

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:                    )  
  )  
Application for                        )  
Certification for the                 ) Docket No. 99-AFC-4  
MOSS LANDING POWER PLANT         )  
PROJECT                                )  
\_\_\_\_\_ )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 7, 2000

10:00 A.M.

Reported by:  
Debi Baker  
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William J. Keese, Presiding Member

Michal C. Moore, Associate Member

STAFF PRESENT

Gary Fay, Hearing Officer

Cynthia Praul, Advisor to Chairman Keese

Susan Bakker, Advisor to Commissioner Moore

Jeffrey M. Ogata, Staff Counsel

Paul Richins, Project Manager

Rick Buell, Assistant Project Manager

David Flores

Charlie Vartanian

Obed Odoemelam

Rick Tyler

Mike Ringer

Steve Baker

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## I N D E X

	Page
Proceedings	1
Opening Remarks	1
Introductions	1
Agenda Modification	2
Coastal Commission Report	13
 Project Overview, Project Description, Environmental Summary	
Applicant witness M. Seedall	16
Direct Examination by Mr. Ellison	17
Exhibit 58, identified and received	17/19
Exhibit 5, excerpts, identified and received	18/19
Exhibit 30, identified and received	18/19
CEC Staff exhibit 65, identified and received	23/23
CEC Staff exhibit 66, identified and received	26/
 Public Health	
Applicant witness E. Walther (declaration)	27
Exhibit 64, identified and received	28/28
Exhibit 5, excerpts, identified and received	28/28
CEC Staff witness O. Odoemelam	29
Exhibits 65 and 66, identified and received	29/32
Direct Examination by Mr. Ogata	30
Examination by Committee	30
 Worker Safety and Fire Protection	
Applicant witness E. Walther (declaration)	32
Exhibit 58 excerpts; 5, 11 and 48, identified and received	32/33

## I N D E X

	Page
Worker Safety and Fire Protection - continued	
CEC Staff witness K. Hann	33
Direct Examination by Mr. Ogata	33
Examination by Committee	36
Exhibits, FSA excerpts	39/39
Transmission Line Safety and Nuisance Transmission System Engineering	
Applicant witness G.A. Jones (declaration)	40
Exhibit 4, previously admitted	40
Exhibit 58, excerpts, identified and received	40/42
Exhibit 5, identified and received	40/42
Exhibit 6, 15A, 11, 13, 27A, 50 identified and received	41/42
CEC Staff witness O. Odoemelam (declaration)	
Exhibits, FSA excerpts	42/49
CEC Staff witness C. Vartanian	43
Exhibits, FSA excerpts	42/49
Direct Examination by Mr. Ogata	44
Examination by Committee	44
Cal-ISO witness P. Mackin (declaration)	
Exhibit 67, identified and received	48/49
Hazardous Materials Management	
Applicant witness E. Walther (declaration)	50
Exhibit 58 excerpts, 5, 48, identified and received	50/50
CEC Staff witness R. Tyler	50
Direct Examination by Mr. Ogata	51
Examination by Committee	52
Exhibit, identified and received	51/57
Waste Management	
Applicant witness E. Walther (declaration)	57
Exhibits 58 excerpts, and 63, identified and received	57/58
Exhibits 5 and 48, identified and received	57/58

## I N D E X

	Page
Waste Management - continued	
CEC witness M. Ringer	59
Direct Examination by Mr. Ogata	59
Exhibits	59/60
Noise	
Applicant witness C. Cannon (declaration)	61
Exhibits 58 excerpts, 63, 64 excerpts, 5, identified and received	61/62
Exhibit 50	62/62
CEC Staff witness S. Baker	62
Direct Examination by Mr. Ogata	62
Exhibits, identified and received	63/68
Visual Resources	
Applicant witness D. Blau (declaration)	68
Exhibits 64 excerpts, 58, 63, 5 excerpts, identified and received	68/69
Exhibits 11, 15A, 16, 48, identified and received	69/69
CEC Staff witness D. Flores	69
Direct Examination by Mr. Ogata	70
Exhibits, identified and received	70/71
Examination by Committee	70
Socioeconomics	
Applicant witness C. Cannon (declaration)	71
Exhibits 64 excerpts; 58 excerpts; identified and received	71/72
Exhibits 5 excerpts; 11, 50, identified and received	72/72
CEC Staff witness A. Stennick (declaration)	72
Exhibits 65 and 66 excerpts, identified and received	72/72

## I N D E X

	Page
Geology and Paleontology	
Applicant witness D. Padgett (declaration)	74
Exhibits 64 excerpts; 58 excerpts; 63 excerpts, identified and received	74/
(Topics deferred to Cultural Resources Testimony)	75
Facility Design, Power Plant Reliability, Power Plant Efficiency	
Applicant witness T. Muallem (declaration)	76
Exhibits excerpts of 5, 63 and 64, identified and received	76/76
Exhibits 11, 13, 15A, 30 identified and received	76/76
Facility Design	
CEC Staff witnesses S. Baker, A. McCuen and M. Kisabuli (declaration)	77
Exhibit excerpts 65, identified and received	77/77
Power Plant Reliability and Power Plant Efficiency	
CEC Staff witness S. Baker (declaration)	77
Exhibits excerpts 65, identified and received	78/78
Compliance Monitoring and Facility Closure	
Applicant witness J. Vigor (declaration)	78
Exhibits excerpts 58, 5, 64, identified and received	78/79
CEC Staff witness J. Scott (declaration)	79
Exhibits excerpts 65	79/79
Afternoon Session	82
Noise-6	82

## I N D E X

	Page
Cumulative Impacts	
CEC Staff witness C. Vartanian	83
Direct Testimony	83
Examination by Committee	84
Traffic and Transportation	
CEC Staff witness S. Brown	89
Direct Examination by Mr. Ogata	89
Exhibit excerpts, identified and received	90/96
Cross-Examination by Mr. Ellison	93
Exhibit 68, identified and received	90/96
Applicant witness C. Cannon	97
Exhibits excerpts of 58, 62, 63, and 5 identified	96
Exhibits 11, 21, 48 and 30, identified and received	97/
Direct Examination by Mr. Ellison	97
Exhibits excerpts 63 and 62, received	98
Cultural Resources and Paleontology	
Applicant witness R. Mason (declaration)	100
Exhibits excerpts 5, 58, 62, 64; 11 and 22, identified and received	100/101
Cultural Resources	
CEC Staff witnesses D. Torres, D. McLean	102
Direct Examination by Mr. Ogata	102
Exhibits, identified and received	104/108
Cross-Examination by Mr. Ellison	107
Geologic Hazards and Resources	
Applicant witness D. Padgett (declaration)	109
Exhibits 58, 63, 64 excerpts; 21 and 50, identified and received	109/109
Geology and Paleontology	
CEC Staff witness R. Anderson (declaration)	109
Exhibits, identified and received	109/110

I N D E X

	Page
Hearings Schedule	110
Adjournment	112
Certificate of Reporter	113

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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

2 10:00 a.m.

3 PRESIDING MEMBER KEESE: Good morning.

4 This is a hearing on the Moss Landing Power Plant  
5 project. I would say if things get extremely  
6 boring here we can have Mr. Richins describe to us  
7 how Tibet was, and I see the mountain didn't win,  
8 so at least we do have Mr. Richins with us.

9 I'm Bill Keese, chairing this Committee,  
10 and Commissioner Moore is Second on this siting  
11 case. Susan Bakker is his consultant on the  
12 right. And Cynthia Praul, mine, on the left. Gary  
13 Fay, who will conduct this hearing for us, welcome  
14 back. Let's see how expeditiously we can handle  
15 this taking of evidence. Mr. Fay.

16 HEARING OFFICER FAY: Thank you, Mr.  
17 Chairman. What I'd like to do is briefly just go  
18 around and take appearances from the major  
19 players, if the parties could identify their major  
20 participants. Mr. Ellison.

21 MR. ELLISON: Thank you, Mr. Fay,  
22 Members of the Committee. I'm Chris Ellison from  
23 the lawfirm of Ellison and Schneider, representing  
24 the applicant in this proceeding.

25 On my left is -- I'll just have our team

1 introduce themselves.

2 MR. TORREY: My name is John Torrey; I'm  
3 a consultant to Duke Energy on the Moss Landing  
4 project.

5 MR. SEEDALL: My name is Mark Seedall;  
6 I'm the Project Director for the Moss Landing  
7 project for Duke Energy North America.

8 HEARING OFFICER FAY: Mr. Ogata.

9 MR. OGATA: Thank you, good morning,  
10 Commissioners. My name is Jeff Ogata; I'm CEC  
11 Staff Counsel. And I'll have the Project Managers  
12 introduce themselves.

13 MR. BUELL: My name is Rick Buell. I'm  
14 the Assistant Project Manager to Paul Richins.

15 MR. RICHINS: Good morning, my name is  
16 Paul Richins. And I'm glad to be back.

17 HEARING OFFICER FAY: Thank you. What  
18 I'd like to do first is ask if there's a need for  
19 any changes in the agenda, as it appeared in the  
20 notice issued May 15th for these hearings. That's  
21 attachment A to the back of the notice.

22 We're going to assume that if we don't  
23 make a change that we will proceed in the order  
24 that it appears in attachment A.

25 Applicant has mentioned to me they would

1       like to consolidated the two transmission-related  
2       subjects, transmission line safety and nuisance  
3       and transmission system engineering.

4               And so what I would propose is if we  
5       insert transmission system engineering right after  
6       transmission line safety and nuisance, that would  
7       address your concerns for your witness, Mr.  
8       Ellison.

9               MR. ELLISON:  It would, thank you.

10              HEARING OFFICER FAY:  It would.  And can  
11       the staff accommodate that?

12              MR. BUELL:  I'd like to make one  
13       observation.  I think that we could accommodate  
14       that, staff witnesses are available.  The  
15       representative, Peter Mackin, from the ISO will  
16       not be available for today's hearing.  So that if  
17       needed to be called as a witness, then that  
18       presents a problem.

19              I believe the parties are acceptable to  
20       accepting his testimony by declaration, however.  
21       And that may address the scheduling change that  
22       you're proposing.

23              HEARING OFFICER FAY:  Okay, why don't we  
24       give it a try, and if no detailed questions come  
25       up that our own people can't answer, then it will

1 work.

2 MR. BUELL: There's one other suggestion  
3 that staff would like to make regarding the order  
4 of technical areas, and that's regarding traffic  
5 and transportation. Staff and the applicant are  
6 still in the process of trying to work out details  
7 on the conditions of certification. And what we'd  
8 like to do is to break into a workshop concurrent  
9 with this hearing to discuss those proposed  
10 changes.

11 Which would mean that we may not be  
12 prepared to talk about that topic after waste  
13 management, but perhaps sometime later in the day.

14 HEARING OFFICER FAY: Can we just let  
15 that trail, then, and have that be the last topic  
16 we take up today?

17 MR. BUELL: That may be acceptable.

18 HEARING OFFICER FAY: Okay. And since  
19 you mentioned this workshop, is it only on traffic  
20 and transportation?

21 MR. BUELL: That's my understanding.

22 HEARING OFFICER FAY: Okay. I'd like to  
23 get into this. The staff and the applicant have  
24 proposed a concurrent workshop on traffic and  
25 transportation that will take place in the

1 building while we're in hearings.

2 And the people who are involved in that,  
3 of course, won't be able to hear what's going on  
4 in the hearing. And I just want to know if  
5 anybody objects to proceeding that way.

6 MR. ELLISON: The applicant has no  
7 objection with one caveat, and that is we would  
8 not want to take up the issue of cultural  
9 resources until after the workshop is completed.  
10 There's a relationship between the traffic issues  
11 and the cultural resource issues.

12 HEARING OFFICER FAY: Okay. And we have  
13 cultural fairly down the list. We'll just see  
14 where we are when that would come up. And I think  
15 we can honor that, as well.

16 So, with that caveat, is there any  
17 objection to conducting a workshop concurrent with  
18 the evidentiary hearing? All right, I hear none.  
19 We will proceed that way, then.

20 So, if the people who plan to work on  
21 traffic and transportation in the workshop can get  
22 started as soon as possible, that would increase  
23 our chances of having that wrapped up by the end  
24 of today, and in time to hear both traffic and  
25 transportation and cultural resources testimony.

1           In addition, we have a problem, since  
2           the staff failed to meet the required filing date  
3           in the hearing order, I am told that they will be  
4           filing their testimony on water, biology and  
5           alternatives two days late, June 8th, which is  
6           tomorrow.

7           And the question arises because this  
8           means there will only be 12 days between the date  
9           the testimony gets filed and the date of the  
10          scheduled evidentiary hearing on June 20th down in  
11          Moss Landing.

12          The Commissioners' schedules are very  
13          tight, and so to lose a hearing day at this late  
14          date is very problematic for the case.

15          I have discussed this with the applicant  
16          and the staff, and the applicant has considered  
17          waiving the regulation requiring the 14-day  
18          advance filing requirement. And I'll hear from  
19          them in a minute.

20          But I do want to mention that to my  
21          knowledge this case has had very little concern  
22          from the local public and we do not have active  
23          intervenors who have voiced a need to avail  
24          themselves of the full two weeks to review these  
25          sections of the FSA.

1           So this is certainly not a desirable  
2           situation, but we're interested in balancing this  
3           thing, because we hate to give up a hearing that  
4           will actually take us down to Moss Landing and  
5           give the local people an opportunity to have  
6           input.

7           Mr. Ellison, have you considered this  
8           possibility?

9           MR. ELLISON: Yes, we have. The  
10          applicant's view is -- obviously we're  
11          disappointed that this situation has arose. We're  
12          concerned that the staff file the remaining  
13          portion of the FSA as soon as possible, and  
14          certainly no later than tomorrow, in order to  
15          preserve the hearing of June 22nd.

16          Having said that, we think that the  
17          underlying purpose of the 14-day notice  
18          requirement on the FSA is to facilitate public  
19          comment. In this case we think that there is more  
20          opportunity for public comment, particularly from  
21          folks in Monterey, if we proceed with the hearing  
22          on the 20th in Monterey than if we did not.

23          And the applicant, on that basis, is  
24          comfortable waiving the 14-day requirement in the  
25          regulations, and proceeding with the hearing on

1 the 20th, because that actually increases the  
2 opportunity for public involvement, recognizing  
3 that there will be, assuming the staff files  
4 tomorrow, there will be 14 days prior to the  
5 hearing on the 22nd.

6 So, the bottomline is the applicant is  
7 comfortable with proceeding as planned in the  
8 hearings, and is willing to waive any objections  
9 with respect to that procedure.

