

COMMITTEE MEMBERS PRESENT

William Keese, Presiding 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

Marc Pryor, Project Manager

Michael Clayton, Principal
Michael Clayton & Associates

APPLICANT

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

Andrew L. Trump, Director of Business Development
Western Region
Robert E. Cochran, II, Project Manager
Duke Energy North America

Peter Okurowski, Senior Associate
California Environmental Associates

David H. Blau, Senior Vice President
Paul Curfman, Associate
EDAW, Inc.

Jeff Ferber, Principal
RRM Design Group

Russell Poquette, Project Manager
Duke FluorDaniel

Bruce R. Eisenbise
Fluor Daniel

INTERVENORS

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

Henriette Groot, President
Bonita L. Churney, Attorney
Pamela Soderbeck
Babak Naficy, Staff Attorney
Environmental Defense Center
Coastal Alliance on Plant Expansion

ALSO PRESENT

Dan Chia
California Coastal Commission

Terril Graham

Garry Johnson

Mandy Davis

Thomas R. Grindeland, Senior Project Engineer
West Consultants, Inc.

I N D E X

	Page
Proceedings	1
Opening Remarks	1
Topics - resumed	
Visual Resources - resumed	
Applicant witnesses D. Blau, R. Poquette, J. Ferber and P. Curfman - resumed	
Examination by the Committee	1
Exhibit 192	16
Exhibit 193	17
CEC Staff witness M. Clayton	19
Exhibits	19/31
Direct Examination by Ms. Holmes	20
Cross-Examination by Mr. Ellison	32
Cross-Examination by Mr. Elie	54
Cross-Examination by Ms. Churney	55
Redirect Examination by Ms. Holmes	59
Examination by Committee	61
Recross-Examination by Mr. Ellison	67
Examination by Committee	68
Public Comments	75
Terril Graham	75
Garry Johnson	80
Henriette Groot	85
Mandy Davis	86
Scheduling Conference	91
Discussion	93
Closing Remarks	
Adjournment	
Reporter's Certificate	

P R O C E E D I N G S

9:05 a.m.

PRESIDING MEMBER KEESE: Good morning.

We're here for the final day of this series of hearings. We're going to start where we left off last night at 6:00. Mr. O'Brien and Mr. Fay have a few questions before we move on to staff's presentation.

Mr. O'Brien.

Whereupon,

DAVID BLAU, RUSSELL POQUETTE, JEFF FERBER

and PAUL CURFMAN

were resumed as witnesses herein, and having been previously duly sworn, were examined and testified further as follows:

EXAMINATION

BY MR. O'BRIEN:

Q I have a few questions on the proposed landscaping, and it goes to the proposed landscape zones which is shown on page 16, Mr. Blau, of your testimony.

And I think in your presentation yesterday you had a slide of that in your PowerPoint presentation. Would it be possible to put that up on the screen?

1 (Off-the-record comments.)

2 HEARING OFFICER FAY: While they're
3 doing that I'd like to interject I'd just note
4 that I've passed out some input forms to all the
5 parties. And we'd like to collect those prior to
6 our scheduling conference later today after
7 visual.

8 I'd appreciate it if each of the parties
9 would fill that out and indicate the names of the
10 witnesses that will be sponsoring the testimony in
11 the areas listed, and their estimates of time for
12 direct testimony and their estimates of time for
13 cross-examination. That will help us to schedule
14 the next set of hearings.

15 MS. CHURNEY: I'm sorry, the Coastal
16 Alliance did not receive that sheet.

17 HEARING OFFICER FAY: I believe I gave
18 that to one of your party yesterday. But, I do
19 have another one here for you.

20 In addition, I want to be sure that we
21 have Mr. Chia on the line. Mr. Chia?

22 MR. CHIA: I'm here, Mr. Fay, thank you
23 very much.

24 HEARING OFFICER FAY: Good.

25 MR. BLAU: We have the image on the

1 screen that you're referring to.

2 BY MR. O'BRIEN:

3 Q Okay, the first question is, in terms of
4 the various areas shown on that proposed landscape
5 zones on the map, can you specifically identify
6 which of those areas it's being proposed to plant
7 larger trees for screening purposes?

8 MR. BLAU: Yeah, we -- Paul, if you
9 could point out on the screen there the strip
10 between north of the power plant, let's go up
11 north, between the trailer park and the power
12 plant. Right in that zone.

13 And then on the south side in that zone
14 there.

15 On the coastal side, which is labeled
16 there as zone B, that's where we have the dunes
17 and the dune restoration. So we would not be able
18 to plant large materials there.

19 MR. O'BRIEN: Okay, and next question on
20 that. The environmentally sensitive habitat
21 areas. Is it not permissible to plant larger
22 trees in those areas?

23 MR. BLAU: That's correct.

24 MR. O'BRIEN: And that's based upon a
25 concern for the species that inhabit the area, and

1 it would be detrimental to those species?

2 MR. BLAU: Exactly.

3 MR. O'BRIEN: Okay. And in terms of the
4 area labeled K, that other large square area,
5 there's no proposal there, or that area is not
6 proposed to have larger vegetation planted?

7 MR. BLAU: Right. At this point that
8 would be the footprint of the existing power plant
9 and it would just be graded and probably seeded.
10 But there's no thinking about landscaping on that
11 footprint.

12 MR. O'BRIEN: And the rationale for not
13 planting screening vegetation there is?

14 MR. BLAU: At this point in the
15 landscape plan it's just that the future use of
16 that particular parcel, that section of the
17 property, is undetermined in the future general
18 plan. So, it didn't seem wise to invest in
19 landscaping that footprint.

20 MR. O'BRIEN: Okay. And then in terms
21 of some of the species that you're looking at for
22 providing screening, I know you were talking about
23 using native vegetation, but what sort of native
24 trees are you looking at, and what heights are,
25 over the long term -- I'm not talking five years,

1 but over the long term, are you looking at?

2 MR. BLAU: To do that we probably have
3 to go back to the various plant lists by zone in
4 the AFC. It may take a moment to find that.

5 (Pause.)

6 MR. CURFMAN: Are you talking about
7 natives specifically used for screening, or --

8 MR. O'BRIEN: Yes.

9 MR. CURFMAN: Okay, the natives used for
10 screening would be madrone. That's a relatively
11 slow growing plant material that grows to
12 approximately 60 feet at full maturity.

13 Tanbark oak, about the same height, a
14 little bit faster growing. Catalina ironwood and
15 the others are drought-tolerant plant materials
16 that are appropriate for landscaping in this area,
17 but not native.

18 MR. O'BRIEN: Okay, and just one
19 question along those lines. Has the use of
20 California sycamore been discussed?

21 MR. CURFMAN: No.

22 MR. O'BRIEN: And any reason for that?
23 It's a native, native to the area; it's a very
24 fast growing tree, and a very -- you know,
25 particularly attractive tree. So, --

1 MR. CURFMAN: I would have to defer to
2 our local expert with regard to that tree.

3 MR. FERBER: Jeff Ferber. We can
4 certainly look into the platanus racemosa, but
5 generally it grows in protected areas, in riparian
6 canyons. And so I would say that we would need to
7 investigate its ability to grow in the more
8 exposed beach environment.

9 MR. O'BRIEN: Okay. Now, another
10 question on the screening activities. There was
11 talk about a five-year period. And it's certainly
12 a possibility that some of the plants that you put
13 in may, after five years, not be doing well.

14 So I'm just wondering if there's any
15 significance to the five-year mark in terms of the
16 landscape plan, as to whether or not after that
17 mark, or after that point in time that would be
18 the end of planting new screening vegetation?

19 MR. CURFMAN: The planting is
20 anticipated to be a one-time approach with the
21 caveat that there is a guarantee that those plant
22 materials will grow for a year and become
23 established.

24 The five-year maturity level was
25 identified by the CEC.

1 MR. O'BRIEN: Okay. And in your
2 presentation yesterday you showed the current
3 intake structure, and then I think above that
4 there was a picture of, and I wasn't sure whether
5 that was the proposed intake structure. And I
6 just wanted to clarify that.

7 And then also ask a question about what
8 the height of the intake structure would be under
9 the current proposal.

10 MR. BLAU: The image I showed yesterday
11 were two elevations of just the existing building.

12 MR. O'BRIEN: Okay.

13 MR. BLAU: Because the changes, they're,
14 really at this point in the discussions with the
15 City, there are no changes to the facade or the
16 architectural style of the building.

17 We showed a north and a west elevation.
18 I do not recall the specific height of the water
19 intake building. Jeff, do you have that data?

20 MR. FERBER: Yes, from the parking lot
21 side of the building, using the parking lot as a
22 zero, the building is 34 feet tall to the top of
23 the parapet. It's taller as you look at it from
24 the water.

25 MR. O'BRIEN: Okay. And just one other

1 question. In the presentation yesterday there was
2 a picture showing the proposed plant in the
3 background with some palm trees in the foreground.

4 Is that being given serious
5 consideration? And the reason I ask for it is
6 that it seems to me that palm trees don't do a
7 particularly good job in terms of any type of
8 screening. And having all the foliage on the top
9 of the palm tree kind of directs your eye to the
10 power plant.

11 So I was just wondering whether that was
12 for illustrative purposes, or that's actually
13 being considered by various people.

14 MR. CURFMAN: The reason the palm trees
15 were presented was that they do, in fact, have
16 foliage up high, whereas all the other foliage is
17 down low.

18 And because it would be in the
19 foreground it would provide a setting for the
20 power plant in the background, something other
21 than the power plant up in the higher elevations
22 of the view.

23 It was presented to the City and there
24 was some controversy about the use of palm trees.
25 And we are flexible in terms of whether or not

1 they would be used.

2 MR. O'BRIEN: Okay, thank you.

3 PRESIDING MEMBER KEESE: Let me follow
4 up directly on one just to make sure I understand.
5 Your indication was that you couldn't get to full
6 coverage in five years. Is that 60 feet?

7 MR. CURFMAN: The full coverage --

8 PRESIDING MEMBER KEESE: -- you
9 indicated that the taller vegetation that you had
10 in mind would reach 60 feet. Is that what we were
11 talking about as full coverage?

12 MR. CURFMAN: You're saying the full
13 maturity of the plant material as described at 60
14 feet is the definition of full coverage?

15 PRESIDING MEMBER KEESE: I'm asking if
16 that is consistent with what I heard before that
17 perhaps it was staff or somebody had asked for
18 full coverage. And you said that -- you admitted
19 that your plan, you didn't think that you had
20 things that were fast growing that would survive
21 that would get there within five years, if I
22 recall the testimony.

23 MR. CURFMAN: There's a difference
24 between full coverage and full maturity. And the
25 term full maturity has been used by the CEC within

1 five years.

2 PRESIDING MEMBER KEESE: All right.

3 MR. CURFMAN: But at the rate of growth
4 which we would expect on the coast, we do not
5 expect that that is possible.

6 PRESIDING MEMBER KEESE: What do you
7 expect is possible?

8 MR. CURFMAN: Well, it depends on the
9 plant material and the age at which you plant it.
10 If you plant a one-gallon plant versus a 24-inch
11 box tree, for instance.

12 PRESIDING MEMBER KEESE: What is your
13 target? Do you have a target for -- let me ask,
14 where do you foresee us in five years under your
15 plan, what height are we at, 15, 30, 35, 40 --

16 MR. CURFMAN: We propose a variety of
17 heights of plant material to be planted, including
18 one-gallon plants, five-gallon plants, 24-inch box
19 trees, so that the larger plant material will
20 provide immediate screening, and the smaller plant
21 material will provide longevity in terms of its
22 adaptation to the coastal climate.

