

PREHEARING CONFERENCE
AND EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification for the) Docket No.
Oakley Generating Station Project) 09-AFC-4
_____)

OAKLEY CITY HALL
CITY COUNCIL CHAMBERS
3231 MAIN STREET
OAKLEY, CALIFORNIA

TUESDAY, MARCH 15, 2011

10:00 a.m.

Reported by:
John Cota
Contract No. 170-09-002

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Brenda Cabral
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Mike Yeraka
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Tom Williams
Iron House Sanitary District (IHSD)

Chris Nagano
United States Fish & Wildlife Service (USF&W)

The Honorable Jim Frazier
Mayor of the City of Oakley

Senior Field Representative Brian Hooker
Office of Congressman John Garamendi

District Representative John Frankel
Office of Assemblymember Joan Buchanan

Members of the Public

Keith Yetter

Shirley Lefave

Tom Lindemuth

Gene Darab

Bruce Connelly

Shirley Darling

Chris McLeod, Trident Environmental Engineering

Tom Williams

Members of the Public

Rob Simpson

Karen Gallegos

Ken Wills

Marilyn Ferguson

Tony Amador

Mary Jane Crockett

Neil Altimari

Carl Grandin Sr.

Regina Wilkerson

Greg Feere, Building Trades Council

Susan Tonkin

Jordan Miner

James D'Amico

Rick Onalfo

Eve Diamond

Greg Levy

Ray Robertson

Mark Gaguardi

Paul Seger

Donna Lagano

Michael Heckathorn, Trident Environmental Engineering

Joe Muñoz

Jeff McEuen

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EXHIBITSFor the Staff

<u>Number</u>	<u>Description</u>	<u>Identified</u>	<u>Received</u>
300	Final Staff Assessment	70	76
301	Final Determination of Compliance	70	76
302	Supplemental Staff Assessment, Downstream Transmission System Engineering Studies	70	76
303	Staff's Rebuttal Testimony	70	76

For the Applicant

<u>Number</u>	<u>Description</u>	<u>Identified</u>	<u>Received</u>
1-56	Multiple Exhibits (not individually identified on the record)	68	76
57	Joint Party Stipulation, 3/14/11	68	76
58	Letter, City of Oakley to the Energy Commission, 3/14/2011	68	76
59	Proposed Revision to Soil & Water 6	68	76

EXHIBITSFor the Intervenor

<u>Number</u>	<u>Description</u>	<u>Identified</u>	<u>Received/ Withdrawn</u>
400	Alternatives Testimony of Robert Sarvey	73	77
401	Environmental Justice Testimony of Robert Sarvey	73	77
402	Biology Testimony of Stuart Weiss	73	77
403	Air Quality Testimony of Robert Sarvey	73	77
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405	Exhibit Withdrawn - Socioeconomics Testimony of Robert Sarvey	61	61
406	Fine Particulate Data and Analysis Modeling for the Bay Area Air Quality Management District	73	77
407	Impacts of Climate Change on Global Energy Production and Consumption, Recent Literature and a Useful California Case Study	73	77

1 What I'm going to do is introduce you to all of
2 the folks up here and then we're going to call on the Mayor
3 and a few other folks for some opening remarks.

4 And if they haven't fixed the WebEx by then I will
5 go through the process of introducing the parties, the
6 applicant and the intervenors and staff.

7 And then, we're going to break with protocol and
8 see if there's folks in the audience who would like to say
9 something. If you have a time constraint of some kind and
10 can only stay this morning or would like to make a comment
11 and then, because you have to leave -- I will allow that
12 although you won't have benefit of the discussion throughout
13 the course of the day if you want to speak to a very
14 specific item.

15 But I know there's working folks here who may want
16 to speak just in general for, or in general against the
17 project and without getting deeply specific. And we're
18 going to allow that until such time as we get the WebEx
19 that's been fixed.

20 Like so many things technical they tested this
21 many times. It worked perfectly. And now when we need it
22 it's not working. So, so much for that.

23 Again, welcome to today's hearing. And at the
24 dais with me here today, to the left of our Hearing Officer
25 or two persons over is Commissioner Carla Peterman, our

1 newest Energy Commission Commissioner. Some of you met her
2 in Sacramento when we had our first, when we had our last
3 status conference to be prepared, part of being prepared for
4 this hearing.

5 She is, again, in a situation of, as we like to
6 say legally, auditing this hearing. She's not an official
7 member of this Committee yet.

8 She will be as of tomorrow when we have our
9 business meeting and do that procedurally. But, she is
10 replacing on this Committee Commissioner Weisenmiller who
11 started out or actually was on this Committee. I think we
12 started out with even a different Commissioner quite some
13 time ago.

14 Commissioner Weisenmiller was named Chairman of
15 the Commission by Governor Brown recently and is having to
16 reshuffle his duties and so Commissioner Carla Peterman gets
17 to take over.

18 Any of us who join a hearing underway have the
19 obligation to go back and read the record, which I know she
20 is diligently doing. But she audited our last discussion
21 and she's auditing the hearing today, technically speaking,
22 in order to absorb all the information firsthand and also to
23 save herself an awful lot of reading when she takes over as
24 a bona fide legal member of this Siting Committee.

25 ASSOCIATE MEMBER PETERMAN: Good morning everyone.

1 Thank you for having us here in Oakley.

2 PRESIDING MEMBER BOYD: Good morning. To my
3 immediate left is our Hearing Advisor Kourtney Vaccaro who,
4 shortly, will take over all the duties of MC-ing today's
5 events and conducting the hearing, which is our practice at
6 the Commission. Two Commissioners and a Hearing Officer
7 constitute the Siting Committee.

8 To my immediate right is my advisor, Susan Brown,
9 who is participating in this hearing for me. And at the far
10 end of the table is Jim Bartridge, advisor to Commissioner
11 Peterman.

12 So with that I'm, well I will introduce because
13 people in the audience might have questions. Also with us
14 today is the Energy Commission's Public Advisor, Jennifer
15 Jennings, who is standing at the back of the room in front
16 of the railroad locomotive picture raising her hand.

17 And her Deputy is Lynn Sadler who is sitting here
18 at the table. They are there to serve you, the public, and
19 to answer any of your questions about process, procedure and
20 what have you. And they're the people you talk to if you
21 want to -- and provide a blue card to if you want to present
22 later in the day or if you want to know how to provide
23 written comments and how the whole process works. Take them
24 aside and they will provide you that information.

25 So with that, I would like to now call upon

1 Mr. Jim Frazier, the Mayor of the city of Oakley, who I
2 understand would actually like to welcome the Commission
3 here and it's nice to be welcomed anywhere.

4 MAYOR FRAZIER: Thank you very much. Committee
5 Members and staff, good morning and welcome. My name is Jim
6 Frazier, the proud Mayor of Oakley.

7 I'm here today not only as the Mayor speaking on
8 behalf of my colleagues on the Oakley City Council but also
9 to advocate on behalf of a broad cross-section of our
10 community who also support this project; local parents who
11 want to make sure our schools are adequately funded, our
12 small business community who has suffered greatly during
13 this recession and want some relief, our public safety
14 representatives who keep facing service cuts, our friends
15 from special districts, local seniors and faith-based
16 communities and our non-profit community, the residents of
17 Oakley who want and deserve the project benefits that come
18 with hosting this facility.

19 A little history. On March 23rd, 2010 after years
20 of what we would describe as open and healthy communication,
21 the Oakley City Council by a unanimous vote entered into a
22 cooperation and community benefit agreements with the
23 proponents of the Oakley Generating Station.

24 Since that point, along with my colleagues, I have
25 advocated for this project in Sacramento and San Francisco

1 and now before you today.

2 Most every city in California needs new and
3 reliable revenue streams. Oakley is no different. This
4 project will provide that reliable revenue we so desperately
5 need.

6 To give you a little context, our General Fund for
7 the fiscal year 2010/2011 is roughly 12 and a half million
8 dollars.

9 This project will provide roughly \$10 million a
10 year in property taxes. It could actually be higher
11 depending on the valuation of the property and the facility.

12 I bring these numbers up to offer some
13 perspectives as to how significant the dollars are when we
14 are discussing project benefits in a comparison to local
15 budgets.

16 This \$10 million in property tax will directly
17 fund police, fire, and most importantly, will bring millions
18 to Contra Costa County schools. Simply put, this project is
19 absolutely critical to our city's financial future.

20 When making your decision whether or not to
21 approve this project I really hope you take into account the
22 hundreds of jobs that will be created as a result of this
23 project and the multiplier effect that this will have on our
24 local economy. I can't stress that enough. This project
25 will serve as an economic shot in the arm for our city and

1 the region.

2 We're so glad you came to Oakley to see some of
3 the faces of the people who will be impacted by your
4 decisions today, hopefully, in a positive way.

5 The Oakley Generating Station is a win/win for our
6 community and for the state as a whole adding clean power
7 generation while helping to take older, less efficient
8 plants off the grid.

9 Locally this project means a great deal to the
10 health and future of our city and it's critical we stay on
11 schedule and break ground this summer.

12 One final point, I would like to thank the CEC for
13 awarding Oakley an energy efficiency and conservation block
14 grant that will allow us to replace about 300 lights with
15 the LED technology.