10 HEARING OFFICER FAY: And since we will  
11 be continuing those topics on to the 22nd, we can  
12 certainly accommodate anybody who does feel that  
13 they didn't have enough time to prepare, just be  
14 more flexible than we normally would be. Although  
15 the hearing on the 22nd is up here in Sacramento,  
16 not down in Monterey.

17 Priscilla, you'll have to come up to the  
18 microphone and identify yourself.

19 MS. ROSS: I'm Priscilla Ross from the  
20 Public Adviser's office. And just for the record,  
21 the Monterey County Planning Building and  
22 Inspection Department has contacted the Public  
23 Advisor's office and has expressed that there is  
24 some concern about not having enough time to  
25 respond to the FSA under the present schedule.

1                   HEARING OFFICER FAY:  When did they  
2                   contact you?

3                   MS. ROSS:  Just yesterday, and we  
4                   haven't been able to formalize this into any kind  
5                   of request.  It's just been a phone conversation  
6                   and we haven't been able to finish that.  I just  
7                   heard this and wanted to make sure that that had  
8                   been brought into --

9                   HEARING OFFICER FAY:  I think there's  
10                  been more recent communication.  Mr. Richins, have  
11                  you talked to Jeff Main of the planning department  
12                  down there more recently than yesterday?  Or --  
13                  was it yesterday afternoon?

14                  MR. RICHINS:  Well, I spoke with Jeff  
15                  Main late yesterday, probably 4:30 in the  
16                  afternoon.  And what they indicated is that they  
17                  would be going to the board of supervisors on the  
18                  25th of July with their review of the final staff  
19                  assessment and that their concerns were.

20                  They don't believe there are any  
21                  outstanding issues, but they want to just make  
22                  sure that there was consistency between the  
23                  project that the Energy Commission is reviewing  
24                  and the projects that the county has lead agency  
25                  over, as it relates to the tank farm and the SCR

1 upgrade.

2 I indicated to him that there were  
3 plenty of opportunities for those comments coming  
4 in on the 25th without delaying the schedule.

5 One method would be to keep the record  
6 open to receive comments, and the other method I  
7 mentioned to him would be during the proposed  
8 decision hearing, the comments could come in at  
9 that time.

10 But encouraged him to give you a call  
11 and work out the best way of doing that. They  
12 felt comfortable with that as long as their  
13 comments got reflected in the record in some  
14 manner.

15 HEARING OFFICER FAY: And I received a  
16 voicemail message from him this morning that said  
17 essentially the same thing, that he'd spoken to  
18 Paul Richins, and that they no longer were asking  
19 for an extension in the process or anything like  
20 that. That they're -- sure --

21 MR. RICHINS: And if I could just  
22 quickly go over, their area that they'll be  
23 discussing with the board of supervisors would be  
24 in the area of traffic, air quality, land use,  
25 hazardous waste and biology are the areas they'll

1 be concentrating on.

2 PRESIDING MEMBER KEESE: Staff, are we  
3 going to have this tomorrow?

4 HEARING OFFICER FAY: The testimony.

5 PRESIDING MEMBER KEESE: Are you going  
6 to meet the --

7 MR. BUELL: Yes. I have talked with the  
8 two authors and those that are reviewing it, and I  
9 have every expectation that we will file tomorrow.  
10 It looks like we're on schedule to do that.

11 PRESIDING MEMBER KEESE: Thank you.  
12 Commissioner Moore, do you --

13 HEARING OFFICER FAY: Would anybody else  
14 like to address this matter?

15 Is there any objection to proceeding  
16 this way?

17 All right, I hear no objection. We  
18 recognize that the applicant is not the only party  
19 whose rights are protected by this regulation.  
20 And so the fact that they waived should not  
21 indicate that other parties have waived.

22 However, there's been very little  
23 expression of concerns in this area from the  
24 general public, as I said. And it sounds like the  
25 county is convinced that their needs can be met at

1 a later time in the process.

2 So, the order of the Committee will be  
3 that the staff and applicant will file their  
4 testimony in water, biology and alternatives  
5 tomorrow, June 8th. And that although that is  
6 only 12 days before the hearing scheduled for June  
7 20th, that hearing will take place as noticed in  
8 Moss Landing at the power plant.

9 Any further questions about that?

10 All right.

11 MR. BUELL: I have one point of  
12 information. I understand that the workshop on  
13 traffic and transportation has a location. It  
14 will be in our engineering conference room on the  
15 third floor, and staff is ready to proceed to  
16 begin that workshop.

17 HEARING OFFICER FAY: And they will let  
18 us know as soon as they complete their work?

19 MR. BUELL: I believe so.

20 HEARING OFFICER FAY: Okay. All right,  
21 with the exception of the changes that we've  
22 identified in the schedule on attachment A, that  
23 is transmission system engineering will follow  
24 transmission line safety and nuisance, and both  
25 traffic and transportation and cultural resources

1 will not be heard until the workshop is concluded,  
2 with those exceptions we'll proceed in the order  
3 as shown in attachment A.

4 And so we'd like to ask the applicant if  
5 they're ready to begin with the project overview,  
6 description, environmental summary.

7 MR. RICHINS: Gary, did you want me to  
8 report on the information coming in from the  
9 Coastal Commission?

10 HEARING OFFICER FAY: Oh, yes.

11 MR. RICHINS: Before we get started.

12 HEARING OFFICER FAY: Mentioned that  
13 before, yes, before we get started, please do.

14 MR. RICHINS: I spoke with Michael Bolin  
15 with the California Coastal Commission, and  
16 there's a section 30413 report that they're  
17 required to provide to us in siting cases.

18 What they propose to do is to provide us  
19 with a letter, two letters. One for land use, and  
20 they'll be taking their comments to their  
21 Commission the third week in June.

22 And so Friday of that week is June 23rd,  
23 so they expect to have comments to us as it  
24 relates to land use and public access by June  
25 23rd.

1           And then the issue of water quality and  
2           biology they will be taking to their Commission  
3           the third week in July. And so they would get  
4           comments to us by the end of that week, July 21st.

5           And they envision that the letter that  
6           they would be sending to us would satisfy the  
7           requirements of section 30413.

8           They also wanted to emphasize that they  
9           don't see any surprises, and they don't see any  
10          outstanding issues that haven't been addressed in  
11          the final staff assessment, and they have been  
12          working closely with us in the various workshops  
13          as it relates to land use, public access. They  
14          will also be attending the workshop on biology and  
15          water that's coming up.

16          And so they see it more as a  
17          confirmation and support of the final staff  
18          assessment. They may have some minor comments,  
19          but they categorize them as minor.

20                 HEARING OFFICER FAY: Okay, thank you  
21                 very much. Okay, anything further before we start  
22                 taking evidence? All right.

23                 MR. ELLISON: I do have one housekeeping  
24                 matter and a question for the Committee.

25                 The housekeeping matter is, as I

1 discussed with the Hearing Officer a moment ago,  
2 as sometimes happens we have revised our exhibit  
3 list somewhat from the one that's on the table  
4 outside.

5 So the exhibit numbers that I will be  
6 asking the Committee to identify for applicants'  
7 exhibits are different. I've provided a copy of  
8 our updated exhibit list to the Committee and the  
9 staff, and I have other copies here for anyone who  
10 needs them.

11 We will provide a cross-reference to the  
12 Committee, the updated exhibit list, to the  
13 exhibit list that the Committee prepared, to  
14 insure that there's no confusion as a result of  
15 that.

16 My question is in many of the areas, in  
17 fact, but for the traffic and transportation and  
18 cultural resource area, we are in agreement with  
19 the proposed licensing conditions in the final  
20 staff assessment for those issues that are on the  
21 agenda for the next two days.

22 As a result of that we have the  
23 opportunity, if the Committee wishes to, to take  
24 witnesses by declaration. We understand the  
25 Committee does have questions in some areas, and

1 we have brought live witnesses in those areas that  
2 were identified to us ahead of time as areas in  
3 which the Committee has questions.

4 So I have Mr. Seedall here, who's our  
5 first witness. He's prepared to present his  
6 testimony, or we can do it by declaration, as you  
7 wish.

8 HEARING OFFICER FAY: My suggestion, for  
9 the Committee's benefit, and it's up to them,  
10 would be because Mr. Seedall's testimony includes  
11 a broad overview, it might help explain the  
12 project well, and get things off to a good start.

13 But I think in general we anticipate  
14 taking the testimony by declaration where there's  
15 no controversy or any questions. That will save  
16 us some time.

17 MR. ELLISON: That's fine, that's how  
18 we'll proceed. May we have Mr. Seedall sworn,  
19 please?

20 HEARING OFFICER FAY: Please swear the  
21 witness.

22 Whereupon,

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

1 as follows:

2 DIRECT EXAMINATION

3 BY MR. ELLISON:

4 Q Mr. Seedall, could you please state and  
5 spell your name for the record?

6 A My name is Mark A. Seedall,  
7 S-e-e-d-a-l-l. My position at Duke Energy is  
8 Director of Electric Modernization, and I'm  
9 overseeing the Moss Landing, Morro Bay Power  
10 Plant's modernization efforts.

11 Q Mr. Seedall, what testimony are you  
12 sponsoring?

13 A I'm sponsoring the project overview  
14 testimony and related prior filings associated  
15 with that testimony. I'm not sure what exhibit  
16 number that is.

17 MR. ELLISON: For the record we would  
18 ask that this testimony be identified as exhibit  
19 58, applicant's exhibit 58.

20 HEARING OFFICER FAY: All right.

21 MR. ELLISON: And this testimony, as the  
22 applicant's testimony will do throughout this  
23 proceeding, incorporates by reference other  
24 exhibits. Do you want me to identify those for  
25 the record? These are all stated within the

1 testimony, itself. They're stated within exhibit  
2 58.

3 But exhibit 58 incorporates by reference  
4 sections 1, 2 and 8 of the AFC. The AFC we would  
5 like identified as applicant's exhibit number 5.

6 It also incorporates certain identified  
7 technical appendices which are also a part of  
8 exhibit 5. They're again set forth in exhibit 58.

9 And it incorporates the supplementary  
10 AFC filing made by the applicant and docketed on  
11 November 22, 1999, and that is exhibit 30.

12 BY MR. ELLISON:

13 Q Mr. Seedall, do you have a copy of  
14 exhibit 58 before you, the project overview  
15 testimony?

16 A Yes, I do.

17 Q Do you have any changes or corrections  
18 to this testimony?

19 A No, I don't.

20 Q Was this exhibit prepared by you or at  
21 your direction?

22 A Yes, it was.

23 Q Are the facts set forth in this exhibit  
24 true and correct to the best of your knowledge?

25 A Yes, they are.

1           Q     Are the opinions contained in this  
2 exhibit your own?

3           A     Yes, they are.

4           Q     Do you adopt exhibit 58 as your sworn  
5 testimony in this proceeding?

6           A     I do.

7           MR. ELLISON: We would move exhibit 58  
8 into evidence at this time.

9           HEARING OFFICER FAY: Any objection?

10          MR. OGATA: No objection.

11          HEARING OFFICER FAY: So moved.

12 BY MR. ELLISON:

13          Q     Mr. Seedall, could you briefly summarize  
14 the issues that you reviewed in this testimony and  
15 state your conclusions as to those issues? And  
16 given that this is project overview testimony,  
17 could you also give a brief summary of the  
18 project?

19          A     Yes. The Moss Landing Power Plant is an  
20 existing industrial complex located in Moss  
21 Landing between Monterey and Santa Cruz,  
22 California, on the California Coast.

23                 It's an existing operating plant and has  
24 been so since 1950. In 1950 operations began with  
25 three units at the site, units 1 through 3, which

1 were 330 megawatts. And by 1956 an additional 240  
2 megawatts was added to the site, bringing the  
3 total to 600 megawatts.

4 It operated in that configuration until  
5 approximately 1967 when units 6 and 7 were added  
6 to the site, which increased the capacity of the  
7 Moss Landing facility to 2100 megawatts.

8 By 1995 units 1 through 5 were retired  
9 by Pacific Gas and Electric, and the operating  
10 level was at 1500 megawatts.

11 By July of 1998 Duke Energy, through an  
12 option in the deregulated California electric  
13 market, acquired Moss Landing Power Plant.

14 Subsequent to that Duke Energy had  
15 proposed to modernize the site; and in particular,  
16 to add 1060 megawatts, two 530-megawatt combined  
17 cycle packages, to the project site.

18 And in the context of that, that's what  
19 we're trying to get certified today. That project  
20 will one, avoid the use of the Elkhorn Slough in  
21 terms of its cooling water discharge; and instead,  
22 combine the discharge with units 6 and 7.

23 The amount of cooling water used by the  
24 new power plant will be less than what the power  
25 plant 1 through 5 units used previously.

1           It will use roughly the same amount of  
2 gas, 600 megawatts previously used, but now  
3 produces 1060 megawatts.

4           It will not require any new gas lines to  
5 the plant. And, in addition, it will directly  
6 connect to Moss Landing's switchyard, owned by  
7 Pacific Gas and Electric, and it will connect to a  
8 230,000 volt system, and hence require no new  
9 upgrades to the electric transmission system.

10           So, that is the overview of the project  
11 and we're anxious, of course, to see if we can get  
12 this project approved, so that it is available for  
13 power production by the summer of 2002.

14           And we believe we can do that if we get  
15 the certification by October of this year.

16           MR. ELLISON: As there are no conditions  
17 of certification related to this topic, that  
18 concludes our testimony with respect to the  
19 project overview and Mr. Seedall is available for  
20 questioning.

21           HEARING OFFICER FAY: Does staff have  
22 any questions?

23           MR. OGATA: Staff has no questions.

24           HEARING OFFICER FAY: Any questions?

25 All right. Thank you, Mr. Seedall.

1                   And what I'd like to ask the staff, is  
2                   there anything you wish to add to this, keeping in  
3                   mind that basically the idea of having testimony  
4                   on this was to give an overview.

5                   MR. RICHINS: No, we don't have anything  
6                   to add.

7                   HEARING OFFICER FAY: Okay. And I don't  
8                   think there are factual matters that need to be  
9                   received into evidence, unless I'm mistaken on  
10                  that.

11                  Mr. Ogata, do you wish to introduce that  
12                  declaration?

13                  MR. OGATA: Well, I guess the only  
14                  question is do we want to give the final staff  
15                  assessment an exhibit number now. I know on your  
16                  list it's number 58, and Mr. Ellison has already  
17                  used 58, so I don't know how we're going to  
18                  resolve that.

19                  HEARING OFFICER FAY: Well, I think  
20                  because the applicant has so many more exhibits we  
21                  should just ignore the provided exhibit list that  
22                  the Committee provided, and start working off  
23                  applicant's exhibit list. I think it might  
24                  simplify things.

