3-21, it requires

1 advance notice to be given only to residents  
2 within a half a mile of the plant as to the  
3 planned steam blows.

4 Has staff taken into account that most  
5 residents have occasion to be in downtown during  
6 the course of any given day?

7 MS. HOLMES: That misstates the  
8 condition. The condition also requires  
9 notification to other area residents in an  
10 appropriate manner. It doesn't say there will be  
11 no notification, so if you could reflect that in  
12 your --

13 BY MS. CHURNEY:

14 Q Okay, so staff wouldn't object to  
15 broadening this requirement to advance notice of  
16 all residents?

17 A Within whatever limits the Committee  
18 feels is appropriate, I wouldn't have any  
19 objection.

20 Q Looking at NOISE-6 and 7, why is the  
21 requirement triggering at reaching 80 percent  
22 capacity when the anticipated average operations  
23 will be at 90 percent capacity?

24 A This, again, is a standard condition  
25 that has been used by the Energy Commission. But

1 the intent is to insure that the plant's up and in  
2 normal operating mode, and to also allow the noise  
3 measurements to be done as soon as possible and  
4 practical.

5 So it's a trigger level that insures we  
6 get out there and get this information as quickly  
7 as possible.

8 Q And turning to NOISE-Appendix A, first  
9 what are the types of adverse public health  
10 effects that can result from noise?

11 A I'm sorry, let me get a copy of that.

12 PRESIDING MEMBER MOORE: Actually we  
13 went through this question before and suggested  
14 that it was too broad. And I'm going to rule that  
15 it is, in fact, too broad. What do you have in  
16 mind, counsel?

17 MS. CHURNEY: Well, --

18 PRESIDING MEMBER MOORE: I mean this is  
19 not a treatise on health and safety.

20 MS. CHURNEY: Okay, he cites that 1971  
21 USEPA study --

22 PRESIDING MEMBER MOORE: Which is what  
23 the applicant cited.

24 MS. CHURNEY: Right. And I'd like to  
25 know, to try to be more specific, have there been

1 subsequent studies showing health effects at lower  
2 levels than what is cited.

3 PRESIDING MEMBER MOORE: Let me ask the  
4 witness, are you aware of any literature that goes  
5 beyond the 1971 study that you have access to, or  
6 that staff typically uses for this analysis?

7 MR. BUNTIN: There are two questions.  
8 I'm aware of studies done by the World Health  
9 Organization, for example. That's been out for  
10 about three or four years. It has not yet been  
11 applied by the staff of the Energy Commission.

12 BY MS. CHURNEY:

13 Q And why is that?

14 A I'm not certain. Let me just leave it  
15 at that, I'm not really certain.

16 Q And how is it different from the USEPA  
17 study?

18 A In general, the World Health  
19 Organization recommendations are far more  
20 conservative than the EPA. I shouldn't say far  
21 more. They are somewhat more conservative than  
22 the EPA recommendations.

23 And as such, since they've not had --  
24 they've not been tested in our legal and political  
25 environment, I haven't seen them applied anyplace

1 yet in my experience, which would be the western  
2 region of the U.S.

3 Q Do you know or can you describe the  
4 effects of any of the results with various noise  
5 levels, constant or intermittent, to those who use  
6 hearing aids?

7 MS. HOLMES: That, again, is a really  
8 broad question. I don't have a problem with the  
9 question in general, but it's got to be much more  
10 specific as to what type of noise levels and what  
11 type of hearing aids and --

12 BY MS. CHURNEY:

13 Q Well, let's use the anticipated noise  
14 levels during construction.

15 A Well, that will depend on where you are,  
16 where the receiver is, of course. Generally  
17 speaking, though, hearing aids are intended to  
18 pick up and amplify noise in the range of speech,  
19 which is 55 to 65 decibels at the receiver's ear.

20 And so if somebody was close enough, if  
21 you looked through those tables and find locations  
22 where you're going to experience noise levels  
23 consistently in that range, let's say of 60 to 65  
24 decibels, then there might be some interference  
25 with hearing.

1                   But that would apply to a person with or  
2                   without a hearing aid.

3                   Q     So the use of a hearing aid, in your  
4                   opinion, should have no impact on experiencing  
5                   noise increases, decreases?

6                   PRESIDING MEMBER MOORE:  Well, before  
7                   you even object, counsel, right, sustained.  
8                   You're going to --

9                   (Laughter.)

10                  PRESIDING MEMBER MOORE:  He didn't  
11                  testify to that.  It wasn't in the prefiled.  If  
12                  you've got a question about his opinion on the  
13                  effects of people who might wear hearing aids in  
14                  the City, do you have an opinion?

15                  MR. BUNTIN:  My opinion would be that if  
16                  the level is high enough to interfere with hearing  
17                  for anybody, interfere with speech or hearing,  
18                  understanding what's being said to you, that it  
19                  would affect somebody with a hearing aid the same  
20                  as anybody else.

21                  BY MS. CHURNEY:

22                  Q     So there's nothing -- I'm simply trying  
23                  to establish, and we do have a large elderly  
24                  population here in Morro Bay, as you know, I'm  
25                  sure, that there would be no particularly

1 different interference for somebody wearing a  
2 hearing aid.

3 MS. HOLMES: Your question assumes a lot  
4 of facts that are not in evidence --

5 PRESIDING MEMBER MOORE: Well, actually  
6 I'm going to sustain that, too. There's no  
7 evidence that's been presented statistically or  
8 otherwise to suggest what that population is. And  
9 I think the witness has answered your general  
10 question.

11 MS. CHURNEY: Well, actually that  
12 evidence is in the FSA, the percentage of elderly.

13 MS. HOLMES: But there's no evidence  
14 that those people have hearing losses or that a  
15 higher percentage of them wear hearing aids.

16 PRESIDING MEMBER MOORE: Well, that's  
17 right. Just because you have an elderly  
18 population does not de facto indicate that they  
19 wear hearing aids. So that was my point.

20 HEARING OFFICER FAY: Any further  
21 questions, counsel?

22 MS. CHURNEY: Yes.

23 BY MS. CHURNEY:

24 Q Have you taken into account the impacts  
25 of intermittent noises from truck traffic and

1 other large vehicles leaving the construction site  
2 and exiting the site on Atascadero Road by the  
3 high school at various times during the day in  
4 terms of level of disturbance that may be caused  
5 to the classrooms?

6 A Pretty long question. There is --

7 MS. HOLMES: Feel free to break it down.

8 (Laughter.)

9 MR. BUNTIN: Well, there is a table in  
10 the FSA that reports the applicant's findings with  
11 respect to truck traffic noise during  
12 construction.

13 BY MS. CHURNEY:

14 Q Is that 6.12-6?

15 A I'll have to check the AFC citation; in  
16 the FSA it's noise table 5.

17 What was the other table you cited? I'm  
18 sorry.

19 Q Well, we're at table 5.

20 A Dash 9?

21 Q The truck noise is given in the LAQ  
22 metric. Do you know what the highest anticipated  
23 noise level would be?

24 A I can answer in a general sense to, I  
25 think, give you the information that you want.

1 It's usually assumed that truck traffic complies  
2 with the state vehicle noise regulations.

3 And in the worst case that's typically  
4 assumed to be about perhaps as high as 86 decibels  
5 at a distance of 50 feet under full acceleration.

6 In reality, when you do traffic noise  
7 modeling you don't use noise levels quite that  
8 high, because the fleet is not that noisy.

9 But that's the worst case that could  
10 occur.

11 Q Thank you.

12 HEARING OFFICER FAY: Does that conclude  
13 your cross-examination?

14 MS. CHURNEY: Yes, thank you.

15 HEARING OFFICER FAY: All right. Ms.  
16 Holmes, before you answer this question, I would  
17 like to give you the option of recommending to us  
18 whether your redirect will be so brief that we can  
19 break for lunch, or whether you think we ought to  
20 break for lunch lest people get impatient with  
21 your redirect.

22 (Laughter.)

23 MS. HOLMES: You've given me a lot of  
24 choice there, Mr. Fay. No redirect.

25 HEARING OFFICER FAY: That is

1 sufficiently brief.

2 MS. HOLMES: -- the right answer?

3 (Laughter.)

4 HEARING OFFICER FAY: All right. Then  
5 we are going to break now for lunch.

6 UNIDENTIFIED SPEAKER: Public comment?

7 HEARING OFFICER FAY: We will return for  
8 public comment after lunch.

9 And we're going to take 45 minutes for  
10 lunch. Be back at 12:30.

11 (Whereupon, at 11:52 a.m., the hearing  
12 was adjourned, to reconvene at 12:30  
13 p.m., this same day.)

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## 1 AFTERNOON SESSION

2 12:42 p.m.

3 HEARING OFFICER FAY: I would like to  
4 now ask if any member of the public would like to  
5 make a comment regarding the issue of noise.

6 Yes, could you please come up to the  
7 witness table as you were before, state your name  
8 and make your comment.

9 MS. WINHOLTZ: My name's Betty Winholtz.  
10 I'm a 16-year resident of Morro Bay. I live on  
11 the south side of town. I have those full 16  
12 years that I have lived in two different  
13 locations.

14 I would like for you to know that Monday  
15 night at the City Council meeting our City Council  
16 directed staff to start negotiations or at least  
17 conversation with the City of San Luis Obispo over  
18 starting up our desalinization plant, which is  
19 down in this industrial area near Duke.

20 And their intent is that it become not  
21 just a peaker desal plant, but something that  
22 would run continuously.

23 And so my question and my concern is if  
24 you are aware of what kind of cumulative effects  
25 that noise would have, if indeed they do bring on

1 the desalinization plant in conjunction with any  
2 of the different effects of the construction or  
3 demolition or ongoing running of the plant.

4 HEARING OFFICER FAY: Well, this is the  
5 time for public comment. You've posed a question.

6 MS. WINHOLTZ: I guess I want you to  
7 have that information and hope you'll pursue it.

8 HEARING OFFICER FAY: Okay, thank you  
9 very much.

10 MS. WINHOLTZ: Um-hum.

11 HEARING OFFICER FAY: Any other --

12 MS. WINHOLTZ: I have a few more  
13 comments.

14 HEARING OFFICER FAY: Good, please.  
15 Didn't mean to cut you off, go ahead.

16 MS. WINHOLTZ: Thank you. I have a  
17 concern about not understanding and hope also this  
18 is -- maybe you've already dealt with this, the  
19 cumulative effects of running the old plant while  
20 the demolition and the construction is going on,  
21 in conjunction with all those other items that  
22 might be going on, as well.

23 I have a concern as a resident about the  
24 confusion that may come up between City  
25 enforcement of noise and the CPM, how well they

1 work together. And I bring this up because of my  
2 experience with having this last year kept track  
3 of what I feel are extreme noise violations at  
4 night from the power plant.

5 I have, over the last year, turned in  
6 about 26 code enforcement concerns to the City. I  
7 have also talked with Duke about a few of those.  
8 I never feel satisfied about those.

9 So my concern for you is I don't feel  
10 comfortable with how the enforcement may happen  
11 with the new plant, in spite of all the nice  
12 regulations. I have to tell you I'm very  
13 skeptical. And so I'm concerned about how you  
14 will see that that's enforced for us. And how  
15 that working relationship will be between the CPM  
16 and the City.

17 One of the issues related to  
18 enforcement, I think, is clarifying -- and this  
19 word legitimate complaint, I don't understand  
20 that. How one could define that, it seems real  
21 soft, as a term.

22 So I think it needs to be made clear to  
23 the residents when they make their complaints, you  
24 know, how many complaints does it take; at what  
25 point is the plant halted from doing what it

1 continues to do; you know, what are those  
2 boundaries. I feel like, having read the  
3 documents, that it's not clear and it's pretty  
4 discretionary. And so I'd like to see some  
5 clarity there.

6 My next-to-the-last point is often you  
7 have spoken this morning about the nearest  
8 receptor sites. And thinking that those are the  
9 ones that will be impacted the greatest. And I  
10 would suggest to you that that's not true.

11 For those of us who live at higher  
12 elevations of the hills, or around the hill, as I  
13 do, who get sand that bounces off the sandspit or  
14 off the hills, and I have done this, myself, when  
15 there's been a very noisy night, I have driven  
16 around town. And my end of town is noisier than  
17 it is on the Embarcadero.

18 So for you to use the closest receptor  
19 sites as your definitive means of how noisy it is  
20 in town, I think is maybe not the most  
21 conservative, as you've been using it, place to  
22 look at in the town. But that you need to go into  
23 the neighborhoods. And you need to go further  
24 south, and you need to need to go further up the  
25 hills and put other sites up there. And I'm

1 speaking of south Morro Bay as much as north Morro  
2 Bay.

3 And then my last concern again I think  
4 relates to enforcement. And that is over time  
5 what we're told now is because the plant's been  
6 here, that it's okay for it to be noisier. It's  
7 part of what you have to accept when you move  
8 here.

9 Well, I was here before the plant was  
10 that noisy. I was here before Duke came. I was  
11 here when PG&E was here. And, indeed, it was  
12 louder on occasion with PG&E, but not consistently  
13 as it is now.

14 And so my concern is say after five  
15 years will Duke be allowed to be more noisy  
16 because they're older, you know, or in 10 years or  
17 in 20 years. So I'm looking long term. Do you  
18 continue to enforce the same standards long term  
19 as you will when it's brand new?

20 Thank you.

21 PRESIDING MEMBER MOORE: Thank you.

22 Anyone else who'd like to address us in public  
23 comments on this issue?

24 All right, let's move then to our next  
25 phase, which is traffic and transportation. And,

1 counsel, you have your witness ready?

2 MR. ELLISON: We do. The applicant's  
3 witness on traffic and transportation is Mr.  
4 Christopher Cannon, who has previously been sworn  
5 this morning. Mr. Michael Pollack is a support  
6 witness, and if you'd like to swear him in we can  
7 do that, as well. He's sitting to my immediate  
8 left.

9 HEARING OFFICER FAY: Please stand, Mr.  
10 Pollack, and will the court reporter please swear  
11 the witness.  
12 Whereupon,

13 MICHAEL S. POLLACK  
14 was called as a witness herein, and after first  
15 having been duly sworn, was examined and testified  
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. ELLISON:

19 Q Mr. Cannon, could you state and spell  
20 your name for the record, please?

21 A It's Christopher Cannon, C-a-n-n-o-n.

22 Q And do you have before you the traffic  
23 and transportation portions of exhibit 134,  
24 beginning at page 64?

25 A Yes, I do.

1           Q     And was this testimony prepared by you  
2     or at your direction?

3           A     Yes, it was.

4           Q     And are your qualifications included in  
5     the testimony, and even more extensively in the  
6     appendix to exhibit 134?

7           A     Yes, they are.

8           Q     Could you briefly summarize your  
9     qualifications with respect to traffic and  
10    transportation?

11          A     Yes, I have 17 years of experience  
12    either managing or developing myself analyses  
13    associated with multijurisdictional permitting and  
14    environmental review projects.

15                As part of this work the last ten years  
16    I've developed detailed traffic management impact  
17    plans and projects including associated with local  
18    and regional landfill facilities and power plants.

19                And I've served as an expert witness on  
20    transportation issues before the New York State  
21    Department of Public Service, as well as the  
22    California Energy Commission.

23          Q     Do you have any changes, additions or  
24    clarifications to your filed testimony?

25          A     No, I do not.

1           Q    Is the testimony, or the facts contained  
2           in the testimony true to the best of your  
3           knowledge?

4           A    Yes.

5           Q    And are the opinions contained in the  
6           testimony your own?

7           A    Yes, they are.

8           Q    And do you adopt this as your testimony  
9           in this proceeding?

10          A    Yes.

11          Q    By way of summary could you briefly  
12          describe how you conducted your traffic and  
13          transportation analysis?

14          A    Yes. We did a complete evaluation of  
15          traffic and transportation conditions relating to  
16          the project in accordance with the CEC  
17          requirements.