16 As a result of this upgrade electricity usage for
17 these lights will go down about 50 percent and the future
18 cost for the electricity for these lights will go down about
19 50 percent. We are thrilled to be doing our part to reduce
20 our overall footprint and, of course, with the CEC's help.

21 I also would like to mention that the city of
22 Oakley has reviewed the Final Staff Assessment for the
23 Oakley Generation Station Project and is satisfied with the
24 revisions and the treatment of the city's recommended
25 conditions of approval.

1 Thank you again and welcome to the city of Oakley.

2 PRESIDING MEMBER BOYD: Thank you Mr. Mayor and
3 thank you for your welcome. As you notice, some of us spent
4 a few dollars here in your community before we came to this
5 meeting. This is my second hearing in this room. It's a
6 beautiful facility and we thank you for it. Thank you for
7 your sentiments on the project.

8 And particularly, I thank you for your reference
9 to the grant you received because, congratulations to the
10 city and thank you for being aggressive enough to pursue
11 activities like that.

12 And just so the folks here know, efficiency is job
13 one for those of us in the energy business in California.
14 So improving efficiency of anything and everything from your
15 light bulbs to your appliances, even your televisions, which
16 is kind of controversial, is the best way to assure a
17 positive electricity future for the people in the economy of
18 California. So thank you very much. Appreciate that.

19 MAYOR FRAZIER: Thank you again and welcome.

20 PRESIDING MEMBER BOYD: And I would just say in
21 passing, thinking about energy, that maybe we all can give a
22 thought to the folks in Japan who are going through some
23 incredibly difficult times; not only the earthquake but the
24 devastating tsunami and now the nuclear power plant issues
25 with which I am, unfortunately, intimately familiar as the

1 state's liaison with the Nuclear Regulatory Commission.

2 And if I glance at my Blackberry once in a while I
3 am not being rude to you, I'm just doing my routine work. I
4 get constant alerts on what's going on there and it really
5 does not look good this morning, so.

6 In any event, let us turn to the business at hand.

7 I've received no high signs that the WebEx system is
8 working yet so I'm going to assume it isn't.

9 And the reason I am taking this rather unorthodox
10 approach is that our hearing notice promised WebEx access by
11 folks. A lot of people are out there, indicated to us they
12 would be participating by WebEx which gives them both video
13 and audio opportunity.

14 On occasion I see it start to spring back and I'm
15 seeing at least a dozen names out there on one occasion. So
16 we're trying to do those parts of this hearing that would
17 not deprive them of some key information relative to the
18 application that they'd be interested in.

19 And by the same token I don't mean to diminish the
20 importance of those of you who are being called upon now to
21 speak, but you have a captive audience of us and the folks
22 here.

23 With that, I'm still not seeing any high sign
24 about the WebEx. I would like to call upon, I believe it's
25 Brian Hooker who is a Senior Field Representative for

1 Congressman John Garamendi who has a statement to make. And
2 welcome, Brian. And Congressman Garamendi I've known for
3 years so nice to see you.

4 SENIOR FIELD REPRESENTATIVE HOOKER: Well thank
5 you very much, Mr. Boyd, and I'm kind of glad WebEx isn't
6 working just in case I do stutter. I'll make sure I tell
7 the Congressman hello for you.

8 Commissioners, thank you for the opportunity to be
9 here on behalf of Congressman Garamendi. I stand before you
10 and the Energy Commission on behalf of the Congressman in
11 support of the Oakley Generating Station and encourage you
12 to vote in favor of approving this project.

13 The Congressman's support for this project stems
14 from numerous environmental and economic attributes that
15 this project possesses.

16 It is a highly efficient, highly flexible,
17 electronical generation project that is important to meet
18 the peak demands of the northern California environment and
19 is one of the most viable projects pending before the
20 California Energy Commission.

21 The Oakley Generating Station is designed with the
22 environment in mind. This facility will provide 614
23 megawatts of clean, flexible generating capacity using fast-
24 start and rapid-response technologies to fully harmonize
25 with the unique load requirements of renewable generation,

1 including wind and solar most importantly.

2 The Oakley Generating Station will be air-cooled
3 and will utilize the best-available control technology to
4 minimize its air emissions

5 This project will be built on an existing
6 brownfield development site to minimize environmental and
7 community impacts and it benefits from strong local support
8 as you can see here today.

9 When fully operational the facility will directly
10 contribute an estimated ten million annually of local state
11 taxes and additionally three million to local community
12 benefits.

13 This project will create approximately 730
14 construction jobs and 22 full-time permanent jobs providing
15 a much needed economic boost when we need it here most in
16 east Contra Costa County.

17 I thank you for your consideration of this request
18 and if you have any questions Congressman Garamendi can be
19 reached at his Washington, D.C. office. Thank you very much
20 for your time and consideration of this project. Have a
21 wonderful morning.

22 PRESIDING MEMBER BOYD: Thank you Mr. Hooker and
23 say hello to the Congressman. Next I'd like to call John
24 Frankel, District Representative of Senator Mark Desalnier,
25 another person I've known for years. I'm getting old I

1 think (laughter).

2 DISTRICT REPRESENTATIVE FRANKEL: Good morning
3 Commissioners and staff. My name is John Frankel, District
4 Representative for Senator Mark Desalnier.

5 And I rise today to urge your support for the
6 Oakley Generating Station.

7 This project, the Oakley Generating Station, is
8 truly critical to our constituents here in the 7th Senate
9 District.

10 Approval of this station will mean hundreds of new
11 jobs, a badly needed economic stimulus and a better choice
12 for local ratepayers.

13 We believe the denial of this project will mark a
14 shortsighted approach that undervalues the ancillary
15 benefits of this project in supporting our local community,
16 aiding in our economic recovery and improving our efforts to
17 reduce carbon emissions.

18 In an area with unemployment and under-employment
19 well above 10 percent, this project is estimated to create
20 more than 700 construction jobs, 20 to 25 permanent jobs and
21 will, undoubtedly, have a positive ripple effect in our
22 local economy.

23 Local businesses and suppliers will see an influx
24 of more than \$4 million in the purchase of construction
25 materials, supplies and services.

1 The project is committed, where possible, to using
2 local, union contractors. Just last month our friends at
3 the Contra Costa Building Trades Council reported a full 35
4 percent of their membership currently unemployed.

5 As you well know, the generating station will
6 feature state-of-the-art turbine technology that
7 significantly reduces greenhouse gas emissions and will move
8 our state forward in meeting our renewable portfolio
9 standards.

10 It is also clear to us that the Oakley Project is
11 a better choice for ratepayers.

12 If approved now, Oakley will not come on-line
13 until 2014 and there will be no cost to ratepayers until
14 2016, a feature that is unique to this project.

15 Finally, the generating station will create a
16 badly needed economic stimulus for both our County of Contra
17 Costa and the city of Oakley with anticipated tax revenues,
18 as the Mayor mentioned, of \$10 million annually.

19 This money will be utilized to strengthen local
20 police, fire and public infrastructure badly needed during
21 this severe economic recession we are facing.

22 After years of review every local and federal
23 regulatory agency, and we know there are many, has concluded
24 that the Oakley Generating Station meets or exceeds all
25 regulatory requirements as related to its environmental and

1 economic impacts.

2 And, again, we urge your support for the Oakley
3 Generating Station. Thank you very much.

4 PRESIDING MEMBER BOYD: Thank you. Thank you for
5 being here. Next I'll call upon Keith Yetter, hope I have
6 said that correctly, District Representative for
7 Assemblymember Joan Buchanan. Finally, somebody I haven't
8 known for years.

9 DISTRICT REPRESENTATIVE YETTER: Thank you
10 Commissioner Boyd, you did say that correctly.

11 Good morning. My name is Keith Yetter. I am
12 District Representative for Assemblymember Joan Buchanan.

13 And both my colleagues have expressed the many
14 benefits of this project already so I'd just like to say
15 that the Assemblywoman also strongly supports this project
16 for the economic benefits it will bring to the community as
17 well as the many jobs and tax revenues that are much needed
18 in the current climate. I thank you for your time.

19 PRESIDING MEMBER BOYD: Thank you very much. Now
20 that's all the cards I have from folks who have wanted to
21 speak this morning in the audience here.

22 I have a note that indicates there's one person
23 who is listening in by phone.

24 DEPUTY PUBLIC ADVISOR SADLER: I'm not sure so --

25 PRESIDING MEMBER BOYD: I don't know if we can

1 talk to anybody by phone.

2 DEPUTY PUBLIC ADVISOR SADLER: Actually, we are
3 chatting with people. There's about 15 people on the line.
4 We don't have any ability to talk except by chat at this
5 point.

6 PRESIDING MEMBER BOYD: Okay.

7 HEARING OFFICER VACCARO: Okay. And for those who
8 have identified themselves by name, have any also identified
9 affiliation to give us an indication if there are any
10 representatives of elected or appointed officials, or if
11 there are any elected or appointed officials.

12 DEPUTY PUBLIC ADVISER SADLER: I'll ask.

13 PRESIDING MEMBER BOYD: While we're waiting for a
14 response there I'll ask in the audience if there are any
15 representatives of any form of government who just wanted to
16 make an opening statement of some kind? Otherwise, we'll
17 hold for peer and public testimony.