25                  And we will just give the FSA the next

1 exhibit number, which would be 65. And so we  
2 identify part 1 of the FSA as exhibit 65.

3 MR. OGATA: Well, I can either move to  
4 have introduction and project description of  
5 staff's FSA in evidence now, or we can just do  
6 that at the end.

7 HEARING OFFICER FAY: Why don't you just  
8 move it now.

9 MR. OGATA: I'll be happy to move that  
10 now.

11 HEARING OFFICER FAY: Objection? All  
12 right, so moved, that's received at this point.

13 And, Mr. Ellison, while we're on this,  
14 is one of the exhibits your summary of testimony  
15 that you provided in the binder? Does that have  
16 an exhibit number?

17 MR. ELLISON: I want to make sure that  
18 we're talking about the same document here. I'm  
19 sure the answer is yes, we have a very complete  
20 exhibit list here, but --

21 HEARING OFFICER FAY: There's an exhibit  
22 entitled, Moss Landing Power Plant Modernization  
23 project testimony, dated May 15, that you  
24 provided.

25 MR. ELLISON: Yes. To clarify, that is

1 all of the applicant's testimony filed on May 15.  
2 As you recall, we're filing testimony in this  
3 proceeding in three waves, if you will. And  
4 that's the first wave of the applicant's  
5 testimony, addressing a variety of topics,  
6 including the one that we just addressed, project  
7 overview.

8 And exhibit 58 is all of that testimony,  
9 including everything in that binder that you just  
10 identified. So, --

11 HEARING OFFICER FAY: So this is exhibit  
12 58?

13 MR. ELLISON: I'm sorry?

14 HEARING OFFICER FAY: This is exhibit  
15 58?

16 MR. ELLISON: That is exhibit 58, and it  
17 includes the testimony and project overview --  
18 just for the record I'll just read it off --  
19 includes the testimony on project overview,  
20 environmental summary, public health, worker  
21 safety, transmission system engineering and  
22 transmission line safety and nuisance, hazardous  
23 materials handling, waste management, traffic and  
24 transportation, noise, visual resources, cultural  
25 and paleontological resources, socioeconomics,

1 geologic hazards and resources, agricultural and  
2 soils, facility design, power plant reliability,  
3 power plant efficiency, compliance monitoring and  
4 facility closure.

5 It was filed, served on all parties, and  
6 docketed on May 15th. We propose to refer to this  
7 as exhibit 58, and then subject matter.

8 HEARING OFFICER FAY: Okay. And just  
9 for the record, what I'd like to do, as each wave  
10 of testimony comes in, we'll give it an additional  
11 exhibit number.

12 But I'd ask the parties to please be  
13 sure that all the pagination within an exhibit is  
14 consecutive, so we don't, for instance, have more  
15 than one page 25 in any exhibit. That helps a  
16 lot. I know sometimes things are submitted by  
17 chapter, and each chapter begins with page number  
18 1. It just complicates things.

19 MR. OGATA: Excuse me, Mr. Fay. So I  
20 understand what you just said, we're going to give  
21 each technical area an exhibit number?

22 HEARING OFFICER FAY: No. Each  
23 publication, so --

24 MR. OGATA: Okay.

25 HEARING OFFICER FAY: -- FSA part 1 is

1 exhibit 65, and part 2 will have a different  
2 exhibit number.

3 MR. OGATA: I wanted to reserve number  
4 66 for part 2 if I could, right now, so that --  
5 (Laughter.)

6 MR. OGATA: -- it would be -- before we  
7 run out of numbers.

8 HEARING OFFICER FAY: Get in there while  
9 you can. All right, do you just want to identify  
10 that now?

11 MR. OGATA: Yes, please, FSA, final  
12 staff assessment part 2, which covers cultural  
13 resources errata, hazardous material management  
14 errata, waste management errata, public health  
15 errata, socioeconomics errata, visual resources  
16 errata and air quality and land use testimony  
17 which was filed June 1st.

18 HEARING OFFICER FAY: Okay. Anything  
19 further? I think we can proceed to public health.

20 MR. ELLISON: Mr. Fay, would you prefer  
21 to have us do this live or -- Memorex?

22 HEARING OFFICER FAY: I think if you  
23 want to do that on declaration, I do have a  
24 question for the staff.

25 MR. ELLISON: Okay. We have a package

1 of declarations which are labeled in our exhibit  
2 list as exhibit 64. Included within that package,  
3 and we have extra copies here for those who want,  
4 is a declaration of Eric G. Walther. Dr. Walther  
5 is our public health witness, as well as the  
6 witness on some other topics areas, specifically  
7 waste management, hazardous materials handling,  
8 worker safety and fire protection.

9 Mr. Walther declares that he is  
10 presently employed by TRC as a Vice President for  
11 Air Quality Services. Includes a copy of his  
12 professional qualifications. He describes that he  
13 prepared the testimony that I just identified,  
14 which would be a portion of exhibit 58, those  
15 areas that I just identified.

16 He states, quote, "It is my professional  
17 opinion that the prepared testimony is valid and  
18 accurate with respect to the issues addressed  
19 therein."

20 He further states, "I am personally  
21 familiar with the facts and conclusions related in  
22 the testimony, and if called as a witness could  
23 testify competently thereto."

24 "I declare under penalty of perjury that  
25 the foregoing is true and correct to the best of

1 my knowledge and belief." Dated June 5, 2000, at  
2 Irvine, California, and signed by Mr. Walther.

3 We would ask that the package of  
4 declarations be identified as exhibit 64 and  
5 admitted into evidence.

6 HEARING OFFICER FAY: Any objection to  
7 receiving the declarations?

8 MR. OGATA: No objection.

9 HEARING OFFICER FAY: All right, those  
10 will be identified as exhibit 64, and received  
11 into evidence at this time.

12 And now that you've indicated the  
13 format, I think you can dispense with reading the  
14 declarations as we move along.

15 MR. ELLISON: Okay, that's fine. Let me  
16 specify that for public health, the portion of the  
17 testimony is the public health portion of exhibit  
18 58, which includes, by reference, certain  
19 identified sections of exhibit number 5, the AFC.

20 And I would ask that the public health  
21 portion of exhibit 58 be admitted into evidence at  
22 this time.

23 HEARING OFFICER FAY: Any objection?

24 MR. OGATA: No objection.

25 HEARING OFFICER FAY: It is entered at

1 this point.

2 Does that conclude your presentation?

3 MR. ELLISON: That does conclude our  
4 testimony on public health.

5 HEARING OFFICER FAY: Okay. Staff?

6 MR. OGATA: Thank you, Mr. Fay. Public  
7 health testimony by Dr. Obed Odoemelam, contained  
8 in exhibit 65, beginning at page 19. And we also  
9 have errata contained in exhibit 66. And Dr. Obed  
10 is here if you'd like to ask him some questions.

11 HEARING OFFICER FAY: Yes, since he is  
12 here I think it would be appropriate. He can come  
13 up and be sworn and respond to questions.

14 MR. OGATA: Is there any particular  
15 location you'd like him to sit?

16 HEARING OFFICER FAY: Do you have  
17 some -- make some room for him over there at your  
18 table? Right there. Please swear the witness.

19 Whereupon,

20 OBED ODOEMELAM  
21 was called as a witness herein, and after first  
22 having been duly sworn, was examined and testified  
23 as follows:

24 //

25 //

1 DIRECT EXAMINATION

2 BY MR. OGATA:

3 Q Dr. Odoemelum, do you have before you  
4 your testimony on public health?

5 A Yes, I do.

6 Q Does that contain your professional  
7 opinion?

8 A Yes, it does.

9 Q Do you have any changes or corrections  
10 you'd like to make to that?

11 A No, I don't.

12 Q Except for the errata that's contained  
13 in the June 1st filing, exhibit 66, is that  
14 correct?

15 A Yes, it is.

16 Q Okay.

17 MR. OGATA: We have no further  
18 questions.

19 HEARING OFFICER FAY: He's available for  
20 questions?

21 MR. OGATA: Yes.

22 HEARING OFFICER FAY: Any questions from  
23 the applicant?

24 MR. ELLISON: No questions.

25 //

1 EXAMINATION

2 BY HEARING OFFICER FAY:

3 Q Dr. Odoemelam, I just wondered, on page  
4 22 of your testimony, if you could clarify for us  
5 the paragraph in the middle of the page. It talks  
6 about the method used by regulatory agencies known  
7 as the hazard index method to assess acute and  
8 chronic effects.

9 And does that index that you refer to in  
10 the paragraph tell you that if something achieves,  
11 or achieves that index, is that a significant  
12 impact, or is that just a threshold level that  
13 then triggers an additional level of analysis?

14 A Yes, it is, threshold level.

15 Q It's a threshold level?

16 A Yes.

17 Q So if something exceeds the exposure, or  
18 the hazard index, it is not necessarily -- that  
19 does not necessarily show a significant impact to  
20 health, is that correct?

21 A That is true.

22 Q Thank you. I just wanted to clarify  
23 that.

24 HEARING OFFICER FAY: Thanks very much,  
25 that's all I have. Thank you, you're excused.

1                   MR. OGATA: I'd formally move his  
2 testimony into evidence.

3                   HEARING OFFICER FAY: Any objection?  
4 All right. Staff's public health testimony is  
5 received at this point into the record.

6                   Worker safety and fire protection, Mr.  
7 Ellison.

8                   MR. ELLISON: The applicant's witness on  
9 worker safety and fire protection is again Mr.  
10 Walther. His declaration has been previously  
11 admitted.

12                   The testimony the applicant has filed on  
13 worker safety is the worker safety portion of  
14 exhibit 58. It includes, by reference, section  
15 6.15 of the AFC, which is exhibit 5. It includes  
16 responses to data adequacy requests filed June 16,  
17 1999, which is exhibit 11. And it includes, by  
18 reference, the applicant's comments on the  
19 preliminary staff assessment dated March 1, 2000,  
20 which we've identified as exhibit 48.

21                   We would move the admission of the  
22 worker safety and fire protection portion of  
23 exhibit 58, and the exhibits included therein.

24                   HEARING OFFICER FAY: Any objection?

25                   MR. OGATA: No objection.

1 HEARING OFFICER FAY: So moved.

2 Anything further from the applicant on  
3 worker safety?

4 MR. ELLISON: No, nothing further.

5 HEARING OFFICER FAY: All right, we'll  
6 move to staff.

7 MR. OGATA: Staff's witness is Kathi  
8 Hann. She needs to be sworn.

9 HEARING OFFICER FAY: Please swear the  
10 witness.

11 Whereupon,

12 KATHLEEN S. HANN

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

16 DIRECT EXAMINATION

17 BY MR. OGATA:

18 Q Ms. Hann, could you please state your  
19 relationship to the Commission, please.

20 A I'm a contractor from the environmental  
21 consulting firm of Entrix, Incorporated.

22 Q You have before you the testimony worker  
23 safety and fire protection, testimony of Kathleen  
24 Hann?

25 A Yes.

1 Q Did you prepare this testimony?

2 A Yes, I did.

3 Q Does this contain your professional  
4 judgment?

5 A Yes, it does.

6 Q And do you have any changes or  
7 corrections you'd like to make to this testimony?

8 A Yes, I do. On page 1 at the very last  
9 sentence of the introduction, the very last line  
10 it refers to proposed conditions of certification  
11 worker safety 3, it should also include conditions  
12 worker safety 3 and 4.

13 HEARING OFFICER FAY: Sorry, what page  
14 is that?

15 MS. HANN: That would be the very first  
16 page, sir.

17 MR. OGATA: That would be page 27  
18 actually in the staff's FSA.

19 HEARING OFFICER FAY: Okay, and could  
20 you repeat the correction, please?

21 MS. HANN: At the very last sentence  
22 under the introduction it refers to proposed  
23 conditions of certification worker safety 3. It  
24 should also include worker safety 3 and 4.

25 //

1 BY MR. OGATA:

2 Q Anything else?

3 A Yes, and I don't have the right pages --

4 Q The pages --

5 A Oh, okay. Sorry. About the middle of  
6 page 29, the paragraph that starts, "Finally  
7 California Senate Bill 198..." in that sentence it  
8 refers to the injury and illness prevent program,  
9 it should be prevention program.

10 And then on page 32, under the section  
11 impacts, project specific impacts, fire  
12 protection. Second paragraph, beginning of the  
13 second sentence, it says "In includes fixed water  
14 fire suppression," and it should say "It  
15 includes," i-t.

16 And then on page 38 under personal  
17 protective equipment program, the third bullet,  
18 eye and face protection policy. Again, the second  
19 sentence should say "It covers numerous types of  
20 eye and fact protection" instead of "In". So it  
21 should start with i-t.

22 And at the very end under worker safety  
23 under the proposed conditions worker safety 4, --

24 HEARING OFFICER FAY: What page?

25 MS. HANN: This would be the last page,

1 page 42. At the very end of worker safety 4 it  
2 refers to "agreeable to the North County Fire  
3 project division." It should be "the North County  
4 Fire Protection District."

5 MR. OGATA: Okay, thank you.

6 Mr. Fay, would you like a summary of  
7 this testimony, or would you just like --

8 HEARING OFFICER FAY: Just I have one  
9 question.

10 EXAMINATION

11 BY HEARING OFFICER FAY:

12 Q On page 40, cumulative impacts. The  
13 last sentence, "Staff will hold meetings with the  
14 District, provide analysis of their mitigation  
15 requirements in the final staff assessment."

16 Since this is the final staff  
17 assessment, is there some explanation needed?  
18 It's a little confusing. It sounded like it  
19 anticipated another document, but this is the  
20 final document.

21 A That's correct, sir. What we have been  
22 working out with the fire protection district and  
23 the applicant is a memorandum of understanding  
24 between them as to how they would pay for the  
25 ladder truck under worker condition 4. And that

1 agreement is being worked out, and as I  
2 understand, is pretty close to being finalized.

3 However, it isn't required under the  
4 condition until 30 days before groundbreaking. So  
5 that should be forthcoming.

6 Q All right, so the current document  
7 allows for this to occur in the future, and the  
8 conditions reflect that?

9 A Yes, sir.

10 Q And so at some future point the  
11 agreement will be entered into the record so that  
12 the compliance unit can determine whether it's  
13 been carried out?

14 MR. OGATA: That's correct, it would be  
15 a compliance matter.

16 HEARING OFFICER FAY: Okay, fine. Thank  
17 you.

18 MR. ELLISON: Can I suggest it might be  
19 appropriate to strike that sentence because it is  
20 confusing.

21 HEARING OFFICER FAY: Are you willing to  
22 do that? Do you want to take a look at it? Page  
23 40, cumulative impacts paragraph, the last  
24 sentence.