23 In terms of coverage, again there'll be
24 a variety of heights. And we expect that those
25 larger plant material will provide adequate

1 coverage in the initial phases of the project.

2 PRESIDING MEMBER KEESE: Thank you.

3 MR. O'BRIEN: Can I follow up on that.

4 Just taking California madrone, as an example,
5 obviously what you're saying is that at five years
6 that plant is not going to be at its full 60 feet.
7 But I would assume at some point in time you would
8 anticipate that it would reach that height.

9 And can you give me an estimate, just
10 using that as an example? Are we talking 10
11 years, 15 years?

12 MR. CURFMAN: Sixty feet is a pretty
13 large madrone, that's probably 30 years.

14 MR. O'BRIEN: Okay.

15 MR. ELLISON: If I could just jump in
16 here. What I want to do is direct the Committee's
17 attention to the prefiled testimony which I think
18 makes clear Duke's position on this issue, and the
19 basis of it. And then if there are any further
20 questions you can certainly follow up.

21 But I'm reading from page 21 of exhibit
22 191 with regard to VIS-2, and starting with the
23 second paragraph of that discussion. It says:
24 This condition also requires that, quote,
25 "vegetation must reach maturity and full screening

1 potential within five years of completion of
2 construction of the new power plant." And then it
3 goes on.

4 And then it says: Duke does not agree
5 that a long-term, significant adverse visual
6 impact will occur. Also, this condition requires,
7 in effect, very large vegetation, i.e., 36 inches
8 to 60 inch box trees or larger on the presumption
9 that this will lead to maturity and full screening
10 within five years. Large trees are more
11 vulnerable to failure and do not grow as fast as
12 their smaller counterparts, so this condition may
13 be counter-productive to the stated aims. For
14 this, and other reasons, this makes the condition
15 not feasible."

16 And so the concern is that by requiring,
17 quote, "maturity and full screening potential
18 within five years", you're actually limiting the
19 kind of vegetation that you would plant at the
20 outset, to a kind which, as I understand the
21 testimony, I'm just reading what's here, but if I
22 understand the testimony you're limiting it to
23 something that Duke believes has less a chance of
24 long-term survival.

25 PRESIDING MEMBER KEESE: Thank you.

1 HEARING OFFICER FAY: And so your
2 alternative is to focus on an objective like
3 effective screening, is that what you intend by
4 the additional language?

5 MR. CURFMAN: Yes.

6 HEARING OFFICER FAY: Okay. I have a
7 few questions.

8 BY HEARING OFFICER FAY:

9 Q Mr. Blau, you mentioned yesterday and
10 then again responding to Mr. O'Brien, that it
11 sounds like there's been a step away from the
12 visual depiction of the intake structure that was
13 shown in visual resources figure 3 in the staff
14 testimony. And I believe that came from Duke as a
15 source.

16 Can you tell us why that happened?
17 Because the visual depiction seems to be
18 consistent with a fishing village image that the
19 town is seeking. And I'd just like to understand
20 why that is not going to be pursued.

21 MR. BLAU: We thought early in the
22 process that that was the image that the town was
23 seeking. But after the workshop on I think it was
24 November 5th, right, and then the resolution that
25 was passed by the City a week later, the

1 resolution asked that a re, relative to the intake
2 building.

3 The City Council considered three
4 options for design treatments for the intake
5 building, including an option to leave the
6 building in its current conditions. That was one
7 of the three options. The other two, one was a
8 peaked roof; the other was more of a barrel roof
9 top with treatment to make it fit in more with the
10 fishing village character.

11 The City Council finds that the
12 alternatives presented by the project applicant
13 require further review, therefore at this time the
14 City Council does not favor any of the proposed
15 design treatments for the existing building. And
16 recommends the applicant consider other options
17 modified to be smaller rather than larger than the
18 existing building.

19 So, the issue became adding height to
20 that building. So there was a subsequent visit by
21 Councilmembers and our team to the building to
22 understand what happens inside of the building.
23 And they realized that its function and shape is
24 driven by the overhead cranes; that the building
25 could not be brought down lower.

1 And so it has evolved now to just
2 basically to spruce up the building, if you will,
3 re-stain the concrete on the building base, add a
4 walkway and some landscaping and some deck and
5 seeding. But not try to, if you will, disguise
6 the building into something that it isn't.

7 HEARING OFFICER FAY: Okay. And you say
8 this was an official act of the City in expressing
9 this, by the City Council?

10 MR. BLAU: Yes, it's in their resolution
11 dated November 13, 2001.

12 MR. SCHULTZ: Which I believe is an
13 exhibit, also.

14 MS. CHURNEY: Is it an exhibit? And if
15 so, could you identify what exhibit it is?

16 HEARING OFFICER FAY: Okay, if somebody
17 can check on that, that would be helpful.

18 MR. ELLISON: I am informed that we
19 believe it's not an exhibit, so it may be
20 appropriate to mark it. If it turns out that
21 we've marked it twice, we will correct it. But my
22 document expert tells me that we don't have an
23 exhibit number for that.

24 HEARING OFFICER FAY: Okay, do you have
25 a number, a resolution number on that?

1 MR. BLAU: It's resolution number 72-01.

2 HEARING OFFICER FAY: And that is City
3 of Morro Bay resolution 72-01 adopted November 13,
4 2001. That will be exhibit 192.

5 MS. CHURNEY: Has that previously been
6 provided to the parties?

7 HEARING OFFICER FAY: I believe it has
8 not, but I think we can just take administrative
9 notice of whatever the resolution says. If it
10 doesn't support what Mr. Blau has said, then that
11 will be obvious.

12 Can we ask the City to provide copies of
13 that to all the parties?

14 MR. SCHULTZ: Yes, we certainly can. If
15 you'd like to also take judicial notice of the
16 minutes of that meeting, also, that might be
17 helpful. We could do that, also.

18 HEARING OFFICER FAY: Is there any
19 objection to also taking notice of the minutes of
20 the meeting that pertain to the discussion about
21 the building?

22 MS. CHURNEY: Oh, I think it's
23 appropriate if you're going to take notice of it
24 that copies of both be provided to the parties.

25 HEARING OFFICER FAY: Can the City help

1 us with that?

2 MR. SCHULTZ: Yes.

3 HEARING OFFICER FAY: Okay, thank you
4 very much.

5 MR. ELIE: Mr. Fay, why don't we give
6 the minutes a number, as well?

7 HEARING OFFICER FAY: Okay, the minutes
8 will be identified as exhibit 193. And can you
9 give us a better identification of the relevant
10 minutes?

11 MR. SCHULTZ: The minutes of the Morro
12 Bay City Council regular meeting dated November
13 13, 2001; it includes under B-1 the public
14 hearings reports and appearances. It was review
15 of the visual and aesthetic issues regarding the
16 modernization of the Morro Bay Power Plant.

17 And I think it is important because it
18 does include the public comments that were given
19 at that meeting and then the comments from council
20 members, the resolution that was just discussed
21 was passed five to zero. But there was also
22 another motion regarding the innovative visual
23 shields or full enclosure that did not pass. So I
24 think that's important, also.

25 HEARING OFFICER FAY: Okay. I think

1 what we'd like is that exhibit 193 include all the
2 discussion of visual, as well as the public
3 comment, the resolution, the vote.

4 MR. SCHULTZ: That's what I thought,
5 yeah.

6 HEARING OFFICER FAY: All right. Any
7 objection to receiving that? Okay. Marked for
8 identification. Thank you.

9 Mr. Blau, on the visual effect of any
10 plume I believe you said you relied on Mr
11 Rubenstein's estimate of no more than 70 daylight
12 hours a year, is that correct?

13 MR. BLAU: That's what I said.

14 HEARING OFFICER FAY: And were there any
15 other analyses done of the time and size of the
16 plume that were available to you?

17 MR. BLAU: No, we felt that the
18 frequency was so low that we did not feel we
19 needed to go further with that aspect of the
20 project.

21 HEARING OFFICER FAY: All right. Okay,
22 that's all I have at this time. We will be
23 getting into a discussion about the Coastal
24 Commission's concerns later. Thank you very much.

25 Anything further, Mr. Ellison?

1 MR. ELLISON: No.

2 HEARING OFFICER FAY: Okay. Then, Ms.
3 Holmes, if you're ready we'll turn to the staff's
4 presentation on visual.

5 MS. HOLMES: Thank you. Staff's visual
6 resources witness is Michael Clayton, and he needs
7 to be sworn.

8 HEARING OFFICER FAY: Please stand, and
9 will the court reporter please swear the witness.
10 Whereupon,

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

15 MS. HOLMES: I think before we begin we
16 need to have one more exhibit marked. That's the
17 supplemental visual testimony is the shorthand
18 name we've been using. Actually the title of the
19 document is request for review of the Energy
20 Commission Staff's power plant enclosure analysis
21 report (supplement to visual resources final staff
22 assessment part one) for the Morro Bay Power Plant
23 project, dated February 14, 2002.

24 HEARING OFFICER FAY: Ms. Holmes, you're
25 going to have to speak more closely into the mike.

1 I cannot hear you.

2 MS. HOLMES: I'm sorry. I'm usually not
3 told that I'm difficult to hear.

4 I'm asking that we mark as an exhibit
5 staff's supplemental visual testimony dated
6 February 14th. I can read the entire title again
7 if you would like.

8 HEARING OFFICER FAY: That would be
9 exhibit 194.

10 MS. HOLMES: Thank you.

11 DIRECT EXAMINATION

12 BY MS. HOLMES:

13 Q Mr. Clayton, did you prepare the visual
14 resources portion of the final staff assessment
15 that's been identified as exhibit 115?

16 A Yes.

17 Q And did that contain your
18 qualifications?

19 A Yes.

20 Q And did you also prepare the
21 supplemental visual testimony that's just been
22 identified as exhibit 194?

23 A Yes.

24 Q And are the facts contained in that
25 testimony true and correct to the best of your

1 knowledge?

2 A Yes.

3 Q And do the opinions contained in that
4 testimony represent your best professional
5 judgment?

6 A Yes.

7 Q And do you adopt that as your testimony
8 on visual resources today?

9 A Yes.

10 Q Thank you. I'd like to turn to a couple
11 of questions that have come up since the visual
12 resources section of the hearings began.

13 First of all, there were a number of, I
14 guess they would be called overheads, that were
15 projected yesterday during the applicant's
16 presentation on visual resources.

17 It's my understanding that those
18 overheads are the same as the depictions that were
19 provided in the application for certification, is
20 that your understanding?

21 A Yes.

22 Q And are those the same as -- do those
23 depictions use the same scale as the depictions
24 that are contained in the final staff assessment?

25 A No. We requested of the applicant to

1 revise those images that were presented in the
2 AFC, to present them in a life-size scale, which
3 is what we use as a standard in the preparation of
4 the staff assessments.

5 Q The use of a different sized scale
6 between the AFC and the FSA, that did not change
7 your conclusions, did it?

8 A No.

9 Q Thank you. Also, I'd like to turn your
10 attention to figure 16 in the FSA, exhibit 115.
11 Actually there's a similar rendition up on the
12 screen right now. Do you see that?

13 A Yes.

14 Q Can you tell me whether or not what's on
15 the screen and what has been discussed this
16 morning is the same as what is presented in the
17 FSA?

18 A What is shown here is different than the
19 most recent landscape plan that we received and
20 which is what we used in the staff assessment.

21 The changes here --

22 Q Excuse me, by here do you mean what's up
23 on the screen?

24 A The changes as to what's shown on the
25 screen reflect a reduction in the screening

1 vegetation that had previously been indicated.