18                    We looked at traffic conditions from  
19          both project construction and project operations.  
20          We looked at project level and cumulative impacts.

21                    For construction we looked at each of  
22          the three stages. Stage one being removal of the  
23          tanks. Stage two, construction of combined cycle  
24          units. And stage three, the decommissioning and  
25          removal of existing power building and stacks.

1                   And, of course, we looked at future  
2                   conditions after all the construction is complete.

3                   Certainly, of all those scenarios the  
4                   one with the greatest amount of activities  
5                   associated with construction, the combined cycle  
6                   units, and so we looked at all the related  
7                   elements that have been presented to the  
8                   Commission: the site and immediate surrounding  
9                   areas; the offsite parking area; the offsite  
10                  laydown area.

11                  We did traffic counts of key  
12                  intersections associated with all of those areas  
13                  in 1999, 2000 and 2001. And where we could, we  
14                  used, I should note, the City's consultant's  
15                  counts in order to avoid potential for conflict.  
16                  Those would be associated with the area near  
17                  Highway 41 and Main Street.

18                  We looked at freeway segments to examine  
19                  the potential for disrupting traffic during key  
20                  high volume periods as project vehicles enter the  
21                  highway.

22                  We looked at weekend traffic, the Morro  
23                  Bay Car Show, Memorial Day traffic. We talked to  
24                  the local school district and local businesses,  
25                  and we asked the City for a list of planned and

1 reasonably foreseeable projects in the area. And  
2 we considered the cumulative effects of those  
3 projects.

4           Based on all this information we  
5 developed traffic design features that would cause  
6 employees to arrive at work by 7:00 and not leave  
7 until 5:30, so as to avoid all together peak  
8 school activity periods and other high volume  
9 traffic periods in Morro Bay.

10           We encouraged Duke to work with the City  
11 to construct a bridge across Little Morro Creek.  
12 Construction of this bridge allows for a circular  
13 traffic flow, which is the safest and most  
14 efficient way of having traffic entering and out  
15 of the site. And it also reduces the potential  
16 for congestion on Main Street near the back  
17 entrance or along Atascadero Road at the -- or,  
18 and also at the important Main and Atascadero  
19 intersection.

20           Using offsite laydown areas, we  
21 encouraged Duke to schedule deliveries to avoid  
22 peak school periods and other high volume traffic  
23 times in Morro Bay. And we supported Duke's  
24 decision to use a local concrete operator at the  
25 end of Atascadero Road because, of course it

1 supports local business, which is an important  
2 thing. But also because it allows the concrete  
3 pours, which tend to be the higher volume delivery  
4 days, to be focused at the end of Atascadero Road.  
5 Just going back and forth across the bridge, away  
6 from nearly all City activity.

7           And for the cumulative analysis to be  
8 conservative, as conservative as we possibly  
9 could, we took the City's list of planned and  
10 reasonably foreseeable projects and we made the  
11 peak impacts from each of these projects all occur  
12 at exactly the same time.

13           And then we took all of that and made it  
14 occur exactly at the same time as the peak impacts  
15 from the Duke project. And this allowed us to  
16 make sure that our cumulative analyses were  
17 completely conservative.

18           MR. ELLISON: At the Committee's  
19 discretion we have a couple of maps, if you will,  
20 that have been sort of blown up. And if you  
21 believe it would be helpful we could take a moment  
22 here and Mr. Cannon could show those exhibits, and  
23 just give you an orientation of the various  
24 intersections and roadways that we'll be  
25 discussing this afternoon. Would that be helpful?

1 HEARING OFFICER FAY: Yes. Can we be  
2 sure that that gets televised, as well as his  
3 explanation? Is that possible? I understand that  
4 they can cover that.

5 Now, do these maps appear anywhere in  
6 the record? Do you relate them to --

7 MR. ELLISON: We certainly can introduce  
8 them. I believe that they are taken from  
9 materials that are already part of the record, is  
10 that correct?

11 MR. CANNON: Yes, they are. That is  
12 correct. They are two figures out of the AFC, and  
13 then there was some other information that was  
14 submitted in response to comments.

15 PRESIDING MEMBER MOORE: The only change  
16 is that they're blown up?

17 MR. CANNON: That is correct.

18 HEARING OFFICER FAY: Could you give us  
19 a reference? If you can't right now --

20 MR. CANNON: No, sure. Each of the two  
21 figures -- here, should I just walk over and --

22 HEARING OFFICER FAY: You'll need a  
23 mike.

24 (Pause.)

25 MR. CANNON: As can be seen at the

1 bottom right-hand corner of this one, it's taken  
2 from a figure in the AFC, 6.11-8. The next  
3 drawing is 6.11-9, which this corresponds. It  
4 shows the AM construction employee inbound route.  
5 And the other one shows them when they're leaving  
6 again.

7 And the last figure that we'll show  
8 comes from one of the questions from the agency  
9 staff where we gave a broader map showing where  
10 the laydown area is.

11 Here's the site. I'm going to be in  
12 somebody's way no matter what I do here.

13 HEARING OFFICER FAY: Excuse me, Mr.  
14 Cannon. If you could be self conscious of the way  
15 you describe it, keeping in mind that the  
16 transcript won't have that picture to help us  
17 along.

18 So if you could use directional terms,  
19 north, south, up, down.

20 MR. CANNON: Okay. This is a map that  
21 shows the area around the power plant. The power  
22 plant is more or less in the middle, in the center  
23 portion of the map.

24 To the north of the existing plant, the  
25 new combined cycle unit is shown. And then just

1 to the north and closer to the ocean is the  
2 location of the newly constructed bridge that I  
3 referred to.

4 And then extending from that bridge is  
5 the northern portion of Embarcadero Road. And  
6 then as it becomes Atascadero Road, and passes the  
7 high school, as I referred, and then it reaches  
8 Highway 1.

9 Atascadero Road continues to the west,  
10 past Highway 1 where it becomes Highway 41. And,  
11 of course, Highway 1 continues in a north and  
12 south direction. And that's the main highway  
13 artery, or access into the area.

14 The purpose of this figure is to show,  
15 as I described earlier, we encouraged Duke to use  
16 access routes and timing that would allow members  
17 of the employees, the project construction  
18 employees to get to the site before key activity  
19 periods are going on in the City, as far as high  
20 school activity, possibly other school kids who  
21 are going back and forth through here, as well as  
22 just the peak traffic period which occurs in the  
23 Main and Atascadero area, which is a particularly  
24 important intersection.

25 So what this shows is that employees

1 would either come from the south, from the San  
2 Luis Obispo area, toward the site. And if they  
3 did they would exit at the Main Street exit, and  
4 then loop around and come in the back entrance  
5 that way.

6 If they came from the north they would  
7 also exit at Main Street and loop around into the  
8 back entrance. And if they did come on Highway  
9 41, they would arrive at the Main and Atascadero  
10 intersection; make a left turn; and then proceed  
11 along Main Street into the back entrance.

12 This particular route was chosen for the  
13 AM arrival because it keeps the project traffic  
14 away from the high school. It's also done before  
15 7:00 a.m. The shift would begin at 7:00.

16 And based on all traffic counts and  
17 discussions with the school board, it was  
18 determined that the high activity period at the  
19 high school and for other schools in the area  
20 occurs after 7:00, perhaps between the hours of  
21 7:00 and 9:00.

22 And our traffic counts, and these were  
23 counts that we also corroborated with the City, at  
24 least for this location, show that peak time  
25 period of activity at this particular important

1 intersection, Main and Atascadero, is roughly  
2 between 7:45 and 8:45, or 8:00 to 9:00.

3 So by arriving at 7:00 you avoid all  
4 this activity. You avoid any potential impact  
5 with the school, with that high volume of  
6 employees that would arrive, as well as any other  
7 students who might be passing through the area to  
8 go to other schools.

9 And then if I may just use the next  
10 figure, which is identical in every way except  
11 that it just shows the reverse. It shows what  
12 happens when everybody goes home.

13 Just to orient you, this is figure 6.11-  
14 9 out of the AFC. It's the exact same orientation  
15 as far as where the plant is, more or less in the  
16 middle. The combined cycle units are shown just  
17 north of the existing plant, the tank farm area,  
18 which is just like the last figure.

19 And what this shows is that at the end  
20 of the day we chose a time approximately --  
21 exactly 5:30 is the end of the shift. We picked  
22 that time because our traffic counts indicated  
23 that the high volume period here at Main and  
24 Atascadero, which is again a key intersection,  
25 occurs roughly between 4:00 and 5:00.

1                   And so we wanted to avoid that time  
2                   period. We also knew that the high school and  
3                   other schools in the area tend to get out around  
4                   between 2:00 and 3:00, and so we wanted to avoid  
5                   that period. Recognizing that there would be --  
6                   there's a difference in the activity associated  
7                   with the schools in the afternoon.

8                   In the morning everyone seems to just  
9                   arrive and it's a big arrival. But in the  
10                  afternoon there are kind of gradual departures  
11                  that occur. But the biggest timeframe is between  
12                  2:00 and 3:00. There is some departure that  
13                  occurs between 3:00, 3:30, 4:00. And usually by  
14                  4:00 or 4:30 most of the kids have left the high  
15                  school. There still are some activities around  
16                  there, but by 5:30 we felt pretty comfortable that  
17                  was a good time to let the plant employees depart.

18                  So they would leave off the new  
19                  construction access road; cross the new  
20                  construction major bridge here. It's the bridge  
21                  we talked, across Little Morro Creek; extend along  
22                  Atascadero Road. And then either get on the  
23                  highway going south or north. And then a few  
24                  would continue straight through Highway 41.

25                  Is there any more description you'd

1       like? Or I guess we can -- I can show you the  
2       offsite laydown areas. Why don't I do that.

3                 One of the key things that I mentioned  
4       in my summary was the use of an offsite laydown  
5       area here, at Camp San Luis here. And the reason  
6       an offsite laydown area is used is it allows the  
7       construction managers at Duke to schedule  
8       deliveries, to use a storage area, a marshaling  
9       area, as it were.

10                And then things can be brought to the  
11       site as they're needed. Kind of like putting  
12       together pieces of a puzzle. And so it gives you  
13       plenty of room over here to do these things. And  
14       it allows the site activities to be focused on  
15       actual assembly and construction of the units.

16                But, also importantly it gives the Duke  
17       managers plenty of flexibility to schedule the  
18       timing of deliveries. And, again, timing being  
19       important.

20                One of the things that we wanted to  
21       avoid, you'll remember, as I just was referring  
22       to, the Main and Atascadero intersection. There  
23       are times in the morning from 7:00 to 9:00 we want  
24       to avoid that area because of the kids and because  
25       of the high activity periods. And there's also

1 times in the afternoon between 4:00 and 5:00.  
2 That's a high volume period then, and so we want  
3 to avoid it.

4 So what we've promised in the AFC is  
5 that we would schedule deliveries to avoid these  
6 time periods, after the peak being the time when,  
7 the street peak is going on and the kids are  
8 usually gone, but that still is a high volume  
9 period, rush hour if you will, during that time  
10 period.

11 So we would avoid 7:00 to 9:00 and we  
12 avoid 4:00 to 5:00. It's easy to say. So how  
13 would you do it? Scheduling of deliveries from  
14 the staging areas is how we propose to do it. And  
15 allows Duke a tremendous amount of flexibility.  
16 They can either have things delivered during the  
17 day, but away from those time periods. Or even at  
18 night, depending upon, you know, when things come  
19 in. But, it gives a tremendous amount of  
20 flexibility to Duke.

21 Last thing, it's not shown on this map,  
22 but in the area South Bay Boulevard intersects  
23 with Highway 1. And near that intersection we  
24 have the ability to use offsite parking, which the  
25 majority of construction employees would park

1 onsite, but we've got room for up to 200 employees  
2 to park here. And a shuttle bus to take them in.

3 Again, giving the Duke managers some  
4 flexibility in terms of onsite movements. It  
5 gives them more room for construction activities.  
6 And it also helps to reduce the amount of traffic  
7 in and around the site, which again is a  
8 consideration for traffic.

9 So, by implementing all these design  
10 features, the staging area at Camp San Luis, the  
11 route by the way, I should point out, takes  
12 O'Connor Way out to Foothill. And then Foothill  
13 to Los Osos Valley Road. And then Los Osos Valley  
14 Road to South Bay. And then you would come and  
15 get back on the highway right here at South Bay  
16 Boulevard and jump up to Main Street. Get off at  
17 Main, come in the back.

18 Then once the deliveries are complete,  
19 you go back out over the bridge and come along  
20 Atascadero and get back on Highway 1, and reverse  
21 the steps.

22 Again, the advantage to this, it's  
23 smooth; it's circular; it allows for scheduled  
24 activities; and it allows for Duke to be able to  
25 mitigate any potential traffic issues during high

1 volume periods.

2 So, that's the basic design. And with  
3 these design features, as I described, we were  
4 able to conclude, based on the traffic analysis,  
5 and we evaluated traffic conditions along O'Connor  
6 Way, along Foothill, along Los Osos, along South  
7 Bay. We took traffic counts at appropriate  
8 locations and used information that we got from  
9 the County, as well.

10 And we were able to conclude that  
11 traffic impacts associated with movements back and  
12 forth from the offsite laydown area were not  
13 significant. We got levels of service of A, B,  
14 and at worst C.

15 Similarly, we were able to conclude  
16 traffic impacts for the project in all locations  
17 around the City of Morro Bay, including the  
18 important Main and Atascadero intersection, also  
19 not significant. And that was within the City's  
20 criteria for significance, which was nothing to  
21 fall below level of service C, as in Charles.

22 And finally on a cumulative level,  
23 because we did take the very conservative  
24 cumulative analysis that we took, taking all the  
25 potential planned projects, and having all their

1 impacts occurring at the same time, we then added  
2 those impacts to the peak impacts of the project.

3 And we were able to conclude for every  
4 location that the impacts were not significant  
5 except for the approach, the eastbound approach to  
6 Main and Atascadero at the 5:30 to 6:00. That did  
7 trigger the City's significance criteria.

8 But with the mitigation measures that  
9 we've talked about, which is traffic management,  
10 which is to avoid delivery activities, especially  
11 during the high volume periods, but also during  
12 the period when all the employees are running in  
13 and out, and because of the fact that this impact  
14 occurs for about a half an hour a day, as these  
15 guys are exiting the site, maybe Monday through  
16 Friday at most. And for about six, seven months  
17 when you're at your very highest period of  
18 activity on the site.

19 Our judgment was, under CEQA, that this  
20 was not a significant impact. It's a short-term  
21 impact; a construction related impact; and limited  
22 in duration.

23 But, we couldn't stop there. We  
24 realized that the City was particularly focused on  
25 that location. So we puzzled over it a little

1 bit. We actually went out and sat one afternoon  
2 and observed that intersection and tried to figure  
3 out how best to address the issues there, even  
4 though our impact was short term, we tried to  
5 think what can we do.

6 And it turns out that when you observe  
7 activities at that intersection the most  
8 conservative way to analyze it is to assume that  
9 all the cars arrive in one line, in a row. And  
10 the right-turn guys turn right; the left-turn guys  
11 turn left; and whoever wants to go straight goes  
12 straight. And you have to wait for the turners to  
13 be made before you can go straight through.

14 If you actually look at the way the  
15 intersection performs, when somebody's ready to  
16 make a left turn somebody else pulls up next to  
17 them, let's them make their left turn. And then  
18 they can proceed straight through the  
19 intersection. It's a shared right-turn lane, and  
20 exclusive left-turn lane.

21 Now, that's not the way it's striped.  
22 In fact, there's no striping at all. But there is  
23 striping at other approaches to that same  
24 intersection which show two lanes.

25 Our estimation was that the reason there

1 isn't striping there is because it's so close to  
2 the offramps from the highway that they chose not  
3 to stripe it.