25 MS. HANN: Yes, that would be fine.

1                   HEARING OFFICER FAY: Strike the last  
2 sentence on the cumulative impacts paragraph, page  
3 40.

4                   MS. BAKKER: It strikes me that the part  
5 of this that ought to be stricken is the part that  
6 says "in the final staff assessment". That, in  
7 fact, you still need to discuss the concerns and  
8 provide the analysis of mitigation requirements.

9                   MR. ELLISON: Perhaps I can comment on  
10 this. The verification to worker safety number 4  
11 requires that the applicant provide the compliance  
12 project manager with a copy of an agreement with  
13 the North County Fire Protection District and the  
14 owners of the project relative to the agreed-upon  
15 fees and the payment for the truck and staffing.

16                   That is the mitigation that we're  
17 talking about. So, by striking that entire  
18 sentence, but leaving in the verification, I think  
19 we've correctly stated what is required of the  
20 applicant here.

21                   The problem with the sentence, even if  
22 you just strike "in the final staff assessment" is  
23 that it implies -- it's vague as to what  
24 mitigation we're discussing, and implies that  
25 perhaps there's something other than condition

1 number 4 being discussed here, which is not the  
2 case.

3 So, my proposal would either be to  
4 strike it, which I think is the simplest thing to  
5 do. Or alternatively, amend it so that it makes a  
6 clear reference to the agreement that's discussed  
7 in the verification of condition number 4.

8 HEARING OFFICER FAY: The witness is  
9 comfortable striking it?

10 MS. HANN: Yes, I am, sir. That would  
11 be fine.

12 HEARING OFFICER FAY: All right. Is Ms.  
13 Hann available for questions?

14 MR. OGATA: Yes, she is.

15 HEARING OFFICER FAY: Any questions of  
16 the witness?

17 MR. ELLISON: No questions.

18 HEARING OFFICER FAY: Okay, thank you  
19 very much, Ms. Hann.

20 MR. OGATA: I'd like to move her  
21 testimony into evidence, if I may?

22 HEARING OFFICER FAY: Any objection? So  
23 moved. The public health section of staff's  
24 FSA -- or the worker safety, rather, section is  
25 received into evidence at this point.

1                   In the areas where we do not have a live  
2 witness, and in fact even where we do, can we just  
3 dispense with the typographical corrections and  
4 rely on an errata sheet to help move things along?

5                   MR. OGATA: That's fine.

6                   HEARING OFFICER FAY: Is that  
7 acceptable? Obviously your corrections for a  
8 witness who is not here will have to come in on an  
9 errata sheet. I think it will help us use our  
10 time effectively.

11                   All right. Are we prepared to move  
12 forward on the transmission line topics? Mr.  
13 Ellison? Go ahead.

14                   MR. ELLISON: The applicant's witness on  
15 transmission line safety and nuisance is Mr.  
16 Graham Allen Jones. Mr. Jones has submitted a  
17 declaration which is included in exhibit 4, which  
18 has previously been admitted.

19                   His testimony is the transmission line  
20 safety and nuisance and transmission system  
21 engineering section of exhibit 58. And that  
22 testimony includes by reference certain portions  
23 of the AFC identified as exhibit number 5; it  
24 includes reference to a Pacific Gas and Electric  
25 Company preliminary facilities study dated May 14,

1 1999, which we've identified as exhibit number 6.

2 It incorporates by reference certain  
3 responses to CEC data requests filed July 30,  
4 1999, which we've identified as exhibit 15A. It  
5 incorporates by reference PG&E power flows filed  
6 June 16, 1999 and June 23, 1999, exhibits 11 and  
7 13.

8 It includes the California Independent  
9 System Operator comments on the PG&E preliminary  
10 facility study dated November 3, 1999, which we  
11 identify as exhibit 27A. And it includes the  
12 applicant's comments on the preliminary staff  
13 assessment filed March 7, 2000, which we identify  
14 as exhibit 50.

15 We would move the transmission line  
16 safety and nuisance and transmission system  
17 engineering portions of exhibit 58 and the  
18 exhibits included therein.

19 HEARING OFFICER FAY: Any objection?

20 MR. OGATA: I have a question. Mr.  
21 Ellison, you referred to exhibit 27A, I believe?

22 MR. ELLISON: That's correct.

23 MR. OGATA: I didn't see that on your  
24 exhibit list.

25 MR. ELLISON: It's a new one. Let me

1 read it again. And this is set forth on the  
2 transmission line safety and nuisance and  
3 transmission system engineering testimony that we  
4 previously filed on May 15th, so I'm just reading  
5 from that under section D, prior filings.

6 It is the California Independent System  
7 Operator comments on the PG&E PFS dated November  
8 3, 1999. And we would ask that be identified as  
9 exhibit 27A.

10 HEARING OFFICER FAY: Could I have the  
11 date, again, of that document?

12 MR. ELLISON: November 3, 1999.

13 MR. OGATA: I have no objection.

14 HEARING OFFICER FAY: Okay. Proceed.

15 MR. ELLISON: That concludes our  
16 testimony on transmission line safety and  
17 nuisance.

18 HEARING OFFICER FAY: And transmission  
19 system engineering, as well?

20 MR. ELLISON: Yes, at the Committee's  
21 pleasure that is also included in the testimony  
22 that was just admitted, so we can take examination  
23 on both those topics.

24 HEARING OFFICER FAY: Okay. Fine.

25 Let's do that. Is that acceptable, Mr. Ogata?

1 MR. OGATA: That's fine.

2 HEARING OFFICER FAY: Okay. Let's move  
3 to the staff, then.

4 MR. OGATA: Staff's witness for  
5 transmission line safety and nuisance, Dr. Obed  
6 Odoemelam's testimony begins on page 45. He has  
7 also submitted a declaration stating that this is  
8 his testimony and if called as a witness would  
9 testify to the contents thereto.

10 Staff's witness on transmission safety  
11 engineering is Charles Vartanian. That testimony  
12 begins on page 285 of the FSA, part 1. He's also  
13 submitted a declaration stating that the testimony  
14 contained therein is his own professional  
15 judgment.

16 HEARING OFFICER FAY: I don't believe  
17 that there's any questions on transmission line  
18 safety and nuisance. I do have a question on  
19 transmission system engineering. So, if you could  
20 have the witness come up and be sworn, that would  
21 help.

22 MR. OGATA: Certainly. Mr. Vartanian.  
23 Whereupon,

24 CHARLES VARTANIAN  
25 was called as a witness herein, and after first

1 having been duly sworn, was examined and testified  
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. OGATA:

5 Q Mr. Vartanian, could you please state  
6 your relationship with the Energy Commission?

7 A I'm an Energy Commission Staff Member,  
8 working in EFS and EPD in the engineering section,  
9 transmission system engineering area.

10 Q Did you prepare the testimony entitled  
11 transmission system engineering?

12 A Yes, I did.

13 Q Do you have any changes or corrections  
14 to that testimony?

15 A No.

16 MR. OGATA: He's available for cross-  
17 examination.

18 HEARING OFFICER FAY: Yes.

19 EXAMINATION

20 BY HEARING OFFICER FAY:

21 Q Mr. Vartanian, just one question. In  
22 fact, this is regarding the testimony that I hope  
23 the staff will be introducing on behalf of the  
24 Cal-ISO.

25 But did you work with them at all in the

1 preparation of their testimony?

2 A We had compared information in general  
3 during the period between my FSA and their  
4 testimony, which just came in. But I didn't  
5 contribute directly to the preparation of Mr.  
6 Mackin's testimony.

7 Q Do you have a copy of Mr. Mackin's  
8 testimony?

9 A Yes, I do.

10 Q Could you turn to page 9, please. Under  
11 recommended conditions of certification, is that  
12 included in your conditions, or something that  
13 addresses the concerns in that?

14 A Yes, in my TSE section 1.

15 Q TSE-1, okay. So you feel that your  
16 testimony and your recommended conditions of  
17 certification have addressed all the concerns  
18 expressed by the ISO?

19 A Yes, I believe it's consistent with his  
20 testimony and his recommendation.

21 Q Okay. Fine. And, in fact I think the  
22 applicant -- probably something I should have  
23 asked them -- in their testimony they discuss the  
24 preliminary facility studies that identified an  
25 overload situation on breaker number 152.

1           I'm not familiar with transmission  
2           system engineering that well, but it sounds to me  
3           like an overload is not something that is a good  
4           thing to have. Can you put that into perspective  
5           for us, is this something the Committee needs to  
6           be concerned about?

7           A     They have identified this overload, and  
8           that's identified as an action item. It's  
9           replacement of this particular circuit breaker. A  
10          circuit breaker is a key component, that if it's  
11          overloaded over its rating, would usually trigger  
12          replacement on behalf of the equipment operator.

13          The piece of equipment, though, is  
14          within the fenceline of an existing substation  
15          external to Moss Landing. But it would be, in  
16          terms of physical dimension, it would be a like-  
17          for-like replacement.

18          Actually, it's not a matter of regular  
19          load-carrying capability, but its ability to  
20          interrupt a fault. If there were a fault on the  
21          system that it had to open up. That is actually  
22          the condition for which it's overloaded.

23          Q     And as a result -- so this is a result  
24          of adding the upgrades of the Moss Landing Power  
25          Plant?

1           A     Yes.  The additional capacity provides  
2     more fault, what's termed fault duty, in the case  
3     of a line outage.

4           Q     And what solution will be taken, what  
5     mitigation or correction?

6           A     They will replace that specific breaker  
7     number 152 with a higher interrupting capability  
8     breaker.

9           Q     And this is actually a PG&E facility --

10          A     Yes.

11          Q     -- in the switchyard?  Okay.  And so  
12     that is already provided for as a result of the  
13     study?

14          A     Yes.

15          Q     Okay.  So you're not concerned that that  
16     is an unmitigated impact that would somehow affect  
17     reliability of the system?

18          A     No.  And, in fact, that mitigation  
19     response is noted in the ISO's testimony as a  
20     bullet item for response, mitigation response.

21          Q     Okay, great.

22                   HEARING OFFICER FAY:  Thank you very  
23     much.  Thank you, you're excused.

24                   Mr. Ogata, do you want to identify the  
25     ISO testimony, give it an exhibit number?

1                   MR. OGATA: Certainly. Signed by R.  
2 Peter Mackin, dated May 22, 2000. It's entitled  
3 transmission system reliability testimony. And I  
4 guess we can put that in as --

5                   HEARING OFFICER FAY: Next exhibit  
6 number is 67. So that will be exhibit 6-7.

7                   Do you have a declaration from Mr.  
8 Mackin?

9                   MR. OGATA: Yes, there is a declaration  
10 of Mr. Mackin attached to his testimony.

11                   HEARING OFFICER FAY: Would you like to  
12 introduce that testimony at this time?

13                   MR. OGATA: Certainly. Exhibit number  
14 67, transmission system reliability testimony  
15 submitted by Peter Mackin from the California  
16 Independent System Operator. Mr. Mackin is a  
17 Senior Grid Planning Engineer employed by the Cal-  
18 ISO. He's stated that his professional experience  
19 and qualifications and experience attached to his  
20 declaration; that he prepared this testimony based  
21 upon his independent analysis of the AFC, the  
22 preliminary facility study, the detailed facility  
23 study, data from reliable documents and sources,  
24 his professional experience and knowledge.

25                   It's his professional opinion that the

1 testimony is valid and accurate with respect to  
2 issues addressed therein. He is personally  
3 familiar with the facts and conclusions related to  
4 testimony, and if called as a witness he could  
5 testify competently thereto.

6 Signed under penalty of perjury May 22nd  
7 at Folsom, California.

8 HEARING OFFICER FAY: Any objection to  
9 receiving Mr. Mackin's testimony on behalf of the  
10 California Independent System Operator?

11 MR. ELLISON: No objection.

12 HEARING OFFICER FAY: All right. That  
13 testimony is entered into evidence at this point.

14 Anything further on transmission issues,  
15 Mr. Ogata?

16 MR. OGATA: We'd just move staff's  
17 testimony into evidence.

18 HEARING OFFICER FAY: All right. Any  
19 objection to moving the staff testimony on  
20 transmission line safety and nuisance and  
21 transmission system engineering into evidence at  
22 this time?

23 MR. ELLISON: No.

24 HEARING OFFICER FAY: All right, so  
25 moved.

1 Move to hazardous materials management.

2 MR. ELLISON: The applicant's witness on  
3 hazardous materials handling is Mr. Eric Walther,  
4 whose declaration has been previously admitted as  
5 part of exhibit 64.

6 The hazardous materials handling  
7 testimony is a portion of exhibit 58, is  
8 identified as hazardous materials handling. It  
9 incorporates by reference hazardous materials  
10 portions of the AFC, exhibit number 5, as well as  
11 related appendices to the AFC, also exhibit number  
12 5. And the applicant's comments on the PSA filed  
13 March 1, 2000, which is exhibit 48.

14 We'd move the admission of those  
15 portions of exhibit 58, and the exhibits included  
16 therein.

17 HEARING OFFICER FAY: Any objection?

18 MR. OGATA: No objection.

19 HEARING OFFICER FAY: All right, so  
20 moved.

21 And I think we can move to the staff,  
22 then, on hazardous materials.

23 MR. OGATA: Staff's witness is Rick  
24 Tyler. He needs to be sworn.

25 //



1 Q What is your conclusion?

2 A My conclusion is that the project won't  
3 have any significant impacts in the area of  
4 hazardous materials handling, provided the  
5 conditions of certification that staff has  
6 provided are adopted.

7 Q Thank you.

8 MR. OGATA: Mr. Tyler is available for  
9 questions.

10 HEARING OFFICER FAY: Any questions from  
11 the applicant?

12 MR. ELLISON: No questions.

13 EXAMINATION

14 BY HEARING OFFICER FAY:

15 Q Mr. Tyler, HAZ-2 on page 61 of your  
16 testimony, it says the project owner shall provide  
17 a risk management plan for Monterey County.

18 Is that a contingent requirement, or  
19 will they be doing a risk management plan?

20 A I believe they'll be required to do a  
21 risk management plan. They may not be required to  
22 do a -- or probably won't be required to comply  
23 with PSM.

24 Q With what?

25 A With the process safety management part

1 of the -- depending on the amount of material, the  
2 type of material, and the mitigation, you are put  
3 in three different categories under the R&P  
4 program.

5 The final category would require --  
6 would be triggered if you were in CalOSHA's PSM  
7 program. Which is triggered for very large  
8 quantities of material.

9 I don't believe that this project will  
10 trigger PSM. But I believe it will require an  
11 RMP.

12 Q And what determines whether a risk  
13 management plan is necessary? Does the Commission  
14 decide that, or is that Monterey County that's  
15 determining that?