18 Or when we call upon representatives of various
19 government agencies who are actually involved in this
20 process we'll call upon them to, at least, identify
21 themselves when we get into the core of the prehearing
22 conference.

23 Anybody else that wants to welcome us here
24 (laughter)?

25 Okay. Again, just holding -- All right, we're

1 still not, excuse me, solving our electronics problem.

2 We have quite a stack of cards here. Folks in the
3 audience who would normally be called upon to speak during
4 the part of the agenda that calls upon public testimony.

5 I would, I'm now going to proceed through folks
6 names and if anyone wants to speak now -- Let me see some
7 hands. Are there any people who would like to speak because
8 they have to leave and go to work or have something else
9 they need to do and would just as soon do it now?

10 All right, I see two hands. I'm going to call on
11 the woman in the back row and then you sir next.

12 I don't know who you are. So would you come
13 forward and identify yourselves and any affiliation you have
14 and make a statement.

15 We have quite a few cards and so -- I'm not going
16 to time limit you, I'm just going to request reasonable
17 brevity.

18 MS. LEFAVE: Good morning Commissioners and staff.
19 I'm Shirley Lefave. I'm actually speaking for myself.

20 I've lived in Oakley for quite a few years and
21 smelled enough of the environmental impact that we've had
22 from different companies that were cancer-causing chemicals
23 so, I'm happy to see this project to come to realism.

24 I've studied this issue and, for the life of me,
25 can't see why we wouldn't get this project approved quickly.

1 The site of this project is zoned for the power
2 plant in our general plan and there are gas and transmission
3 just a stone's throw from the proposed site.

4 This makes a lot of sense to me. We shouldn't
5 over-complicate this issue.

6 Maybe of greater importance is making sure we are
7 adequately planning for the future of this town. This is
8 very important to me because at build-out our city will
9 almost double in population from 35,000 to 65,000.

10 Oakley doesn't have the retail or industrial base
11 to support more city services but we are going to grow
12 regardless. We can't turn into a bedroom community of
13 65,000 residents with no real industry. That's not going to
14 work.

15 The truth is Oakley needs this project and we are
16 lucky to have this offer on the table, especially during
17 this economy. And even more so as to look and expand and
18 diversify our tax base. We definitely need the jobs, tax
19 revenue that will emerge as a result of the power plant.

20 I'm old enough to have witnessed serious planning
21 mistakes in our region and have seen the consequences of
22 those decisions. Please, let's not have that continue any
23 longer. Thank you.

24 PRESIDING MEMBER BOYD: Thank you.

25 MS. LEFAVE: Commissioner I'd like to comment

1 something. You comment about age. I'm 74. And you know
2 something, turn your age around because age is only a
3 number. It's the fun you have with it (laughter). Thank
4 you.

5 PRESIDING MEMBER BOYD: Oh, I like that approach
6 (laughter). You'd be 47 but I'd only be 17 (laughter).

7 Thank you. Yes sir.

8 MR. LINDEMUTH: Good morning, ladies and
9 gentlemen. My name is Tom Lindemuth. I am a 10 year
10 resident of Oakley and am speaking today on behalf of
11 myself.

12 Let me start by saying since I'm speaking on
13 behalf of myself a little bit of my qualifications however.

14 Prior to my retirement I spent 35 years as an
15 engineer followed by 10 years as an educator, educator
16 mostly here in this community.

17 When I was with Bechtel I spent much of my career
18 advising clients on the appropriateness of comparative
19 technology, both for energy generation and for other
20 purposes.

21 Later on when I was working in the hazardous
22 materials field I spent six years on this county's Hazardous
23 Materials Commission and I was one of the authors of the
24 very novel ordinance, 96100 here in Contra Costa County,
25 which provides guidance for siting facilities that have a

1 relative risk to the environment.

2 And then finally, as far as qualifications, I also
3 -- as a teacher I introduced students and the public to the
4 environmental nature of our surroundings and particularly
5 impacts of what we do here on our very valuable delta.

6 I will make it simple by telling you that I
7 believe that this is a very, very good project and deserves
8 support and orderly completion in the way that I see things
9 happening now.

10 First of all, the technology is extraordinarily
11 efficient. And as such, represents a good use of resources
12 compared to other things that might be chosen.

13 In addition, I think the site is appropriately
14 selected for this technology. In fact, the technology is
15 such that this, it could be sited in many, many places but
16 the one that has been sited, selected rather, is a very good
17 one. Close to transportation, close to transmission lines,
18 close to gas supply. One could scarcely make a more logical
19 choice for an energy project.

20 Secondly, the risk to the community based on the
21 way we look at it here in Contra Costa County should be
22 extraordinarily low; meaning that large amounts of hazardous
23 materials are not going to be used in this project.

24 The project is one that should there be
25 interruptions in utilities it could either shut down safely.

1 Or because it relies a whole lot less on the grid itself
2 could run to support in emergency situations, very much
3 better than older, more fragile technologies.

4 And I will tell you that that's based on at the
5 start of my career working in a great big coal-fired power
6 plant and watch it all go down in five seconds; 1800
7 megawatts and eight units. I've seen that happen and we're
8 sort of seeing the same sort of thing, unfortunately, with
9 the nuclear units in Japan.

10 So having a project like the Oakley Generating
11 Station I think provides a really, really good backup.
12 Particularly, heaven forbid, that there should be
13 restrictions put on the four operating nuclear plants in
14 this country, this state, rather.

15 So I would just sort of close by urging your
16 approval of the project and its moving forward.

17 Thank you very much.

18 PRESIDING MEMBER BOYD: Thank you very much.
19 Would you give me your name again.

20 MR. LINDEMUTH: Oh, yes. First name Tom. Last
21 name is spelled, L-I-N-D-E --

22 (WebEx message over PA system).

23 MR. LINDEMUTH: Start over. L-I-N-D-E-M-U-T-H.

24 PRESIDING MEMBER BOYD: I've got your card here.
25 Thank you very much.

1 That was a, in spite of the interruption of the
2 witness, was a very positive sign that came across. Does
3 that mean maybe we're having some success?

4 I guess not. I'm looking at a screen in front of
5 me.

6 Well what I can do is just keep proceeding. And
7 again I'll ask if anyone wants to speak now I'd be glad to
8 entertain you or you can wait until --

9 (WebEx message over PA system)

10 PRESIDING MEMBER BOYD: Please, place us in
11 conference (laughter). I see a very hopeful look on the
12 face of Ms. Sadler there indicative of progress.

13 Like I was saying, I'd be glad to entertain any of
14 you who would like to speak now from the public just in case
15 you wanted to leave. Otherwise we'll have a hiatus here
16 until we conclude we can or cannot.

17 There's a gentleman in the back. Two gentlemen,
18 all right. The gentleman standing in the back after you,
19 sir.

20 We just lost our system. Okay, you're back on.

21 MR. DARAB: My name is Gene Darab. I'm retired.
22 I'm an Oakley resident and I just wanted to make a comment
23 in favor of this power plant.

24 I started in power plants in 1964 on the East
25 Coast in New Jersey. I was a licensed stationary engineer.

1 I burned coal, high-viscosity oil, natural gas, jet fuel,
2 just about every type of fuel available at the time with the
3 exception of nuclear power.

4 And here on the West Coast I've worked for PG&E, I
5 have worked for the government at Mare Island in their power
6 plant and I have worked for the San Luis Delta Mendota Water
7 Authority as a operator for a hydro pump generation station.

8 And I just want to comment that this plant here in
9 Oakley is going to, creates jobs here locally. It's gas-
10 fired which is the cleanest fuel that you can get besides
11 wind and solar.

12 Just the other day, as far as the solar energy,
13 there was an article in the local paper about a man over in
14 Richmond, I guess, he has a water treatment plant and he has
15 a one megawatt solar panel generating facility for his plant
16 which only supplies one megawatt of power. And it took
17 eight acres of solar panels to provide that one megawatt.

18 This plant is far more efficient than anything
19 that we could do here. You can imagine the town of Oakley
20 being covered with solar panels and just not even producing
21 near what this plant will do for the energy source.

22 Energy, electric energy is not going to go away.
23 It's not going to decrease in demand. The push for
24 government -- electric-powered cars and all sorts of
25 electrical efficient energy use is still going to require

1 more and more generation down the road.

2 So, I highly recommend that you approve this plant
3 here in Oakley, not only as an Oakley resident which I'm
4 retired so I have no profit-making in this at all except for
5 my electric bill. And I heartedly agree that this plant
6 should be built and built soon. Thank you.

7 PRESIDING MEMBER BOYD: Thank you very much. The
8 gentleman in the back of the room.

9 And Lynn, I take it we still didn't make it. We
10 get to some threshold and then it collapses I noticed. Good
11 morning.

12 MR. CONNELLY: Good morning. Good morning,
13 Commissioners. My name is Bruce Connelly. I did fill out a
14 card up there.

15 PRESIDING MEMBER BOYD: Thank you.

16 MR. CONNELLY: I probably should have put some of
17 my past titles on it. I am most immediately a former city
18 council member for the city of Oakley as well as past Mayor
19 for the city of Oakley.

20 I've been on the Board for many years. Been prior
21 president of the Oakley Chamber of Commerce. I've been past
22 president of the Oakley Lions Club, actually three times. I
23 won't bore you but the list does go on beyond that.