2 Previously the plans showed, and what we
3 evaluated, was screening vegetation along the west
4 side of the project site, as well. And then also
5 screening vegetation up along the south boundary
6 of the trailer park.

7 And so it appears that those areas have
8 been eliminated in terms of screening vegetation.

9 Q And that's not something that you've
10 analyzed, is it?

11 A No, it is not.

12 Q And in addition, the information that
13 was provided with respect to the intake structure
14 this morning, is that new information to you?

15 A Yes, it is.

16 Q Thank you. What I'd like to do now is
17 go through the applicant's comments on your
18 testimony one by one, starting with VIS-1.

19 Duke has objected to the portion of the
20 condition that requires partial screening options.
21 Now, before I ask you a question about that, I
22 would like to note that staff would prefer to
23 discuss the request of the Coastal Commission in
24 their letter to the Energy Commission last week at
25 the scheduling conference, and not during this

1 portion of the testimony.

2 So, with that understanding I'll just
3 proceed with the questions.

4 Mr. Clayton, do you have a response to
5 Duke's recommendations for changes to VIS-1?

6 A Well, presently I think the concept that
7 was developed by staff seems to be reasonable. I
8 don't agree that the shielding that is shown in
9 the simulations necessarily represent substantial
10 increase in either mass or would represent a
11 blockage of additional sight lines through the
12 project site from let's say residential hillside
13 views.

14 That concept is intended to imply a very
15 close cladding specifically of the HRSG
16 structures. So we would expect that that would be
17 kept tightly around those structures. And they
18 are not representing any kind of shielding that
19 would extend in between the HRSG structures, or
20 that would otherwise block views through the
21 overall power plant facility.

22 Also, I think it's reasonable to point
23 out, although it is not stated in the actual
24 report, that the primary purpose of that concept
25 is to try and reduce that complex industrial

1 character to views specifically from KOP 5 and 6,
2 which represent Morro Strand state beach, and also
3 the trailer park to the north of the project site.

4 So, theoretically we're primarily
5 interested in shielding on the north side and on
6 the west side of the structures. Those are the
7 view directions that we're primarily concerned
8 with.

9 So, it's conceivable that shielding
10 could be applied to just two sides of those
11 structures.

12 So, with that, I would say we disagree
13 with the characterization that this is going to
14 dramatically either increase size or block views
15 to the project site. And, again, those shields,
16 as stated in that testimony, are not intended to
17 have roofs, so I'm not sure that there is a
18 demonstrable effect on any kind of plume downwash
19 that would actually occur. That has to be,
20 obviously, evaluated, though.

21 Q And with respect to the testimony that
22 you heard yesterday that the hillside views would
23 be degraded by use of the shields. Is that a
24 statement that you agree with?

25 A No. As I said, that shielding will be

1 very close to the structures; it would not be any
2 shielding recommended in between the structures.
3 The views through the project site from the
4 hillside should not be measurably affected by the
5 inclusion of that kind of shielding.

6 Q Thank you. Let's move on to VIS-2. I'd
7 like first to begin with the applicant's concerns
8 about the limitations that may or may not be
9 imposed by what's referred to as the ESHA buffer
10 around Morro Creek. Do you have a response to
11 those concerns?

12 A Well, we evaluated, as I mentioned
13 previously, the revised landscaping zones map,
14 which is included in the staff assessment and in
15 the FSA as figure 16.

16 And in the review of that plan we see no
17 potential conflict with that sensitive habitat
18 area. The areas that they have shown for full
19 screening on that image appear to be reasonable
20 and appear to be feasible. So I don't see -- it is
21 not readily apparent that there is a conflict, or
22 what that conflict would be.

23 Q Thank you. And you've also heard a lot
24 of discussion this morning about vegetation
25 reaching maturity and full screening. Do you want

1 to provide your perspective on the appropriate way
2 to apply that condition?

3 A Well, I don't think it's necessarily
4 unreasonable to characterize, as the applicant
5 wishes to characterize. It is appropriate that we
6 could say that it should be effective at five
7 years following construction. That's a reasonable
8 request, and we can agree to make that change.

9 But, I think it's important to remember
10 that what we're talking about here is five years
11 following construction. We have a five-year
12 construction window, as well, so what we're really
13 talking about here is that we need to achieve
14 effective screening of the majority of those
15 project components really at the end of ten years.

16 And staff feels in this particular case
17 that ten-year timeframe is really reasonable. And
18 we see no reason at this point in time in the
19 record why effective screening of those project
20 components could not be achieved within that ten-
21 year timeframe.

22 And in previous discussions at workshops
23 the applicant has indicated a willingness to
24 proceed early on with landscaping in order to take
25 advantage of the additional five-year construction

1 timeframe.

2 Q So you believe that with the
3 substitution of the word effective in front of
4 screening for the word full, that the condition
5 should remain as it's currently worded?

6 A Yes.

7 Q Let's move on to VIS-3 which addresses
8 lighting. The applicant has suggested a change to
9 VIS-3 regarding timing. In addition they also
10 recommended some changes to the language of the
11 condition, itself, that go to specific language
12 about the types of equipment that would need to be
13 shielded.

14 Do you have a response to the
15 applicant's recommendation?

16 A Well, I don't really see a problem with
17 the way that that condition is written. This
18 condition language has been utilized for other
19 projects. It seems to be feasible and reasonable
20 on these other projects.

21 Certainly when the applicant does
22 eventually develop a lighting plan with details
23 that staff can review, we will evaluate it for
24 those kinds of concerns. And we will look at
25 possible solutions to locations where there might

1 be these up into a light, for example. We can
2 look at things such as repositioning the light, or
3 adjusting the shielding on the light. Consider
4 reorientation of the light. Or, as possible,
5 modify the screening to resolve that issue.

6 Those are things that the CPM and staff
7 can evaluate once there is an actual lighting plan
8 that has been developed. I would not, at this
9 point in time, weaken that condition language.

10 Q Thank you. And do you have a response
11 to the timing change that Duke has recommended
12 with respect to VIS-3?

13 A We could agree to a change in the
14 language on VIS-3 by adding a couple of words, and
15 I can read that to you. We could say that for
16 VIS-3 prior to first turbine row of each unit,
17 adding the words of each unit, the project owner
18 shall design and install all permanent lighting,
19 adding the word permanent, such that the light
20 bulbs and reflectors are not visible from public
21 viewing areas and illumination of the vicinity in
22 the nighttime sky is minimized. Recognizing that
23 there is a sequential development in bringing on
24 line of the project.

25 Q Thank you. Let's move on to VIS-4.

1 This has to do with screening the demolition
2 rubble.

3 Duke has asked for some additional
4 flexibility with respect to locating and screening
5 the demolition rubble. What's staff's response to
6 that recommendation?

7 A Well, at this time we see no evidence in
8 the record that indicates why that condition isn't
9 feasible, or why the applicant would need
10 additional flexibility on that condition.

11 Clearly staff is open to working with
12 the applicant on this, but there's information we
13 would need to assess the appropriateness of
14 modifying the condition. How tall the pile's
15 going to be. Where it will be located? What are
16 these viewing areas of concern? What kinds of
17 screening can they implement?

18 Clearly, I think that information needs
19 to be provided before we can entertain revising
20 the condition.

21 Q Thank you.

22 A I would also point out that if the
23 applicant provided sufficient information that we
24 could agree that, yes, they needed some additional
25 flexibility on that condition, we would have to

1 make sure that the phrase to the maximum extent
2 feasible -- excuse me, the maximum extent
3 reasonable is that which is determined by the CPM.

4 Q Thank you. I believe that with respect
5 to VIS-5 the only recommended change has to do
6 with timing. Is that a change that staff can
7 support?

8 A Yes, we can support that.

9 Q And finally with respect to VIS-6 Duke
10 has suggested some changes having to do with
11 whether or not grading all of the areas to the
12 original grade is required or not. Does staff
13 have a response to those proposed changes?

14 A We could agree to those changes.

15 Q Thank you. Does that conclude your
16 comments on the changes that were proposed by the
17 applicant?

18 A Yes, it does.

19 Q Thank you.

20 MS. HOLMES: I think with that we'll ask
21 that the visual resources portion of exhibit 115
22 and the supplemental testimony, which has been
23 identified as exhibit 194, be moved into evidence.

24 HEARING OFFICER FAY: Is there any
25 objection? All right, so moved.

1 MS. HOLMES: And the witness is
2 available for cross-examination.

3 HEARING OFFICER FAY: Okay. Mr.
4 Ellison.

5 MR. ELLISON: Thank you.

6 CROSS-EXAMINATION

7 BY MR. ELLISON:

8 Q Good morning. The first question is
9 staff reached the conclusion on visual resources,
10 at least in exhibit 115, that the applicant's
11 proposal does not cause a significant adverse
12 visual impact, correct?

13 A Which exhibit is this?

14 Q The FSA, exhibit 115.

15 A The conclusion of staff is that the
16 project will cause a significant visual impact,
17 but that it can be mitigated.

18 Q And what is the mitigation that you're
19 referring to, the landscaping, correct?

20 A The landscaping, correct.

21 Q Okay.

22 A Effective implementation of staff's
23 conditions of certification.

24 Q Okay. Did anything in your supplemental
25 analysis change that conclusion?

1 A No.

2 Q So is it fair to say that the
3 recommendation of partial enclosure, the screening
4 that you've referred to, is not made on the basis
5 that it's necessary to mitigate a significant
6 visual impact of the project as proposed by the
7 applicant with the conditions imposed in exhibit
8 115?

9 A That is correct.

10 MS. HOLMES: If I could just interject
11 at this point. I'm happy to state for the record
12 that staff conducted that analysis because of the
13 request of the Coastal Commission.

14 MR. ELLISON: Thank you. Let me also
15 make a statement for the record. There was a
16 preliminary discussion as to the exhibit that's
17 still projected on the screen here. And whether
18 that reflected the landscaping analyzed by staff
19 in the FSA.

20 And I do want to make clear that
21 although we used this as an exhibit to illustrate
22 the locations of the landscaping, that the
23 applicant's proposal is, and remains today, what
24 was analyzed by staff in the FSA.

25 This did not intend to represent a

1 reversion back to the proposal in the AFC.

2 BY MR. ELLISON:

3 Q Let me ask you some questions regarding
4 the supplemental exhibit partial enclosure
5 proposal.

6 You've indicated that your view of the
7 screening is, I believe you used the phrase close
8 cladding, is that correct?

9 A Correct.

10 Q How close do you mean by that?

11 A I can't say precisely. Again, as we
12 indicated in that write-up, that's a concept. The
13 concept being what can we do to sort of minimize
14 the structural complexity of that.

15 So, whether or not that's materials that
16 are, let's say, affixed, attached directly to the
17 size of the HRSG, or if it's some type of more
18 free-standing structure that's placed in close
19 proximity. The intent is that whether it's
20 attached or free-standing that it's as close as
21 possible to the HRSG for the very reasons that the
22 applicant's consultants have raised previously,
23 that we want to minimize the bulk of the
24 structures, and also to minimize the potential for
25 blocking additional sight lines through the

1 project site.

2 So, it needs to be kept, in my opinion,
3 that kind of partial enclosure or cladding or
4 shielding needs to be kept in close proximity to
5 the HRSG structures as possible.

6 MS. HOLMES: I apologize for
7 interrupting again, but if the Committee would
8 like to look at the exhibits that we're
9 discussing, I'm not sure you have them in front of
10 you, compliments of the applicant we have an extra
11 copy.