4           But in terms of actual activity, if you  
5 look at it, that's the way it was analyzed --  
6 that's the way it occurs. So if you analyze it  
7 with that shared right-turn lane, and the  
8 exclusive left-turn lane, the analysis shows  
9 impacts go way down. It's not a significant  
10 impact, or doesn't trigger the City's LOSD  
11 significance criteria.

12           So we thought, well, one way to do that  
13 is to restripe them. And so we thought about  
14 that. We actually talked to Caltrans and said,  
15 what do you think about this. Is this a  
16 completely ridiculous idea or does it make sense.

17           And Caltrans said we know what you're  
18 doing, we understand, and it does make some sense  
19 to attempt to do that. We're going to have to  
20 make a judgment as to whether or not it works  
21 based on our guidelines; but we understand what  
22 you're doing. It's not an unreasonable thought  
23 under the circumstances. And they're familiar  
24 with the area. That's as far as they were willing  
25 to go, understandably until they have a proposal

1 in front of them. But they didn't think it was  
2 such a bad idea.

3 So we went to the City and we said, ah,  
4 we've got a solution. Let's restripe it. And the  
5 City says, well, we like that, but we really want  
6 to have this thing redeveloped. We want to have a  
7 round-about.

8 And so Duke spent a lot of time and a  
9 long time actually discussing this with the City.  
10 And it wasn't really responsive to anything that  
11 was going on here in the analysis because the  
12 analysis indicates in our view either that it's  
13 not significant, or if it is, with striping it  
14 could be handled.

15 But nevertheless Duke, very generously,  
16 I guess agreed to provide the City with \$1.4  
17 million. And that \$1.4 million would go toward  
18 improvements.

19 This is -- I'm putting back up the PM  
20 construction employee outbound route, figure 6.11-  
21 9. That \$1.4 million would go toward improvements  
22 of the Main and Atascadero intersection such that  
23 you could have a round-about. And all along  
24 Atascadero Road in front of the high school, as  
25 well as the north portion of Embarcadero Road,

1 north of the plant bridge.

2           And the only caveat, as Duke said, you  
3 know, we're happy to do this, but let's not  
4 associate it with the analysis. And, in fact,  
5 just don't hold our schedule up. If you can get  
6 it done before the schedule, great. If you can't,  
7 we're still going to support you, but we're just  
8 going to have to wait until our construction  
9 schedule gets going and then gets to a point where  
10 we can be completed, and then go forth.

11           And so I guess to conclude our  
12 assessment of impacts, we found no significant  
13 impacts anywhere, including the eastbound approach  
14 to Main and Atascadero, which, in our view, is  
15 limited duration. And the nature of it is not  
16 significant.

17           We found a way to restripe it that would  
18 reduce the impacts. Caltrans is willing to look  
19 at it. But ultimately, without tying it to this  
20 analysis, but recognizing that Duke wants to  
21 support the City, they've agreed to give a lot of  
22 money, \$1.4 million, to address long-term solution  
23 in this area.

24           And so that's the result of our  
25 analysis. Is there anything else I could --

1                   MR. ELLISON: No, thank you. Why don't  
2 you turn to your seat and we'll continue with the  
3 direct examination.

4 BY MR. ELLISON:

5                   Q     A couple of just clarifying questions.  
6 Mr. Cannon, in your testimony you mentioned on  
7 more than one occasion that you had recommended to  
8 Duke that they incorporate a certain project  
9 feature.

10                   I'm just going to ask this question  
11 generically. With respect to each of those  
12 recommendations did Duke, in fact, incorporate  
13 them into the project?

14                   A     Yes, they did.

15                   Q     And what was your conclusion with  
16 respect to compliance with applicable laws,  
17 ordinances, regulations and standards?

18                   A     It was my evaluation and judgment that  
19 the project will comply with all applicable laws,  
20 ordinances, regulations and standards.

21                   Q     I'd like to ask you just a couple of  
22 questions about your description a moment ago  
23 about the cumulative construction impact at the  
24 Main and Atascadero intersection.

25                   You testified that for that temporary

1 period of construction time without the project  
2 features that the level of service would  
3 occasionally be a level of service D, is that  
4 correct?

5 A That is correct, for approximately 45  
6 minutes.

7 Q A level of service D, is that within the  
8 design loading of the roadway at that point?

9 A Typically the design capacity of a road  
10 is level of service E, as in easy. And so level  
11 of service D would fit within that design. Some  
12 roads are designed less conservatively, and so  
13 level of service D would be design capacity.

14 But in either event, impacts associated  
15 with the project and cumulative conditions would  
16 not exceed design capacities of roads.

17 Q Okay, even under these worst case  
18 cumulative construction conditions where you've  
19 assumed all of the peak impacts of all the various  
20 projects all happen at the same time, nothing  
21 exceeds the design capacity of any roadway,  
22 correct?

23 A Correct.

24 Q Am I correct that the level of service  
25 designations are related to time periods of

1 potential delay?

2 A That is correct, yes. They include  
3 evaluation of many factors, but ultimately it is  
4 represented in a time of delay.

5 Q And what is the time delay that puts you  
6 into level of service D?

7 A That's 25 seconds or more. In excess of  
8 25 seconds.

9 Q Okay, so if you have a delay of 25  
10 seconds you are level service D, is that correct?

11 A If you exceed 25 seconds you're at level  
12 service D.

13 Q Okay. And again, during construction,  
14 in combination with the assumed peak impacts of  
15 all the other projects, cumulatively, all  
16 happening at the same time, what would be the time  
17 period of delay at that worst case intersection of  
18 Atascadero and Main?

19 A Our analysis indicated that it was 25.6  
20 seconds.

21 Q So you're into level of service D by six  
22 tenths of one second for 45 minutes, assuming  
23 construction impacts coinciding with peak period  
24 impacts of all the other projects that might be  
25 built in the area, is that right?

1 A That is correct, yes.

2 Q And then you have proposed \$1.4 million  
3 worth of construction at that intersection, is  
4 that correct?

5 A Yes, just as a separate agreement with  
6 the City based on our knowledge that they were  
7 concerned about that location.

8 Q Okay. Notwithstanding your conclusion  
9 that that .6 of one second temporary construction  
10 impact was not significant, is that correct?

11 A That is correct.

12 Q Have you had an opportunity to review  
13 the final staff assessment with respect to traffic  
14 and transportation?

15 A Yes.

16 Q And do you agree with the staff's  
17 conclusions regarding significance of impacts in  
18 compliance with applicable laws?

19 A I agree with the staff's conclusions,  
20 yes.

21 Q And with respect to the conditions of  
22 certification, have you had an opportunity to  
23 review those?

24 A Yes, I have.

25 Q And would you comment on your agreement

1 with the conditions of certification proposed by  
2 staff?

3 A We agree with the staff's position on  
4 TRANS-1, TRANS-2, TRANS-3, TRANS-5 and TRANS-8.

5 We respectfully disagree with the staff  
6 on TRANS-4, TRANS-6 and TRANS-7. We have had some  
7 discussions with staff to indicate that we are  
8 moving in the direction of agreement on those  
9 issues, as well.

10 Q Could you briefly describe the areas of  
11 disagreement and your position with respect to  
12 those particular conditions?

13 A Yes. TRANS-4 relates to improvement --  
14 well, it relates to wear and tear on roads that  
15 might occur as a result of project traffic. We  
16 wanted TRANS-4 to reflect the fact that there is  
17 an agreement to lease that the City of Morro Bay  
18 and Duke have worked out.

19 It relates to the \$1.4 million that I  
20 talked about earlier. And certainly any  
21 improvements that would occur, we should take into  
22 consideration the fact that that part has already  
23 been agreed to be done in the first place, or any  
24 wear and tear associated with that, we should know  
25 that it's going to be replaced or improved by the

1       \$1.4 million.

2                   The second thing is allow for the post-  
3 construction assessment of potential impacts to  
4 roadway pavement. To take into consideration the  
5 ratio of project traffic to overall traffic.

6                   Now, certainly in the areas associated  
7 right near the City, right near the plant, there  
8 may be a fairly high percentage of project  
9 traffic, but as you get further and further away,  
10 and certainly on the route to and from the offsite  
11 laydown area, those roads are very very highly  
12 travelled with lots of traffic.

13                   And we would hope that any analysis of  
14 potential impacts from project traffic would  
15 include consideration of normal wear and tear from  
16 the other traffic that travels in that location.

17                   TRANS-6 relates to -- it's a series of  
18 bullets related to a transportation management  
19 plan. I won't go through each one because they're  
20 in my submitted testimony. I'll just give a  
21 summary.

22                   First, we would want to make sure that  
23 the first bullet is clarified to indicate that  
24 Duke will follow a designated hazardous material  
25 transportation route. And will comply with all

1 applicable federal, state and local regulations.

2           The language, as is, indicates that we  
3 would prohibit transportation of hazardous  
4 material on roadway segments that have residential  
5 uses fronting them. Say we don't anticipate that,  
6 but the language should be clarified to follow the  
7 law in accordance with transportation of hazardous  
8 material.

9           Second, the second bullet just needs  
10 clarification that the -- it says 7:00 to 8:00  
11 a.m. that we would avoid time periods, important  
12 time periods, and it's actually 7:00 to 9:00, as  
13 I've testified earlier. And then also from 4:00  
14 to 5:00, which is correct.

15           The third bullet talks about scheduling  
16 of heavy vehicle equipment and building materials  
17 deliveries to occur in offpeak hours. Just want  
18 to make sure that that means 7:00 to 9:00 and 4:00  
19 to 5:00, as we discussed.

20           And then it says prohibiting use of SR41  
21 east of SR1 by heavy vehicles for project related  
22 deliveries. We request that that say oversize/  
23 heavy haul vehicle equipment.

24           And again, the clarification of the  
25 timing that all the project deliveries would occur

1 in offpeak hours.

2 I should note that we've had discussions  
3 with the CEC Staff on this, and the discussions  
4 relate to the staff's concern about this road  
5 being a not particularly easy route to travel.  
6 The potential for slow-moving trucks to disrupt  
7 traffic.

8 Number one, we wouldn't have deliveries  
9 occur during peak traffic periods. And number  
10 two, it's a designated alternative truck route, so  
11 it's very difficult to turn around and prohibit  
12 truck traffic on that. Heavy haul, certainly.  
13 Regular semitruck traffic, because it's a  
14 designated truck route and because we feel like  
15 it's not necessary, there wouldn't be a high  
16 volume of truck traffic for the project anyway on  
17 that route. We feel like that's not necessary.

18 And then the last two are just  
19 clarifications on that. We need to figure out  
20 which bicycle trails we're talking about. And as  
21 far as measures to insure continued recreational  
22 access what we would do is we would require  
23 compliance with all local planning requirements  
24 and ordinances for recreational access. That's  
25 what we would do.

1                   TRANS-7 talks about mitigating the  
2                   expected level of service D operations at the  
3                   intersection. We just need to make it clear that  
4                   there are mitigation measures that we talked.  
5                   Number one, we don't believe it's a significant  
6                   impact anyway. But to the extent that there are  
7                   some things that can be done to make things  
8                   smoother, we think that striping would work.

9                   But to the extent that we have any kind  
10                  of discussion about improvements, whatever kind of  
11                  improvements in dollar figures, they should be  
12                  tied back to the agreement to lease, which has  
13                  already resulted in the agreement of a lot of  
14                  money, as I testified earlier, to address  
15                  conditions at that intersection, as well as along  
16                  Atascadero Road and north of Embarcadero, or north  
17                  of the new bridge on Embarcadero.

18                  Those would be my recommended changes.

19                  Q     Thank you. I'd like to direct your  
20                  attention to the filings of other parties briefly,  
21                  starting with the testimony from the City.

22                  The City has filed testimony of Robert  
23                  W. Schultz with regard to traffic and  
24                  transportation. Do you have a copy of that?

25                  MR. ELIE: Can we get a number for that,

1 Mr. Fay? We don't have an exhibit number yet.

2 HEARING OFFICER FAY: Sure.

3 MR. ELIE: Trying to keep the record  
4 clean.

5 HEARING OFFICER FAY: Let's mark that --

6 MR. ELIE: The full title is testimony  
7 of Robert W. Schultz on behalf of the City of  
8 Morro Bay regarding traffic and transportation.

9 HEARING OFFICER FAY: That will be  
10 exhibit 138.

11 MR. ELIE: Thank you.

12 BY MR. ELLISON:

13 Q With respect to that exhibit, at the  
14 back of the exhibit Mr. Schultz makes a  
15 recommendation regarding a proposed condition  
16 TRANS-9. Do you see that?

17 A Yes.

18 Q Assuming that the condition were worded  
19 exactly as it is presented here in Mr. Schultz'  
20 testimony, would you object to its incorporation  
21 into the FSA -- I'm sorry, into the Commission's  
22 decision?

23 A Assuming there's nothing more to article  
24 16 paragraphs 16.3, other than what is shown in  
25 his testimony, yeah, that's fine. I would not

1 have a problem with that. And I would reemphasize  
2 only just that we would want that type of  
3 provision to not interfere with the construction  
4 activities. But other than that Duke is 100  
5 percent supportive, and would have no problems  
6 with that.

7 Q Okay. Further up that six or seven  
8 pages in Mr. Schultz' testimony, Mr. Schultz  
9 briefly identifies two other concerns. One with  
10 respect to TRANS-4 and another with respect to  
11 TRANS-6. Do you see that?

12 A Yes.

13 Q What is your position with respect to  
14 his recommendation regarding TRANS-4?

15 First of all, let me ask you this. What  
16 do you understand his recommendation regarding  
17 TRANS-4 to be? And then let me ask you what is  
18 your position with respect to it.

19 A Well, what it says, as I read it, is  
20 that the pre- and post-construction inspection  
21 should include an evaluation of subsurface roads  
22 and utility conditions to determine the extent of  
23 any project impacts and repairs necessary from  
24 those project impacts.

25 And I assume that means surface roads

1 and subsurface utilities conditions, is that  
2 correct? That would be my reading of that.

3 Q Assuming that you read it correctly, and  
4 we have the words here in the exhibit, what is  
5 your position with respect to including an  
6 evaluation of subsurface roads and utility  
7 conditions to determine the extent of project  
8 impacts and repairs necessary from those project  
9 impacts?

10 A Well, again, assuming that my reading is  
11 correct, that we're talking about surface roads  
12 and subsurface utility conditions, my comments  
13 regarding evaluation of potential impacts to the  
14 surface roads are the same as what I said earlier.

15 And that is that we would hope to make  
16 sure that there is an evaluation of ratio of Duke  
17 traffic to existing traffic, number one.

18 And number two, to the extent that it  
19 covers areas that would have already been  
20 addressed by the agreement to lease, the \$1.4  
21 million, that that be recognized that's already  
22 been covered.

23 But otherwise I have no problems with  
24 the idea of evaluating roads with those caveats.

25 As far as the buried utilities, I have a

1 little more problem with that. I would have to  
2 disagree with that recommendation. In my view  
3 it's difficult to make an initial assessment of  
4 the condition of buried utility structures. It's  
5 hard to get at them. Some maybe you can, probably  
6 a lot you can't.

7           If you could possibly get at them, it's  
8 difficult to determine whether their existing  
9 condition, whether the deterioration that exists  
10 there is the result of traffic at all, or whether  
11 it's just the result of their being buried, or  
12 other issues that are related to the kinds of  
13 things that are carried by these utility  
14 structures.

15           And finally, if you could figure out  
16 that it is a result of traffic, well, then it's an  
17 even trickier proposition to try to figure out how  
18 the Duke traffic would affect these underground  
19 utility structures.

20           It just becomes very very difficult.  
21 Even more difficult than trying to look at the  
22 surface roads. I mean at least you can take a  
23 picture and sort of make some evaluation. But  
24 with the underground utility structures, I don't  
25 see a way to do that that would make sense. So I

1 would disagree with that.