24 My point is not to expand on my ego but to let you
25 know that I'm very much been involved in the city of Oakley

1 for over 25 years now.

2 And I'm in favor of the power plant. And I would
3 agree 100 percent, to save some time, with all the previous
4 speakers that went before me on every point that was brought
5 out.

6 One thing that I do want to correct the record on
7 is there is a group, I believe it's a taxpayer's advocacy
8 group, that has made a statement that is totally untrue.
9 And that's that the people that have been putting this
10 together, Radback Energy through Zeller Associates haven't
11 done enough outreach, haven't informed the public enough.

12 I'm here to tell you they have gone beyond any
13 organization I've seen as far as outreach in trying to get
14 the public informed.

15 They didn't care if you were a small group of
16 three or four people or a group of 50. They went beyond the
17 call of duty in my opinion as far as outreach and informing
18 the public.

19 So,, you know, I don't know if this group has made
20 a formal statement to your Commission but it definitely has
21 been put in the papers.

22 I'd say they've even done a better job than the
23 city. I hate to say that but they have done an excellent
24 job. So if you aren't informed, maybe you aren't listening.

25 But I would have to say the majority of the

1 community here has been informed of what's going on and how
2 it works. You know, all the information. They've made
3 themselves readily available to answer any questions and I
4 think that's a good thing.

5 And this power plant definitely would be a good
6 thing for Oakley for all the reasons that have already been
7 stated. Thank you.

8 PRESIDING MEMBER BOYD: Thank you very much.
9 Appreciate your taking the time to come and make a statement
10 to us. Are there any -- all right, well, the woman in the
11 front here but then the lady in the back next.

12 Although she got there first, you're closer --
13 She's yielding to you so go right ahead.

14 MS. DARLING: Good morning, Commissioners. My
15 name is Shirley Darling and I'm a resident of Oakley.

16 It was over a year ago that Radback Energy came to
17 town to offer those interested a tour of the proposed site
18 of a new generating plant.

19 The tour consisted of showing us where the
20 existing grid was located and proposed the site and the
21 proposed site for the plant, which is on industrial land.
22 The grid is there, the natural gas lines are there and the
23 rail spur can be put in place to keep the traffic for heavy
24 construction materials to a minimum on existing roads.

25 Oakley is in great need of industrial development

1 in town. Much of the future home developments will be in
2 the east Contra Costa County. So the need for both industry
3 and electricity is vital. This generating plant is a chance
4 to put in the newest technology and fulfill some of those
5 needs.

6 I am in full support of the building of this new
7 generating plant, which is air-cooled, so will much diminish
8 the water taken from our Delta, which the old type plant
9 being water cooled to get take.

10 This plant will bring much needed sales tax to our
11 small and growing community.

12 I am involved in the Friends of Oakley Community
13 Foundation, whose mission is to improve the quality of life
14 in the city of Oakley now and for future generations. I was
15 the treasurer and still a volunteer for this organization,
16 which helps the most vulnerable Oakley residents.

17 We raise funds to furnish a Christmas each year
18 for the families in need, including presents to the
19 children. We also have raised funds to help teachers buy
20 much needed supplies for the classroom.

21 Our project last year was a police department who
22 had a need for a vehicle coverage structure with an animal
23 detention center.

24 When we get in and see a need we work to correct
25 it.

1 I am also a past state president and member of the
2 local council of the Improved Order of Redmon Degree of
3 Pocahontas who raised money for alzheimers, diabetes,
4 hospice, scholarships and many other charities.

5 And I am a member of the Oakley Seniors who work
6 to bring information and social interaction to the seniors
7 in the area.

8 Radback has made a commitment to be a partner to
9 help nonprofits in their quest to accomplish these missions.

10 It is important for our city, our county, our citizens and
11 our nonprofits that this project go forward in a timely
12 manner. Thank you.

13 PRESIDING MEMBER BOYD: Thank you very much. Yes
14 ma'am.

15 MS. MCLEOD: Good morning, Commissioners and
16 staff. I'm Chris McLeod with Trident Environmental and
17 Engineering. I am here representing myself and also my
18 employer.

19 We work and live in this region and are in strong
20 support of what's been said here today. And technically
21 very strong support the quality of the work that has gone
22 into this project, far superior to prior plants that have
23 recently been built.

24 I'm very much in favor of it. Thank you.

25 PRESIDING MEMBER BOYD: Thank you very much

1 Ms. McLeod. Anyone else? Yes sir. Mr. Simpson is a
2 familiar face and, I'm sure, wants to engage in the meatier
3 part of the meeting. Yes sir.

4 MR. WILLIAMS: Good morning. My name is Tom
5 Williams. I'm the General Manager at Iron House Sanitary
6 District.

7 And while I will remain after my comments this
8 morning I really just wanted to take this opportunity to
9 step up before you today and briefly, you know, express my
10 support for the project.

11 Normally as a utility we like to remain pretty
12 neutral, you know, in these respects but recently having
13 gone through a wastewater treatment plant design,
14 permitting, construction et cetera, recognizing the time and
15 the challenge that it takes to implement a project like
16 this, and feel strongly, you know, that California really
17 needs to aggressively move forward in updating its power
18 generating infrastructure.

19 And, you know, in that sense and more as a citizen
20 of the area support, you know, the project. And especially
21 with as you've heard the testimony on the technology which
22 the project has been moved forward.

23 Also to say that Radback Energy has been in the
24 last year and a half, two years in which we've been talking
25 with them really a pleasure to work with.

1 You know, certainly not aggressive or assertive.
2 Really, just more listening as Mr. Connelly had stated
3 before. They seem to be very open to discussion in trying
4 to improve their project and make it better.

5 Obviously, I think as we get further into the
6 discussion today the issues of recycled water are a
7 challenge. And again, I'll be sticking around in case the
8 Commission would like to touch bases with me on that. I can
9 provide more technical detail. But really I wanted to step
10 forward right now and support the project.

11 PRESIDING MEMBER BOYD: Thank you very much. And
12 I'm glad you have offered to stay because very definitely
13 there will be discussion of the water issue.

14 Okay. Are there any other general public people
15 who would now like to take this opportunity rather than wait
16 for this, after we get into the specifics?

17 I see two volunteers here. Mr. Simpson do you
18 want to speak now?

19 MR. SIMPSON: Sure.

20 PRESIDING MEMBER BOYD: All right.

21 MR. SIMPSON: Good morning, Commissioner Boyd.

22 PRESIDING MEMBER BOYD: Good morning.

23 MR. SIMPSON: And good morning to the new
24 Commissioner. Glad to see you here. You have an impressive
25 history.

1 My name is Rob Simpson. I monitor power plant
2 proceedings around the state. I have a fair bit of
3 knowledge about the effects of power plants.

4 I understand that the members of this community
5 look forward to the apparent economic benefits of this
6 facility.

7 But prior to concluding that the economic benefits
8 outweigh the impacts of the facility once you review the 856
9 page environmental impact report; the federal government has
10 developed standards so that decision makers can compare and
11 understand the air quality impacts of a project.

12 These are called the National Ambient Air Quality
13 Standards. There is a maximum value that's considered safe
14 for people, anything beyond which would be considered a
15 threat to public health.

16 A table representing these values is on about page
17 300 of the report. It has the national standard of 35 parts
18 per million of particulate matter, small particulate matter
19 that passes straight through the lungs to the bloodstream.

20 And the impact for this facility is, that's the
21 maximum allowable standard under the federal standards. The
22 impact for this facility with a background is 655 percent of
23 that standard. So you're six and a half times the national
24 ambient air quality standard.

25 So before you conclude that the economic benefits

1 outweigh these risks I recommend that you take a look at
2 this report. Look at the whole of the picture, look at the
3 other technologies that can provide these same benefits to
4 this community.

5 I grew up not far from here. I knew most of the
6 kids at school. What I didn't know was anyone with asthma.

7 My kids know people with asthma. We have some of
8 the highest asthma rates in this community in the country.

9 I've seen mothers testify in other proceedings
10 about the death of their children in cancer clusters near
11 similar facilities.

12 This project will lead to higher asthma rates for
13 children, higher respiratory failure rates for elders and
14 higher cancer rates for everyone else.

15 After I authorized my father's removal from life
16 support I held him as he died from respiratory failure. And
17 I can tell you, firsthand that respiratory failure, fighting
18 for your last breath is not a pleasant way to die.

19 This proceeding reminds me of a movie that I saw.
20 This fellow comes to peoples' houses and he gives them a
21 button. And they push that button and they get a million
22 bucks but someone in the world dies.

23 Someone they don't know dies. But what the people
24 don't know -- most people end up pushing the button but they
25 don't know that then they're in the game. Someone else can

1 push the button and they'll die.

2 So when you come up here you're making the choice,
3 whether you're going to push that button or not, whether
4 this risk is worth it to your community.

5 This developer stands to make a billion dollars on
6 this project. Those of you hoping for a piece of this money
7 are like slaves vying for scraps off your master's table.

8 This project is not here to enrich this community.
9 It'll funnel money away from the community in a pipeline to
10 foreign interests.

11 If this community wishes to benefit through energy
12 production they should be developing renewable resources
13 which have the potential to retain value in the community
14 and have a lasting benefit. Thank you.