12 HEARING OFFICER FAY: Is this exhibit
13 194 you're referring to?

14 MS. HOLMES: Yes, it is. It's just
15 extra copies.

16 HEARING OFFICER FAY: Okay. And can you
17 guide us to the appropriate plate?

18 MS. HOLMES: Figure 1, figure 3, --

19 HEARING OFFICER FAY: Why don't we just
20 take a moment and have the witness describe the
21 cladding effects or partial cladding effects for
22 the record. And referencing each figure.

23 MR. CLAYTON: Figure 1 shows the view
24 from KOP5 of the proposed project as simulated by
25 the applicant. And KOP5 is the view from Morro

1 Strand state beach.

2 Figure 2 is that same view with the
3 representation of what we're referring to as a
4 partial enclosure concept. And in that what we
5 attempted to do is to place or construct shielding
6 immediately around each of the individual four
7 HRSG structures. And the attempt in that
8 simulation is to keep that material and that
9 shielding as close to those structures as possible
10 to minimize bulk, height and the potential for
11 blockage of additional sight lines.

12 Figure 3 is the view from KOP-6 at the
13 trailer park. That presents a simulation of the
14 proposed project as developed by the applicant.

15 Figure 4 is the same image again showing
16 the partial enclosure concept. Essentially
17 represents a closer view of what we previously
18 described for KOP5. And, again, the intent is to
19 keep that shielding as close as possible to the
20 HRSG structures. As you'll note in that
21 simulation we do not extend it all the way up to
22 the very tops of the pipeworks on top of the
23 HRSGs.

24 Again, we're trying to demonstrate some
25 sort of a compromise between raising the height of

1 this shielding too high and creating additional
2 view blockage, but still trying to shield or to
3 cover the majority of the complex structural
4 components, which I believe is a primary
5 contributor to that sort of industrial character
6 of the structures.

7 HEARING OFFICER FAY: Thank you. Go
8 ahead, Mr. Ellison.

9 MR. ELLISON: Thank you.

10 BY MR. ELLISON:

11 Q I believe your previous answer said that
12 what you meant by close cladding was as close as
13 possible, or something to that effect, is that a
14 fair statement?

15 A Correct.

16 Q Did you do any engineering analysis to
17 determine how close was possible?

18 A No.

19 Q So you didn't look at how much space
20 would be needed for maintenance or to protect
21 equipment or allow access or those sorts of
22 things?

23 A No.

24 Q Okay.

25 A And we identify in that report that this

1 concept needs to be tested for feasibility and for
2 precisely for those reasons.

3 Q So the representations that are in the
4 depictions that you've shown, how did you arrive
5 at the dimensions of that screening, not knowing
6 how close was possible?

7 A The purpose of the simulations were
8 merely to illustrate a concept in the sense of
9 something in between the proposed project and the
10 full enclosure which was originally represented on
11 the simulations that we previously received.

12 The intent, as I interpreted the Coastal
13 Commission's concern, was in how can we sort of
14 reduce that industrial complexity, in what
15 fashion? And I would agree, as I have stated,
16 with the applicant's opinion that full enclosure
17 is more problematic than the proposed project, in
18 that it is substantially blocks views and creates
19 a greater visual impact.

20 So the intent was what's possible in
21 between that. And so we started out with this as
22 being the initial concept of what if we try --
23 find out a way to just enclose just the HRSG
24 structures, just cover over as much of that
25 material as possible.

1 And so that was the basis for why we
2 approached it that way, and why I developed that
3 particular simulation. But it does need to be
4 tested for feasibility. And it may be upon
5 engineering review or design that the structure
6 has to be a little bit larger or positioned
7 differently, and that still remains to be done.

8 Q Let me clarify my question. The
9 question wasn't why you did this, or what the
10 intent was or any of that. I understand that.
11 But you have shown some visual depictions of what
12 this would look like, and they necessarily
13 require, in order to do that, some dimensions of
14 the screening.

15 And so my question was not knowing how
16 close was possible, how did you arrive at those
17 dimensions?

18 Let me ask the question a different way.
19 Did you depict, as the concept, what the screening
20 would look like assuming that it could be as small
21 as possible to provide the screening that you were
22 looking for?

23 A It was not developed based on
24 dimensions. It was developed on the basis of
25 covering over the industrial components. So there

1 were no dimensions developed.

2 We didn't say well, it needs to be x
3 such and such feet tall by such and such feet high
4 or long. So there is no validity in the sense of
5 accurate dimensions, but the intent was, and I
6 think what we showed, is this is what it would
7 look like. If you could closely clad that, this
8 would be the effect.

9 Q Okay. But whether you actually can
10 closely clad that is something you don't know,
11 correct?

12 A We do not know, and that's why we stated
13 in there it has to be tested for feasibility to
14 see whether or not that's even feasible, or if
15 something -- if that's not feasible, is something
16 slightly larger feasible. Those questions have to
17 be asked and answered.

18 Q Would it be fair to say that staff's
19 conclusions regarding the desirability of this
20 type of screening might change if you knew that
21 the dimensions of the screening would be different
22 than what you've assumed?

23 A Certainly. If, for example, the
24 engineering design proved that the only thing
25 feasible was full enclosure, as has been

1 previously illustrated in simulations by the
2 applicant, we would not be in favor of that.

3 So what is in between there that
4 accomplishes a reduction of industrial complexity
5 without resulting in too substantial an increase
6 in bulk and height that begins to increase further
7 the project's dominance or block sight lines
8 through the project.

9 So there may be something feasible and
10 reasonable in between those two extremes.

11 Q Let me ask a question with regard to
12 downwash and the impact on stack height. Did you
13 analyze that issue?

14 A No.

15 Q Did you, in your depictions, assume any
16 change in stack height or depict them?

17 A No.

18 Q You've heard the applicant's testimony
19 that Duke believes that it would increase stack
20 height by 20 feet. Do you have any basis then to
21 disagree with that?

22 A No.

23 Q Did your conclusions regarding the
24 desirability of this screening assume any change
25 in stack height?

1 A No, it did not.

2 Q Did you do any depictions or analysis of
3 what the screening that the concept screening that
4 you've proposed would look like from any of the
5 hillside KOPs?

6 A No.

7 Q So your testimony this morning regarding
8 whether that would be problematic is not based
9 upon that sort of analysis, is it?

10 A It's not based on the preparation of
11 simulations. When the concept was developed it
12 was evaluated in the field in terms of looking
13 both at the simulations.

14 We have simulations from each of -- from
15 these hillside viewpoints. And basing it on what
16 we envisioned the concept to be in terms of
17 closely placing -- either placing free-standing
18 structures adjacent to the HRSGs, or closely
19 cladding those structures, we reviewed the
20 simulations from the various viewpoints to
21 ascertain whether or not it would appear that
22 there would be additional view blockage.

23 And it did not appear that there would
24 be substantial view blockage that would result
25 from that. But we did not prepare simulations to

1 illustrate that.

2 Q So when you said that it did not appear
3 that there would be substantial view blockage, am
4 I correct that you were assuming there to be no
5 change in stack height and no change in the height
6 of the HRSGs as a result of the screening?

7 A That's correct. We assumed that the
8 siding or the shielding would extend no higher
9 than the upper pipeworks on the top of the HRSG,
10 and that there would be no additional height of
11 the stack.

12 Q Even with those assumptions is it not
13 true that to the extent hillside viewers can see
14 through the piping at the top of the HRSGs, that
15 with the screening they would no longer be able to
16 do that?

17 A That is correct.

18 Q And if there were an increase in the
19 HRSG height and/or an increase in stack height is
20 it not also true that hillside viewers would have
21 their views of the ocean, the rock, the beach
22 reduced?

23 A That is very probable. And what we
24 would do, in terms of evaluating additional
25 designs, if there are presented, is we would look

1 at those very issues.

2 We would look to the degree that the
3 views may be compromised. Presently, you know,
4 I'm not -- I wouldn't be prepared to say that what
5 is visible through the piping on top of the HRSGs,
6 that the additional view blockage caused by
7 shielding that covers that is necessarily a
8 substantial increase in view blockage.

9 I mean those views are somewhat limited.
10 But that is a concern. And that is what we would
11 evaluate once we get a detailed design, if that
12 was presumed.

13 Q Let me turn to a different topic now. I
14 want to ask you some questions about your response
15 to Duke's changes in some of the conditions of
16 certification.

17 With respect to the issue that we
18 discussed this morning of VIS-2 and the five-year
19 issue, you mentioned that you thought that was
20 really ten years, because there's a five-year
21 window for construction.

22 The five-year window for construction
23 that you referred to, is that the statutory
24 deadline for commencement of construction?

25 A No, not that I'm aware of.

1 Q Could you explain exactly what you're
2 referring to, then?

3 A Well, could you restate that question
4 again?

5 Q Could you just tell me what is the five-
6 year, additional five years, there's five years in
7 the condition, itself. And then you mentioned an
8 additional five years. Could you clarify exactly
9 what the additional five years is?

10 A We have been told, and it is described
11 in the application, that the construction will
12 take -- the process of demolition and construction
13 will take approximately five years.

14 We have raised the issue during
15 workshops that in order to achieve, in order to
16 provide additional time for vegetation growth, is
17 there a reason why landscaping in some of these
18 critical shielding screening areas could not be
19 started at the outset of project demolition
20 construction.

21 And it was indicated, yes, that was a
22 possibility. So that, to us, indicates that there
23 could be as much as five years additional growth
24 on top of the five-year requirement following
25 into construction.

1 So, to the extent that you have the
2 construction period of whatever number of years it
3 is, in this case approximately, as we understand
4 it, five years, that theoretically could provide
5 you additional time for the growth of landscaping.

6 (Pause.)

7 MR. ELLISON: Bear with me a moment,
8 excuse me.

9 BY MR. ELLISON:

10 Q Is it your understanding that the five
11 years, and I'm referring now to the five years
12 that's in the condition, itself, is triggered by
13 the commencement of construction of the new power
14 plant as distinct from, for example, tank farm
15 demolition?

16 A No.

17 Q So the five years would be triggered by
18 the beginning of tank farm demolition?

19 A Correct. At the beginning of the quote,
20 construction/demolition process.

21 Q And because tank farm demolition is
22 included as part of this project, then the five
23 years would begin to run, as it's currently
24 written, when Duke began the tank farm demolition?
25 Is that your understanding?

1 A Five years from -- in the condition,
2 you're referring to?

3 Q That's correct.

4 A No, the five years in the condition
5 refers to the completion of all project
6 construction demolition and the beginning of
7 project operations.

8 So once the project -- effectively, once
9 the project begins to operate that's when the five
10 years begins on the condition. What we're
11 indicating is that you may have as much as maybe
12 an additional five years during the demolition and
13 construction process to achieve additional growth.

14 Q Okay, I think I understand. The five
15 years that you're referring to, the additional
16 five years is not anything in the condition, --

17 A Correct.

18 Q -- it is not started by anything, it's
19 simply an estimate of the amount of time that
20 would precede the trigger date in the condition?

21 A Right.

22 Q I understand, okay. You mentioned with
23 respect to condition VIS-3, that if the
24 applicant's language minimized to the maximum
25 extent reasonable were modified by, that you'd

1 like to see that modified by determined by the
2 CPM.

3 Do I recall that correctly?

4 A Correct.

5 Q With that modification of the addition
6 of determined by the CPM, can you accept the
7 applicant's minimized to the maximum extent
8 feasible? I'm sorry, reasonable, maximum extent
9 reasonable language?