2 Q Referring to his recommendation  
3 regarding TRANS-6, where he says the  
4 transportation management plan should include  
5 measures to promote the use of carpooling,  
6 vanpooling and/or ridesharing, what is your  
7 position with regard to that?

8 A I would support the idea of including  
9 measures to promote the use of carpooling,  
10 vanpooling and ridesharing.

11 Q And now if I can ask you to refer to  
12 CAPE's testimony on traffic and transportation.  
13 First --

14 MS. CHURNEY: Maybe this is a time to  
15 get that document marked as an exhibit.

16 HEARING OFFICER FAY: Sure.

17 MS. CHURNEY: And the document is the  
18 testimony offered by the Intervenor Coastal  
19 Alliance on plant expansion, on group two topics  
20 in response to exhibits.

21 HEARING OFFICER FAY: And that will be  
22 exhibit 139.

23 BY MR. ELLISON:

24 Q Included within exhibit 139 is a  
25 declaration of Colby Crotzer, do you see that?

1 A Yes.

2 Q Mr. Crotzer had -- paragraph four of his  
3 testimony discusses the closure of Morro Bay  
4 Elementary School and the consolidation of  
5 students with those at Delmar Elementary School,  
6 do you see that?

7 A Yes, I do.

8 Q Assuming that the closure described here  
9 is correct, does it change in any way your  
10 analysis of the traffic impacts of this project?

11 A No, it does not.

12 Q Further down in paragraph five Mr.  
13 Crotzer describes the relocation of the Morro Bay  
14 Youth Center, do you see that?

15 A Yes.

16 Q Assuming again that the description of  
17 the closure is correct in Mr. Crotzer's testimony  
18 would that change you analysis of the traffic  
19 impacts from the project at all?

20 A No, it would not.

21 Q Also included in exhibit 139 is a  
22 declaration of Pamela M. Soderbeck. Do you have  
23 that?

24 A Yes, I do.

25 Q Turning to the final page, page 16,

1           there are two paragraphs numbered 32 and 33 with  
2           regard to traffic and transportation, do you see  
3           that?

4           A     Yes.

5           Q     My reading of the two paragraphs, Ms.  
6           Soderbeck testifies regarding the overlapping  
7           transition lane from southbound Atascadero Road  
8           onramp to Highway 1, and the southbound traffic  
9           exiting on Main Street, do you see that?

10          A     Yes.

11          Q     Did you analyze the impacts of the  
12          modernization project, both construction and  
13          operation, on that stretch of road that she  
14          discusses in her testimony?

15          A     Yes, we did.

16          Q     And could you briefly describe your  
17          conclusion with respect to the impact on that  
18          stretch of road?

19          A     Our evaluation indicates that the  
20          existing levels of service in that stretch of road  
21          are acceptable; level of service A or B. And that  
22          addition of project traffic on either a project  
23          level or a cumulative level would not alter those  
24          levels of service.

25          Q     And lastly, Mr. Cannon, did you assume

1 any project life in doing your traffic and  
2 transportation analysis?

3 A No, I did not. I assumed the project  
4 would be here indefinitely and analyzed it  
5 accordingly.

6 MR. ELLISON: That's all I have. I  
7 would move the introduction into evidence of  
8 exhibit 134, the portion on traffic and  
9 transportation, beginning on page 64; and the  
10 exhibits incorporated by reference therein, which  
11 are at pages 65 and 66. There are several and I  
12 will not take the time to enumerate them unless  
13 you want me to.

14 HEARING OFFICER FAY: That's not  
15 necessary. Any objection? All right, hearing  
16 none, so moved.

17 MR. ELLISON: That's all I have, thank  
18 you.

19 HEARING OFFICER FAY: Is the witness  
20 available for cross-examination?

21 MR. ELLISON: Yes.

22 HEARING OFFICER FAY: All right. And  
23 just before we get into that, I just want to point  
24 out for all of the parties, but in particular for  
25 Coastal Alliance since they've just had the most

1 recent exhibit marked, with an exhibit such as  
2 exhibit 139, that contains many subparts, I'm  
3 afraid people are going to have to be very careful  
4 making reference to that, so that the reference  
5 includes the subparts. Just saying 139 is not  
6 going to help us as the pagination does not  
7 continue straight through.

8 MS. CHURNEY: Well, I'd be happy to  
9 separate out the exhibits. I was doing it that  
10 way simply following the applicant's lead. That's  
11 how they designated their --

12 HEARING OFFICER FAY: Well, I think for  
13 now we can deal with this. If something else  
14 comes up, we'll make the change clear in the  
15 record.

16 I just want to note that. And it  
17 applies to any of these exhibits that are not  
18 paginated straight through.

19 Okay, with that, Ms. Holmes, any cross-  
20 examination by the staff?

21 MS. HOLMES: No, none.

22 HEARING OFFICER FAY: All right. We'll  
23 move to the City, then.

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## CROSS-EXAMINATION

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BY MR. SCHULTZ:

Q Yes, Mr. Cannon, I just have one quick question for you. After the bridge is constructed south of the bridge area to the new plant entrance, will the traffic in that area increase or decrease as it exists today?

A I am not in a position to make that judgment. There is very little traffic extending from where the bridge would be to Coleman today. And I'm not in a position to judge what traffic conditions would be like once the project construction was completed.

Q The area from where the new plant entrance to where the creek is, that dead-ends into the creek as it exists right now, correct?

A Yes, it does.

Q And what's the condition of that road? Is it unimproved, would you say?

A It's definitely unimproved, yes.

MR. SCHULTZ: No further questions.

HEARING OFFICER FAY: All right.

Coastal Alliance.

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## CROSS-EXAMINATION

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BY MS. CHURNEY:

Q On Duke's recommendations with respect to transportation-6, it does not include either the school lunch hour or the 2:00 to 3:00 p.m. period. Does Duke object to avoiding these periods for both employees and deliveries, as well?

A Yes, Duke would. Those time periods, based on our evaluations, have lower traffic levels in the intersections and also lower amounts of activities as far as the schools are concerned, based on our evaluations.

Q You are aware, however, that the high school is an open campus and students do leave during the lunch period and then return later on after the noon time period, was that taken into your consideration?

A Yes, it was.

Q You've indicated that you have come to the conclusion that the closure of Morro Bay Elementary School and the move of the Youth Center to Atascadero Road will not change your analysis with respect to traffic impacts of the project.

Could you state the basis for your

1 conclusion?

2 A Well, there's really two time periods  
3 that we identified where high volumes of Duke  
4 traffic would be present on the roads. The first  
5 is when the employee, construction employees, and  
6 this only really during the peak project  
7 construction phase, it's about six or seven  
8 months. That would be when the peak number of  
9 project construction employees arrive in the  
10 morning. And then again when they depart in the  
11 afternoon.

12 Our design features which were to start,  
13 among the design features that we recommended,  
14 were to start the construction day shift by 7:00  
15 a.m. And the reason was to avoid any Duke  
16 construction traffic for employees during the time  
17 period when students would most likely be moving  
18 around in the mornings.

19 And so that would be between 7:00 and  
20 say 8:30 or 9:00. So to the extent that there is  
21 additional student movements during the morning,  
22 we would have accounted for that as well, by  
23 avoiding having a large amount of Duke traffic on  
24 the streets at that time.

25 Now, I should add that we've also agreed

1 to restrict or to prevent deliveries traveling  
2 through the crucial Main and Atascadero  
3 intersection also during that time period. And  
4 it's for the same reasons.

5 So, basically Duke is not on the roads  
6 during the time when the kids would most likely be  
7 moving about and traveling to school in the  
8 mornings.

9 In the afternoon we deliberately made  
10 the day shift end late enough that we would avoid,  
11 again, the times when higher volumes of students  
12 might be present.

13 The same is true with the potential for  
14 the Youth Center. While there may be kids going  
15 back and forth to the Youth Center, there's no  
16 indication that high volumes of kids would be  
17 moving around in and about the Youth Center in the  
18 5:30 to 6:00 range, which is when the large bulk  
19 of construction employee traffic would depart.

20 Q What about the departure time for  
21 students between the 2:00 and 3:00 o'clock time  
22 period?

23 A During the 2:00 and 3:00 o'clock time  
24 period the most there would be is some  
25 construction traffic moving along Atascadero that

1 would be associated with deliveries to and from  
2 the site.

3 The amount of those trucks is not very  
4 high. And would not constitute a significant  
5 safety hazard to students or anybody else  
6 operating on those roads.

7 Q You also mentioned that there had been  
8 discussions by Duke to utilize a local cement  
9 contractor located on Atascadero Road. Have those  
10 negotiations been concluded?

11 A They have not been concluded, no.

12 Q So at this point Duke does not know  
13 whether they will be able to reduce cement truck  
14 traffic by utilizing a local provider?

15 A If these -- I understand that the  
16 discussions are ongoing and that they are  
17 proceeding along favorably, but according to what  
18 I've just been told they have not been complete.

19 MS. CHURNEY: I have no further  
20 questions.

21 HEARING OFFICER FAY: Any redirect, Mr.  
22 Ellison?

23 MR. ELLISON: No.

24 HEARING OFFICER FAY: All right, thank  
25 you very much, Mr. Cannon, appreciate that.

1                   We'll now move to the staff witness on  
2                   traffic and transportation.

3                   MS. HOLMES: Thank you. Staff's witness  
4                   is Steven J. Brown. We've also brought with us  
5                   Mr. Fore, who works in the traffic and  
6                   transportation unit, I guess it is, at the  
7                   California Energy Commission. And he's collected  
8                   some information recently about the issues that  
9                   Mr. Crotzer raised in his prefiled testimony.

10                  So I'd like to have them both sworn, and  
11                  then establish Mr. Fore's qualifications on the  
12                  record, since they weren't filed --

13                  HEARING OFFICER FAY: Okay, let's go off  
14                  the record a minute and we'll clean up the maps.  
15                  And then come back on the record.

16                  (Off the record.)

17                  Whereupon,

18                  STEVEN J. BROWN and JAMES FORE  
19                  were called as witnesses herein, and after first  
20                  having been duly sworn, were examined and  
21                  testified as follows:

22                  MS. HOLMES: Since Mr. Fore is new, why  
23                  don't we have him state his name and spell it for  
24                  the record.

25                  MR. FORE: My name is James Fore,

1 F-o-r-e.

2 DIRECT EXAMINATION

3 BY MS. HOLMES:

4 Q And could you please state what your  
5 position is at the California Energy Commission?

6 MR. FORE: I work in the environmental  
7 unit for the siting of power plants as a planner.  
8 I've been with the Commission for approximately 13  
9 years.

10 MS. HOLMES: Can you explain what your  
11 expertise is in the area of traffic and  
12 transportation?

13 MR. FORE: At the Commission I've worked  
14 on several of the projects for traffic. And while  
15 in private industry I worked in the areas of  
16 constructing facilities as well as siting  
17 locations for manufacturing facilities.

18 MS. HOLMES: Thank you. Was the traffic  
19 and transportation portion of exhibit 115 prepared  
20 by you or under your direction?

21 MR. FORE: Under my direction.

22 MS. HOLMES: I'm sorry, I'm confused.

23 Is Mr. Brown not testifying?

24 MR. BROWN: I am.

25 MS. HOLMES: You're just going to be

1 sitting there?

2 MR. BROWN: When I --

3 MR. FORE: Hopefully we'll trade places.

4 MS. HOLMES: I'd like to ask you both  
5 questions to get --

6 (Pause.)

7 MS. HOLMES: And, Mr. Brown, did you  
8 participate in the preparation of the traffic and  
9 transportation section of exhibit 115?

10 MR. BROWN: Yes, I did.

11 MS. HOLMES: And was the statement of  
12 your qualifications included in exhibit 115?

13 MR. BROWN: Yes, it was.

14 MS. HOLMES: And are the facts contained  
15 in this testimony true and correct to the best of  
16 your knowledge?

17 MR. BROWN: Yes, they are.

18 MS. HOLMES: And do the opinions  
19 contained in this testimony represent your best  
20 professional judgment?

21 MR. BROWN: Yes, they do.

22 MS. HOLMES: Duke has stated that the  
23 design life for the facility is 30 years. If the  
24 operation exceeds 30 years would that fact change  
25 any of your conclusions about the significance of

1 impacts or the sufficiency of mitigation?

2 MR. BROWN: No, it would not.

3 MS. HOLMES: Okay. I think what I'd  
4 like to do now is walk through the various  
5 comments that we've discussed earlier today, the  
6 testimony that's been filed and the like. Why  
7 don't we begin with the City of Morro Bay. I  
8 believe it's exhibit 138, the testimony of Robert  
9 Schultz on traffic and transportation.

10 Do you have that in front of you?

11 MR. BROWN: Yes.

12 MS. HOLMES: The City of Morro Bay has  
13 recommended that TRANS-4 be amended to include  
14 examination of subsurface roads and utility  
15 conditions. Do you have a response to that  
16 recommendation?

17 MR. BROWN: My comments would be similar  
18 to what was said earlier, which is the  
19 subsurface -- to evaluate subsurface roads and  
20 utility conditions would be very difficult for  
21 present conditions, and even more difficult to  
22 assess the project's contribution to any  
23 degradation.

24 So, as a practical matter, I'm not sure  
25 that that could be effectively done.

1 MS. HOLMES: So you wouldn't recommend  
2 its inclusion at this time?

3 MR. BROWN: Correct.

4 MS. HOLMES: With respect to TRANS-6,  
5 the City of Morro Bay has recommended that the  
6 transportation management plan portion be required  
7 to include measures that promote the use of  
8 carpooling, vanpooling and ridesharing. Do you  
9 have a response to that recommendation?

10 MR. BROWN: I'm not sure it would  
11 accomplish anything, but I see no harm in its  
12 inclusion.

13 MS. HOLMES: Is your concern about the  
14 enforceability of the condition if it were to have  
15 that language in it?

16 MR. BROWN: Yes. Promote is vague, at  
17 best.

18 MS. HOLMES: Thank you. Finally, with  
19 respect to TRANS-9, well, actually the City has  
20 proposed the addition of a new condition TRANS-9  
21 that would require the project owner to comply  
22 with certain sections of the agreement to lease  
23 with respect to traffic improvements.

24 Is that a condition that the CEC Staff  
25 would support?

1                   MR. BROWN: Not in the transportation  
2 section, as its nexus to the analysis is not  
3 clear, and as such, I wouldn't recommend its  
4 inclusion.

5                   MS. HOLMES: Thank you. Let's turn next  
6 to the testimony that was filed by the intervenor  
7 Coastal Alliance, or CAPE. I believe these  
8 questions are probably more appropriately  
9 addressed to Mr. Fore, who's the one who's done  
10 some fact gathering about the issues raised by Mr.  
11 Crotzer.

12                   Mr. Fore, are you familiar with the  
13 declaration that I'm referring to which is in  
14 exhibit 139?

15                   MR. FORE: Yes, I am.

16                   MS. HOLMES: And are you aware of the  
17 fact that the Delmar Elementary School is going to  
18 be closed?

19                   MR. FORE: It's the Morro Bay School --

20                   MS. HOLMES: Excuse me, --

21                   MR. FORE: -- closed.

22                   MS. HOLMES: -- thank you.

23                   MR. FORE: Yes, I checked with the  
24 school board on this, and the students will be  
25 transferred to Delmar, is where they will go. And

1 that's approximately two and a half miles away  
2 from the center of town.

3 MS. HOLMES: And does that fact change  
4 any of the conclusions that the two of you reached  
5 in the traffic and transportation section about  
6 significant impacts or about a sufficiency of  
7 mitigation?

8 MR. FORE: It didn't change my  
9 conclusion since the timeframe for that school is  
10 almost identical to the high school. It was to  
11 start at 8:20 and end around 2:30, which would put  
12 it on the same timeframe as the high school  
13 basically, as far as avoiding traffic at that  
14 intersection.