15 PRESIDING MEMBER BOYD: Thank you. Ma'am you?
16 After this witness I'm going to stop the hearing and go off
17 the record and we'll discuss the logistics of the situation
18 and how we're going to proceed. Thank you.

19 MS. GALLEGOS: Thank you, Commissioner, and all
20 the rest of you. Mine is brief. My name is Karen Gallegos.
21 I'm the President of the Oakley Senior Club and I'm also a
22 fifth generation pioneer family member of east Contra Costa
23 County.

24 And as you well know from the last census report
25 our end of the County is growing by just phenomenal rate.

1 And to that subject I'd like to speak about the need for
2 more power in our state and also our country for that
3 matter.

4 The facility being proposed today will use dry-
5 cooling technology, which all but eliminates the need for
6 large amounts of water to operate this plant.

7 I like that a lot because it helps to preserve our
8 Delta, which I consider a valuable resource out there and
9 second only to the people.

10 What I would even like more is the idea of
11 building this new facility with new technology that will
12 allow some of the older, less-efficient plants to be closed
13 and shut down. That is a good thing for East County and a
14 good thing for California.

15 We need more access to energy, especially for
16 future generations, and that's why I support this project
17 and hope you do too. Thank you.

18 PRESIDING MEMBER BOYD: Thank you. You don't hear
19 often from a fifth generation Californian, much more a fifth
20 generation in this area, so my hat is off to you. I always
21 felt pretty good about being a fourth generation Californian
22 but that's pretty good.

23 All right, one quick comment since I am trying to
24 fill time and this is an opportunity to impart some
25 information. A couple of comments about the proceedings we

1 are engaged in and then we are going to go off the record
2 for a few moments and decide how to proceed.

3 Something I probably should have said at the
4 beginning: These type hearings are quasi-judicial. The
5 Siting Committee sitting up here plus advisors operate in a
6 very judicial way. The decision that is made on this case
7 is predicated on the record that has accumulated through
8 these various hearings.

9 The staff, who will be introduced shortly, and the
10 applicant and the intervenors are all treated the same. We
11 as the Siting Committee members are not allowed by law to
12 even carry on a conversation of any kind with these people
13 that doesn't take place in a public setting like this,
14 including our own staff. They are treated as intervenors.
15 So there is no collusion behind closed doors with staff on
16 what the outcomes might, everything is predicated on the
17 record.

18 Therefore, we sitting up here have to be careful
19 in what we say. Many times I like to lecture people about
20 energy but I don't want to -- we don't want to ever seem
21 like we're biased in one direction or another. So often we
22 bite our tongues and listen to what folks have to say.

23 So with that said we are going to go off the
24 record now for a few minutes and try to decide how we are
25 going to proceed.

1 (Off the record at 11:15 a.m.)

2 (On the record at 11:30 a.m.)

3 PRESIDING MEMBER BOYD: Thank you, everybody,
4 we'll go on the record now.

5 I am going to ask, as I said, one more time if
6 there is anyone who would like to, any public comment?
7 Anyone who would like to do that now versus waiting. We
8 have a -- now we have got three folks I noticed. John, you
9 were first, come on up. And then while you're coming up
10 here, please remember to mention your name. Tell us if we
11 have a card on you and we'll sort through and pull it out so
12 we know you have spoken.

13 The system, I notice, keeps coming to a point and
14 then collapsing. After we get done with this unorthodox
15 early public comment, which you all may like. It's a
16 different format for us. We will return to the more typical
17 way of conducting one of these hearings with or without
18 WebEx. I can't communicate with those people and give them
19 our apologies but technology will do this to you every once
20 in a while.

21 We will continue with the hearing. Since we are
22 having a hearing on the 25th maybe those folks will still
23 have an opportunity to participate if the system doesn't
24 come back up today. Or even if it does they may decide --
25 anyway, enough said. Yes sir.

1 MR. WILLIS: I'm Ken Willis, I have a card there.
2 I'm an Oakley resident.

3 PRESIDING MEMBER BOYD: Can you get a little
4 closer to the microphone.

5 MR. WILLIS: I'm Ken Willis, I live here in Oakley.
6 I'm buying a house right over here on Fetzner Lane. I've
7 lived in this area, in Oakley/Knightson for 35 years. I've
8 been in Knightson for ten years. I'm a third generation
9 Californian, maybe four, I'm not positive. My great-
10 grandfather came to California in 1953.

11 I just want to go on the record that I support
12 this power plant being built here in Oakley. We need the
13 work and all the benefits it's going to bring here. I just
14 wanted to come down and say that.

15 PRESIDING MEMBER BOYD: Thank you very much,
16 appreciated that. Yes? There were a couple of other hands.
17 Yes, ma'am.

18 MS. FERGUSON: Hi, my name is Marilyn Ferguson, I
19 do have a card up there as well. I'm a construction
20 electrician. I live here in East County and I have been out
21 of work for a year. I need --

22 I am here to ask this panel to -- to tell you that
23 we really do need the work in East County and to please
24 approve this project. Not only will it bring in jobs to
25 this area but it will bring in millions in much-needed

1 sales, property tax and revenue.

2 PRESIDING MEMBER BOYD: Thank you very much. Yes,
3 sir.

4 MR. AMADOR: Thank you for the privilege to
5 address you. My name is -- on this project. My name is
6 Tony Amador, I'm 54 years old. The life of this community
7 which I love so much.

8 You know what, it takes a village to raise our
9 children. I raised my four siblings here and they are now
10 highly successful citizens and flourishing. Today from this
11 village I am asking you for your support in this endeavor of
12 producing fine children, fine citizens and proud Americans.

13 Thank you.

14 PRESIDING MEMBER BOYD: Thank you. Thank you for
15 being here today. Any others? Yes, yes ma'am.

16 MS. CROCKETT: Mr. Boyd and Commissioners. My
17 name is Mary Jane Crockett. I live at -- my residence is at
18 4370 Live Oak Avenue and I have lived here for the past 53
19 years. I survived my husband, Ken, who was born and raised
20 here. I would like to change my figure around but my
21 wrinkles on my face wouldn't match it but I'm 75 years old.

22 And we raised our children here.

23 And I'm proud to share with you that I had
24 received the award of Citizen of the Year last March for
25 2009, which is a distinction I never thought I would use in

1 introducing myself. But the project before us is extremely
2 important to me, my family and the residents of Oakley. So
3 mentioning the award seems appropriate to me today. And my
4 time is running out.

5 Having been around the area for so long I remember
6 the type of environment landlords previously, industry, has
7 been. Some previous attendants are still cleaning up the
8 mess they had left behind.

9 The Oakley generation plant is light years ahead
10 of the type of industrial neighbor we are accustomed to in
11 East County. Our region needs private industry to not only
12 provide jobs but to build a reasonable tax base.

13 This is not a new issue and lack of real
14 investment in Oakley has been a problem for some time. But
15 we still function relatively well because we have operated
16 on a very lean city government since we incorporated in
17 1999. Our vision paid off.

18 Today leaders of Oakley, trusted individuals
19 including myself, as we feel the Oakley Generation plant
20 Station to be -- to offer the type of healthy community we
21 envision for the next 20 to 30 years.

22 We are a small community. We don't have the
23 resources to actively recoup large businesses in our town
24 but Oakley doesn't have the time or the money to squander
25 real opportunities. So please approve this project for our

1 community. Thank you.

2 PRESIDING MEMBER BOYD: Thank you very much.
3 Anyone else? Well, this gentleman and then that gentleman
4 and then you, ma'am.

5 MR. ALTIMARI: Good morning, ladies and gentlemen.
6 My name is Neil Altimari. Thank you for allowing me the
7 time to comment this morning. I do have a blue card up
8 there. I am a resident of Oakley. I am speaking on behalf
9 of myself.

10 I have stated this project does offer economic
11 gain to the community and to the city of Oakley. However it
12 does come at a cost to the environment as well. This
13 project, if approved, will create pollution and it will
14 affect the residents and affect the health of the
15 population. It is not only going to affect our health today
16 but it is going to affect children's health and their
17 children's health. It is going to have an impact on the
18 future.

19 And if the decision is made to approve this it is
20 going to be done and there is not going to be able to be a
21 reverse ten years down the line as children are having
22 increased health risks.

23 I work as a paramedic in Contra Costa County and I
24 have seen the health that this has on children and the
25 elderly. Actually senior citizens -- it can have an effect.

1 And I just wanted to make the point that if this
2 happens then it's done and it is going to happen and comes
3 at a cost to the environment. Thank you, again.

4 PRESIDING MEMBER BOYD: Thank you for being here
5 today. Yes, sir. I could have said the gentleman in the
6 lime green shirt but I didn't. But I did, didn't I?

7 MR. GRANDIN: My name is Carl Grandin, I'm a
8 homeowner here on Oakley. I have also been a member of the
9 Building Trades for the last 30 years. I won't tell you how
10 old I am because everybody wants to call me senior. I do
11 have a card, however, in there as Carl Grandin, Sr. I also
12 have one in there as Carl Grandin, Jr. He's over that side
13 now.

14 We're both in favor of the plant. My association
15 with the power plants started almost as an apprentice when I
16 helped Pat over here work on the Foster Wheeler plant across
17 the street from what was then Tosca. I've worked at the
18 Pittsburg power plant, I've worked at the Antioch power
19 plant, I've worked at Potrero power plant. I would love to
20 work at the Oakley power plant so I am totally in favor of
21 this.