10 A You're referring to VIS-3?

11 Q I am.

12 UNIDENTIFIED SPEAKER: Four.

13 MS. HOLMES: Yeah, I think we're --

14 MR. ELLISON: No, I'm sorry. I stand
15 corrected. Excuse me, can't read my own notes.

16 BY MR. ELLISON:

17 Q Yes, VIS-4.

18 A VIS-4. Once we have sufficient, once
19 the Commission has sufficient information to
20 determine that additional flexibility is
21 appropriate to build into that condition and we
22 accept that language change, then we would need to
23 modify the language to have the CPM be the decider
24 of what's reasonable.

25 But before that, before an agreement to

1 the language changes that you're requesting, we
2 would need additional information to understand
3 why the condition, as written, is not feasible or
4 reasonable.

5 Q Have you asked Duke for that additional
6 information prior to this time?

7 A No, we have not.

8 Q Could you describe for me what you mean
9 by -- and I'm turning now to VIS-3 -- could you
10 describe what you mean by public viewing areas?
11 Are there specific locations you have in mind?

12 A What part of VIS-3 are you referring to?

13 Q I'm referring to the statement, the
14 first sentence of VIS-3 where it speaks of being
15 light bulbs and reflectors are not visible from,
16 quote, public viewing areas.

17 A Areas accessible to the public. Morro
18 Strand state beach; any sort of pathways, walkways
19 along the west side of the project site; from the
20 Embarcadero.

21 Q So do I understand correctly that the
22 effect of this condition is to say that no member
23 of the public from anyplace accessible to the
24 public can see at all any light bulbs or
25 reflectors? Is that what this means?

1 A We're trying -- the intent of the
2 condition is to eliminate direct exposure of
3 light, obviously the light bulbs and reflectors,
4 to public viewing points through the use of
5 shielding, through the use of directional
6 orientation.

7 HEARING OFFICER FAY: Mr. Clayton, --
8 excuse me, Mr. Ellison, if I may interject -- is
9 the concept of an objective such as that
10 visibility of light bulbs or reflectors shall be,
11 to the maximum extent, reduced or eliminated, is
12 that consistent with your condition?

13 MR. CLAYTON: Yes.

14 HEARING OFFICER FAY: Okay, because I
15 sense that applicant is concerned about a hard-
16 edge here that says not visible. And that perhaps
17 that is an enforceable bit of language that it
18 would be hard for them to comply with.

19 But if you agree with the way I phrased
20 it, I wonder if that helps us move along. Does
21 it, Mr. Ellison?

22 MR. ELLISON: Definitely. I think
23 you've put your finger right on our concern. We
24 are certainly willing to do what is feasible and
25 reasonable on this issue. We certainly concur

1 with the concept. The concern is that the
2 language that staff has written, we believe, sets
3 such a strict standard that it may require things
4 that are not feasible.

5 BY MR. ELLISON:

6 Q So do I understand that the language
7 that Hearing Officer Fay just described would be
8 acceptable to you?

9 MS. HOLMES: Could we have that
10 repeated, Hearing Officer Fay?

11 HEARING OFFICER FAY: Well, I wasn't
12 rewriting the exact condition, however install all
13 lighting with the objective that light bulbs and
14 reflectors shall, to the maximum extent feasible,
15 have their visibility from public viewing areas
16 reduced or eliminated.

17 MR. CLAYTON: And I would add to that as
18 determined by the CPM. We could agree with that
19 language change.

20 MR. ELLISON: Well, I think we can, as
21 well, so I do think that's very helpful, Mr. Fay,
22 thank you.

23 HEARING OFFICER FAY: And if I can
24 anticipate your thinking process and maybe save
25 some more time, when you move to VIS-4 can we

1 entertain a similar concept when it comes down to
2 demolition rubble not visible.

3 Can we entertain the concept of reduced
4 visibility to the maximum extent feasible?

5 MR. CLAYTON: Yes, we can entertain
6 that.

7 MR. ELLISON: On this one let me make a
8 slight modification, but explain it.

9 MR. CLAYTON: On which one?

10 MR. ELLISON: On this topic, this VIS-4
11 issue. Here I think we would prefer the word to
12 the maximum extent reasonable as determined by the
13 CPM, as opposed to feasible.

14 And the reason is this. We understand
15 this condition applies not to the end-stage when
16 the demolition is done, but it also applies during
17 the demolition process.

18 We believe that there are things that
19 could be done to reduce visibility of rubble that
20 are feasible during the demolition, but not
21 reasonable. That would be, for example, one of
22 the things that we had proposed to do is to fill
23 in the foundations with some of the rubble so it
24 doesn't have to be taken offsite. Taking it
25 offsite and bringing it back is feasible, but it's

1 not reasonable.

2 And getting that we're talking about a
3 temporary circumstance here, again I emphasize
4 we're not talking about the end state here, we're
5 talking about during the demolition, we would
6 prefer to see the language to the maximum extent
7 reasonable, as determined by the CPM. So that
8 these issues can be balanced.

9 BY MR. ELLISON:

10 Q Let me ask staff whether that language
11 would be acceptable?

12 A The example you just gave, I think, it's
13 reasonable in that context. And I'm not
14 necessarily adverse to making that language
15 change, or to agree with that language change.

16 But we need to be a bit cautious that we
17 don't have other situations that are feasible and
18 reasonable, but there's a difference of opinion in
19 terms of what's reasonable.

20 And so that's why I think that would be
21 resolved by letting the CPM be the arbiter there
22 if that's reasonable, with consultations from
23 staff. So, I think that would be acceptable.

24 MR. ELLISON: That does resolve our
25 concerns with respect to VIS-4, thank you, again,

1 Mr. Fay and staff, thank you.

2 Thank you, we're done.

3 HEARING OFFICER FAY: Great. Does the
4 City have any cross-examination of the staff?

5 MR. ELIE: Yes.

6 CROSS-EXAMINATION

7 BY MR. ELIE:

8 Q Mr. Clayton, I'm going to ask you the
9 same questions I asked Mr. Blau yesterday. The
10 verifications of VIS-1 through -6, would you
11 object to changing them all to make them
12 consistent for 90 days?

13 A No objection.

14 Q Also would you object or would you agree
15 to the condition of certification we propose on
16 the intake structure which is similar to VIS-5,
17 which would state something to the effect of at
18 least 90 days prior to construction of the
19 remodeling of the intake structure the project
20 owner shall submit the design to the CPM for
21 review and approval, and the California Coastal
22 Commission and the City of Morro Bay for review
23 and comment?

24 A I would agree with that.

25 MR. ELIE: No further questions.

1 HEARING OFFICER FAY: CAPE.

2 CROSS-EXAMINATION

3 BY MS. CHURNEY:

4 Q Mr. Clayton, did staff evaluate Duke's
5 estimated dimensions for a fully enclosed facility
6 to determine whether those dimensions are
7 reasonable for the proposed new Morro Bay Power
8 Plant?

9 A No.

10 Q And if you did not, why did you not?

11 A The evaluation was based on the
12 presentation of the simulations and the visual
13 effects with the result from those simulations.

14 We did not have, and do not have, from
15 my understanding of the engineering staff, that
16 would be able to actually design that type of
17 enclosure that would require operational
18 information.

19 Q If it were determined that Duke's
20 estimated dimensions are over-estimated, would
21 that affect staff's conclusion regarding whether
22 full enclosure would have an adverse visual
23 impact?

24 A It would depend on the ultimate outcome
25 of those dimensions. If the dimension proved to

1 be substantially smaller, it might affect our
2 overall assessment of the enclosure. I would also
3 point out that the enclosure -- at some point
4 there's a line as to where the enclosure of the
5 industrial character is offset by the size of the
6 structure.

7 And so where that line is reached we
8 don't know until we see simulations of that. It's
9 possible that if a full enclosure was small enough
10 that it might not be -- it might meet that line.

11 My suspicion is that full enclosure is
12 going to result at its smallest in a structure
13 that is substantially larger and creates more view
14 blockage than the proposed project would.

15 Q Does staff intend to fully evaluate the
16 structural shield concept including testing for
17 feasibility and increased effects, if any, of
18 building downwash?

19 A Staff is available to evaluate any
20 further design or exploration of that concept.
21 We're not in the position to actually do the
22 designs or do the simulations, but we would
23 certainly be available to review and evaluate any
24 additional information presented on those
25 concepts.

1 Q And in your evaluation to this point on
2 close cladding, I believe you've indicated that
3 you have just done the evaluation to protect views
4 from the north and the west, is that correct?

5 A Correct.

6 Q Was there a reason why you also did not
7 do the evaluation to protect views from the east?

8 A Well, the views from the east, if you
9 mean from the hillside views, we didn't find,
10 first of all, see any visual impacts from those
11 hillside views. They're at a greater distance and
12 the intent of the shielding was really to minimize
13 the impact, the visual impact of the structural
14 complexity, which was most, if you will, impacting
15 on the very close views, which were represented by
16 KOPs 5 and 6.

17 So those are the areas where we felt
18 that any additional shielding or enclosure would
19 most benefit from.

20 Q Actually my question is more directed to
21 views from highway 1, which is the view that most
22 residents and those travelers north and south on
23 highway 1 are going to have of this power plant.
24 I think it's going to be the most common view, in
25 fact more common than either from the beach, which

1 is a view from the west, or --

2 MS. HOLMES: Can I ask that counsel not
3 testify but simply ask a question of the witness.

4 MS. CHURNEY: Okay. Well, that is the
5 question, the view from highway 1.

6 MR. CLAYTON: No, that was not
7 evaluated. The view from highway 1 is very
8 restricted, I mean is to a large degree already
9 screened from view by existing trees along that
10 area and in close proximity. When you're in close
11 proximity to highway 1, to a large degree, the
12 plant is outside the primary cone of vision.

13 We did not identify a significant visual
14 impact from highway 1, which is represented in
15 staff's analysis by KOP20.

16 BY MS. CHURNEY:

17 Q Is KOP20 the one shown from the Main
18 Street exit off of highway 1?

19 A Correct.

20 Q And you don't consider that to be quite
21 apparent to those utilizing that area of highway
22 1?

23 A No. I mean that location, I mean that's
24 a direct view of the project site from that
25 location. The reality is that most people, at

1 least as that is to represent the view from
2 highway 20, most people actually don't have that
3 view on highway 1, excuse me, views are oriented
4 up and down the freeway. And there is a great
5 deal of vegetative screen along that stretch.

6 So we did not find a significant visual
7 impact at that location. Even with a direct view
8 at the project site.

9 MS. CHURNEY: I have no further
10 questions.

11 HEARING OFFICER FAY: Any redirect?

12 MS. HOLMES: I have a couple questions.

13 HEARING OFFICER FAY: Do you have
14 redirect, Ms. Holmes?

15 MS. HOLMES: Yes, I do.

16 REDIRECT EXAMINATION

17 BY MS. HOLMES:

18 Q Mr. Clayton, earlier this morning
19 counsel for the applicant asked you whether or not
20 you had any basis to disagree with their
21 assumption of stack height or the height of the
22 HRSGs would necessarily be increased with a
23 partial screening option. Do you recollect that?

24 A Yes.

25 Q Do you have any basis to agree with the

1 assumption that stack height or the height of the
2 HRSGs must necessarily be increased in order to
3 accommodate partial enclosure?

4 A We have no information that would
5 indicate a need for additional stack height.

6 Q Thank you. With respect to VIS-4,
7 counsel for applicant asked you whether or not you
8 had asked for additional information from Duke to
9 respond to their concerns about the language. Do
10 you recollect that discussion?

11 A Yes.

12 Q Was this condition in the PSA?

13 A I'm sorry, which one?

14 Q This is VIS-4.

15 A VIS-4. Yes.

16 Q Thank you. And finally, with respect to
17 a question from counsel for CAPE earlier this
18 morning, I'd like to ask you a question about full
19 enclosure.