15 MS. HOLMES: So that your testimony that  
16 the project's traffic then will not affect traffic  
17 at the time that the children are likely to be  
18 traveling?

19 MR. FORE: Yes.

20 MS. HOLMES: In addition, Mr. Crotzer  
21 raised a question about the Morro Bay Youth  
22 Center, and potential impacts associated with its  
23 operation. Are you familiar with that?

24 MR. FORE: Yes, I am.

25 MS. HOLMES: And do you agree that this

1 is an issue that needs to be further evaluated in  
2 traffic, or do you believe that it's already been  
3 addressed?

4 MR. FORE: I believe it already has been  
5 addressed in that I checked with the City. The  
6 Youth Center will open during construction, but  
7 they indicate that they expect approximately 20 to  
8 30 youths there on an average basis. And the  
9 timing is 2:30 to 9:00 p.m.; and most of the  
10 youths will be dropped off, will not be driving to  
11 the intersection. So it will be adults basically  
12 delivering them to it.

13 MS. HOLMES: So you're talking about 20  
14 to 30 youths over a time period from 2:00 to 9:00,  
15 is that --

16 MR. FORE: Right.

17 MS. HOLMES: Thank you. In addition  
18 there was -- I guess we're going to continue to  
19 use the same exhibit number at this time. In  
20 exhibit 139 there were two paragraphs on potential  
21 traffic concerns that were raised by Ms.  
22 Soderbeck, having to do with -- I'll pull out the  
23 exact reference.

24 On page 16 of her testimony, paragraphs  
25 32 and 33, having to do with a transition lane

1 from southbound Atascadero Road onramp to Highway  
2 1, and the southbound traffic exiting from Highway  
3 1 onto Main Street. Are you familiar with that  
4 testimony?

5 MR. FORE: I read it this morning.

6 MS. HOLMES: And do you believe that  
7 there is an additional concern that should be  
8 addressed in staff's traffic analysis as a result  
9 of this?

10 MR. FORE: I believe staff has addressed  
11 that intersection to satisfy the safety concerns  
12 and traffic potential there.

13 MS. HOLMES: Thank you. Let's turn to  
14 Duke's proposed changes at this time and march  
15 through them one by one.

16 With respect to TRANS-4 Duke had several  
17 bulleted items that they included in their  
18 testimony. These items consist of recommendations  
19 to changing the language in staff's proposed  
20 conditions.

21 Rather than have me ask the questions,  
22 why don't you just march through the bulleted  
23 items one-by-one and give us staff's response. I  
24 think that would be faster, if nobody objects.

25 MR. BROWN: Sure. With respect to the

1 first bullet and the \$1.4 million, we're not aware  
2 of what any portion of that would be applicable to  
3 roadway resurfacing, and therefore we don't think  
4 it's appropriate to include in TRANS-4.

5 With respect to the second portion we do  
6 agree that we should clarify that certain  
7 roadways, namely Embarcadero, Main Street between  
8 1 and Atascadero, and Atascadero between  
9 Embarcadero and Main those should be 100 percent  
10 responsibility of the project; whereas, the routes  
11 that are mentioned in TRANS-4 that relate to the  
12 offsite laydown area, that a proportional share is  
13 appropriate for those facilities. And we'd agree  
14 with that clarification in TRANS-4.

15 MS. HOLMES: Does the staff support  
16 including representatives from San Luis Obispo  
17 County in --

18 MR. BROWN: Yes.

19 MS. HOLMES: -- discussions about that?

20 MR. BROWN: Yes.

21 MS. HOLMES: And finally, does staff  
22 support Duke's proposal that the CPM be the  
23 arbiter with respect to any disagreements that  
24 arise regarding the extent of roadway impact  
25 conditions that need to be mitigated?

1 MR. BROWN: Yes.

2 MS. HOLMES: All right. Let's turn to  
3 TRANS-6, then. The first bulleted item refers to  
4 following a designated hazardous material  
5 transport route. What is staff's response to that  
6 bulleted item?

7 MR. BROWN: It's in the spirit of what  
8 we had suggested, although probably more clear, so  
9 I would support that.

10 MS. HOLMES: Thank you. With respect to  
11 the second bulleted item and work shifts, does  
12 staff have a reaction to that proposal?

13 MR. BROWN: Yes. They clarify rather  
14 than we said 7:00 to 8:00, they said 7:00 to 9:00,  
15 which is more restrictive, and therefore we have  
16 no problem with that.

17 MS. HOLMES: With respect to the third  
18 bulleted item, there's a reference to the  
19 scheduling of oversized heavy haul vehicle  
20 equipment. And they suggest a clarification.  
21 Does staff have a reaction to that proposed  
22 change?

23 MR. BROWN: Their clarification is  
24 acceptable and appropriate.

25 MS. HOLMES: And what about the next

1 item, which refers to a prohibition on the  
2 scheduling of project deliveries that use Main,  
3 Atascadero intersection during peak traffic  
4 periods?

5 MR. BROWN: That is different from what  
6 we had suggested initially, but we would not  
7 object to it.

8 MS. HOLMES: And the next item has to do  
9 with clarifying bicycle paths, is that acceptable?

10 MR. BROWN: Yes. Specifically I think  
11 the bicycle path that's being referenced is the  
12 one that parallels Highway 1 to the west of  
13 Highway 1.

14 MS. HOLMES: And finally, there's a  
15 recommendation that there be language added  
16 including measures to require compliance with all  
17 local planning requirements. Does staff have an  
18 objection to that?

19 MR. BROWN: No.

20 MS. HOLMES: With respect to TRANS-7,  
21 Duke has suggested that the condition should be  
22 modified in order to reflect the agreements that  
23 are contained in the agreement to lease. Is that  
24 something that staff supports?

25 MR. BROWN: No. We were not a party to

1 the agreement between Duke and the City, and  
2 therefore we don't know what the specific impacts  
3 of that agreement was meant to address. So we  
4 would not recommend its inclusion.

5 MS. HOLMES: Thank you. I believe that  
6 covers all of the proposed changes that Duke has  
7 made.

8 With that, I would ask that the traffic  
9 and transportation section of exhibit 115 be  
10 entered into evidence.

11 HEARING OFFICER FAY: Any objection?  
12 Hearing none, so ordered.

13 MS. HOLMES: And the witness is  
14 available for cross-examination.

15 HEARING OFFICER FAY: Both witnesses?

16 MS. HOLMES: Both witnesses, excuse me.

17 HEARING OFFICER FAY: Okay. The panel  
18 is available for cross-examination. Mr. Ellison.

19 MR. ELLISON: No questions.

20 HEARING OFFICER FAY: The City?

21 MR. ELIE: No questions.

22 HEARING OFFICER FAY: CAPE?

23 CROSS-EXAMINATION

24 BY MS. CHURNEY:

25 Q On page 3.6-4 of the FSA part one, you

1 note that State Route 1 is a scenic route. Does  
2 that designation have any impact on the analysis  
3 you made of traffic and transportation impacts for  
4 the project?

5 MR. BROWN: No.

6 BY MS. CHURNEY:

7 Q And on page 3.6-6 under intersection  
8 operating conditions you note that LOS levels are  
9 not a measure of safety or accident potential.  
10 How was the accident potential analyzed and  
11 measured in terms of the impacts for the project?

12 A There are no standardized ways to  
13 predict the incremental safety associated with  
14 increase in traffic from a project such as this.  
15 Nor is there any CEQA standard, if you will, to  
16 measure the threshold of significance.

17 So there is no analytical analysis in  
18 there. We observed existing conditions in the  
19 field and assessed whether any physical conditions  
20 are problematic at present, or would be. And  
21 concluded that there was no -- that the increase  
22 in traffic associated with the project would not  
23 cause any safety concerns.

24 Q Were the field observations made over a  
25 24-hour period at different times during the

1 month, or how were they made?

2 A As our primary purpose was to observe  
3 the physical conditions, namely the geometry of  
4 the roadways, time of day was not relevant.

5 Q On page 3.6-10 in the first paragraph  
6 you indicate that the project-related trips will  
7 not be scheduled during the high school lunch  
8 hour. Is that included in the conditions of  
9 certification?

10 A It is in that the project workforce time  
11 restrictions, namely -- well, I should be clear.  
12 The 4:00 to 5:00 is covered. The 2:00 to 3:00 is  
13 not.

14 Q What about the lunch hour, the noon to  
15 one?

16 A It is not identified in any conditions  
17 at this point.

18 Q And why isn't that hour and also the  
19 2:00 to 3:00 hour not included?

20 A It's our opinion that the level of  
21 traffic that would be generated during that time  
22 from the project is not consequential because the  
23 work shifts would be outside of those time  
24 periods. Any traffic to the project at that  
25 point would be related to deliveries, or perhaps a

1 few workers going to lunch. But, it would not be  
2 of a magnitude to be of concern.

3 Q Is there anything that would prohibit  
4 Duke employees, or Duke deliveries to be made  
5 during the noontime period, and thereby impacting  
6 that segment of the roadway?

7 MS. HOLMES: I'm sorry, can you restate  
8 that question, it sounded like a double negative.

9 BY MS. CHURNEY:

10 Q Is there anything that would prevent  
11 Duke from allowing employees or construction-  
12 related traffic to use that part of the roadway  
13 during the noon hour?

14 MS. HOLMES: I'm going to object to that  
15 question. I don't think this witness has any  
16 knowledge of what prohibits Duke from --

17 PRESIDING MEMBER MOORE: All right,  
18 sustained. If the question was is there anything  
19 in the conditions already advanced by staff that  
20 would constrain Duke from operating in those  
21 hours, is that the question?

22 MS. CHURNEY: Yes.

23 HEARING OFFICER FAY: Do you have the  
24 question in mind?

25 PRESIDING MEMBER MOORE: Is there

1 anything in the conditions already stated that  
2 would constrain them?

3 MR. BROWN: No.

4 PRESIDING MEMBER MOORE: Thank you.

5 MS. CHURNEY: I have no further  
6 questions.

7 PRESIDING MEMBER MOORE: Thank you.

8 HEARING OFFICER FAY: That's great,  
9 thank you.

10 PRESIDING MEMBER MOORE: We're going to  
11 take a short break; we'll take ten minutes and  
12 reconvene and take up the City's witness. Thank  
13 you.

14 (Brief recess.)

15 PRESIDING MEMBER MOORE: Yeah, and on  
16 the other items that we just went through, I would  
17 indicate that I closed the hearing off before  
18 counsel had a chance for redirect. And so I offer  
19 my apologies. Falling into my old trap. And  
20 offer the opportunity to staff counsel for  
21 redirect.

22 MS. HOLMES: Thank you. I have one  
23 question.

24 //

25 //

1 REDIRECT EXAMINATION

2 BY MS. HOLMES:

3 Q With respect to Duke's request on TRANS-  
4 6, there was a discussion there about work shifts.  
5 Do you have a clarification to your response to  
6 that?

7 (Laughter.)

8 MR. BROWN: It states cause construction  
9 worker commute times to fall outside of ambient  
10 peak traffic levels. Commute times is unclear.  
11 It could mean when someone starts from their  
12 house. I think the intent is to say cause  
13 construction worker shift times to fall, and that  
14 would be my recommendation.

15 MS. HOLMES: So that would be your  
16 recommended language, thank you. That's it.

17 HEARING OFFICER FAY: All right, any  
18 follow up questions by any party? I see no  
19 indication.

20 All right, then the next testimony we  
21 have scheduled is from the City of Morro Bay.

22 MR. ELIE: The City calls Robert W.  
23 Schultz, who needs to be sworn.

24 HEARING OFFICER FAY: Please stand.  
25 Would you like to testify --

1 MR. SCHULTZ: I'll just stay here.

2 HEARING OFFICER FAY: Right. Please  
3 swear the witness.

4 Whereupon,

5 ROBERT W. SCHULTZ

6 was called as a witness herein, and after first  
7 having been duly sworn, was examined and testified  
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. ELIE:

11 Q Mr. Schultz, would you state and spell  
12 your last name?

13 A Robert Schultz, S-c-h-u-l-t-z.

14 Q What is your connection to these  
15 hearings?

16 A I serve as the City Attorney for Morro  
17 Bay. I've been the City Attorney since 1998; and  
18 for a year before that I was Assistant City  
19 Attorney.

20 Q And have you been involved in the Duke  
21 AFC and this project for some time?

22 A Yes, for some time. Actually 1997 I was  
23 involved with negotiations with PG&E that involved  
24 negotiating numerous easement agreements between  
25 PG&E and the City before they sold the power

1 plant.

2 And then after Duke took over I was  
3 involved in the very first AFC; the negotiations  
4 to obtain the withdrawal of that AFC; subsequent  
5 AFC being filed.

6 And I've been in negotiations for the  
7 past two years with Duke. First to reach an  
8 agreement with a document called a memorandum of  
9 understanding. And then reaching an agreement  
10 which is called the agreement to lease. And we're  
11 currently in the negotiations right now for the  
12 outfall lease.

13 Q Exhibit 138 to these proceedings is your  
14 prefiled testimony for traffic and transportation.  
15 Do you have any corrections to that testimony?

16 A The only correction I would make is on  
17 page 4 and 5 in regard to TRANS-4, the evaluation  
18 of the subsurface roads and utility conditions  
19 should have read evaluation of surface roads and  
20 subsurface utility conditions. So I was talking  
21 about the subsurface utility conditions.

22 Q And then is there a typographical error  
23 in the recommendation?

24 A Yes, in the recommendation under TRANS-9  
25 it should read article 16, paragraph 16.3 instead

1 of paragraphs.

2 Q With those corrections is exhibit 138  
3 testimony that you prepared, yourself?

4 A Yes, it is.

5 Q Is it true and accurate to the best of  
6 your knowledge?

7 A Yes, it is.

8 Q Why don't we go ahead and summarize the  
9 key points of your testimony. Why don't you start  
10 by discussing the importance of the Highway 41  
11 Atascadero Road improvements and the paragraph  
12 16.3 of the agreement to lease.

13 A As I stated, we've been in negotiations  
14 for the past two years. Many workshops were held  
15 within the City of Morro Bay.

16 The City of Morro Bay hired experts in  
17 each specific field for the specific purpose of  
18 meeting with Duke representatives to go through  
19 the different areas.

20 We had a traffic and transportation  
21 expert that met with Duke's experts. And there  
22 was disagreement as to the impacts that would  
23 occur at 41 and Main Street. And in order to  
24 reach an agreement so that we wouldn't have to  
25 have experts at this hearing, and to have

1 disagreement as to what those impacts were, we  
2 were able to reach an agreement as to a mechanism  
3 that would fund improvements to that area.

4 It's a very important intersection; 41  
5 and Main has had trouble. The \$1.4 million that  
6 has been mentioned is only a partial. We did not  
7 believe that Duke was completely responsible for  
8 the past problems to that intersection. Or even  
9 the future.

10 We do have other projects that will be  
11 occurring in the area. But it was a way for our  
12 experts and Duke's experts to reach an agreement  
13 so that the parties could move forward in a  
14 cooperative effort to make improvements to that  
15 intersection.

16 We're currently in the design phase for  
17 a round-about. There was previous testimony that  
18 the agreement will in no way hinder the project.  
19 And that's also in 16.3, there is wording in that  
20 that says the City agrees not to undertake traffic  
21 improvements at or near the key intersection of  
22 this corridor. And throughout the City would not  
23 be -- that if it would not be completed in a  
24 timely manner that we would hold up the  
25 improvements till afterwards.

1                   We're confident, very confident as where  
2 we are sitting right now that we will be well  
3 ahead, done with that project before any  
4 construction would start.

5                   The \$1.4 million is for the improvements  
6 starting at Highway 41 and Main Street. They go  
7 down Atascadero Road and wrap around the corner to  
8 the bridge. So it takes care of that important  
9 section.

10                   So there is a funding mechanism that  
11 specifically states what these funds would be used  
12 for. And it is to mitigate that intersection in  
13 that area in front of the high school. It  
14 fulfills Duke's complete obligation.