22 I managed to build several of the cooling towers
23 that people object so vehemently to the clouds of. When I
24 built them I was under the impression that they were going
25 to be using less water but they still seem to make the

1 clouds. This cooling system that they are using on this
2 plant will avoid all of that.

3 It's something that I think the city of Oakley
4 really needs. They don't have an industrial base here yet
5 they do have industrial land. There is almost nothing else
6 I can envision for the land being used other than what it is
7 proposed for it to do.

8 It's really hard on Oakley and it's really hard on
9 the building trades right now. My tax bills have been
10 lowered by the tax assessor, which means less money for
11 Oakley. And I'm watching business after business close its
12 doors. Something like this plant could really offer the
13 stimulus to this area to help it recover from this recession
14 that we are all going through. Thank you.

15 PRESIDING MEMBER BOYD: Thank you very much for
16 your testimony. Ma'am, you raised your hand. Good morning.

17 MS. WILKERSON: Good morning, Commissioners and
18 staff. My name is Regina Wilkerson, I live at 1713 Domain
19 Way in Oakley. I am a registered nurse, retired for 15
20 years, registered nurse in the state of California for 40
21 years, and I am a 23 year resident of Oakley. I am also a
22 parishioner at Saint Anthony Church and an active member in
23 the social concerns and in my community. I was also an
24 active proponent of Oakley becoming a city in 1999.

25 I am here today to give you just a peek into our

1 city and why we want and need this power facility. Because
2 of our outreach and social concern to this in need, Saint
3 Anthony Church provides parishioners a firsthand look into
4 the economic hardships many in our community have been
5 facing for years. The situation has grown worse, especially
6 during the recession as the previous gentleman mentioned.

7 Surprising to many, we here in Oakley have more
8 than a few homeless residents. Many of them have families.

9 We have our share of Oakley residents in need of food,
10 clothing and the basic necessities, of which through the
11 goodwill of Saint Anthony Church we have been trying to
12 provide these needs. Not only to the Oakley residents but
13 the outgoing communities, Knightson, Brentwood, et cetera.

14 Any decision that does not economically help
15 Oakley residents actually hurts us all and would have very
16 real consequences for me, my neighbors and my parishioners.

17 I feel that I can say with conviction because we are on the
18 front lines and we see the needs of the people.

19 I want to thank our mayor, our first mayor, Pat
20 Anderson and the council members through our current mayor,
21 Jim Frazier and our council members for their responsible
22 governing in the city of Oakley to this point.

23 Our community is surviving but we are on the edge,
24 even with this responsible management. Our city budget,
25 while acceptable today, is on the edge. Public safety

1 services, while acceptable today, is on the edge.

2 Property tax revenue in Oakley from retail or
3 industry is currently unacceptable with little hope of
4 improvement due to the encroachments by Antioch and
5 Brentwood.

6 The Oakley power plant is a ray of hope for our
7 community. And especially the many foreclosures that have
8 affected our community and also property tax revenues.

9 Commissioners, you have the power to help our
10 community sustain itself. Something most individuals
11 desire. Please, vote to support the speedy approval of this
12 project. Thank you.

13 PRESIDING MEMBER BOYD: Thank you very much. All
14 right. Well I am going to take two more people and then we
15 are going to revert back to the normal process and
16 procedures. Sir, did you have your hand up in the front
17 row?

18 MR. FEERE: Yeah.

19 PRESIDING MEMBER BOYD: I'm going to call on you
20 first then the lady back there and one other gentleman, I'll
21 take three. We have a lot of people who just showed up but
22 we can't continue it on like this, we've got to -- for those
23 of you who just shown up, we have been unable to start the
24 formal part of the hearing because of electronic problems so
25 we have been taking public testimony. But I'm giving up on

1 technology in a few minutes and we're going to revert back.

2 Sir, would you like to speak first? I've been looking at
3 you all morning so I know you paid the dues, so to speak.

4 MR. FEERE: Good morning Vice Chairman Boyd and
5 members of the Commission. My name is Greg Feere and I am
6 here on behalf of the 30 construction trades unions and well
7 over 30,000 building trades men and women who reside in
8 Contra Costa County.

9 The big concern that I have right now is that we
10 have gone through the worst economic downturn that I have
11 ever seen in my lifetime. We are currently somewhere
12 between 30 and 35 percent unemployed, which has never, never
13 happened in the 20 years that I have been running the
14 Building Trades Council here. Men and women through no
15 fault of their own have been out of work for a year, even
16 longer. The economic disaster that this economy has created
17 is unbelievable.

18 That's why the importance of this job is so
19 critical. I mean, it is more than critical. It provides
20 not only, you know, opportunity but real hope for the
21 future. We have apprenticeship opportunities. We re the
22 only people that really train in this county.

23 The amount of revenue that is generated with these
24 jobs is just astronomical, you know. When we hear about the
25 reports on the jobs that this generates -- these jobs, you

1 know. And I have been involved with every single power
2 plant in this county for the last 20 years, including all
3 the peaker plants. And it is really close to almost 1,000
4 construction jobs that this project will generate.

5 But it's always overlooked and it's always down-
6 played, even the newspaper doesn't recognize this, is that
7 there's -- for every one construction job there two to two-
8 and-a-half to three secondary jobs. Payroll clerks,
9 receptionist, material suppliers. All of these people that
10 benefit by this project. And it's always overlooked. So
11 all these projects and jobs, you know, if you see one
12 construction worker out there -- if everybody would look and
13 see three other secondary jobs they would see what kind of
14 impact this is.

15 And this is, this is huge. Because, you know,
16 we're talking, you know, pretty simple arithmetic. If you're
17 talking close to 1,000 construction jobs all you've got to
18 do is multiply it by three and you've got probably 4,000
19 jobs that this project generates.

20 In addition to the project, you know, I've listed
21 and I have read every report. I saw this issue with the
22 butterfly. I was pretty amazed by this because I lived out
23 -- I moved to Contra Costa in 1952 and I have lived in East
24 County here for 30 years and I don't really recall seeing
25 the butterflies. But I think in the report the way it was

1 written, 100 years ago we had 25,000 of these butterflies, I
2 guess metal back -- Lange's Metalmark Butterfly, and in 2006
3 they counted 26.

4 Just recently at the Merritt project they had a
5 mitigation for the butterflies of somewhere in excess of
6 right around \$20,000. So those butterflies are almost worth
7 about \$1,000 apiece and they get treated a whole lot better
8 than some of the people in this area. So I've got really
9 concerns, you know, about 26 butterflies in this area. I
10 said, I'm all for clean air, clean energy and clean water
11 but, you know, I think the people in the community need to
12 come first.

13 I would hope that you would, you know, approve
14 this project so that, you know, we can see some real hope
15 and real opportunity because this community needs it. So I
16 would urge you, urge you beyond, you know, anything that I
17 could humanly say here to get this project up and running as
18 soon as possible, thank you.

19 PRESIDING MEMBER BOYD: Thank you. I am going to
20 ask you to do something so don't leave the podium. In the
21 last 10 or 15 minutes I have watched a huge influx of
22 people. I trust a lot of them are maybe members of your
23 trade organization. I don't know if you turned around you'd
24 recognize them. Maybe you want to ask them for a show of
25 hands of people who are in your camp, so to speak, on this

1 so we just get some --

2 MR. FEERE: Well I'd ask something even better
3 than that. If all the people here would stand up who are in
4 support of this project; would you please stand up and show
5 your community support.

6 PRESIDING MEMBER BOYD: Okay.

7 MR. FEERE: Is that a good show for the hands?

8 PRESIDING MEMBER BOYD: We appreciate that and not
9 everybody has to testify.

10 MR. FEERE: Okay.

11 PRESIDING MEMBER BOYD: Thank you very, very much.

12 MR. FEERE: Thank you.

13 PRESIDING MEMBER BOYD: I identified two other
14 people. Yes, ma'am.

15 MS. TONKIN: Hello, Commissioner and staff. Thank
16 you for the opportunity to speak. My name is Susan Tonkin
17 and I am a -- I have been an Oakley/Brentwood resident for
18 over 20 years. I brought with me today Jordan Miner, we'll
19 give him just a second. He is actually going to speak on
20 our behalf. Joni Smith who is our vice president of the 4-H
21 Council for Contra Costa County. Our director of the UC
22 Extension for UC Davis, Shelly Murdock, and a copy of the
23 parents back there have decided to hide out. But if it's
24 okay with you I would like Jordan as a youth to speak on our
25 behalf.

1 PRESIDING MEMBER BOYD: Welcome, Jordan.

2 MR. MINER: I am here today to voice support for
3 the Radback nuclear (sic) energy plant. They donated to 4-H
4 thousands of dollars for our Roddy Ranch golf tournament to
5 help us keep our 4-H program going. That money also helped
6 us with science technologies and to educate the young.

7 If the council members approve the building of the
8 nuclear energy plant, and it will be able to hold a nine-
9 point magnitude earthquake. (Sound system distorting
10 speaker.) -- become a common practice, thank you.