20 You indicated that staff was available
21 to undertake further analysis of full enclosure or
22 partial enclosure. Does staff plan to do any
23 additional work without Committee direction on
24 this?

25 A No.

1 MS. HOLMES: Thank you. Those are all
2 my questions.

3 HEARING OFFICER FAY: Okay. Anything
4 further from any of the parties?

5 MR. ELIE: Mr. Fay, I don't have any
6 recross, but I do want to point out to the
7 Committee that we provided copies of exhibits 192,
8 the resolution of the City Council, and the 193,
9 the minutes of the City Council to all the
10 parties. And at the next break I'll provide them
11 to the Committee.

12 HEARING OFFICER FAY: Oh, great, thank
13 you. Appreciate your promptness on that.

14 PRESIDING MEMBER KEESE: I do have a
15 question and I will try to ask it in a very simple
16 form.

17 EXAMINATION

18 BY PRESIDING MEMBER KEESE:

19 Q And that is when I hear the concept the
20 staff and others are putting forward, which is to
21 reduce, I guess, the industrial feel ==

22 A Industrial character, yeah.

23 Q -- of this building, let me just talk
24 about backyard screening. And someone may want to
25 block something. Generally what they use in a

1 backyard from a close-up viewpoint, they don't use
2 a piece of plywood that is four feet by six feet,
3 they use an open-face cross-hatched straight line
4 board, many different configurations to blunt the
5 view, but not put up a wall. Which I would say a
6 wall is bulk.

7 I can look at figure 2 here and for a
8 portion of it it looks like we're getting more
9 bulk versus what we had previously.

10 Now that is one way to reduce the
11 industrial feel, but in a way it also increases an
12 industrial feel with bulk.

13 Is staff suggesting that the only
14 alternative would be a flat wall?

15 A Not necessarily. I think you're correct
16 there's a trade-off here between creating
17 something that appears maybe more solid, and
18 because it appears more solid it appears to be
19 more massive, which is something that looks very
20 highly complex, so there's those two aspects to
21 what isn't attractive in this case.

22 And so you're trying to -- you attempt
23 to draw a balance between what -- between those
24 two.

25 For example, and I think what is

1 presented here represents something of a balance
2 between let's say the full enclosure, which would
3 be, in a sense, it would enclose everything, all
4 in one structure. Versus everything, or
5 everything that's shown in figure 1 as being
6 exposed.

7 So the intent here was to find that
8 compromise of well, let's not try and enclose
9 everything because that becomes too massive.
10 Let's just enclose a little bit. Or let's enclose
11 a portion of that.

12 So that we do reduce some of the
13 complexity without creating too large of a massive
14 structure.

15 Are there other solutions in terms of
16 some form of camouflage or other types of
17 shielding that might present a less solid image.
18 I mean that's possible. I mean like, you know,
19 that's something that could possibly be explored.

20 Q The goal is to hide the industrial
21 character, not necessarily to -- how tall would
22 you estimate these structures are, if -- am I
23 right that that wall is about 20 feet?

24 A Yeah, I believe that that soundwall is a
25 20-foot soundwall.

1 Q So we're probably talking about 80-or
2 100-foot structures here, and an ocean wind
3 climate, which would be strengthened to make sure
4 that they stayed up?

5 A True, yeah.

6 Q Well, in both cases I heard full
7 enclosure seems to include a solid construction.
8 And I'm just wondering if that's necessarily what
9 we're talking about.

10 In other siting cases I have seen open-
11 face arcs and different things proposed that hide
12 the view, but not necessarily enclose. So
13 enclosure, I guess, is -- I'm asking what one
14 means by enclosing.

15 A Our use in terms of enclosure here
16 particularly is in reference to what the applicant
17 has put forward previously. As we understood it,
18 that was a solid structure. And that's what we
19 evaluated in terms of our analysis of full
20 enclosure.

21 And in terms of the partial enclosure
22 concept presented by staff, that also is also a
23 solid sides, if you will. But I would not say
24 that that some other form of screening might not
25 be feasible, or might not work.

1 We just haven't -- we haven't seen any
2 samples of those other options or possibilities.

3 Q Thank you. Even though we're looking at
4 this and guesstimating it's maybe 100 feet, what
5 you are suggesting is that the industrial
6 character is more obvious the closer you are to
7 the structure?

8 A Yes.

9 Q And a certain distance from the
10 structure you won't see that --

11 A It becomes less prominent, yes.

12 Q Which would seem to me to mean that the
13 screening doesn't have to screen from a half-mile
14 away, perhaps, but you do definitely want to
15 screen from 100 to 200 feet. When I ask you where
16 you see, which would mean that the screen didn't
17 have to be that high because if you're within ten
18 feet, probably a ten-foot screen would block the
19 view.

20 I mean is there a -- how far are you
21 thinking of the industrial character being clearly
22 discernible?

23 A The industrial character is most
24 apparent when you're from a close vantage point.
25 And in terms of the viewpoints that we have that

1 we're looking at, 5 and 6 are two of the closest
2 viewpoints.

3 There were other viewpoints presented by
4 the applicant, KOP7, for example, is probably the
5 closest or one of the closest, also.

6 We found from views from 5 and 6, to a
7 large degree, because of that industrial
8 complexity, a pretty strong visual contrast
9 occurring there. And that's why we --

10 Q About how far are we away there?
11 KOPs --

12 A Five and 6, I don't have the distance
13 immediately at hand.

14 Q I mean, I'm looking at the one, KOP6
15 here, which --

16 A That's the trailer --

17 Q -- is the trailer park, and that looks
18 like we're quite close.

19 A Yes, that is quite close. I don't have
20 the distance immediately at hand.

21 Q Okay.

22 PRESIDING MEMBER KEESE: Thank you, I
23 think that's enough.

24 MR. CLAYTON: But that was -- okay.

25 Yeah, the screening definitely is not something

1 that we think is, as we stated previously,
2 required to mitigate the visual impact in those
3 locations. And certainly would not be necessary
4 from distant viewpoints around the project site.

5 MR. ELLISON: Mr. Fay, if it's
6 permissible, and entirely at the discretion of the
7 Committee, I would like to ask one followup
8 question to the questions of the Chairman.

9 HEARING OFFICER FAY: All right, go
10 ahead.

11 MR. ELLISON: Thank you.

12 RE-CROSS-EXAMINATION

13 BY MR. ELLISON:

14 Q With regard to the sizing of the
15 screening in order to accomplish the staff's goals
16 from the viewpoints that the staff is concerned
17 about, is it fair to assume that the staff
18 proposal is, in staff's view, the minimum height
19 necessary to accomplish the screening?

20 In other words, if you could have done
21 it with something smaller, you would have done so?

22 A That's correct.

23 MR. ELLISON: Okay, thank you.

24 MR. O'BRIEN: Mr. Clayton, I have a few
25 questions for you.

EXAMINATION

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

BY MR. O'BRIEN:

Q First of all, you were talking about the industrial nature of the project, and trying to screen that, is it a fair understanding that staff's proposal is made because you believe what you've presented here is more visually appealing than the project without screening?

And that it's not an issue of industrial because clearly it's an industrial facility, and what you've brought forward doesn't eliminate the perception on the part of the viewer that it's still an industrial facility.

But I'm assuming what you're saying is that what you've come up with presents a view from KOP 5 and 6 of a manmade structure that's more visually appealing.

A Yes.

Q Second question for you in terms of these viewpoints. Am I correct in assuming that they do not include the screening, the vegetative screening that is being proposed for this project?

A That is correct.

Q And that if we were to look at figure 4 and 3, that the view of the facility would at

1 least be partially obscured by mature screening
2 that is being proposed?

3 A Yes.

4 Q I'd now like to go to the issue of the
5 location of the screening. And I'm not sure I
6 understood what you were saying earlier regarding
7 the map, referring to the overhead here.

8 Can you point out to me, using that
9 overhead, all the areas where staff is proposing
10 screening with vegetation that when it reaches
11 maturity will have considerable height?

12 A I'll try and do it from --

13 Q And before you do that, indicate whether
14 there are any areas where staff is recommending
15 such screening that isn't shown there, or whether
16 there's any difference between what staff is
17 recommending and what the applicant is
18 recommending.

19 A Well, as I understand correctly, I think
20 staff's counsel indicated that this graphic, in
21 fact, does not represent the current landscaping
22 plan; that it is just used here as a presentation
23 exhibit, because they followed up with a comment
24 that what is shown as figure 16 in the FSA is, in
25 fact, what the current landscaping proposal is.

1 So what is shown, I think you may have
2 that graphic in front of you. The areas that I
3 was questioning, based on their presentation, --

4 (Laughter.)

5 MR. ELLISON: Let me say two things.
6 One, let me confirm that what I said earlier is
7 true, and was correctly characterized by staff.

8 Secondly, what we're putting up is right
9 out of the applicant's testimony. This is the
10 landscaping plan in that testimony.

11 The reason we used the other one is, as
12 you can see, this one's much harder to read in
13 terms of locations. So, we apologize if we've
14 confused people. Used the earlier one because
15 just to demonstrate locations, so people could
16 understand where things were happening, but not
17 necessarily what the landscaping would be.

18 Now, I don't know if this helps at all,
19 but I do want to apologize for the confusion. And
20 I do want to make clear that what staff has in
21 their, I believe it's figure 16, is congruent with
22 the applicant's proposal.

23 MR. CLAYTON: Should I clarify on that
24 exhibit the areas of concern, or is it clear now
25 that --

1 PRESIDING MEMBER KEESE: Let's see if we
2 have one more shot of the better one.

3 (Pause.)

4 PRESIDING MEMBER KEESE: We're trying to
5 get the right exhibit so he can demonstrate.

6 Okay.

7 BY MR. O'BRIEN:

8 Q Okay, Mr. Clayton, am I correct that in
9 my assumption that in the area labeled B from the
10 staff testimony, visual resources figure 16, that
11 there will be, after some point in time, ten years
12 or so, tall trees stretching from the area where B
13 intersects A, and then proceeding in a northerly
14 direction, and then turning easterly all the way
15 to where B intersects D?

16 A That is correct. Now, there's two B
17 areas which, having looking at counsel's exhibit,
18 is not necessarily clear. But there's a B that
19 has a red line cross-hatching through it. And
20 there's a B that just open.

21 And it's the B -- I don't know if I
22 can -- the B area with the screening vegetation is
23 on the inside of those two B areas. And then it
24 also runs along the north side of the project
25 site. And in addition, there is additional

1 screening vegetation to be included in this area
2 along the southern boundary of the trailer park,
3 as well.

4 Q Okay. Can you just do that for me one
5 more time with your pointer?

6 A Sure.

7 Q In terms of where the tall mature
8 vegetation will be located.

9 A The tall mature vegetation would be
10 located in this area along this area on the north
11 side. And then also over here along the south
12 side of the trailer park. Those two areas.

13 MS. HOLMES: What Mr. Clayton was
14 referring to about the exhibit being unclear is it
15 appears that some of the reproductions in the
16 FSA's are less than clear.

17 (Laughter.)

18 MS. HOLMES: And so it is, in fact, I
19 noticed, looking at my copy it's much more
20 difficult to see that it is on his copy that he
21 has.

22 MR. CLAYTON: I can show you my copy
23 which is very clear if that would be helpful.

24 HEARING OFFICER FAY: And for clarity,
25 Mr. Okurowski provided us with a very clear copy.

1 Where did that come from? Exhibit 163? Okay.

2 And is that identical to figure 16, but
3 for the improved clarity? Because I note -- it
4 is, all right. Good. Because I note that the
5 referenced red cross-hatching does not show in the
6 FSA, and it does show on Mr. Okurowski's print.