15                   I do have in my testimony the complete  
16 16.3 language which is part of the agreement to  
17 lease. It does not include, as it says in the  
18 last paragraph, Duke also agrees that to the  
19 extent any street repairs are necessary due to  
20 damage from the movement of the machines and  
21 equipment, that they will reimburse the City  
22 separate. So we do not believe it should be, it's  
23 part of TRANS-4, but we do believe that it should  
24 be a separate TRANS, and then it should be  
25 included as a condition, because it says the

1 preapproved agreement between Duke and the City.

2 I'd just point out that it's very  
3 important to the City that this be incorporated  
4 in. As I said, it was a way for the City to have  
5 experts at the beginning of this process and to go  
6 through the workshops and reach this conclusion,  
7 instead of trying to make these points at this  
8 hearing on whether there's -- what impacts there  
9 are. It was a way to alleviate all of that, the  
10 necessity of having those at this hearing.

11 With regards to the other two issues I  
12 have in my testimony that are important. To  
13 elaborate on TRANS-4, I was little surprised by  
14 the testimony earlier, because it's a very simple  
15 process.

16 It's a very simple videocamera that is  
17 placed down in the manholes, and it videotapes the  
18 condition of the sewerlines or the waterlines.  
19 And specifically the area that the City is  
20 tremendously concerned about is that area from  
21 Highway 1 down Atascadero Road where it goes  
22 around to the corner, and it currently dead-ends.

23 So when you go down that road and it  
24 goes around the corner, there's very little  
25 traffic as we talk about.

1                   Those waterlines are then -- and the  
2                   sewerlines are on the other side of the creek,  
3                   from the unimproved road up to Duke's power plant.

4                   Three years ago the City had a sewerline  
5                   that collapsed on Atascadero Road. We had to  
6                   videotape the line. We replaced a portion of it.  
7                   But we are concerned of the condition of that  
8                   sewer and waterline in that area; sewer and  
9                   waterline right in front of the plant where there  
10                  will be a tremendous amount of deliveries, heavy  
11                  equipment.

12                  And I think it protects not only the  
13                  City, but I think that Duke should want to do this  
14                  to know what the conditions of those lines are.

15                  One of the first steps they will take  
16                  during the construction process is improving the  
17                  road, putting the bridge in and improving the road  
18                  in front of the plant. And I think it would make  
19                  economic sense to videotape that line to know what  
20                  the condition is before those improvements are put  
21                  in, so that the City and Duke can work together on  
22                  any improvements need to be made to the sewer and  
23                  waterline.

24                  So, it's a very simple process. It's  
25                  not digging up, trenching it and finding out what

1 the lines are. It's just putting a videocamera  
2 down into the manholes.

3 We've been doing it in various parts of  
4 the City because our sewer and waterlines are some  
5 50 years old. So we've been doing this process  
6 throughout the City to videotape the lines. But  
7 we had no intention of doing it in the Atascadero  
8 Road area, or in front of the power plant because  
9 of the fact that these roads are not being used,  
10 they're undeveloped. And therefore it wasn't in  
11 the process right now of being videotaped. But  
12 will need to be because of the improvements that  
13 will occur.

14 So that was the purpose of that. We  
15 believe that that area there should be videotaped  
16 so we know the condition before the construction.

17 In regards to TRANS-6 --

18 CHAIRMAN KEESE: The road you're talking  
19 about is the road that you're going to improve in  
20 conjunction with the round-about?

21 MR. SCHULTZ: No, no. Well, yes, the  
22 round-about is -- maybe I can use the map.

23 PRESIDING MEMBER MOORE: The round-about  
24 is at 41 and Main Street.

25 CHAIRMAN KEESE: But then you're going

1 to improve the road all the way around the corner  
2 and down?

3 MR. SCHULTZ: Correct.

4 CHAIRMAN KEESE: And that's the area in  
5 which you're now talking about subsurface  
6 sewerlines --

7 MR. SCHULTZ: Correct.

8 CHAIRMAN KEESE: -- underneath that  
9 improved roadway?

10 MR. SCHULTZ: Correct. If I may --

11 CHAIRMAN KEESE: Sure.

12 MR. ELIE: Why don't you refer also, Mr.  
13 Schultz, to the figure that you're using.

14 MR. SCHULTZ: Yes. It's figure 6.11-9  
15 and it was what we referred to before. The round-  
16 about will occur where Main Street is, where the  
17 onramp and offramp is to Highway 1, and that's in  
18 the design phase right now.

19 Coming down Atascadero Road heading  
20 towards the beach is a sewer main and a water  
21 main, as our wastewater treatment plant is right  
22 here on the corner.

23 As you go around the corner from  
24 Atascadero the wastewater line and main go across  
25 here, across the creek and come down the road.

1 This is the area we're most concerned about.

2 These lines have --

3 HEARING OFFICER FAY: You say this --

4 MR. SCHULTZ: Across the creek, it's a  
5 waterline and a sewerline, and it goes from the  
6 creek and comes down to the Embarcadero area.

7 The line is about 40 years old, both of  
8 those lines. This is all unimproved road, dirt.  
9 I don't remember the last time it's even been  
10 improved with asphalt.

11 Very little traffic is used here because  
12 it dead-ends here at the creek. We do have an  
13 unimproved parking lot at the end of that creek  
14 road.

15 So this is the area that we're  
16 completely concerned about because there hasn't  
17 been any improvements to the sewerline or the  
18 waterline and we know that there will be a  
19 tremendous increase in traffic with the bridge  
20 being put in place.

21 Approximately 100 feet, right across  
22 from the high school and where Flipppo's is, is the  
23 area where we had the collapse and had to replace  
24 part of the sewer main.

25 We did do some videotaping and slip

1 lining farther along in our last project, but we  
2 haven't done any type of videotaping in front of  
3 the plant and along the Embarcadero. So that is  
4 our area of concern, in knowing the condition of  
5 that line.

6 CHAIRMAN KEESE: I guess my question  
7 would be if we're talking about 40 or 50 year old  
8 line that has experienced failure, and we're  
9 talking about spending -- you're talking about  
10 spending I don't know how much of this money on  
11 improving part of the road, and I would imagine in  
12 conjunction with the bridge that we're talking  
13 about improving the roadway to the south, I would  
14 naively ask if any consideration has been given to  
15 improving the subsurface prior to the paving,  
16 which would seem to be a prudent course of action.

17 MR. SCHULTZ: Absolutely. And that's  
18 our concern, and that's what we need to do before  
19 construction begins and before those road  
20 improvements do, is to videotape those lines.

21 CHAIRMAN KEESE: To videotape them  
22 and --

23 MR. SCHULTZ: And to find out --

24 CHAIRMAN KEESE: -- or video --

25 MR. SCHULTZ: Well, the next thing would

1 be to understand their condition and find out if  
2 they do need to be replaced. There's some 40 year  
3 old lines that are in perfect condition.  
4 Obviously the ones under Atascadero Road weren't  
5 and had infiltration.

6 CHAIRMAN KEESE: Then help me with the  
7 tie-in. I got the impression you were waiting for  
8 Duke's heavy trucks to cause failure so Duke would  
9 pay a portion of the payment. Am I missing  
10 something here?

11 MR. SCHULTZ: No. That's what we don't  
12 want to happen. We want to be able to videotape  
13 those conditions subsurface to be able to  
14 determine whether the City has to make repairs to  
15 those lines.

16 CHAIRMAN KEESE: And you're asking Duke  
17 to help you out on that?

18 MR. SCHULTZ: On the videotaping,  
19 because we would not have to videotape that area  
20 because there wouldn't be any trucks coming. But  
21 obviously --

22 CHAIRMAN KEESE: Okay.

23 MR. SCHULTZ: -- Duke's not responsible  
24 for the 40 years of decay. We haven't asked for  
25 that.

1 CHAIRMAN KEESE: Thank you.

2 MR. SCHULTZ: We would ask for the  
3 videotaping to be done.

4 BY MR. ELIE:

5 Q Let me ask a couple of clarifying  
6 questions then. The portion of the Atascadero  
7 sewerline that collapsed is in the traffic area,  
8 correct?

9 A Correct.

10 Q And the concern is that there's going to  
11 be additional traffic areas now which haven't been  
12 videotaped because there's been no reason to?

13 A Correct.

14 Q And then you had -- why don't you go  
15 ahead to TRANS-6 and explain the reasoning for the  
16 proposed change.

17 A With regards to TRANS-6 the City had  
18 concerns because of the fact that both in the FSA  
19 and in Duke's testimony they talk about the  
20 parking area offsite being able to hold up to 200  
21 cars.

22 But there's nothing in the conditions of  
23 certification explains how that's going to occur;  
24 how you're going to require the employees to use  
25 that parking lot as opposed to trying to drive

1 onsite.

2 Although "promote" might seem a somewhat  
3 vague term, at least some type of condition the  
4 City felt needed to be put in there. Either  
5 require, promote, or to make sure that offsite lot  
6 is used for the parking of workers and employees.

7 MR. ELIE: I would move the admission  
8 into evidence of exhibit 138.

9 HEARING OFFICER FAY: Is there any  
10 objection? All right, exhibit 138 will be entered  
11 into the record.

12 MR. ELIE: Thank you. And the witness  
13 is available --

14 PRESIDING MEMBER MOORE: Before we  
15 start, counsel, I have a question for you. I just  
16 want to make sure I understand some of the  
17 testimony that we just received.

18 Counsel, you indicated that you tried to  
19 work this out in a workshop so that there wouldn't  
20 be a disagreement coming into these hearings, and  
21 so that you'd minimize that, try and have a set of  
22 pretty complex conditions solved before you came  
23 here.

24 MR. SCHULTZ: Correct. And not only in  
25 traffic, --

1                   PRESIDING MEMBER MOORE: I understand.

2                   Across the board --

3                   MR. SCHULTZ: -- across the board we had  
4                   numerous workshops --

5                   PRESIDING MEMBER MOORE: It's a wide-  
6                   ranging MOU, I understood that.

7                   MR. SCHULTZ: Right.

8                   PRESIDING MEMBER MOORE: Now, with  
9                   regard to the videotaping, am I understanding that  
10                  that's an issue that simply wasn't solved in the  
11                  workshops, and therefore since it didn't get  
12                  solved and it's still obviously something that's  
13                  of concern to the City monetarily or policywise,  
14                  you're bringing it to this forum so that the  
15                  Committee will consider it as part of the overall  
16                  deliberations here, because it simply didn't  
17                  get --

18                  MR. SCHULTZ: Correct. Well, I would  
19                  say it might not even have been brought up in the  
20                  workshops. It came up when the FSA comes out and  
21                  we looked at the condition that you're going to be  
22                  making photographs of the surface conditions, the  
23                  issue came up as to let's suppose we do videotape  
24                  these lines, find out that they're in perfectly  
25                  good condition. We do not need to replace them.

1                   But for some reason after the fact, and  
2                   with the heavy equipment, they do break. Then  
3                   there might be a scenario where Duke should have  
4                   to pay for those -- for that correction.

5                   I mean --

6                   PRESIDING MEMBER MOORE: So you --

7                   MR. SCHULTZ: -- we saw it as a  
8                   protection of not only the City, but for Duke.

9                   PRESIDING MEMBER MOORE: I'm not sure  
10                  Duke might see it that way, but --

11                  (Laughter.)

12                  PRESIDING MEMBER MOORE: -- yeah, I  
13                  won't go down that way very far.

14                  So my question is, is it your position  
15                  then that this is something that simply didn't  
16                  have a chance to come out in those workshops, and  
17                  so you're proposing it at this point?

18                  MR. SCHULTZ: That's correct. The  
19                  specific videotaping.

20                  PRESIDING MEMBER MOORE: Thank you.

21                  HEARING OFFICER FAY: Okay. Mr.  
22                  Ellison.

23   CROSS-EXAMINATION

24                  BY MR. ELLISON:

25                  Q     Mr. Schultz, I'd just like to ask you a

1 couple of questions with respect to the topic  
2 we've just been discussing, this question about  
3 TRANS-4 and the videotaping.

4 And in particular because a couple of  
5 the things that you've said suggest to me that  
6 perhaps the City is looking for something slightly  
7 different than what we thought you were looking  
8 for.

9 Are you asking the Energy Commission to  
10 simply require the videotaping? Or alternatively,  
11 are you asking the Commission to make some finding  
12 with respect to project impacts on these  
13 subsurface facilities?

14 A No, actually not as to the second. Only  
15 to as to the videotaping, in that specific area.

16 Q And the videotaping would occur prior to  
17 any possible project impact, is that correct?

18 A Correct.

19 Q If the videotaping were to determine  
20 that there was some sort of a problem, and since  
21 the videotaping is occurring prior to any possible  
22 project impact, would you agree with me that Duke  
23 would not be responsible for any problem that was  
24 revealed by the videotape?

25 MR. ELIE: We're talking about the first

1 videotape, before construction began?

2 MR. ELLISON: If there are more than one  
3 then we should clarify that.

4 MR. ELIE: Well, I presume the thought  
5 was -- it says pre- and post-construction  
6 inspection. That implies to me, and I think  
7 that's what the intent of the testimony was, that  
8 we do it before, and then after, to see what the  
9 impact was, if any.

10 MR. ELLISON: Okay, with that  
11 understanding, then, let's focus first on just the  
12 initial videotaping, the pre videotaping.

13 BY MR. ELLISON:

14 Q If the pre videotaping were to reveal  
15 some problem or potential problem, is it the  
16 City's position that Duke has some responsibility  
17 to contribute financially to the repair of that  
18 problem?

19 A No.

20 Q And who would make the judgment about  
21 whether a problem existed at that time under your  
22 proposal?

23 A I would assume it would be our City  
24 Engineer, Public Works Director. I would imagine  
25 we would collaborate with Duke to make sure we

1 understand, you know, the load factors and what  
2 the conditions are.

3 As I say, we don't even know what the  
4 conditions are. Our main concern is that you do  
5 do the improvements out there, and then you have a  
6 collapse during construction.

7 Q Okay. If there were a -- let's assume  
8 we do the videotaping, the City makes the judgment  
9 that there are no repairs necessary. Then we do a  
10 subsequent post-construction videotaping and  
11 there's a change in the condition of the  
12 subsurface facility.

13 Do you have all those assumptions in  
14 mind?

15 A Yes.

16 Q Okay. Are you asking the Energy  
17 Commission to conclude that that change is  
18 necessarily caused by Duke?

19 A As I understand the condition, it would  
20 be the same condition that would apply to the  
21 photographing of the above-surface. If those are  
22 directly related to the increase in traffic  
23 related to the Duke project, then, yes. If the  
24 condition has changed subsurface, if the piping  
25 was fine beforehand and post-construction it's

1 worse, then, yes, we would be asking Duke for a  
2 contribution. Just as they would above-surface.

3 PRESIDING MEMBER MOORE: Counselor, can  
4 I clarify what I just heard? Let me -- what I  
5 just heard you say was that if, in a pre-  
6 construction world there was no defect found; and  
7 then that provided the baseline.

8 In a post-construction world, if there  
9 was a defect found that could be related or was  
10 found to be tied to Duke, not blanket, not just  
11 any defect which happened, but something which was  
12 demonstrably tied to Duke, then that would become  
13 a Duke responsibility and you would expect that to  
14 be incorporated in one of our conditions?

15 Did I hear that right?

16 MR. SCHULTZ: I think it's already  
17 incorporated as a condition now. What we were  
18 saying is that the condition -- it's a  
19 contribution --

20 PRESIDING MEMBER MOORE: Right, but that  
21 that contribution would be determined, in other  
22 words, if the road -- I'll create a pretty extreme  
23 example.

24 Let's say that there is post-  
25 construction there's a strong motion event. You

1 have a strong motion event that, in fact, causes a  
2 section of the undersurface facilities to fail in  
3 a localized spot.