16 A I've asked for -- oh, you mean the RMP.  
17 The RMP would be determined by the requirements of  
18 both the federal government and the local  
19 administering agency.

20 If it's required, it would be submitted  
21 to both EPA and the local administering agency,  
22 which is the Monterey County.

23 Q All right.

24 A And it's really triggered by the amount  
25 of material and the type of material that you

1 propose to handle, whether you have to do it or  
2 don't have to do it.

3 And then, additionally, the local  
4 administering agency has some discretion to  
5 require things that they believe, for whatever  
6 reason, are.

7 Q And in this case what is the predominant  
8 material?

9 A Aqueous ammonia.

10 Q So this doesn't have anything to do with  
11 site preparation or moving contaminated soil or  
12 anything? It's just the --

13 A No.

14 Q -- the ammonia?

15 A This would only be related to the  
16 storage and use of aqueous ammonia.

17 Q All right. And now does this plan come  
18 up in our other cases where we have similar  
19 amounts of aqueous ammonia, or is it different in  
20 Monterey County and at this site?

21 A No, it's the same virtually throughout  
22 the state.

23 Q Okay. Just I recall the term risk  
24 management plan being sort of a large task that  
25 had a high threshold. Perhaps I'm confusing it

1 with another analysis.

2 A Actually, the category one facility, if  
3 you have minimal risks and you have passive  
4 mitigation, and you don't, which this facility  
5 does not show any potential for impact off the  
6 site property.

7 If you do not have any potential to  
8 cause an impact, you're what's called a category  
9 one facility, which simply requires you to  
10 demonstrate that you don't have an impact, and  
11 give a discussion of what you're handling, and I  
12 believe also that you have not had any accidents,  
13 or your accident history for the last five years.

14 So, it's pretty minimal at category one  
15 facility, which I believe this one would be.

16 The reason I asked for a safety  
17 management plan, and I specified that that only  
18 applied to delivery, because there are -- even  
19 though there is very adequate mitigation proposed,  
20 there's a sump underneath the actual railcar  
21 loading area and so on, I believe that's very  
22 adequate and appropriate. And I don't believe  
23 that there should be any problem at all.

24 However, delivery of ammonia is clearly  
25 the highest potential cause of accidental release.

1       So I was -- just wanted to see a thought process  
2       and some checklists and so on to insure that, in  
3       fact, the train's wheels are blocked, and things  
4       like that are taken care of, to make sure that we  
5       really reduce, to the maximum extent feasible, any  
6       release during that sort of process.

7               Q     Am I recalling correctly that the design  
8       for this facility includes a lot of passive  
9       controls --

10              A     That's correct, it has a sump --

11              Q     -- of ammonia spills?

12              A     -- it has a catchment basin under the  
13       actual delivery station so that anything that got  
14       away between in connection or during delivery of  
15       the material to the tank from the railcar would  
16       actually drop into the catchment and then be  
17       directed to an underground sump.

18                     The tanks, themselves, also have  
19       catchment basin underneath them which drain to an  
20       underground sump.

21                     Under those conditions the mass transfer  
22       from the surface of the ammonia is virtually  
23       eliminated. The only transfer to the atmosphere  
24       is through the vents or through the holes where  
25       the material drops out.

1                   They've also discussed use of balls to  
2 float on the surface with netting on top of that.  
3 This is, in my opinion, state of the art  
4 mitigation. And that's why you're not seeing any  
5 potential for impact beyond the fenceline of the  
6 facility.

7                   Q     Okay, great.

8                   HEARING OFFICER FAY: All right, thank  
9 you very much. No further questions.

10                  MR. TYLER: Thank you.

11                  MR. OGATA: We would move Mr. Tyler's  
12 testimony into evidence.

13                  HEARING OFFICER FAY: Any objection?

14                  MR. ELLISON: No objection.

15                  HEARING OFFICER FAY: So moved.

16                  Now move to waste management.

17                  MR. ELLISON: The applicant's witness on  
18 waste management is again Mr. Eric Walther. Mr.  
19 Walther filed testimony as part of exhibit 58 on  
20 May 15, 2000. However, that testimony was revised  
21 in a subsequent filing on June 1, 2000. The  
22 subsequent revisions to the applicant's testimony  
23 we have identified as exhibit 63.

24                  The waste management portion of exhibit  
25 63 incorporates, by reference, section 6.14 of the

1 AFC, which is exhibit 5, and the applicant's  
2 comments on the preliminary staff assessment filed  
3 March 7, 2000, which is exhibit 48.

4 Mr. Walther's declaration has previously  
5 been received into evidence, so I would move into  
6 evidence exhibit 63 and the exhibits incorporated  
7 by reference therein.

8 HEARING OFFICER FAY: Any objection?

9 MR. OGATA: No objection.

10 HEARING OFFICER FAY: So moved.

11 Anything further then on waste management from the  
12 applicant? Mr. Ellison, anything further?

13 MR. ELLISON: No.

14 HEARING OFFICER FAY: Okay. Mr. Ogata.

15 MR. OGATA: Okay, we have staff's  
16 witness, Mike Ringer, available. Would you like  
17 to have him sworn?

18 HEARING OFFICER FAY: I have no  
19 questions of Mr. Ringer, so if you want to just  
20 submit it on declaration, that's fine.

21 MR. OGATA: Well, since he's sitting  
22 here we'll just ask him the questions quickly.

23 Oh, okay, errata to the errata.

24 HEARING OFFICER FAY: Well, if he's  
25 going to answer questions, we're going to swear

1 him.

2 MR. OGATA: Mr. Ringer apparently needs  
3 to be sworn.

4 HEARING OFFICER FAY: Please swear the  
5 witness.

6 Whereupon,

7 MIKE RINGER

8 was called as a witness herein, and after first  
9 having been duly sworn, was examined and testified  
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. OGATA:

13 Q Mr. Ringer, could you please state your  
14 job title at the Commission.

15 A I'm a Health and Safety Program  
16 Specialist in the Environmental Office.

17 Q Did you prepare the waste management  
18 testimony beginning on page 69 of the FSA?

19 A Yes, I did.

20 Q Do you have any changes or corrections  
21 you'd like to make at this time?

22 A I do. To condition Waste-4. I had  
23 submitted waste management errata, and I'd like to  
24 make a slight change to that.

25 In the first sentence it should read,

1 "silt or related dredge material removed by the  
2 project owner" instead of Duke Energy. Actually  
3 that's an addition. Right now it just says  
4 removed during work or maintenance, so I'd like to  
5 insert "the project owner".

6 HEARING OFFICER FAY: And this is a  
7 correction to the errata you're making?

8 MR. TYLER: Correct.

9 MR. OGATA: Which is on page 15 of FSA  
10 part two.

11 MR. TYLER: And then the very last  
12 sentence, "Similar work performed by the Moss  
13 Landing Harbor District for the project owner  
14 shall comply with the District's permit."

15 BY MR. OGATA:

16 Q Does that include your changes?

17 A It does.

18 Q Is your conclusion in the testimony that  
19 there is no significant impact?

20 A Yes, it is.

21 MR. OGATA: I'll move Mr. Ringer's  
22 testimony into evidence at this point.

23 MR. ELLISON: We have no objection but I  
24 would like to clarify. The first of the two  
25 corrections?

1           MR. TYLER: Yeah, silt or related dredge  
2 material removed by the project owner during work  
3 or maintenance on the cooling water intake system.

4           MR. ELLISON: Thank you.

5           HEARING OFFICER FAY: Anything further?

6           MR. OGATA: That concludes our  
7 testimony.

8           HEARING OFFICER FAY: No questions.  
9 Questions from the applicant?

10          MR. ELLISON: No questions.

11          HEARING OFFICER FAY: All right, thank  
12 you, Mr. Ringer, you're excused.

13                 That concludes waste management. We're  
14 going to, as we said earlier, we'll defer traffic  
15 and transportation till later.

16                 And now move to noise.

17          MR. ELLISON: Applicant's witness on  
18 noise is Mr. Chris Cannon. Mr. Cannon's  
19 declaration is included as part of exhibit 64.

20                 Mr. Cannon filed supplementary -- filed  
21 testimony as part of exhibit 58 on May 15th, which  
22 was slightly revised in exhibit 63 filed on June  
23 1st. Exhibit 63 incorporates by reference a  
24 portion of the AFC, which is exhibit 5, as well as  
25 the applicant's comments on the PSA, which is

1 exhibit 50.

2 We would move the admission of the noise  
3 portion of exhibit 63, and the exhibits  
4 incorporated by reference therein.

5 HEARING OFFICER FAY: Any objection?

6 MR. OGATA: No objection.

7 HEARING OFFICER FAY: So moved. And  
8 does that conclude the applicant's presentation on  
9 noise?

10 MR. ELLISON: It does.

11 HEARING OFFICER FAY: Mr. Ogata.

12 MR. OGATA: Staff's witness is Steve  
13 Baker. We'd like to have him sworn.

14 Whereupon,

15 STEVE BAKER

16 was called as a witness herein, and after first  
17 having been duly sworn, was examined and testified  
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. OGATA:

21 Q Mr. Baker, what's your job title at the  
22 Commission?

23 A I'm a Senior Mechanical Engineer in the  
24 Engineering Office.

25 Q And you are the author of the noise

1 testimony of the FSA?

2 A That's correct.

3 Q Do you have any changes or corrections  
4 to your testimony?

5 A I have none to my testimony, but I do  
6 have a comment on the applicant's rebuttal  
7 testimony filed with exhibit 63 on June 1st.

8 Q Okay, go ahead and please describe it.

9 A On page 55 of Chris Cannon's testimony  
10 near the bottom we see a proposed condition of  
11 certification Noise-1, in which it's said that a  
12 noise survey shall be performed within 90 days of  
13 the start-up of commercial operations to verify  
14 that the modeled noise levels are met.

15 In my final staff assessment testimony,  
16 part one, at page 111, I offer condition of  
17 certification Noise-6, and in this condition I  
18 would require the noise survey to be conducted  
19 within 30 days of the plant first achieving 80  
20 percent of maximum generating capacity.

21 The reason for this is at 80 percent the  
22 plant's probably putting out the most noise it  
23 will at any time. And I'd like to see the survey  
24 within 30 days, so that if there is a significant  
25 noise problem it's taken care of expeditiously.

1           I believe that the applicant's rebuttal  
2 testimony suggestion of 90 days, if there is a  
3 problem, could be a problem.

4           HEARING OFFICER FAY: Because it may not  
5 measure at the noisiest period, if you will?

6           MR. BAKER: Well, what I'm saying is if  
7 there is a significant noise problem the sooner  
8 it's dealt with, the better.

9           In my condition of certification Noise-6  
10 I'm proposing that the noise survey be conducted  
11 within 30 days. The applicant's rebuttal  
12 testimony suggests 90 days. I'm just pointing out  
13 that difference to you, and explaining why I think  
14 30 days is appropriate.

15          MR. ELLISON: The applicant has no  
16 objection to the 30-day requirement.

17          HEARING OFFICER FAY: Glad we got that  
18 clarified.

19          MS. BAKKER: Excuse me, there is the  
20 other aspect of this, too, am I correct, that you  
21 also indicated that 80 percent level --

22          MR. BAKER: Yes, --

23          MS. BAKKER: Is that distinct from the  
24 commercial operation?

25          MR. BAKER: The actual point in time

1 where the unit is declared commercial can vary.  
2 That may be soon after it's first started up; it  
3 may be after everything is up and tested and  
4 accepted, and all the contracts are signed and the  
5 checks are signed.

6 MS. BAKKER: I understand that, the  
7 point I was making is that you're distinguishing  
8 your condition in two ways, --

9 MR. BAKER: Right, yes.

10 MS. BAKKER: -- rather than just one.

11 MR. BAKER: Yes.

12 MS. BAKKER: The 30 days and the 80  
13 percent of maximum output.

14 MR. BAKER: And the reason for that is  
15 commercial operation doesn't necessarily mean that  
16 the plant would be producing maximum noise. For  
17 instance, this project is actually two combined  
18 cycle power plants.

19 The first portion could go commercial  
20 sometime before the second. But what I'm saying  
21 is by the time the entire 1060 megawatt project  
22 has reached at least 80 percent of output, you can  
23 be fairly certain that most of the equipment is  
24 operating and creating the most noise that it ever  
25 will. At that time I think it's appropriate to

1 take the noise survey.

2 HEARING OFFICER FAY: Thank you for that  
3 explanation.

4 MS. BAKKER: Don't we need to get the  
5 applicant's -- I thought they agreed just to the  
6 30 days.

7 HEARING OFFICER FAY: Well, the 80  
8 percent has been here all along in the FSA.

9 MR. ELLISON: We do not have an  
10 objection to the 30 days. Our noise witness is in  
11 the building, but he's in the workshop that is  
12 being conducted concurrently.

13 So, what I would like to do is go ahead  
14 and proceed with this testimony, but hold the  
15 record open and give us an opportunity to talk to  
16 him over the lunch hour. And then we will report  
17 back to the Committee after the lunch hour if  
18 there is any concern.

19 HEARING OFFICER FAY: Okay, I assume,  
20 since you only mentioned the 30 days, that the  
21 rest of the Noise-6 was acceptable.

22 Did the rebuttal testimony take issue  
23 with any other aspect of the conditions?

24 MR. BAKER: No, sir.

25 HEARING OFFICER FAY: And just that

1 number?

2 MR. ELLISON: But there is a difference,  
3 as Mr. Baker's pointed out, and Ms. Bakker has  
4 pointed out, between the rebuttal testimony  
5 proposed condition and Mr. Baker's proposed  
6 condition in both respects; with respect to the 30  
7 days, which we do not have a concern with, and  
8 with respect to the different definition of  
9 commercial operation.

10 What we would like to do is have an  
11 opportunity to discuss the second issue, a  
12 different definition of commercial operation, with  
13 our noise expert over the lunch hour.

14 If there is a concern we'll report back  
15 to the Committee right after lunch.

16 HEARING OFFICER FAY: Okay, yeah, please  
17 let us know either way.

18 MR. ELLISON: All right.

19 HEARING OFFICER FAY: Thank you. Any  
20 further questions on noise? Thank you, Mr. Baker,  
21 you're excused.

22 MR. OGATA: I'd move Mr. Baker's  
23 testimony into evidence.

24 HEARING OFFICER FAY: Any objection?

25 MR. ELLISON: No objection to moving

1 Mr. Baker's testimony. I would ask that he not be  
2 excused until we report back, however. Just in  
3 case there's still an issue here I may need to  
4 recall him.