7 MS. HOLMES: Ironic, but we're glad
8 that's clarified.

9 (Laughter.)

10 HEARING OFFICER FAY: I have a few
11 questions, but hold on just a minute.

12 (Pause.)

13 BY HEARING OFFICER FAY:

14 Q All right, Mr. Clayton, have you
15 received expression of City interest or comments
16 on your visual conditions as you've developed
17 them?

18 A We've heard comments in workshops, but
19 we haven't had direct testimony --

20 Q Okay.

21 A -- on the FSA.

22 Q Do you know if the conditions, as you've
23 got them written now, are acceptable to the City?

24 A I'm not aware, other than the testimony
25 provided by the City here today, I'm not aware of

1 any other --

2 Q Okay, so --

3 A -- concerns.

4 Q -- the modifications they requested and
5 you agreed to, as far as you know that's all --

6 A As far as I know.

7 Q -- that they've asked? Okay. And can
8 you tell me, I believe it's Lila Kaiser Park, is
9 that the proper name?

10 A Yes.

11 Q Which KOP would give me the closest
12 impression of the view from that park?

13 A We don't have a KOP for that location.

14 Q But you have so many there must be one
15 that's fairly close. Is the trailer park --

16 A Well, that's close, but that's not
17 really the view perspective. I mean that's a --
18 from the park, to the extent that the site is
19 visible, I mean it's basically through a break in
20 the treeline at sort of the east side of the
21 project site.

22 So there really isn't, I don't think, a
23 good view that could be representative of that
24 location. We do describe, in -- well, we do
25 describe views from Lila Kaiser Park, but that

1 actually is part of the dry cooling analysis,
2 which we've not covering here today.

3 Q Okay. Is it fair to say that while the
4 existing plant is clearly visible from that park,
5 that much of the vegetative screening around the
6 park would probably have a -- cause a reduced view
7 of the proposed facility?

8 A Yes. And also the screening that's
9 proposed, the vegetative screening that's proposed
10 in the landscaping plan condition would
11 substantially reduce those impacts.

12 Q Okay.

13 HEARING OFFICER FAY: Thank you.
14 Counsel, anything further with your witness?

15 MS. HOLMES: I don't believe so.

16 HEARING OFFICER FAY: Okay. We do have
17 some requests for public comment. That concludes
18 our formal testimony on visual resources. But I'd
19 like to call on a few members of the public who
20 asked to speak.

21 First, is it Terril Graham? Sir, if
22 you'd please spell your name for the record for
23 the court reporter's sake. And then give us your
24 comments.

25 MR. GRAHAM: My name is Terril Graham,

1 T-e-r-r-i-l G-r-a-h-a-m.

2 I live at 6205 Conejo Road in
3 Atascadero. I appreciate your appearance here.
4 I've been going through three years of litigation
5 with the City of Atascadero, and more recently
6 with the County of San Luis Obispo in relationship
7 to environmental problems that have been taking
8 place in my neighborhood.

9 I've become very familiar after having
10 read CEQA three times, highlighting it, tabbing
11 it, sending it to the court. And finally, after
12 appropriate due process of law, I have arrived at
13 the California Supreme Court to represent these
14 environmental issues to that court.

15 The conclusion of my testimony was that
16 the City and County have decided, on their own, to
17 ignore California law. The underlying complaint
18 on all of these including what's going on today
19 with Duke, what's going on in Cambria in
20 relationship to the leakage of MTBE and Standard
21 Oil, it all shows the posture of the government
22 that is in San Luis Obispo County representing the
23 interests of commercial people instead of the
24 interests of the people of the State of
25 California, under whose sovereign laws these men

1 must operate.

2 The liberty that all of these people are
3 always extolling about private property ownership
4 is only that liberty that they receive under law.
5 It's a misperception that you can go in and under
6 the guise of private property ownership destroy a
7 community, if not a state, if not the world.

8 We can't tolerate it any longer. We're
9 asking this Commission, along with these fine
10 people that represent the public of the State of
11 California, who many are unemployed
12 environmentalists like myself, who dedicate
13 themselves to the outcome of the law, as opposed
14 to dedicating themselves to skirting the law,
15 these angels that appear at public meetings to
16 notify us all of the real truth of the law and
17 what's going on, need to be acknowledged.

18 And if I didn't think I had already
19 perhaps overtaken my time I would go ahead and
20 name them all. But I can say one man is Eric
21 Greening. And he's an angel that appears at
22 various meetings all over the state to represent
23 the citizens of California. And he comes into the
24 meetings very humbly. And he prostrates himself
25 in front of the law and says please listen to me.

1 And they persecute him. They bring in
2 people that cause him to be forced out of the
3 meeting. They've tried to do it to me. They've
4 used police at both Atascadero and the County to
5 intimidate me; to try and keep me from performing.

6 But what they don't understand is the
7 compulsion. I have no alternative. I'm here to
8 please ask you to make the proper determination
9 that Duke and the County of San Luis Obispo have
10 failed to conform to California law; they have not
11 even minimally complied with CEQA.

12 CEQA under Longshoremen's v. Board of
13 Supervisors clearly delineated that compliance
14 means actual compliance. It doesn't mean
15 approximate compliance. That is a joke that
16 architectural picture that this guy came and said,
17 I'm a licensed architect; I write these
18 architectural plans for the city.

19 With a green pin around a fenceline.
20 Come on, a due architect would be putting holes
21 and showing how big the trunk's going to be, and
22 how tall it's going to be when we put in it. And
23 what it's going to look like in 15 years.

24 And are they going to put in a sapling
25 or they're going to put in a 20-year-old developed

1 tree, so that we don't have to suffer and watch
2 their pollution while the appropriate environment
3 grows back that's already been cut down by
4 industry.

5 We're not going to tolerate it any
6 longer. I represent people that are in their 90s.
7 When I said in Atascadero they're cutting these
8 trees down but don't worry, they're going to
9 replace them. And he said a lot of good that's
10 going to do me.

11 I moved here because I wanted to be in
12 the country. They're cutting down the trees and
13 telling me to wait 400 years. I can't bear to
14 wait the 15 years.

15 But furthermore, the law says we don't
16 have to wait 15 years. You have to show us how
17 you're going to come in, integrate with our
18 neighborhood without embarrassing us. Without
19 destroying our community. That's what California
20 law is asking for. That's what we must demand.

21 And I hope that you can direct your
22 staff to enter amicus for my pleading in the
23 Supreme Court so that we can bring all of this
24 injustice in this County to an end as rapidly as
25 possible.

1 Thank you for your consideration.

2 PRESIDING MEMBER KEESE: Thank you.

3 HEARING OFFICER FAY: Thank you, sir.

4 The next person is Garry Johnson.

5 MR. JOHNSON: Shocking experience up
6 here. My name's Garry Johnson. I live here in
7 Morro Bay. I live two blocks from this facility.

8 I'd like to give you my background, and
9 then from there I will get into my discussion, and
10 then a summary.

11 My background is I got a bachelor of
12 science degree in metallurgy. I also entered the
13 masters program and did some studies at Stanford.
14 At one time I thought I'd get my PhD, but decided
15 against it.

16 I work for the space agencies. I've
17 done a lot of surveys of companies throughout the
18 United States in my 40 years experience in the
19 working industry. I've worked on the guidelines,
20 not so much quality assurance, a QA type deal, but
21 I did the ISO9000 series type investigation into
22 companies that were building parts for our space
23 program with NASA and with the government.

24 I moved here five years ago. And when I
25 moved here, realizing this plant was within vision

1 of our house, but because this community was so
2 great, and I loved the community, as far as I'm
3 concerned the plant didn't bother us. I have more
4 concerns about the buildings in front of me than
5 the plant, itself.

6 I'm an independent person that
7 investigated into Duke Energy. I'm not influenced
8 by any group, whether it's the City, County or
9 state, who I've had long discussions with the
10 state and with the County, and also with Duke
11 Energy.

12 The first meeting that we had, I cannot
13 believe this has been going on for four years;
14 it's been costing the City thousands of dollars.
15 It's cost Duke Energy millions. And we're still
16 going on and on with this.

17 I just can't believe why we can't come
18 to a conclusion sooner. And the community is very
19 very tired That's why you don't see anybody here.
20 Or you see very few people here because people are
21 tired of all this. They just want to see
22 closures. And the people did vote, and they came
23 up with their own conclusions that 60, 70 percent
24 of the people said let's get on with the project.

25 My first concern was the first meeting I

1 went to the verbiage that was coming out of this
2 meeting, there was standing room only, the
3 community showed up, there was a couple hundred
4 people there.

5 I was very concerned about what they
6 said about what Duke Energy is doing to our
7 community; they're poisoning us and et cetera and
8 et cetera.

9 Because of my strong background and I'm
10 a high tech person I decided that I'm going to
11 really look into this in many different ways.

12 I immediately called Duke Energy and
13 wanted to set up an appointment with Steve to do a
14 complete survey following the ISO9000 guidelines
15 and so forth. I spent several days with Steve. I
16 went from one end of the plant to the other;
17 outside, inside, and as far as I'm concerned, and
18 this is the key, do they meet the requirements.

19 I couldn't find anything that they
20 didn't meet the requirements. Just like your
21 automobile. You take your automobile in to get
22 it -- to see if it does meet the state
23 requirements. If it meets the requirements, it
24 meets the requirements. Even though the car still
25 pollutes, it does meet the guidelines of our

1 pollution.

2 So I contacted Duke and found out that a
3 lot of those things that people were saying were
4 not true. Duke Energy had many meetings for three
5 or four months, every Thursday afternoon they had
6 meetings with the public. You could go in there
7 and discuss anything you wanted; whether you
8 wanted to take a tour.

9 I went over the visual part of this from
10 one end to the other. I understand why we have a
11 design like this. And also looked at the
12 technical end of it. And most of the time I was
13 the only one there. Very few other people would
14 ever show up at these meetings.

15 So, if they're so concerned about all of
16 this, why weren't they in there like I was?

17 Duke has had workshop after workshop
18 after workshop, and no matter what they've done,
19 what they say, there's always a group there saying
20 you haven't done enough.

21 Also, Duke had a lot of townhouse
22 meetings. We had one at our house. Kathy Novak
23 sent out over 100 postcards that anybody could
24 come to our house and discuss with Duke. Five
25 people showed up, three of the people were against

1 Duke. Duke had all their visual aspects and so
2 forth. And I thought Duke represented themselves
3 quite well with the people that were against them.

4 Four years and millions of dollars have
5 been spent, and we, as residents of Morro Bay, are
6 very tired, like to see closure contrary to what
7 other people say.

8 As of today's requirements the plan
9 meets the environmental requirements. Just like I
10 said earlier about CARB, that meets the
11 requirements. But even though anything that we
12 generate power does cause pollution. We know
13 that. And we're going to get better and better at
14 it. The requirements today will change tomorrow.
15 We need power.

16 When power from this plant goes into our
17 system what does it do for us? Produces food;
18 gives energy to our hospitals; to our schools; and
19 et cetera and et cetera. We all know this.

20 So, anyway, thank you for listening to
21 me.

22 PRESIDING MEMBER KEESE: Thank you.

23 HEARING OFFICER FAY: Thank you, Mr.

24 Johnson.

25 Henriette Groot.

1 MS. GROOT: My name is Henriette Groot.
2 Councilman Colby Crotzer asked me to call
3 something to your attention. He's at work so he
4 can't be here, himself. He did have the
5 opportunity to watch some of the proceedings on
6 tv.