4 Well, they failed post-construction, but  
5 it's demonstrably not because of anything that  
6 Duke did, so that cost would not go to them.

7 But if you found a failure of some kind  
8 that then could be demonstrably tied to truck  
9 movement, or heavy traffic volumes or something  
10 else where the demonstrated effect was due to  
11 them, you contend that's their cost?

12 MR. SCHULTZ: Correct.

13 PRESIDING MEMBER MOORE: How would you  
14 determine, and what is the metric that you would  
15 use to say it's their responsibility versus a  
16 natural event, or a music festival that took place  
17 that was unexpected and drew in a lot of big buses  
18 or something, I don't know, something --

19 MR. SCHULTZ: How do you expect to do  
20 the same --

21 PRESIDING MEMBER MOORE: What --

22 MR. SCHULTZ: -- as the condition is  
23 written right now for surface conditions?

24 PRESIDING MEMBER MOORE: That's what I'm  
25 asking. I'm trying to understand it as a

1 condition.

2 MR. SCHULTZ: The CPM has the ability to  
3 take in all the evidence and make that  
4 determination.

5 PRESIDING MEMBER MOORE: And you're  
6 willing to rely on that, on that CPM judgment?

7 MR. SCHULTZ: Absolutely.

8 PRESIDING MEMBER MOORE: Okay. Sorry,  
9 counselor, I just -- I didn't mean to intervene,  
10 but I wasn't understanding the exchange.

11 MR. ELLISON: And now in the interests  
12 of time I'll just say that that's exactly the  
13 point that I would have explored with further  
14 questions, as well.

15 I think the concern that Duke has with  
16 this proposal is that in contrast with the surface  
17 of the road where there is a presumption in the  
18 Energy Commission's finding that if there is a  
19 difference between pre and post condition, that it  
20 is the result of traffic and not something else.  
21 And then there is a metric for assigning Duke's  
22 responsibility for the traffic.

23 I think our concern is exactly what the  
24 Commissioner was driving at, that with a  
25 sewerline, for example, the fact that the

1 condition of that sewerline has changed before and  
2 after the Duke project may or may not be the  
3 result of the Duke project. It may be the result  
4 of toxic chemicals in the sewerline; it may be the  
5 result of an earth-shaking event; it may be the  
6 result of other things.

7 And the concern that we have is that we  
8 don't know how you determine. And so the  
9 question, all of this is by way of one question,  
10 which is are you asking the Commission to presume  
11 that if there is a change in condition between the  
12 pre-certification videotaping and the post -- I'm  
13 sorry, pre-construction videotaping and the post-  
14 certification, that that change was caused by  
15 Duke?

16 MR. SCHULTZ: Yes.

17 MR. ELLISON: Okay, thank you.

18 PRESIDING MEMBER MOORE: That, in fact,  
19 clarifies it. Thank you very much. But I wasn't  
20 getting there with the other line, so thank you  
21 for going down that road.

22 HEARING OFFICER FAY: Anything further,  
23 Mr. Ellison?

24 MR. ELLISON: That's all I have.

25 HEARING OFFICER FAY: Okay. Staff.

1 MS. HOLMES: No questions.

2 HEARING OFFICER FAY: Does CAPE have any  
3 questions of the City witness?

4 MS. CHURNEY: No questions.

5 HEARING OFFICER FAY: All right. Any  
6 redirect?

7 MR. ELIE: None.

8 HEARING OFFICER FAY: Okay, fine. Thank  
9 you. Then we'd like to move to CAPE's witness.

10 MS. CHURNEY: I would call Colby  
11 Crotzer.

12 HEARING OFFICER FAY: Please come  
13 forward and be sworn as a witness. Would the  
14 court reporter please swear the witness.  
15 Whereupon,

16 COLBY CROTZER  
17 was called as a witness herein, and after first  
18 having been duly sworn, was examined and testified  
19 as follows:

20 HEARING OFFICER FAY: Please state and  
21 spell your name for the record.

22 MR. CROTZER: I'm Colby Crotzer,

23 C-r-o-t-z-e-r.

24 //

25 //

1 DIRECT EXAMINATION

2 BY MS. CHURNEY:

3 Q Mr. Crotzer, could you briefly state  
4 your background?

5 A Yes, I'm a school teacher; a local  
6 resident; and locally elected public official on  
7 the Morro Bay City Council, serving my second  
8 term.

9 Q And have you submitted a declaration for  
10 the Committee's consideration in this matter?

11 A Yes, I have.

12 Q And was it prepared by you or at your  
13 direction?

14 A Yes.

15 Q And are the facts stated in that  
16 declaration true and correct to the best of your  
17 knowledge?

18 A They are.

19 Q And do you have any changes, corrections  
20 or clarifications to make with respect to the  
21 testimony?

22 A Yes, only a few. Since writing this,  
23 and signing it on the 14th of this month, my  
24 employer, the San Luis Coastal Unified School  
25 District, has, in fact, made the decision to close

1 Morro Elementary School. I'm sure everyone  
2 understands the implications of that.

3 Moving the student body and staff,  
4 support staff, to the Delmar site, for the most  
5 part. With the slight possible exception that at  
6 Los Osos Middle School we're trying to develop  
7 attractive programs that might bring a fraction of  
8 the sixth grade class south rather than north to  
9 Delmar.

10 Another has to do with unforeseen events  
11 that happened. One of them happening this  
12 evening. So if you gentlemen or ladies are out  
13 tonight, be careful. All of the Highway 101  
14 traffic will be routed through the City of Morro  
15 Bay on Highway 1. And it's one of those  
16 unforeseen things. And the nature of that is that  
17 we kind of never know when that's going to happen.

18 So, the fact that the decision is made  
19 to close Morro Elementary School, and to correct  
20 somewhat of a misstatement where on cross-  
21 examination it was mentioned that there will be a  
22 closure of the Youth Center. In fact, it's the  
23 closure of the present skating rink at Flippo's  
24 across from Morro High School; and it's the opening  
25 of a teen center on that site. Just been decided,

1 and is moving forward, and probably will be  
2 occupied after modifications this summer, prior to  
3 certification -- or the project initiating.

4 Q And just to clarify, Mr. Crotzer, you're  
5 not testifying here or offering this testimony as  
6 a traffic expert, are you?

7 A I'm not a traffic expert. I may be in  
8 one way described as an expert in that I'm  
9 probably the only individual in town that over the  
10 last few years has walked on every street several  
11 times as a part of my political campaigning. But  
12 other than that, no.

13 (Laughter.)

14 BY MS. CHURNEY:

15 Q At this time could you briefly summarize  
16 your testimony, please, for the Committee?

17 A Yes. Alluding to the possible closure,  
18 and now actual closure of Morro Elementary School,  
19 I'm very concerned. The City of Morro Bay has,  
20 over the last few years, and understanding I'm in  
21 my second term, I've been involved in at least  
22 eight years directly of this, trying to increase  
23 the safety of pedestrians, particularly public  
24 pathways, including bicyclists and kids on  
25 scooters and whatnot.

1                   Pursing that we have created really a  
2                   new multimodal alternate route north/south.  
3                   Happily, tomorrow that will be dedicated. And the  
4                   link across the high school campus will allow  
5                   children, commuters and others, just  
6                   recreationally, to go north/south through a very  
7                   narrow city.

8                   And that new link comes out at the exit  
9                   of Morro Bay High School. You know the geography  
10                  of the roads probably pretty well right now  
11                  without my having to point to it on the map, but  
12                  from that point headed south there's no crosswalk  
13                  or designation for how one finds their way across  
14                  to the connecting link on the other side of  
15                  Highway 41 Atascadero Road just west of Highway 1.

16                  So what happens is commuters,  
17                  recreational enthusiasts, or my main concern, of  
18                  course, our students, drift across diagonally,  
19                  jaywalking, if you will, or jay-biking, to find  
20                  the entrance to the continued class 1 type bike  
21                  path that continues across the PG&E property and  
22                  heads toward downtown.

23                  Added to that, the impact of the  
24                  closure, and adding elementary school children, or  
25                  more of them into that mix concerns us, of course,

1 because hopefully many of those children will be  
2 using alternates to individual car rides with  
3 their parents.

4 For the first year only San Luis Coastal  
5 will provide bus that will carry any children if  
6 their parents determine should go on the school  
7 bus. After that they'll have an option to  
8 purchase that ride.

9 But, after that time hopefully in terms  
10 of reducing traffic, our plan was that more kids  
11 would be able to ride their bicycles or take other  
12 alternate routes, to travel the only couple miles  
13 from their residence perhaps in the southern part  
14 of the City up to their new elementary school.

15 Other than that, the issue of creating  
16 the new teen center across from the high school to  
17 serve children everywhere from late elementary  
18 school kids up through their later teens, and even  
19 early 20s, because a teen center typically is  
20 occupied by even graduates from high school, there  
21 will be a new attraction there next to where the  
22 current recreational BMX recreational facility is.

23 The programs have yet to be developed,  
24 because some modifications have to happen to that  
25 site before it's occupied. But we are very

1       ambitious. The Mayor of Morro Bay and myself,  
2       perhaps reflecting a very broad support for this,  
3       want to see as many children take part in these  
4       activities that will be offered, and programs as  
5       possible.

6                So, it's hard to predict how many might  
7       be there. We have a very small teen center  
8       presently in use and already there are probably  
9       around 50 average that attend that per week.

10               But there are occasions when we have  
11       dances, things called teen-hang-arounds, and these  
12       attract over 100 children regularly. So with this  
13       new location our ambition to have it be used as  
14       intensively as possible.

15               And the lack of safe crossing ways from  
16       the high school, combined with the fact that on a  
17       block schedule at the high school -- understand  
18       that I have worked for the last two school terms,  
19       1999/2000 and 2000/2001 at Morro Bay High School,  
20       commuted regularly to that site -- that the  
21       impacts we hope from more student traffic will be  
22       large. It's hard to actually quantify it beyond  
23       that.

24               So --

25               Q     And --

1 A Yes?

2 Q -- I'm sorry, no, go ahead.

3 A Well, the concern for safety is combined  
4 with our ambition to increase pedestrian and  
5 bicycle and skating and now these new scooters and  
6 every other kind of alternate to riding in cars to  
7 the very place where with the Duke project there  
8 will be increased impacts.

9 And it's hard to predict exactly what  
10 time the peaking time is, other than if, with  
11 foggy conditions, there are large vehicles,  
12 there's a potential for an accident there that I  
13 know that you will help us avoid.

14 Q And just to give the Committee an idea  
15 of the difference between the two teen centers and  
16 how that might impact that area, size-wise how  
17 would you compare the new teen center on  
18 Atascadero with the current teen center?

19 A Well, perhaps in terms of acquisition of  
20 the site, the current one is a left-over public  
21 works building which is, by any estimate, I guess  
22 tiny. The new one is ambitious; as I recall  
23 correctly, it's about \$800,000 expenditure to  
24 acquire. And with that kind of an expenditure we  
25 want to ambitiously, as I said, have it be used to

1 the max.

2 I could make a guess, but I don't know.

3 The possibility of dance attendance for high  
4 school kids could easily be in the hundreds, if  
5 not several hundred.

6 Q Capacity-wise, is it fair to say that  
7 the new teen center building is twice the size,  
8 easily of the present teen center?

9 A Yes, more than that.

10 MS. CHURNEY: I have no further  
11 questions, and the witness is available.

12 HEARING OFFICER FAY: Okay, thank you.  
13 Does the applicant have any cross-examination?

14 MR. ELLISON: Just a couple of  
15 questions, Mr. Crotzer.

16 CROSS-EXAMINATION

17 BY MR. ELLISON:

18 Q With respect to the dances at the teen  
19 center, would it be fair for me to assume that  
20 those typically occur in the evening?

21 A No. Not in the present climate. The  
22 Police Chief took exception to, when this was a  
23 privately run facility, of dances that took place  
24 in the evening. It may be tactically prudent for  
25 us to try to design them for another, even a

1 daylight hour for reasons of safety.

2 But typically teen dances have been in  
3 the evening. Those are the more school-sponsored  
4 affairs that happen in the gymnasium on school  
5 property. I'm not really referring to that as  
6 much as things that the City, Recreation and Parks  
7 might sponsor. Sock hops I think we used to call  
8 them.

9 Q You wouldn't expect those to be  
10 scheduled during school hours, would you?

11 A Again, block schedule is difficult to  
12 define exactly what school hours are. Often the  
13 high school students will attend a morning session  
14 and have an afternoon session entirely free.

15 So they may not have class obligations,  
16 but are rather going to the library, studying on  
17 their own. Even pursuing an occupation like a  
18 part-time job in the afternoon. Or conversely, in  
19 the morning. It depends on how their schedule is  
20 constructed.

21 Q Referring to your declaration, in the  
22 last paragraph -- well, let me back up. The first  
23 paragraph you mention that you're employed with  
24 the San Luis Coastal Unified School District. And  
25 that you're currently a member of the Morro Bay

1 City Council.

2 And then referring to paragraph six, you  
3 state that you're testifying as a teacher, parent  
4 and City Council Member. Do you see that?

5 A Yes.

6 Q Are you testifying on behalf of the  
7 Morro Bay City Council today?

8 A I am not.

9 Q And similarly, are you testifying on  
10 behalf of the San Luis Coastal Unified School  
11 District today?

12 A No, as an individual.

13 Q Okay.

14 MR. ELLISON: That's all I have, thank  
15 you.

16 HEARING OFFICER FAY: Thank you. Staff?  
17 No questions. Does the City have questions?

18 MR. ELIE: No questions.

19 HEARING OFFICER FAY: Okay.

20 MS. CHURNEY: At this time I would like  
21 to offer that portion of exhibit 139 which  
22 consists of Mr. Crotzer's declaration.

23 HEARING OFFICER FAY: Is there any  
24 objection? I hear none. We'll receive Mr.  
25 Crotzer's declaration as it appears in exhibit

1 139.

2 Thank you, Mr. Crotzer, you're excused.

3 MR. CROTZER: Thank you very much. I do  
4 have time to get back to class. Thanks a lot.

5 HEARING OFFICER FAY: Yes, thank you.  
6 We appreciate your testimony.

7 That concludes our taking of evidence --

8 MS. CHURNEY: Hearing Officer Fay, we  
9 have one more witness with respect to traffic, and  
10 that is Pamela Soderbeck, who I would like to  
11 call.

12 HEARING OFFICER FAY: Okay. She did  
13 file testimony, although you did not inform us at  
14 the prehearing conference that she would be  
15 appearing as a witness. Is there any objection to  
16 hearing from Ms. Soderbeck?

17 All right, let's call Ms. Soderbeck.

18 And she's not been sworn, so would the court  
19 reporter please swear this witness.

20 Whereupon,

21 PAMELA SODERBECK  
22 was called as a witness herein, and after first  
23 having been duly sworn, was examined and testified  
24 as follows:

25 //

1 DIRECT EXAMINATION

2 BY MS. CHURNEY:

3 Q Would you please state your name and  
4 spell your last name for the record?

5 A My name is Pam Soderbeck; it's  
6 S-o-d-e-r-b-e-c-k.

7 Q And could you briefly state your  
8 background?

9 A For my testimony today I'm testifying  
10 really just as a resident in Morro Bay. And I've  
11 lived here since 1999, about two and a half years.

12 Q And you're not a traffic expert or have  
13 no expertise in traffic planning or safety, do  
14 you?

15 A Not at all.

16 Q You submitted two paragraphs in your  
17 declaration, which is a part of exhibit 139, with  
18 respect to traffic issues. They're paragraphs 32  
19 and 33. Do you have any changes, corrections or  
20 clarifications to make with respect to that  
21 testimony?