5 MR. OGATA: That's fine.

6 MR. ELLISON: Why don't we do this, the  
7 applicant is comfortable with excusing Mr. Baker  
8 with the provision that he could be recalled this  
9 afternoon if we have a --

10 HEARING OFFICER FAY: Are you available  
11 this afternoon, Mr. Baker, if you need to be  
12 recalled?

13 MR. BAKER: Yes, I am.

14 HEARING OFFICER FAY: Okay, fine, we'll  
15 leave it that way then. Thank you.

16 All right, visual resources.

17 MR. ELLISON: Applicant's witness on  
18 visual resources if Mr. David Blau. Mr. Blau has  
19 filed a declaration which is included as part of  
20 exhibit 64; filed testimony on visual resources  
21 which is included in exhibit 58 filed May 15th;  
22 and revised that testimony in visual resources  
23 portion of exhibit 63 filed on June 1st. Exhibit  
24 63 incorporates by reference portions of the AFC  
25 which is exhibit 5, in response to CEC data

1 request filed June 30, 1999, which is exhibit 15A.  
2 That's identified on our exhibit list as exhibit  
3 15A. Response to the CEC data request filed June  
4 16, 1999, which is exhibit 11. Response to the  
5 California Coastal Commission data request dated  
6 August 26, 1999, identified as exhibit 16. And  
7 the applicant's comments on the preliminary staff  
8 assessment filed March 1, 2000, which is exhibit  
9 48.

10 We'd move the admission of exhibit 63  
11 and the exhibits incorporated by reference  
12 therein.

13 HEARING OFFICER FAY: Any objection?

14 MR. OGATA: No objection.

15 HEARING OFFICER FAY: So moved.

16 All right, Mr. Ogata.

17 MR. OGATA: Staff's witness is David  
18 Flores. He needs to be sworn.

19 HEARING OFFICER FAY: Please swear the  
20 witness.

21 Whereupon,

22 DAVID FLORES

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

1 DIRECT EXAMINATION

2 BY MR. OGATA:

3 Q Mr. Flores, could you please state your  
4 job title.

5 A I'm a Planner II with the Environmental  
6 Section.

7 Q Did you prepare the visual resources  
8 testimony beginning on page 121 of the FSA?

9 A Yes, I did.

10 Q Does this testimony incorporate your  
11 professional opinion?

12 A Yes, it does.

13 Q Do you have any changes or corrections?

14 A Only what was provided in the errata,  
15 part two.

16 Q What is your conclusion?

17 A There will be no significant visual  
18 resources effect from the project.

19 MR. OGATA: He's available for  
20 questions.

21 EXAMINATION

22 BY HEARING OFFICER FAY:

23 Q Mr. Flores, I had the impression,  
24 reading your testimony, that there's actually a  
25 visual improvement as a result of the project, is

1 that correct?

2 A That's correct. With the removal of the  
3 eight stacks and also the removal of fuel tanks,  
4 it will be actually a visual improvement.

5 Q We don't often see the addition of a  
6 power plant making things look better, so that's  
7 another unique aspect of this project.

8 HEARING OFFICER FAY: No questions, all  
9 right. Thank you very much.

10 MR. FLORES: Thank you.

11 MR. OGATA: I move his testimony into  
12 evidence, including the errata in the FSA part  
13 two.

14 HEARING OFFICER FAY: Any objection?

15 MR. ELLISON: No objection.

16 HEARING OFFICER FAY: All right, then  
17 the staff testimony on visual resources is entered  
18 at this point into the record.

19 We'll move to socioeconomic.

20 MR. ELLISON: The applicant's testimony  
21 on socioeconomic is sponsored by Chris Cannon.  
22 Mr. Cannon's declaration is included in exhibit  
23 64, which has already been admitted. Mr. Cannon's  
24 testimony is the socioeconomic portion of exhibit  
25 58; incorporates by reference portions of the AFC,

1 which is exhibit 5; responses to CEC data requests  
2 of June 16, 1999, exhibit 11; and the applicant's  
3 comments on the PSA, exhibit 50.

4 We'd move into evidence the  
5 socioeconomics portion of exhibit 58, and exhibits  
6 incorporated by reference therein.

7 HEARING OFFICER FAY: Any objection?

8 MR. OGATA: No objection.

9 HEARING OFFICER FAY: So moved.

10 Mr. Ogata.

11 MR. OGATA: Staff's witness is Amanda  
12 Stennick. Her testimony begins on page 219 of the  
13 FSA part one; exhibit 65 includes errata and  
14 exhibit 66, FSA part two, beginning on page 19.

15 Ms. Stennick has included in her  
16 testimony her declaration which by now you're  
17 already familiar with what it says. We'd move her  
18 testimony into evidence.

19 HEARING OFFICER FAY: Any objection?

20 MR. ELLISON: No.

21 HEARING OFFICER FAY: All right, so  
22 moved.

23 Are there any questions on  
24 socioeconomics? No, so thanks very much. We'll  
25 just take that on declaration.

1 (Pause.)

2 HEARING OFFICER FAY: We just had a  
3 discussion about the requirement encouraging local  
4 purchases, and my understanding is that that is a  
5 long-standing practice of licensing. Mr. Ogata is  
6 indicating yes.

7 MR. OGATA: That's correct. The basic  
8 philosophy behind that is that staff believes that  
9 to the extent possible applicant should try to  
10 bring a benefit to the local area, since there is  
11 perhaps some burden to having a power plant. And  
12 that is a typical condition that staff submits as  
13 part of its testimony.

14 HEARING OFFICER FAY: And if I recollect  
15 correctly, it's flexible to the point that if  
16 materials aren't available locally, for instance  
17 you don't need to buy your turbine in Monterey  
18 County, if those aren't available there.

19 MR. OGATA: I don't have the actual  
20 condition in front of me, but my recollection is  
21 that in most cases that's correct, it is a  
22 flexible condition. It requires best efforts. I  
23 don't think we use that language anymore, but the  
24 concept that's what, we require them to try their  
25 best.

1                   HEARING OFFICER FAY: All right, let's  
2 move to geology and paleontology.

3                   MR. ELLISON: Applicant's witness on  
4 geology and paleontology is Mr. Dennis Padgett.  
5 Mr. Padgett's declaration has previously been  
6 admitted as a portion of exhibit 64. In geology  
7 his testimony was filed as a portion of exhibit  
8 58, and then revised as a portion of exhibit 63.

9                   Pardon me for the confusion. The  
10 applicant filed its testimony on paleontology in  
11 conjunction with its testimony on cultural  
12 resources. And since we are deferring the  
13 testimony on cultural resources, what I'd prefer  
14 to do is to divide geology and deal with that, and  
15 admit our testimony on that, and then admit our  
16 testimony on cultural resources and  
17 paleontological resources when we deal with  
18 cultural resources, if that's acceptable.

19                   HEARING OFFICER FAY: Does that create a  
20 problem for you, Mr. Ogata?

21                   MR. OGATA: I don't believe so.

22                   MR. ELLISON: I do not have a problem  
23 with addressing staff's testimony which combines  
24 geology and paleontology at this time. But would  
25 prefer not to proceed with the applicant's

1 testimony that combines cultural and  
2 paleontological resources at this time.

3 If you wish, however, to take them up  
4 all together, I would suggest we defer geology and  
5 paleontology until cultural resources.

6 HEARING OFFICER FAY: All right, let's  
7 put over geology, then, and deal with them all at  
8 the same time.

9 MR. ELLISON: Okay.

10 HEARING OFFICER FAY: Is that all right?

11 MR. OGATA: Yeah. Just for your  
12 information we have no changes or corrections to  
13 our testimony, so if the Committee doesn't  
14 envision any questions for Mr. Anderson, I would  
15 just like to let him know that so he doesn't have  
16 to appear today.

17 HEARING OFFICER FAY: Yeah, I have no  
18 questions. And I think that's fine. We can  
19 assume we can take Mr. Anderson's testimony on  
20 declaration this afternoon.

21 MR. OGATA: Okay, that's fine, thank  
22 you.

23 HEARING OFFICER FAY: Thank you. All  
24 right, can we move to facility design?

25 MR. ELLISON: The applicant's testimony

1 on facility design, power plant efficiency and  
2 reliability is Mr. Ted Muallem. Mr. Maullem's  
3 declaration has been previously admitted as a  
4 portion of exhibit 64.

5 His testimony was filed on May 15th and  
6 revised as part of exhibit 63 on June 1st. His  
7 testimony incorporates by reference section 8 of  
8 the AFC, exhibit 5, as well as certain appendices  
9 also in exhibit 5. It incorporates by reference  
10 the data adequacy responses filed June 16, 1999,  
11 which is exhibit 11, June 23, 1999, which is  
12 exhibit 13, and July 30, 1999, which is exhibit  
13 15A. It also incorporates by reference the  
14 supplementary AFC filing change in the project  
15 description filed November 22, 1999, which is  
16 exhibit 30.

17 Move the admission of exhibit 63, the  
18 portion of exhibit 63 which addresses facility  
19 design, power plant efficiency and reliability.

20 HEARING OFFICER FAY: Is there  
21 objection?

22 MR. OGATA: No objection.

23 HEARING OFFICER FAY: So moved.

24 And, Mr. Ogata.

25 MR. OGATA: Staff's testimony on

1 facility design was prepared by Steve Baker, Al  
2 McCuen and Kisabuli. Their declarations are  
3 attached to the FSA which is exhibit 65.

4 There are no changes or corrections to  
5 their testimony. They found no significant  
6 adverse environmental impacts in these areas.

7 HEARING OFFICER FAY: All right, so --

8 MR. OGATA: We'd move admission of their  
9 testimony.

10 HEARING OFFICER FAY: Objection?

11 Hearing none, so moved.

12 HEARING OFFICER FAY: And just to  
13 clarify, so under facility design there are no  
14 errata?

15 MR. OGATA: Correct.

16 HEARING OFFICER FAY: All right. Power  
17 plant reliability.

18 MR. ELLISON: I'd just note the  
19 testimony just submitted addresses facility design  
20 as well as reliability and power plant efficiency.  
21 So that testimony has previously been admitted.

22 HEARING OFFICER FAY: Mr. Ogata.

23 MR. OGATA: With your permission, Mr.  
24 Fay, we can do power plant reliability and  
25 efficiency together, since they both were prepared

1 by Mr. Baker, Steve Baker.

2 HEARING OFFICER FAY: Sure, same  
3 witness.

4 MR. OGATA: He was previously sworn, and  
5 you have his declarations. And as conclusion,  
6 there is no adverse impacts. The liability  
7 testimony begins on page 269 of the FSA, and  
8 efficiency begins on page 277 of the FSA, part  
9 one.

10 HEARING OFFICER FAY: Are there  
11 corrections to either of those sections?

12 MR. OGATA: There are no changes or  
13 corrections to either of those areas. I'd move  
14 those into evidence at this time.

15 HEARING OFFICER FAY: Compliance  
16 monitoring and facility closure.

17 MR. ELLISON: Applicant's witness on  
18 compliance monitoring and facility closure, Mr.  
19 James Vigor. Mr. Vigor's testimony was filed as  
20 the appropriate portion of exhibit 58 on May 15,  
21 2000, incorporates section 4.0 of the AFC, which  
22 is exhibit 5. His declaration has been previously  
23 admitted as a portion of exhibit 64.

24 I would move the admission of the  
25 compliance monitoring and facility closure portion

1 of exhibit 58.

2 HEARING OFFICER FAY: Any objection?

3 MR. OGATA: No objections.

4 HEARING OFFICER FAY: So moved.

5 Mr. Ogata.

6 MR. OGATA: Compliance monitoring plan  
7 including general conditions of closure testimony  
8 was written by Jeri Zene Scott. Ms. Scott's  
9 declaration is attached to the FSA part one, and I  
10 would move her testimony into evidence at this  
11 time.

12 HEARING OFFICER FAY: Okay. Objection?

13 MR. ELLISON: No.

14 HEARING OFFICER FAY: It's received at  
15 this time.

16 All right. That concludes the taking of  
17 the evidence that we can manage before the lunch  
18 break.

19 After lunch we will be, I presume we'll  
20 hear from the applicant on the question regarding  
21 noise-6. We will take up geology and  
22 paleontology, traffic and transportation and  
23 cultural resources. Does that conform to  
24 everybody's understanding?

25 MR. ELLISON: That's correct.

1                   HEARING OFFICER FAY: Good. Then we're  
2 adjourned until 1:00.

3                   MR. OGATA: Excuse me, Mr. Fay. Mr.  
4 Buell has just gone out to check on the status of  
5 the workshop and he has something to report.

6                   MR. BUELL: What they told me is they're  
7 making progress. They have one item to resolve at  
8 this point, so that's encouraging. But they  
9 indicated that they probably would be available at  
10 1:30 versus 1:00.

11                   HEARING OFFICER FAY: That's fine.  
12 We'll start with the other items first, and look  
13 forward to seeing them at 1:30.

14                   Why don't we return here at 1:15.

15                   MR. OGATA: Okay.

16                   MR. ELLISON: Actually, Mr. Fay, if I  
17 could, given the progress that we've made this  
18 morning, can I ask that we just resume at 1:30.  
19 The reason for the request is that there is a  
20 relationship between the traffic issues and the  
21 cultural resource issues.

22                   HEARING OFFICER FAY: You'd like the  
23 people all here?

24                   MR. ELLISON: And we'd like to know that  
25 the traffic issues are resolved, and how -- the

1 issue, one of the big issues that's being  
2 discussed with respect to traffic is the  
3 protection of certain cultural resources with  
4 respect to the traffic mitigation that's going to  
5 be done, so depending upon the outcome of the  
6 traffic discussion, it could potentially change  
7 the cultural resources testimony.

8 And so I prefer not to proceed with the  
9 cultural resources testimony until traffic is  
10 resolved.

11 HEARING OFFICER FAY: That's fine. All  
12 right, we'll return here at 1:30.

13 (Whereupon, at 11:45 a.m., the hearing  
14 was adjourned, to reconvene at 1:30  
15 p.m., this same day.)

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1 change.

2 HEARING OFFICER FAY: Okay, so we're  
3 just inserting the word "sustained" before output?

4 MR. ELLISON: That's correct, and  
5 changing the and to an a.

6 HEARING OFFICER FAY: And keeping the 30  
7 days. Good. Thank you.

8 And now Mr. McCuen spoke to me during  
9 the break, indicated that they had an expanded  
10 definition, or an expanded analysis of cumulative  
11 impacts for transmission system engineering.

12 And, Mr. Buell, do you have people  
13 available to present that?

14 MR. BUELL: Yes, I believe we have.  
15 Charlie would be available to provide a brief  
16 summary of the cumulative impacts.