11 PRESIDING MEMBER BOYD: Thank you, young man. I
12 just think for the record I need to correct something you
13 said. I believe you used the term "nuclear energy plant"
14 more than once. We older folks are very sensitive to that
15 term this week. And it's not a nuclear plant, I think you
16 understand that, it's a conventional power plant, we would
17 say. But thank you for your courage in being here.

18 MS. TONKIN: Clean energy plant.

19 PRESIDING MEMBER BOYD: Clean energy plant, okay,
20 very good. Thank you very much, young man.

21 MS. TONKIN: And lastly I would like to point out
22 that we feel that this plant will provide clean energy in
23 support of our community. The community will benefit
24 through increased taxes, through jobs and also the
25 contribution to nonprofit groups like 4-H.

1 And the youth in our county just in the three
2 clubs that support Knightson, Antioch, Brentwood and Oakley
3 have contributed over 6,000 hours of community service and
4 we have other clubs on the east side also. So I just want
5 to thank you for your time and allowing Jordan to speak.
6 And I do appreciate you correcting that this is a clean
7 energy plant.

8 PRESIDING MEMBER BOYD: Thank you all very, very
9 much. Now the gentleman in the red shirt is the last person
10 I remember when I set my quota as three more. For now.
11 More later. Although more people may begin to recognize
12 that their vote has been cast, so to speak.

13 MR. D'AMICO: Good afternoon, Commissioners. I do
14 have a green (sic) card up there. My name is James D'Amico.
15 I'm the owner of Black Bear Diner and I am also the vice
16 president of the Oakley Chamber of Commerce.

17 I'm here today because I think Oakley needs more
18 jobs. Not just for our young people but for everyone. We
19 need more customers in town. Not just in our restaurants
20 but in our hotels, our hardware store and our tire store.
21 Everywhere. Even people using our gas stations. Every
22 little bit helps.

23 And in the case of the power plant we're not
24 talking about a small amount of money the city stands to
25 receive. We need the revenue to help pay for our police and

1 fire divisions as well.

2 This is exactly the type of project that brings
3 people into our city to help all of our Oakley businesses.
4 So I am asking you to please pass this power plant so we can
5 generate some business for all of our businesses here in
6 Oakley. Thank you.

7 PRESIDING MEMBER BOYD: Thank you very much for
8 your testimony. As I advised some time ago when we
9 reconvened -- for those of you who just arrived a short time
10 ago, we are engaged in a fairly unorthodox procedure here
11 today because we announced this meeting, we noticed this
12 meeting as being WebEx accessible. There are large numbers
13 of people out there expecting to listen and watch and
14 participate by audio and video.

15 That system has failed us all morning so we have
16 been holding some public testimony now before we turn to the
17 presentations that we normally would go through before
18 public testimony. I think this has worked out reasonably
19 well. But after almost two hours of waiting for the
20 electronics system to correct itself, as I indicated, we've
21 pretty well given up on that possibility.

22 So what I am going to do now is go back to where
23 we would have been at about 10:15 this morning. Call upon
24 the intervenor, staff and applicant to introduce themselves.
25 Then I will turn the hearing over to our hearing officer

1 and we will commence the hearing on the subjects that were
2 noticed to be heard today and then we will again return to
3 public testimony as indicated in the agenda at the
4 appropriate time later in the day.

5 So with that I would just again remind everybody
6 and welcome you to the Oakley Generating Station Prehearing
7 Conference and Evidentiary Hearing. We are going through
8 two stages today all at once and I will let the hearing
9 officer explain that to you more.

10 I am going to just do my last little bit here and
11 ask now for the introduction of parties who are very germane
12 to this issue. I'll first ask for the applicant to
13 introduce themselves, I'll turn to the staff then the
14 intervenors and then turn it over to our hearing officer.
15 So applicant, please.

16 MR. GALATI: Thank you, members of the Committee.
17 My name is Scott Galati and I'm with the law firm of
18 Galati|Blek. It is so named because I won the coin toss.
19 And I am proud to represent Contra Costa Generating Station
20 LLC, which is wholly owned by Radback Energy.

21 MR. LAMBERG: Thank you, Scott. My name is Greg
22 Lamberg, project manager for Contra Costa Generating Station
23 LLC. And on behalf of CCGS and Radback Energy I'd like to
24 thank Mayor Jim Frazier and the City Council and the City
25 Manager Brian Montgomery and all the citizens of Oakley for

1 hosting us here today at this beautiful, state of the art
2 facility, WebEx notwithstanding.

3 Also on our team here today we have Rick Crowe
4 from CH2M Hill, our field biologist. We have Keith McGregor
5 from CH2M Hill working also on compliance issues. Doug Davy
6 from CH2M Hill is our ALC project manager and Jim McLucas
7 also with Radback Energy who is managing all the engineering
8 aspects of the project.

9 Again, thank everybody for coming out today and
10 for all the comment and we look forward to a very productive
11 afternoon.

12 PRESIDING MEMBER BOYD: Thank you. Staff.

13 MR. BELL: Good morning, Commissioner Boyd,
14 Commissioner Peterman, Ms. Vaccaro and members of the
15 public. My name is Kevin Bell, Senior Staff Counsel with
16 the California Energy Commission. With me here at the front
17 desk is our project manager --

18 SPEAKER FROM THE AUDIENCE: Press the button.

19 MR. BELL: I pressed it. I'll talk loud. With me
20 here at the front table is Pierre Martinez, our project
21 manager. To avoid turning this into an academy awards
22 speech I'll just thank our numerous staff who are present
23 with us as a group. We are very happy to be here serving
24 the public.

25 PRESIDING MEMBER BOYD: Thank you. And

1 intervenors? You're coming to the -- oh yes, you need a
2 microphone, Mr. Sarvey.

3 MR. SARVEY: Yeah, my name is Robert Sarvey, I am
4 the intervenor on this project. For the record I want to
5 note that there is some very good looking food out in the
6 hallway that is disappearing rapidly so I'll leave it to the
7 Committee to decide what to do next.

8 PRESIDING MEMBER BOYD: Thank you, Mr. Sarvey.

9 At this time, normally two hours ago, I would have
10 also asked if there is any public officials who haven't
11 already testified or public agencies that are involved with
12 this proceeding who would just like to identify themselves
13 for the record or save themselves for later if they want to
14 introduce themselves at that time.

15 But this is an opportunity to do that. Folks from
16 the city of Oakley we heard from. From any other cities,
17 from any federal government agencies, other state of
18 California agencies or other local districts. Sir, you have
19 risen to the microphone?

20 MR. YERAKA: Yes. My name is Mike Yeraka; I am
21 general manager of Diablo Water District here in Oakley.
22 And I will be available the entire day to answer any
23 questions you may have regarding our water supply that we
24 have available for this project.

25 PRESIDING MEMBER BOYD: Thank you. Any other

1 folks?

2 MS. TRUESDELL: Kathleen Truesdell and Brenda
3 Cabral from Bay Area Air Quality Management District.

4 PRESIDING MEMBER BOYD: Thank you very much for
5 being here.

6 MR. NAGANO: Chris Nagano, U.S. Fish & Wildlife
7 Service.

8 PRESIDING MEMBER BOYD: Thank you. Any other
9 state or federal agencies involved in this? Seeing no one
10 else I am going to thank everybody.

11 I want to make another comment since the audience
12 has swelled to more than double the number of people I
13 addressed two hours ago.

14 This is a siting case hearing being conducted by
15 the Energy Commission; I am Commissioner Jim Boyd. Also at
16 the dais is Commissioner Carla Peterman who is a brand new
17 Commissioner who is auditing this not being an official
18 member yet, she will be as of tomorrow and our hearing
19 officer here in a moment I will turn the proceeding over to.

20 This is a very -- this is a judicial-type process.
21 We sit as a committee hearing all the evidence that is
22 presented in testimony. The decisions that are made are not
23 based on our emotions but based upon the record that is
24 developed that we have to review and ultimately write a
25 Presiding Member's Proposed Decision that will go to the

1 full Commission.

2 As the Siting Committee of two commissioners and
3 hearing officer and our immediate staff we do not interact
4 with the intervenors, with the applicant or the staff of the
5 Energy Commission in any setting other than a public setting
6 like this hearing. As I said, we can't even talk to our own
7 staff about this case. Therefore it's predicated on the
8 record that's developed, therefore it's a very judicial-type
9 process. So you understand the process.

10 Now I am going to turn the hearing over, something
11 I would have normally done almost two hours ago, to our
12 hearing advisor, Kourtney Vaccaro, who will proceed from
13 this point to explain the proceedings and conduct the rest
14 of the hearing.

15 HEARING OFFICER VACCARO: Thank you, Commissioner
16 Boyd? Can everyone hear me?

17 Okay. Again, thank you all for your flexibility
18 and your patience this morning. As has been indicated by
19 Commissioner Boyd there is a procedure that we typically
20 follow when we conduct prehearing conferences and
21 evidentiary hearings. We typically do reserve public
22 comment to the very end of the day.

23 I bring that up right now because again we see so
24 many of you here. This is a tremendous number of members of
25 the public; but it is going to be a while yet before we get

1 to public comment again. So those of you who are planning
2 to stay for awhile, we encourage you to please take any
3 available seat because there are still plenty up front. If
4 you're comfortable standing I leave that to you. But I do
5 invite you to have a seat because we are going to keep
6 moving until we take a lunch break.