22 A No, I don't.

23 Q And was your declaration included in  
24 exhibit 139 prepared by you or at your direction?

25 A Yes, it was.

1           Q     And are the facts stated in your  
2     declaration true and correct?

3           A     Yes.

4           Q     And if you could now briefly summarize  
5     those two paragraphs only at this time?

6           A     If I could, it would be easier for me to  
7     do that with a blowup of a portion of what has  
8     already been looked at in terms of the  
9     enlargements up here, because I'm looking at just  
10    a very specific portion of that for this  
11    intersection.

12           HEARING OFFICER FAY:  Oh, you have it to  
13    put up?  Sure, please go ahead.  Just keep in mind  
14    that you'll need to use the remote microphone so  
15    you'll be heard for the record.

16                     And as I've mentioned to other people,  
17    when you say here and there, it does not inform  
18    the transcript, even though you have a picture in  
19    front of you.  So, please, use directional  
20    descriptions.

21                     (Pause.)

22           MS. SODERBECK:  The intersection that I  
23    am concerned about is the transition, and actually  
24    it doesn't show where we have it right now, but  
25    I'll move this just slightly -- Atascadero Road,

1 and this is Highway 1.

2 The area that I'm concerned about in my  
3 testimony is this transition on Highway 1.

4 There's, in essence, a third lane. And what  
5 happens is that the southbound traffic from  
6 Atascadero Road, which is heading southbound on  
7 Highway 1, comes up here, as the arrows show, for  
8 the departure of the construction employees.

9 And at the same time traffic that is  
10 going southbound already on Highway 1, who would  
11 be exiting on the Morro Bay exit, what happens is  
12 the traffic going southbound and exiting on Morro  
13 Bay exit essentially has to, has a short distance  
14 there, engaging on the scale of the map, it looked  
15 like it was a quarter mile or thereabouts, in  
16 which they have to -- they being the southbound  
17 traffic on 101 who wants to exit on Morro Bay,  
18 they have this short distance to merge to the  
19 right to make that exit.

20 At the same time traffic that is coming  
21 up the onramp from Atascadero Road to be heading  
22 southbound on Highway 1 has that very same little  
23 distance to be merging to the left.

24 In the older style, I think, from my  
25 experience, it's an older style transition on

1 freeway entrances and I live up here in north  
2 Morro Bay, above what you see on the map here. So  
3 I routinely take that exit anytime I come into  
4 town.

5 And that's during a wide variety of  
6 times a day. I do not work, at least that I'm  
7 paid for --

8 (Laughter.)

9 MS. SODERBECK: -- so I vary my hours a  
10 lot in terms of when I come into town and when I  
11 don't. I don't have any limitations to just  
12 observing peak traffic hours I guess is what I'm  
13 trying to say.

14 And I'd say over the two and a half  
15 years I've lived here, I have witnessed numerous,  
16 and I'd say somewhere in the order of at least a  
17 dozen near-misses at this transition the way it is  
18 now.

19 And it's particularly noticeable,  
20 probably moreso during tourist season when you  
21 have people who are a little bit unfamiliar with  
22 where they're going here. You have more large  
23 vehicles like RVs.

24 But even, you know, other times of the  
25 year I've seen the same thing. Where, in fact, on

1       one occasion, I, myself, was in a position where I  
2       had to slam on the brakes because somebody  
3       panicked.  Somebody was trying to come up this way  
4       and somebody was trying to go down across that  
5       transition and merging across each other.

6                 And my biggest concern is that when you  
7       add particularly the construction vehicles, the  
8       large trucks, the dirt trucks, the concrete  
9       trucks, that sort of this, which are typically  
10      very large, you might have a double-length dirt  
11      truck, for example, and they don't go really fast.  
12      There's really just not a lot of room there for  
13      them to be getting over, as other people are  
14      trying to get off to go into town.

15                And also, as you can see, there's  
16      somewhat of a curve.  And I'm just afraid that,  
17      although I haven't witnessed any accidents yet,  
18      that I would be.  And I already drive very  
19      carefully when I go on that particular stretch of  
20      road.

21                And, as I said, the only point of my  
22      testimony was as a percipient witness to point out  
23      that that's already, I consider, a very unsafe  
24      area.  And I think it's only going to be made more  
25      unsafe when you add the construction traffic onto

1 that.

2 And that would be true whether you're  
3 talking about the occasional trucks in the middle  
4 of the day, or during very, I guess the 5:30 to  
5 6:30 timeframe when the employees would be exiting  
6 that route.

7 MS. CHURNEY: And I also have a few  
8 questions on rebuttal if I could offer those now?

9 PRESIDING MEMBER MOORE: Before you do  
10 let me just ask her one question. And that is  
11 have you made these concerns known to the City  
12 Council? This is an existing condition that you  
13 are commenting on. Have you formally or  
14 informally made these kinds of concerns known?

15 MS. SODERBECK: I have talked to the  
16 City Council about a whole number of things. I'm  
17 not sure that this was ever one of them.

18 MS. CHURNEY: Well, you know, I think  
19 this might be out of the jurisdiction of the City  
20 Council. It's --

21 (Parties speaking simultaneously.)

22 MS. CHURNEY: I think it's a Caltrans  
23 issue.

24 MR. SCHULTZ: That's Highway 1 --

25 PRESIDING MEMBER MOORE: Well, I

1 understand it's a Caltrans issue, at least as far  
2 as construction goes. But Caltrans typically  
3 deals with city councils, boards of supervisors  
4 and the like.

5 And so they get their complaints, at  
6 least in part, from those public officials. And  
7 the public officials --

8 MS. SODERBECK: Let me answer it this  
9 way --

10 PRESIDING MEMBER MOORE: -- get their  
11 complaints from the citizens.

12 MS. SODERBECK: I did check with the  
13 City to find out that they view this as not in  
14 their jurisdiction. They referred me to Caltrans  
15 if I wanted to make the complaint.

16 In all honesty I'm rather busy with  
17 other things here, and just haven't done that.

18 PRESIDING MEMBER MOORE: You answered my  
19 question, thank you.

20 BY MS. CHURNEY:

21 Q And then -- you can go back to your  
22 seat. And by way of rebuttal, have you had  
23 occasion to use the intersection of Atascadero and  
24 Main Street in your commutes or travels from north  
25 Morro Bay into town?

1           A     Many times. And same way, returning  
2     from the downtown area going home northbound, I go  
3     through that intersection at all different times  
4     of the day, and different days of the week.

5           Q     Have you ever had to wait longer than 25  
6     seconds at that intersection?

7           A     Many many times longer have I waited at  
8     the intersection of Main and Atascadero. Much  
9     longer than 25 seconds.

10          Q     and --

11          A     And I -- well, I just want to qualify  
12     that by saying I don't use a stopwatch. But when  
13     the whole -- when you've got the radio playing and  
14     you listen to a whole song while you're sitting  
15     there, I'm pretty sure it's more than 25 seconds.

16          Q     And are there certain days of the week  
17     that you've noticed that it's particularly  
18     congested at that intersection?

19          A     Well, I learned about the first week I  
20     was here to avoid it anytime relating to school  
21     hours. But, for example, going to the farmers  
22     market on Thursdays, which, depending on the time  
23     of year is, you know, 3:00 to 5:00 or 2:00 to  
24     4:30, those kind of hours.

25                     The backup in multiple directions

1 getting across that intersection, I'd say the  
2 estimate that the City had in their comments of  
3 about a line of 30 cars queued up would not be an  
4 exaggeration.

5 MS. CHURNEY: I have no further  
6 questions and the witness is available.

7 HEARING OFFICER FAY: Okay. Mr.  
8 Ellison?

9 CROSS-EXAMINATION

10 BY MR. ELLISON:

11 Q My only real question, Ms. Soderbeck, is  
12 with respect to the Main and Atascadero  
13 intersection that you just discussed, would you  
14 support the idea of there being a round-about  
15 there, rather than the current conditions?

16 A No. I personally wouldn't. I've had  
17 experience with roundabouts in other areas,  
18 including when I lived in Boston for several  
19 years, and I think roundabouts are horrible.

20 But, that's where the City and I  
21 disagree. I know the City favors one. But I  
22 personally would hate to see that happen.

23 Q Okay, thank you.

24 MR. ELLISON: That's my only question.

25 HEARING OFFICER FAY: Staff, any

1 questions?

2 MS. HOLMES: No, I don't think so.

3 HEARING OFFICER FAY: Okay. Does the  
4 City wish to probe that matter?

5 (Laughter.)

6 MR. ELIE: In a round-about way? No.

7 (Laughter.)

8 MS. CHURNEY: At this time then I would  
9 offer that portion of Ms. Soderbeck's declaration  
10 into evidence. And that's paragraphs 32 and 33.

11 HEARING OFFICER FAY: Any objection?  
12 Hearing none, so moved.

13 Actually, Ms. Soderbeck, I have a  
14 question. Do you have any recommendation on how  
15 the merging problem that you discussed regarding  
16 somebody entering Highway 1 south from Atascadero  
17 Road, how that danger could be reduced?

18 MS. SODERBECK: I was thinking about  
19 that, and the way it's configured now I don't see  
20 how it could be reduced significantly unless there  
21 is some really restrictive mini-management of when  
22 those truck traffic and employees are heading out  
23 that ramp, so that they're spaced at least to give  
24 enough room for intervening traffic to come in.

25 I mean if you've got two of those double

1 dirt trucks, for example, back to back, there's no  
2 way you're going to be able to exit there, period.

3 I suppose the other alternative would be  
4 to route some of that traffic in a more indirect  
5 way and avoid that particular transition ramp all  
6 together. But, you know, I recognize that would  
7 create further impacts at other intersections. So  
8 it would have to be evaluated. And I don't know  
9 what the result would be.

10 HEARING OFFICER FAY: Thank you. All  
11 right, that concludes our taking of testimony on  
12 traffic and transportation.

13 And I'd like to ask now if there's any  
14 member of the public who would like to comment on  
15 this topic. Yes, could you please -- why don't  
16 you take the mobile mike right here. Give your  
17 name and make your comment.

18 MS. DAVIS: Hi, my name is Mandy Davis.  
19 Number one, I would really like to support Pam's  
20 statement that roundabouts don't work. I also  
21 lived in Boston, lived in the City of Sarasota,  
22 and some other locations that they had round-  
23 abouts. And they were horrendous traffic  
24 problems. So I don't support the City's  
25 recommendations on that.

1                   Don't mean to be contentious with the  
2                   statement, but it seems to me that in the  
3                   applicant's and the expert witnesses' statements  
4                   on whether or not they thought that the traffic,  
5                   or there would be a problem with the new traffic  
6                   that would be happening with the building of any  
7                   site, it seems to me that just some real common  
8                   sense stuff wasn't even considered.

9                   And what I mean by common sense is that  
10                  when they asked how they came to their  
11                  conclusions, and they said that primarily they had  
12                  come to the conclusions by taking a look at the  
13                  area geometry. And that they had not made any  
14                  personal observations at specific times during the  
15                  day.

16                  And I said, holy, moley, what's up with  
17                  this. Why did they not make personal observations  
18                  during specific times of the day over a period of  
19                  time to see for themselves and to, I mean it seems  
20                  to me that would be part of the research. But  
21                  apparently it was not.

22                  So, as a citizen, I have some real real  
23                  concerns with this. And number one, my concerns  
24                  are that they better get out there and do some  
25                  direct observation. Because that intersection is

1 an absolute nightmare. Especially if you go there  
2 during the times when the kids are going in and  
3 out of school, during commuter times.

4 What nobody has addressed was noontime  
5 hour, which happens to be an absolute nightmare  
6 sometimes. It's an open campus. Kids coming in  
7 and out. And the traffic there is really bad.

8 Well, it seems to me that if you're  
9 going to start this construction process that all  
10 those construction workers are probably going to  
11 be leaving the site at lunchtime in search of  
12 filling their bellies. Talked to several of the  
13 restaurant owners in the area, and a lot of them  
14 support this whole process. And one of the  
15 reasons is because it's purely economic. They  
16 know they're going to get a lot of business in  
17 their restaurant during the time that this is  
18 going to be going on.

19 So, my assumption is that a lot of these  
20 people are going to be going out to eat at  
21 noontime. And that means you're going to have an  
22 additional traffic problem during that time.

23 There's also, well, I'll just use this.  
24 There's something that people haven't addressed.  
25 And besides the fact that there is a new

1 recreation center going in there, quite a few  
2 years ago I used to work for recreation  
3 departments, and rec centers, and I do know that  
4 the estimation probably for a City that's about  
5 the size of Morro Bay, and estimation or at least  
6 the research that this guy did, and I don't know  
7 who in the City he talked to, that said maybe 20,  
8 30 maximum, kids going into that center between  
9 the hours of 2:00 and 9:00 is really really  
10 probably a very low estimate, considering the size  
11 of the recreation center that is being proposed.

12           And we have a really gung-ho Parks and  
13 Recreation Department that plans on doing some  
14 really neat stuff with this. So we're going to  
15 have a lot of kids going in and out of there. And  
16 it's a really really crucial concern for me.

17           The other thing that's going to be  
18 happening, or that is happening now, as Mr.  
19 Crotzer pointed out, is that bike path goes right  
20 through that area. And I've seen some really  
21 close calls there.

22           The point I'm trying to make is there's  
23 a lot of kids in that area at a variety of times  
24 during the day. And not only during the school  
25 year. When school is out and those kids have all

1 kinds of time they're using the bike path more;  
2 they're using their scooters. But what nobody's  
3 pointed out is that -- I need my glasses -- sorry.

4 I'm just going to verbally tell you what  
5 I'm talking about, -- is there, there happens to  
6 be the world's toughest miniature golf course  
7 there. The school is there. And the bike park.  
8 And now the new recreation center. They're all  
9 within that area.

10 And it makes it a prime location for  
11 kids to hang out. And you know as well as I do,  
12 that with bicycling back and forth, there's going  
13 to be pedestrians, there's ballgames going on,  
14 there's going to be all kinds of Parks and Rec  
15 programs going on, kids, especially during the  
16 summer, are going to be going to the miniature  
17 golf course and the fun center that's there.

18 It is highly used by children during the  
19 summer, also. And nobody's even pointed that out.  
20 So, my point being is that I don't think these  
21 guys have done their research. I think direct  
22 observation, if anybody has been in this town and  
23 tried to go through that intersection for any  
24 period of time they'd realize that it's a really  
25 dangerous intersection. That an increase in

1 traffic is going to make the danger for children  
2 that much worse. And it's pretty bad right now.

3 So I just wanted you to be aware of  
4 that, because I don't think all the facts have  
5 been brought out.

6 HEARING OFFICER FAY: Thank you. Any  
7 other comments from members of the public?

8 Okay, I see nobody indicating.

9 CHAIRMAN KEESE: I would like to  
10 comment. I guess my comment is the same as our  
11 Hearing Officer's was regarding the highway. We  
12 have heard four or five people talk about bike  
13 traffic around the school. We've had nobody make  
14 a suggestion on what we should do about it.

15 So I would hope that certainly the  
16 record is open. You can send us letters. You can  
17 tell us. But, a suggestion of what should be done  
18 would be very helpful.

19 As Mr. Fay alluded to earlier, on all  
20 the items that come before us, comments are  
21 welcome, suggested language, suggested action is  
22 what will help us focus.

23 So, a more focused idea of what might be  
24 done would be helpful.

25 HEARING OFFICER FAY: Okay, any other

1           comments from the Committee before we adjourn?

2                       All right.  Our next gathering is  
3           tomorrow morning at 9:00 a.m.  We will begin with  
4           the topic of socioeconomics.  And following that  
5           we will have a scheduling conference.  And the  
6           parties have been put on notice that we need to  
7           hear suggestions about how the rest of the case  
8           can be scheduled.

9                       So, with that we'll see you tomorrow  
10          morning.  We're adjourned.

11                      (Whereupon, at 3:18 p.m., the hearing  
12           was adjourned, to reconvene at 9:00  
13           a.m., Thursday, January 31, 2002, at  
14           this same location.)

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## CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of February, 2002.

JAMES RAMOS

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