17 HEARING OFFICER FAY: He has previously  
18 been sworn and remains under oath.

19 DIRECT TESTIMONY

20 MR. VARTANIAN: To summarize, the TSC  
21 portion of the FSA gave an opinion, qualitative  
22 opinion of low expectation of cumulative impacts  
23 for the project.

24 Our FSA also did identify several  
25 specific power flow scenarios which were to be

1 performed by PG&E, in the then-pending detail  
2 facility study for the project, in which they  
3 would model the project on line in conjunction  
4 with several other potential projects in the area.

5 Subsequent to the FSA PG&E did complete  
6 this analysis. I have reviewed the analysis, as  
7 well as the ISO's review comments on this  
8 particular aspect of the detailed facility study,  
9 DFS.

10 My conclusion is the quantitative  
11 analysis by PG&E and related Cal-ISO review  
12 comments are consistent with the earlier  
13 qualitative finding of no significant cumulative  
14 impacts expected.

15 EXAMINATION

16 BY HEARING OFFICER FAY:

17 Q And when you looked at cumulative  
18 impacts, can you give us a sense of how far away  
19 from the project you examined the system?

20 A In terms of the quantitative input there  
21 were four specific projects analyzed in  
22 conjunction with the project.

23 The farthest, both geographic and in  
24 terms of electrical integration, was Sutter. And  
25 that was just left and not turned on and off for

1 comparison, but just left on as a given within the  
2 case.

3 They also ran cases with Los Medanos  
4 Energy Center, Delta Energy Center and Metcalf  
5 Energy Center where they incrementally added those  
6 projects to the power flow case.

7 In all cases the effect electrically was  
8 minor. And, in fact, turned back some of the  
9 overloads that were seen under contingency,  
10 without those projects operating.

11 I expanded this qualitative  
12 consideration to assess the additional plants in  
13 the San Francisco area being analyzed within the  
14 AFC process, Contra Costa, Newark Energy, Potrero  
15 and the South City Projects, which are at various  
16 stages, either licensing project or pre-filing, and  
17 it's safe to assume, or I'm assuming that the  
18 impacts would be similar to what they've analyzed  
19 for Los Medanos, Delta Energy and Metcalf.

20 The other plants concerned qualitatively  
21 were the ones, plant projects in the AFC process  
22 in Kern County, LaPaloma, Midway Sunset, Elk Hills  
23 and Sunrise. And those I made the determination  
24 of no minimal electrical interaction so no  
25 cumulative impacts.

1                   And I think this is supported by the  
2 fact that PG&E, within their analytic case, chose  
3 the southern tie between Mendive Way and Vincent  
4 with Edison as what's called a swing buss. And if  
5 a buss is designated that within the power flow  
6 it's basically acknowledging that there's very  
7 electrical interaction with that physical location  
8 and a location of interest, where they were  
9 analyzing Moss Landing Power Project.

10                   Those were the other plants given a  
11 second qualitative look beyond the quantitative  
12 info from PG&E.

13                   HEARING OFFICER FAY: Thank you. Does  
14 the applicant have any questions regarding this  
15 testimony?

16                   MR. ELLISON: No, no questions.

17                   HEARING OFFICER FAY: Mr. Ogata, I know  
18 I talked to Mr. McCuen about filing this with your  
19 testimony tomorrow, but it might be better for the  
20 record if we could mark this as an exhibit today.

21                   (Pause.)

22                   HEARING OFFICER FAY: Do you have some  
23 concerns about that?

24                   MR. OGATA: Yeah, Mr. Fay. We would  
25 like to take a look at what's here before we

1 actually file it. I had a chance to review it,  
2 but I'm not sure that actually it's been reviewed  
3 by management, so --

4 HEARING OFFICER FAY: All right.

5 MR. OGATA: -- I mean we were prepared  
6 to present Mr. Vartanian's findings as he did  
7 orally to give basically the Committee an update  
8 from the FSA till what we've learned to date.

9 But in terms of having something  
10 actually filed, I think these are more speaking  
11 notes, and I think we'd be better served if we had  
12 something that was properly reviewed.

13 HEARING OFFICER FAY: So, when will you  
14 file it?

15 MR. OGATA: Two days. Friday, this  
16 week.

17 HEARING OFFICER FAY: Okay. And what  
18 will it be labeled, supplement to the transmission  
19 system engineering testimony?

20 MR. OGATA: I think that's what it will  
21 be called, yes.

22 HEARING OFFICER FAY: All right. Is  
23 there any objection to staff filing it that way at  
24 this time?

25 MR. ELLISON: Assuming that it comports

1 with the oral testimony that was just given, no,  
2 there's no objection. If we have a concern after  
3 we see it, we'll raise it at a later date.

4 HEARING OFFICER FAY: Let me just say  
5 that any party, after being served with this  
6 testimony, makes an objection to the way it came  
7 in, should just contact the Hearing Officer. And  
8 file an objection in writing, as well, to the  
9 record.

10 All right. Thank you for that expansion  
11 on your analysis.

12 Mr. Ellison, I'd like to ask you, in  
13 terms of traffic, cultural, geological and  
14 paleontological, is there an order that is more  
15 logical one way or the other? I know traffic was  
16 sort of guiding a lot of this.

17 MR. ELLISON: My suggestion would be  
18 that we take traffic and transportation first, and  
19 then take the cultural and related topics second.

20 My understanding from the workshop is  
21 that there has been a proposed change by staff to  
22 the traffic conditions, which is acceptable to the  
23 applicant. I think it's appropriate to take that  
24 issue up first, and then we can go to the others.

25 HEARING OFFICER FAY: Meaning take up

1 the staff's presentation first?

2 MR. ELLISON: Yeah. Actually, I think  
3 that makes more sense if you're prepared to handle  
4 it that way.

5 HEARING OFFICER FAY: All right.

6 MR. OGATA: Yes, I think we're prepared.

7 Okay, staff will call Steve Brown. He  
8 needs to be sworn.

9 HEARING OFFICER FAY: Please swear the  
10 witness.

11 Whereupon,

12 STEVE BROWN

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

16 DIRECT EXAMINATION

17 BY MR. OGATA:

18 Q Mr. Brown, would you please tell us your  
19 relationship to the Energy Commission.

20 A Yes. I am a consultant working on  
21 behalf of the Energy Commission.

22 Q You have before you your testimony  
23 titled traffic and transportation?

24 A Yes.

25 Q Which begins on page 81 of the FSA part

1 one. Do you have any changes or corrections to  
2 your testimony?

3 A Yes, we do. I have prepared this  
4 morning an errata that has been, I hope,  
5 distributed to the Commission, and it's four pages  
6 in length.

7 Q Could you briefly describe for the  
8 Committee the main changes between the errata and  
9 your testimony as contained in the FSA?

10 A Yes. The two primary changes in the  
11 errata are that we clarified, or I clarified the  
12 cumulative nature of the impacts associated with  
13 this project.

14 Cumulative, as defined by this project,  
15 the other activities on the site, as well as other  
16 developments in the surrounding area.

17 And so the impacts that are identified  
18 in the FSA, in the errata are clarified to state  
19 that those are cumulative in nature, as opposed to  
20 solely project-driven impacts.

21 The other primary clarification in the  
22 errata relates to the conditions. And there are  
23 about seven or eight conditions that have been  
24 modified, mostly to a minor nature for  
25 clarification. However, one or two probably

1 warrant a more complete discussion.

2 The one I'd like to highlight would be  
3 condition number 6, which has been modified to  
4 read as follows:

5 Prior to reaching a construction staffing  
6 level of 400 for the project, the project  
7 owner shall implement the following physical  
8 improvements at the State Route 1/Dolan Road  
9 intersection to the satisfaction of Caltrans.

10 I won't read the specific improvements,  
11 but I'll continue on:

12 If any of the above physical improvements  
13 cannot be completed prior to reaching the  
14 project construction staffing level of 400,  
15 the project owner shall implement a program  
16 that restricts all project-related trucks  
17 from making turns at the intersection of  
18 State Route 1 and Dolan Road until all the  
19 physical improvements have been completed.

20 The project owner must request and receive  
21 CPM approval to cease the restrictions on  
22 project-related turns at the intersection of  
23 State Route 1 and Dolan Road.

24 The clarification there being that there  
25 may be some difficulties in implementing the

1 physical measures due to cultural resource  
2 findings in the area. And if those improvements  
3 are delayed, there's essentially a back-up  
4 mitigation measure which says that the trucks  
5 cannot be allowed to turn at that critical  
6 intersection of Dolan Road and Highway 1.

7 So that was the clarifications to  
8 provide that second or alternative mitigation, if  
9 you will, if there's a delay in the physical  
10 improvements.

11 The other condition that probably  
12 warrants highlighting is number three, which  
13 previously had been more generic. It was made  
14 more specific in the errata to identify the exact  
15 grate crossings that are to be looked at as far as  
16 a management plan, to make sure that they're safe  
17 crossing. The distinction being that the  
18 applicant does not have control over private  
19 crossings, but does have control over public, or  
20 can work with public agencies to deal with  
21 potential hazards at public crossings. So that  
22 was hopefully made clearer in the errata.

23 Q Okay, with the errata that you just  
24 testified to, does this change your conclusion  
25 about any significant impacts resulting from this

1 project?

2 A The conclusion previously still stands,  
3 which are with these mitigation measures, with  
4 these conditions that all significant impacts can  
5 be mitigated.

6 Q Thank you.

7 MR. OGATA: Mr. Brown is available for  
8 questioning.

9 HEARING OFFICER FAY: Mr. Ellison, any  
10 questions?

11 MR. ELLISON: Just a couple of  
12 clarification questions, if I may.

13 CROSS-EXAMINATION

14 BY MR. ELLISON:

15 Q Mr. Brown, I'd like you to refer again  
16 to transportation number 6, as modified. And  
17 specifically the mitigation measure which is the  
18 fourth bullet after the introductory paragraph,  
19 and reads: Lengthen of the southbound left-turn  
20 pocket on State Route 1, and modify the southbound  
21 acceleration lane in the median of State Route 1.

22 Do you see that mitigation measure?

23 A Yes.

24 Q With respect to that mitigation measure,  
25 does this include any alternative designs that may

1 be approved by Caltrans?

2 A It does in the sense that Caltrans has  
3 what's called a design exception process, and it's  
4 conceivable that they will allow a certain degree  
5 of construction initially, and then may have some  
6 follow-up construction.

7 The condition is meant to apply to the  
8 functionality of the improvement. If the  
9 improvement is functional with the initial  
10 construction, then the condition's been satisfied.  
11 Any fine-tuning later on as a request of Caltrans  
12 would be over and above what's necessary to  
13 satisfy the functional aspect of the condition.

14 Q So, for example, if Caltrans were to  
15 approve a design exception to its normal turn  
16 pocket lane, the initial pocket lane subject  
17 to the -- with the exception, pursuant to the  
18 exception, would satisfy this condition?

19 A Yes. By definition, the design  
20 exception implies that Caltrans is satisfied with  
21 the improvement, given the exception.

22 Q Okay. And if Caltrans were to later  
23 decide to lengthen the pocket to the normal design  
24 standard, this would not render the completed work  
25 incomplete and violative.

1           A     Correct.

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

3           HEARING OFFICER FAY:   Thank you very  
4           much.  Let's be sure that's well identified.  I  
5           want to be consistent with what we've done before,  
6           but I believe all your other errata has come in as  
7           part of exhibit 67.

8                     Are you docketing this today, or how do  
9           you intend to --

10          MR. BUELL:   Yes, we can docket it today.

11          HEARING OFFICER FAY:   Why don't we just  
12          give it a separate exhibit number, so there's no  
13          risk of confusion.

14          MR. OGATA:   Number 68?

15          HEARING OFFICER FAY:   Yes.  I misspoke  
16          previously, exhibit 66 is staff FSA part two, and  
17          all the other errata, but this will be exhibit 68,  
18          traffic and transportation errata, testimony of  
19          Stephen J. Brown.

20          MR. OGATA:   Okay, so at this time then I  
21          would move the exhibit 68, Mr. Brown's errata,  
22          along with his prior testimony, to the extent it's  
23          not overridden by the errata, but is consistent  
24          with it, into evidence.

25          HEARING OFFICER FAY:   Any objection?

1 Mr. Ellison?

2 MR. ELLISON: Oh, I'm sorry, no. No  
3 objection.

4 HEARING OFFICER FAY: No objection. All  
5 right, the testimony of Stephen Brown in part one  
6 of the FSA, and exhibit 68 which modifies that,  
7 are entered into evidence at this point.

8 Thank you very much.

9 Mr. Ellison, to you on traffic and  
10 transportation.

11 MR. ELLISON: Okay, thank you, Mr. Fay.  
12 The applicant's witness on traffic and  
13 transportation is Chris Cannon, who is sitting  
14 immediately to my left.

15 Mr. Cannon's testimony has been  
16 previously filed as the traffic and transportation  
17 portion of exhibit 58; the traffic and  
18 transportation portion of exhibit 63; and the  
19 traffic and transportation portion of the  
20 applicant's rebuttal testimony, which is  
21 identified as exhibit 62, and was filed and served  
22 on June 1, 2000.

23 Exhibit 63 incorporates by reference  
24 certain prior filings, a section of the AFC, which  
25 is exhibit 5, responses to certain CEC data

1 requests, which are exhibit 11 and exhibit 21; the  
2 applicant's comments on the PSA, which is exhibit  
3 48; and the AFC supplementary filing which is  
4 exhibit 30.

5 Although Mr. Cannon has submitted a  
6 declaration, given the circumstances I think we'll  
7 do Mr. Cannon as a live witness.

8 Mr. Cannon, you need to be sworn.

9 Whereupon,

10 CHRISTOPHER CANNON

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

14 DIRECT EXAMINATION

15 BY MR. ELLISON:

16 Q Mr. Cannon, could you state and spell  
17 your name for the record, please.

18 A Chris Cannon, C-h-r-i-s C-a-n-n-o-n.

19 Q And would you briefly describe your  
20 occupation.

21 A I'm an environmental consultant.

22 Q And what is your association with the  
23 Moss Landing Power Plant?

24 A I've been asked, or I've been managing  
25 and developing the traffic and transportation

1 analyses for the AFC.

2 Q With respect to the traffic and  
3 transportation portions of exhibit 63, as well as  
4 the traffic and transportation portions of exhibit  
5 62, first of all, were these exhibits prepared by  
6 you or at your direction?