7 And his concern is this, that when you
8 were discussing the visibility of the light
9 fixtures I believe the visual condition that was
10 put into effect stated that none of the lights
11 should be visible from public places.

12 Now his concern is that doesn't protect
13 the citizens of the City, the residents. Are you
14 really saying that these light sources should be
15 visible from all the residents of the City? That
16 the private residences cannot be protected from
17 that you might call light pollution?

18 So I would urge you to consider, to take
19 that into account and to provide protection for
20 the private residences, as well, from the light
21 sources. And perhaps also from the viewshed that
22 the plant, the project offers.

23 Thank you.

24 PRESIDING MEMBER KEESE: Thank you.

25 HEARING OFFICER FAY: Thank you.

1 Mandy Davis.

2 MS. DAVIS: Hi. I would like to preface
3 the questions I have and the comments that I would
4 like to make with this statement. And what I'm
5 about to bring up I would like you to understand
6 there is no disrespect meant whatsoever. And this
7 is done in the spirit of equity and fairness, and
8 hopefully the truth.

9 I personally do not like to make
10 assumptions. It gets us all into trouble. So
11 instead of making an assumption that I was in the
12 process of making, I decided to come here and to
13 address the situation up front.

14 It is my understanding that private
15 consultations with the CEC or the Commissioners
16 are not allowed if they're an applicant, or if
17 they are one of the -- what do you guys call
18 yourself, interceders? Intervenors.

19 And I'm a little uncomfortable saying
20 this, but I need to clear something up. I made an
21 observation last night that two of the
22 Commissioners were in a private meeting with
23 somebody that I had assumed, and once again I
24 don't like to make assumptions, was in the employ
25 of Duke and/or they were maybe not directly in the

1 employ, but they are associated with these
2 proceedings. Is that true?

3 HEARING OFFICER FAY: I'm not sure what
4 you're referring to. You're going to have to be
5 more specific.

6 MS. DAVIS: Okay. Well, last night at
7 the Morro Bay Brew Pub you were, you know,
8 enjoying the entertainment and having a private
9 meeting with an individual. Are they employed at
10 Duke?

11 HEARING OFFICER FAY: The three of us
12 were there.

13 PRESIDING MEMBER KEESE: You were
14 looking at the three of us.

15 HEARING OFFICER FAY: And you were the
16 only other person we spoke to at that place.

17 MS. DAVIS: Okay. So, it's, you know,
18 it's really funny because this whole thing is so
19 darn confusing for me, and --

20 PRESIDING MEMBER KEESE: No, you are
21 correct, --

22 HEARING OFFICER FAY: I suppose to the
23 extent that you brought up --

24 MS. DAVIS: And you know what's really
25 funny is because I looked at you and you had

1 something completely different on. And on a daily
2 basis I see all of these people, and I get a
3 little confused, but I do apologize. It's --

4 PRESIDING MEMBER KEESE: Yes, well, you
5 bring up a good point.

6 MS. DAVIS: Yeah, and I was wondering
7 about that --

8 PRESIDING MEMBER KEESE: -- and it is a
9 basic rule, you know, we cannot discuss this
10 case -- we can say hello, --

11 MS. DAVIS: Right.

12 PRESIDING MEMBER KEESE: -- but we can't
13 discuss this case with the applicant. We can't
14 discuss this case without our staff over here.

15 MS. DAVIS: Right. Oh, you can't?

16 PRESIDING MEMBER KEESE: We can't
17 discuss it with them. We can't discuss it with
18 CAPE. We can't discuss it with the City. But Mr.
19 O'Brien is my Advisor. I guarantee you I discuss
20 it with him. Mr. Fay is our Hearing Officer, I
21 guarantee you we discuss it. But we're the only
22 people who can discuss this, along with Mr. Boyd,
23 who is our other Commissioner.

24 MS. DAVIS: See, because I see faces
25 coming in and out. It's funny, I didn't even --

1 PRESIDING MEMBER KEESE: Everything else
2 comes under this public forum.

3 MS. DAVIS: -- I didn't even recognize
4 you for who you were last night. I thought you
5 were somebody else.

6 I do apologize. But it is also
7 something that you can understand that, you
8 know, --

9 PRESIDING MEMBER KEESE: Well, I'm
10 actually glad you bring it up here, --

11 MS. DAVIS: Right.

12 PRESIDING MEMBER KEESE: -- because I'd
13 much rather be able to answer it than have it
14 thought that we were --

15 MS. DAVIS: Yeah, and I don't like
16 making assumptions, so I do offer an apology, too,
17 but it's something, you know, was innuendo and
18 assumptions fly back and forth, and people, oh,
19 well, so-and-so was talking to this person. And I
20 just wanted to understand that it was based purely
21 on that.

22 PRESIDING MEMBER KEESE: Thank you, and
23 I --

24 MS. DAVIS: I apologize to you for not
25 recognizing you.

1 PRESIDING MEMBER KEESE: -- and I will
2 tell you, we were soaking in the ambience of Morro
3 Bay, and we did not discuss the case among
4 ourselves.

5 MS. DAVIS: Yeah, and I'm really glad
6 you guys are enjoying the City and some of the
7 neat things that we have to do here for you, the
8 Celtic music was great.

9 PRESIDING MEMBER KEESE: Thank you.

10 MS. DAVIS: Thank you very much.

11 HEARING OFFICER FAY: And thank you for
12 bringing up that we were at the Brew Pub.

13 (Laughter.)

14 HEARING OFFICER FAY: Strictly a site
15 visit.

16 All right, any other comments regarding
17 visual? I see no indication.

18 What we'd like to do shortly is go off
19 the record and we will first take a break. And
20 then we'll gather, off the record, have a
21 discussion about the receivables, products that
22 are due and expected at certain times, whether
23 they are on schedule or not. And what effect that
24 might have for the remainder of the case.

25 And we will -- I would like the parties

1 to give me, during the break, give me their input
2 sheets so that I can look those over. After we
3 have an informal, off-the-record discussion about
4 scheduling, then I'll go back on the record and
5 review what we have sorted out.

6 And that will help inform people
7 somewhat. And then you'll look for a Committee
8 order to follow that will direct time and place
9 for the concluding events in taking evidence in
10 the case.

11 So, we're off the record for a ten-
12 minute break.

13 (Brief recess.)

14 HEARING OFFICER FAY: We're back on the
15 record and this is our scheduling conference.

16 Prior to going back on the record we had
17 a long discussion about the schedule and what
18 could be done regarding that. And we have the
19 following tentative dates for people. And we will
20 follow up with a Committee order to confirm these.

21 What I can immediately confirm is a
22 change to the schedule on page 4 of the
23 Committee's last order, and that is the notice of
24 the third set of hearings and scheduling order
25 issued on February 13th.

1 The change is as follows: All parties
2 who file opening briefs on group three topics on
3 April 19th of 2002, rather than April 12th. And
4 all parties will file reply briefs on group three
5 topics on May 3rd, rather than April 26th.

6 In addition, we confirm that staff will
7 file its FSA on biology and alternatives and
8 cooling options on April 22nd. The parties will
9 file their testimony on those topics on May 10th,
10 and that testimony will include all rebuttal they
11 may have to the staff position expressed in the
12 FSA.

13 Then all parties, including staff, will
14 file rebuttal testimony on May 24th; and that
15 rebuttal testimony is limited to rebutting
16 positions expressed by the nonstaff parties in
17 their May 10th filing.

18 Evidentiary hearings will take place on
19 June 4th, 5th, 6th with a possible overflow day on
20 June 7th.

21 We intend to call for expedited
22 transcripts of those June hearings. And opening
23 briefs on those topics heard in June will be
24 called for on June 28th, with the reply briefs due
25 on July 12th.

1 In addition, counsel for the applicant
2 requested an expedited transcript of yesterday's
3 hearing, that's March 13th hearing. We will
4 follow up and order that.

5 And we held a discussion about the
6 Coastal Commission's request expressed in its
7 March 5th letter regarding additional examination
8 of various ways to reduce the visual impact of the
9 project, or at least its industrial appearance.
10 And confirmed with Mr. Chia of the Coastal
11 Commission that there is room or flexibility
12 within condition VIS-1, as offered by staff, to
13 explore alternatives in a post-certification
14 process that will include input from the Coastal
15 Commission and also the local community.

16 Are there any corrections to my
17 recitation or comments on that?

18 MR. ELLISON: I do not have any
19 corrections. I do have one question that pertains
20 to our discussion about VIS-1 that I'd like to
21 raise, and perhaps it involves the interpretation
22 of the language, and I want to make sure that
23 we're interpreting it correctly. Perhaps staff
24 can comment on this.

25 The language says, and I'm not going to

1 quote the whole condition, but I think the
2 relevant part is: In addition, the treatment
3 plant shall include options to partially or
4 completely enclose or cover the more industrial
5 appearing elements such as piperacks in order to
6 reduce visibility from KOPs 5, 6, and 7.

7 We read the completely enclose language
8 as being a reference to completely enclosing the
9 more industrial appearing elements such as
10 piperacks, as distinct from the complete enclosure
11 of the power plant.

12 Are we reading that correctly?

13 MS. HOLMES: That would appear to be the
14 plain meaning. I'm trying to recollect how this
15 language was changed from the PSA to the FSA.
16 It's my recollection that some of the language was
17 added at the request of the Coastal Commission.

18 It's possible that the complete
19 enclosure refers to the analysis that was already
20 done. And that's something that I can clarify. I
21 can simply put it in the brief.

22 MR. ELLISON: Okay.

23 MS. HOLMES: But I know that this
24 language has changed several times, and I just
25 want to be absolutely clear before I give a final

1 answer. So I'd rather go back and review the PSA,
2 notes from meetings with the Coastal Commission,
3 and consult with Mr. Clayton.

4 MR. ELLISON: That's fine. I just don't
5 want there to be a misunderstanding amongst the
6 parties as to what this means, given our
7 conversation.

8 HEARING OFFICER FAY: Okay, anything
9 further?

10 All right. Oh, one other thing. We did
11 order the parties to, by email, to inform the
12 Hearing Officer no later than March 22nd of the
13 results of the workshop on March 20th and 21st.
14 Particularly with the views of the Fish and
15 Wildlife agencies, and how that could impact our
16 schedule, if it might.

17 MR. ELIE: And those are to be provided
18 to all the parties, as well, right?

19 HEARING OFFICER FAY: Yes. That should
20 be proofed --

21 MR. ELIE: Service to --

22 HEARING OFFICER FAY: -- by electronic
23 service to all the parties.

24 MR. ELIE: Thank you.

25 HEARING OFFICER FAY: We'll just keep it

1 that way for convenience.

2 Any other questions, comments before we
3 adjourn?

4 MR. ELLISON: Just one. I would ask the
5 Committee to remind everybody of your admonition
6 yesterday that the exhibits that have been
7 presented during the hearing and not yet served
8 need to be docketed and served on all parties.

9 And if we have any of those we certainly
10 will do that.

11 HEARING OFFICER FAY: And you're
12 referring to all the exhibits presented during
13 this set of hearings?

14 MR. ELLISON: That's correct.

15 HEARING OFFICER FAY: Yes. I believe I
16 mentioned that yesterday, and perhaps it bears
17 reiterating, that any exhibit offered today must
18 be sent to the docket and proofed to the parties.

19 Okay, thank you, all, very much. And we
20 are adjourned.

21 PRESIDING MEMBER KEESE: And thank you,
22 all.

23 (Whereupon, at 12:40 p.m., the hearing
24 was adjourned, to reconvene at 9:00
25 a.m., Tuesday, June 4, 2002.)

CERTIFICATE OF REPORTER

I, JAMES A. 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 8th day of April, 2002.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345