7 A Yes, they were.

8 Q Are the opinions contained in this  
9 exhibit your own?

10 A Yes, they are.

11 Q Are the facts contained in these  
12 exhibits true and correct to the best of your  
13 knowledge?

14 A Yes, they are.

15 MR. ELLISON: I would move the admission  
16 of the traffic and transportation portions of  
17 exhibit 63 and the exhibits incorporated therein,  
18 as well as the traffic and transportation portions  
19 of exhibit 62.

20 HEARING OFFICER FAY: Is there  
21 objection?

22 MR. OGATA: No objection.

23 HEARING OFFICER FAY: So moved.

24 BY MR. ELLISON:

25 Q Mr. Cannon, you have reviewed the

1 proposed conditions of certification in the final  
2 staff assessment, have you not?

3 A Yes, I have.

4 Q And you just heard the testimony of Mr.  
5 Brown regarding the changes to those conditions?

6 A Yes, I did.

7 Q And you've reviewed the written copy of  
8 those proposed changes?

9 A I have.

10 Q With the staff's amendments and those  
11 changes, are the traffic and transportation  
12 conditions acceptable in your opinion?

13 A Yes, they are acceptable. I've read the  
14 transportation errata and I'm comfortable with the  
15 changes that have been made.

16 Q Okay.

17 MR. ELLISON: That's all we have, thank  
18 you.

19 HEARING OFFICER FAY: Thank you. Any  
20 questions?

21 MR. OGATA: No questions.

22 HEARING OFFICER FAY: Thank you, Mr.  
23 Cannon, you're excused.

24 Do you have a preference as to the next  
25 topic? Go to cultural or -- well, let's just go

1 to cultural.

2 MR. ELLISON: We're taking cultural  
3 first?

4 HEARING OFFICER FAY: Yes.

5 MR. ELLISON: Okay. Applicant's  
6 testimony on cultural, as well as paleontological  
7 resources testimony is being sponsored by Mr.  
8 Robert Mason.

9 Mr. Mason has submitted a declaration  
10 which is contained in exhibit 64. His testimony  
11 is the cultural and paleontological resources  
12 portion of exhibit 58. He also submitted rebuttal  
13 testimony which is the cultural portion of exhibit  
14 62.

15 Exhibit 58, the cultural portion of that  
16 incorporates sections of the AFC, as well as  
17 appendices, which are exhibit 5; and two sets of  
18 responses to data requests filed June 16, 1999 and  
19 October 4, 1999, which are exhibits 11 and 22,  
20 respectively.

21 I would move the admission of cultural  
22 and paleontological resources portion of exhibit  
23 58, as well as the cultural portion of exhibit 62,  
24 as well as the exhibits that are incorporated by  
25 reference therein.

1 HEARING OFFICER FAY: Is there  
2 objection?

3 MR. OGATA: No objection.

4 HEARING OFFICER FAY: Before I rule on  
5 that, have the changes that have been made in  
6 traffic and transportation addressed the concerns  
7 expressed earlier regarding cultural resources?

8 MR. ELLISON: Yes, they have. The  
9 rebuttal testimony that was submitted by the  
10 applicant with respect to these issues made some  
11 proposed changes to cultural resources-2 and  
12 cultural resources-10.

13 With the adjustments that have now been  
14 made in the traffic and transportation section,  
15 the applicant is comfortable with staff's proposed  
16 cultural resources conditions, and retracts the  
17 proposed changes in the rebuttal testimony.

18 HEARING OFFICER FAY: Thank you for that  
19 clarification. And the identified cultural  
20 resources testimony and associated documents  
21 identified by the applicant are entered into  
22 evidence at this point.

23 Mr. Ogata.

24 MR. OGATA: Thank you, Mr. Fay. Thank  
25 you for asking that question. I was going to ask

1 Mr. Ellison that question, myself.

2 Given that answer, do you wish to hear  
3 from our witnesses, or shall we just take this  
4 section by declaration?

5 HEARING OFFICER FAY: If your witnesses  
6 are comfortable, and I assume they are since they  
7 have proposed the condition, then we can just take  
8 it on declaration.

9 MR. OGATA: Since they're sitting here,  
10 if you wouldn't mind just taking a few minutes to  
11 allow them to present one additional change.

12 HEARING OFFICER FAY: Clarification?  
13 Certainly. Please swear the witness.  
14 Whereupon,

15 DOROTHY TORRES and DEBORAH McLEAN  
16 were called as witnesses herein, and after first  
17 having been duly sworn, were examined and  
18 testified as follows:

19 MR. OGATA: Okay, we have as staff's  
20 witnesses Dorothy Torres to my left, and Deborah  
21 McLean to the far left.

22 DIRECT EXAMINATION

23 BY MR. OGATA:

24 Q Ms. McLean, would you please tell us  
25 what your relationship is to the Commission.

1 MS. McLEAN: I'm the Cultural Resources  
2 Consultant.

3 MR. OGATA: And you work for?

4 MS. McLEAN: For LSA Associates in  
5 Irvine.

6 MR. OGATA: And you have before you the  
7 cultural resources testimony?

8 MS. McLEAN: Yes.

9 MR. OGATA: And did you write that  
10 testimony?

11 MS. McLEAN: Yes, with assistance by  
12 Dorothy Torres.

13 MR. OGATA: And, Ms. Torres, could you  
14 also describe your relationship to the Commission.

15 MS. TORRES: I'm an Energy Analyst here  
16 at the Commission.

17 MR. OGATA: And did you also co-write  
18 the cultural resources testimony?

19 MS. TORRES: Yes, I assisted Debbi  
20 McLean's writing the testimony.

21 MR. OGATA: And currently your  
22 conclusion is that there will be no significant  
23 impacts from this project?

24 MS. TORRES: Yes.

25 MR. OGATA: With the conditions that

1       you're proposing?

2                   MS. TORRES:  Yes.

3                   MR. OGATA:  All right, do you have any  
4       changes or corrections to that testimony?

5                   MS. TORRES:  Yes.  We recently filed  
6       final errata, but we have one additional  
7       correction, and that's to condition number 10.  
8       We're proposing language that serves to better  
9       make clear our intent of the condition.

10                   And that is on page 221, the first  
11       paragraph, the last line of the first paragraph.  
12       Oh, page 212, I'm sorry.

13                   HEARING OFFICER FAY:  Ms. Torres, could  
14       you locate that for us again?

15                   MR. OGATA:  We will be referring to the  
16       errata submitted in FSA part two, cultural  
17       resources errata starts on page 7.  Ms. Torres  
18       will be referring to cultural 10 which is on page  
19       8 of the FSA part two.

20                   MS. TORRES:  Sorry, I was sending you to  
21       the original FSA.

22                   The change that we're making is to  
23       delete the period after the word activities under  
24       protocol and add the language "where cultural  
25       resources monitoring is occurring."  Period.

1                   MR. OGATA:  And, Ms. Torres, what do you  
2 believe is the effect of that addition?

3                   MS. TORRES:  I believe a  
4 misunderstanding could occur from the previous  
5 sentence which said that Native American monitors  
6 shall be present during any project-related earth-  
7 disturbing activities.

8                   Our intent is to have them present  
9 whenever cultural resources monitoring activity is  
10 occurring.  Not at any time there's earth-  
11 disturbing activities.

12                   MR. OGATA:  And you're also sponsoring  
13 the errata that was submitted as part two of the  
14 FSA, is that correct?

15                   MS. TORRES:  Yes.

16                   MR. OGATA:  Okay.

17   EXAMINATION

18                   HEARING OFFICER FAY:  This correction  
19 just offered regarding the Native American  
20 observer, is that included in the errata?

21                   MR. OGATA:  No, it is not.  It's an  
22 additional phrase.

23                   HEARING OFFICER FAY:  So this is  
24 cultural-10, at the end of the first sentence  
25 following the word "activities"?

1 MS. TORRES: It's actually the  
2 second --

3 MR. OGATA: The last sentence.

4 HEARING OFFICER FAY: The last sentence.

5 MR. OGATA: Under the protocol. Go to  
6 protocol, the last sentence. This phrase will be  
7 added to the very end of the protocol.

8 HEARING OFFICER FAY: And could you  
9 repeat the change?

10 MS. TORRES: Yes. Instead of having a  
11 period after "activities", we'll delete the period  
12 and say, "where cultural resources monitoring is  
13 occurring."

14 CROSS-EXAMINATION

15 MR. ELLISON: Just for clarification,  
16 you're making this change at the end of the  
17 condition, itself, as opposed to the protocol?

18 MS. TORRES: We're making the change at  
19 the end of the protocol.

20 MR. ELLISON: Okay. The same language  
21 appears in the condition, itself. Would it be  
22 appropriate to make the same change there?

23 MS. TORRES: I don't think it has the  
24 same connotation that the Native American monitor  
25 is to be there all the time.

1 HEARING OFFICER FAY: Well, the protocol  
2 is part of the condition; it's as binding as the  
3 condition, unlike the verification. I'm not sure  
4 that the distinction matters that much.

5 MR. ELLISON: Would the staff object to  
6 adding those same words to the end of the  
7 condition, itself, along with the protocol?

8 MS. TORRES: No. It should be fine.

9 MR. OGATA: Is there anything else you  
10 want to add to your testimony right now?

11 MS. TORRES: No, this is enough. I'm  
12 finished, thank you.

13 MR. OGATA: Thank you. They're  
14 available for questioning.

15 HEARING OFFICER FAY: Thank you. Mr.  
16 Ellison, any questions?

17 MR. ELLISON: I just have a couple of  
18 clarification questions.

19 CROSS-EXAMINATION

20 BY MR. ELLISON:

21 Q If I could ask you to refer to the FSA,  
22 exhibit 65, at page 201. In the first paragraph,  
23 midway through the paragraph, appears a sentence:  
24 This designated specialist must have the -- and  
25 this refers to the cultural resources specialist.

1 "This designated specialist must have the  
2 authority to halt or redirect work if cultural  
3 resources are encountered."

4 Do you see that sentence?

5 MS. TORRES: Yes.

6 MR. ELLISON: Am I correct in my  
7 understanding that the designated specialist has  
8 the sole authority to do that, as opposed to  
9 sharing it with the Native American monitor?

10 In other words, if there is a dispute  
11 about that question, it's the cultural resources  
12 specialist's opinion that controls?

13 MS. TORRES: I would think it would have  
14 to be.

15 MR. ELLISON: That's my only question,  
16 thank you.

17 HEARING OFFICER FAY: All right.

18 Questions? Thank you very much, thank you, both.

19 MR. OGATA: Staff would move that  
20 testimony into evidence.

21 HEARING OFFICER FAY: Any objection? So  
22 moved.

23 Mr. Ellison, do you have a witness on  
24 geologic resources?

25 MR. ELLISON: Yes, we do. The

1 applicant's witness on geologic resources is Mr.  
2 Dennis Padgett. Mr. Padgett has submitted a  
3 declaration which is included within exhibit 64.  
4 His testimony was included in the geologic hazards  
5 and resources portion of exhibit 58, as well as  
6 exhibit 63.

7 Exhibit 58 incorporates by reference  
8 section 6.3 of exhibit 5; responses to the CEC  
9 data requests filed October 4, 1999, which are  
10 exhibit 21; and the applicant's comments on the  
11 PSA, which is exhibit 50.

12 In light of Mr. Padgett's declaration I  
13 would move the admission of geologic hazards and  
14 resources portion of exhibit 63, as well as the  
15 geologic hazards and resources portion of exhibit  
16 58, and the exhibits incorporated by reference  
17 therein.

18 HEARING OFFICER FAY: Any objection?

19 MR. OGATA: No objection.

20 HEARING OFFICER FAY: So moved. Thank  
21 you.

22 Mr. Ogata.

23 MR. OGATA: Staff's witness is Robert  
24 Anderson. Attached to his testimony, beginning on  
25 page 229 in the FSA, is his declaration stating

1 that this testimony was done by him. We have no  
2 corrections or additions to his testimony, so we'd  
3 move it into evidence at this time.

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

6 And that concludes geology. I believe  
7 that completes the taking of evidence on the  
8 topics that were noticed for today.

9 Are there any follow-up matters that we  
10 need to address?

11 MR. BUELL: Mr. Hearing Officer, didn't  
12 we notice this for compliance monitoring and  
13 facility closure, or was that taken while I was  
14 out of the room?

15 MR. OGATA: Yes, we did that one.

16 MR. BUELL: Okay, sorry.

17 HEARING OFFICER FAY: I want to call the  
18 parties' attention to the fact that -- a reminder  
19 that the original notice of evidentiary hearings,  
20 as modified by the revised notice, is still in  
21 effect.

22 We had some temporary confusion, but the  
23 next hearing will be June 15th, here. And  
24 following that will be June 20th in Moss Landing.  
25 And if we're not able to complete our business on

1 June 20th, the overflow day is June 22nd here in  
2 Sacramento. So, in spite of all the confusion, we  
3 are back to the schedule as published in the two  
4 notices.

5 Any questions about that?

6 All right. And we do have an early  
7 start, as I check my revised notice, I believe  
8 it's a 9:00 start on the Moss Landing hearing. On  
9 the 15th, as well, okay. So that's a little  
10 different. Please flag your calendars for that.

11 In addition, I'd call your attention to  
12 the fact that the exhibit list that the Committee  
13 put out is not to be used. We're going to rely  
14 on, and as the record has been building, making  
15 use of the applicant's proposed exhibit list.  
16 Applicant has offered to send us a copy of that.  
17 Can we get that by Monday? I know I told you  
18 about a week, but can you have that provided by  
19 Monday?

20 MR. ELLISON: We can get you that by  
21 Monday, and we will also do the cross-referencing  
22 to the other list that we mentioned, and get you  
23 that as quickly as we can.

24 HEARING OFFICER FAY: Okay. My main  
25 concern is just a copy of this proposed exhibit

1 list. And then once we have looked it over and  
2 brought it up to date, we'll make that available  
3 to the parties at future hearings so they can sort  
4 of keep track of exhibits as they go.

5 Any other matters before we adjourn for  
6 today?

7 Okay, great. I want to compliment the  
8 parties on being very efficient in providing the  
9 record and the evidence. And also, on solving  
10 your last-minute problems on traffic in an  
11 efficient manner even while we were here in the  
12 hearing. So, nice work. I hope that's an omen  
13 for how things will go for the rest of the case.

14 Any closing remarks from the Committee?

15 PRESIDING MEMBER MOORE: No.

16 (Laughter.)

17 HEARING OFFICER FAY: All right. Thank  
18 you. We are adjourned.

19 (Whereupon, at 2:25 p.m., the hearing  
20 was adjourned, to reconvene at 9:00  
21 a.m., Thursday, June 15, 2000 at Moss  
22 Landing.)

23 --o0o--

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CERTIFICATE OF REPORTER

I, DEBI BAKER, 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 14th day of June, 2000.

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