7 I thank the parties in particular for their
8 patience as well; I think because this is a little different
9 than what you are used to. And I think you probably thought
10 we were going to make a bit more headway substantively
11 several hours ago. And finally, Intervenor Sarvey. I
12 extend apologies to you that you don't have a microphone at
13 your table and I apologize that you are going to have to get
14 up and come to the podium to address us. You should have a
15 microphone just as the others do.

16 MR. SARVEY: Is it possible I could use a
17 microphone?

18 MR. GALATI: You can use mine when it's your turn.

19 HEARING OFFICER VACCARO: Yes, I think that would
20 be appropriate, to have you sit and sort of be treated just
21 as the other parties because for all intents and purposes
22 you are like the other parties in this proceeding.

23 MR. SARVEY: Thank you.

24 HEARING OFFICER VACCARO: I think I am not going
25 to repeat what -- I am not going to repeat what Commissioner

1 Boyd said, however I am going to underscore some very
2 important points. The Committee here today is going to take
3 in evidence after we get through the prehearing conference
4 portion.

5 The prehearing conference portion is really just
6 housekeeping. It's letting everybody know what to expect
7 for today's proceedings. Which issues, which topical areas
8 are in dispute, which topical areas we are going to
9 introduce and admit all of the evidence on papers, where we
10 might need witness testimony, what we plan in terms of
11 briefing, how we expect the day to proceed. That's the
12 prehearing conference portion.

13 All of that will get us to the evidentiary
14 hearing. That's when evidence is admitted into the record.

15 It is going to be done on a number of papers that have been
16 prepared in advance of today's hearing. It is also going to
17 be done on oral testimony.

18 What is very important to understand is all of
19 this information, once admitted into the record, becomes the
20 basis for what's called a Presiding Member's Proposed
21 Decision. That's going to be prepared by this Committee.
22 That decision will ultimately be put out for public review
23 and comment and then it becomes presented to the full
24 Commission. So these Committee Members don't make a
25 decision today on this power plant. What they do is take

1 all of the evidence in, listen to what the parties have to
2 say and then prepare a Presiding Member's Proposed Decision.

3 However, this isn't the only day of hearing. I
4 think many of you have read the notice. And if you haven't
5 I'd like to make you aware there is another hearing date for
6 the Oakley Generating Station Project and that is March 25
7 in Sacramento. So we are going to get through as much as we
8 can today. There will probably be a few items that are held
9 over until the 25th.

10 With that I think I am going to go ahead and get
11 started with the housekeeping so that we can move forward to
12 the evidentiary proceedings.

13 Again, the parties did everything they were asked
14 to do. We received prehearing filings on time. We received
15 the review of witness and topical information, so that I
16 think we're ready to just get to the meat of what is at
17 issue today and how we can go about addressing information.

18 So here is my understanding. My understanding,
19 first of all, is that the parties entered into a stipulation
20 this morning that might affect which issues we are actually
21 going to be discussing. My understanding before we convened
22 this morning is that we had about six or seven topics that
23 were potentially in dispute, Air Quality, Biological
24 Resources, Land Use, Public Health, also classified or
25 characterized as Environmental Justice, Soil and Water

1 Resources, Alternatives and possibly Socioeconomics.

2 So is there anything among that list that has been
3 resolved so that we are not going to be hearing witness
4 testimony on those topics today? Mr. Galati, I'll let you
5 start.

6 MR. GALATI: Yes. I want to extend my thanks to
7 the staff and Mr. Sarvey for having productive
8 conversations. We entered into a stipulation in which we
9 modified one condition, specifically AQS-C8 to address some
10 concerns that Mr. Sarvey had raised. And that has now
11 resolved the issues between Mr. Sarvey, staff and us with
12 respect to Air Quality, Public Health, Socioeconomics and
13 Environmental Justice.

14 In addition there was an issue raised with worker
15 safety that was more properly characterized as hazardous
16 materials dealing with natural gas steam blows -- excuse me,
17 natural gas blows and purging. Staff already had a
18 condition in hazardous materials that took care of that
19 issue so there is not a worker safety issue.

20 I would like to just make sure I state for the
21 record that this does not include any of the other areas as
22 well as does not include Mr. Sarvey's ability to delineate
23 more issues with the district with respect to the FDOC and
24 the Bay Area Clean Air Program.

25 So we will not present any evidence other than

1 what you have already seen on Air Quality. Don't plan to
2 put a live witness for Public Health, Socioeconomics as it
3 relate to Environmental Justice nor Worker Safety.

4 HEARING OFFICER VACCARO: Thank you. Mr. Bell.

5 MR. BELL: Yes, the staff has entered into that
6 stipulation as well. We are planning to call no witnesses
7 pursuant to that stipulation in the area of Air Quality,
8 although I do understand that representatives of the Bay
9 Area Air Quality Management District are present so
10 Mr. Sarvey can ask them questions. And if the Committee has
11 any questions of course you're free to ask those as well.

12 With the resolution of those other issues staff
13 would be presenting live testimony otherwise in the area of
14 Water Resources, Biological Resources. I believe
15 Alternatives is still an area of contention as is
16 potentially Land Use.

17 As a housekeeping matter I do have to say that the
18 parties had all agreed that the Land Use witnesses who both
19 reside in Southern California could participate via WebEx
20 today and it doesn't appear that that is going to happen.
21 If that issue is not resolved before we reach that topic we
22 would be asking that that matter be continued to the 25th to
23 be heard on that day. I can't put on witnesses that we
24 don't have.

25 HEARING OFFICER VACCARO: Understood. Okay, thank

1 you. Mr. Sarvey.

2 MR. SARVEY: Yeah. I think Mr. Galati has
3 properly characterized our stipulation and I will be
4 withdrawing my Worker Safety and Fire Protection testimony.

5 I am available if the Committee has any questions on any of
6 my other testimony. As far as staff's Land Use witness I
7 have no problem with them not being on-line today. I think
8 that pretty much summarizes the agreement.

9 HEARING OFFICER VACCARO: Okay, thank you. And
10 actually you jumped ahead but while you're standing there.
11 When you say you withdraw your testimony with respect to --

12 MR. SARVEY: Hazardous Materials.

13 HEARING OFFICER VACCARO: So could you identify by
14 exhibit number which documents you are withdrawing.

15 MR. SARVEY: That would be Exhibit 404, Worker
16 Safety Testimony of Robert Sarvey.

17 HEARING OFFICER VACCARO: Okay. And I noticed you
18 did not enter anything on 405, which would have been
19 Socioeconomics, is that correct?

20 MR. SARVEY: 405 is withdrawn as well.

21 (Intervenor's Exhibits 404 and 405
22 were withdrawn.)

23 HEARING OFFICER VACCARO: Okay. And then your
24 Environmental Justice testimony, which was Exhibit 401?

25 MR. SARVEY: I have not agreed to withdraw it.

1 HEARING OFFICER VACCARO: Okay.

2 MR. SARVEY: It's still in the record as long as
3 -- along with my Air Quality testimony.

4 HEARING OFFICER VACCARO: Okay, thank you. Okay,
5 so I think based on what everyone has stated that we have
6 Air Quality as a topic for witness testimony, for the Air
7 Quality Management District to sponsor the Final
8 Determination and we are also looking to have those
9 witnesses available for cross-examination by Intervenor
10 Sarvey.

11 Biological Resources is still a topic for which
12 witness testimony will be presented. Mr. Sarvey, you
13 indicated before today's proceedings just as we were dealing
14 with our WebEx issues that your witness might not be
15 available until what time today?

16 MR. SARVEY: Two o'clock.

17 HEARING OFFICER VACCARO: Until two o'clock. Are
18 all the parties aware of this and in agreement that
19 Biological Resources will be moved to the end of today's
20 proceedings?

21 MR. GALATI: Yes, I'm aware of that. I would also
22 like to offer to Mr. Sarvey if he is making that witness
23 available only because I had asked for cross-examination? I
24 am willing to waive cross-examination and just stipulate on
25 the written record.

1 HEARING OFFICER VACCARO: I think before we hear
2 from staff why don't we hear from you, Mr. Sarvey.

3 MR. SARVEY: I believe in my discussions with
4 staff they had some questions so -- I can't speak for them
5 so I think we need to hear from them first.

6 HEARING OFFICER VACCARO: Would you mind coming to
7 the podium. I do apologize. Or if someone else, perhaps
8 Mr. Martinez, if you wouldn't mind allowing Mr. Sarvey the
9 opportunity to sit down while we go through this
10 housekeeping I think it would be beneficial for everybody.
11 Thank you. So if you wouldn't mind just right now having a
12 seat next to Mr. Bell and we can have you at a microphone
13 and continue this discussion.

14 MR. SARVEY: I'm sorry, I lost track of the
15 question.

16 HEARING OFFICER VACCARO: Well, you were
17 indicating that staff might have some inquiries for your
18 witness and for that reason your witness still might need to
19 be available for cross-examination, even though the
20 applicant is willing to waive cross-examination.

21 MR. SARVEY: The staff preliminarily told me
22 before the hearing that they were so I think we need to hear
23 from them on that issue.

24 HEARING OFFICER VACCARO: Thank you.

25 MR. BELL: Staff does have some brief questions

1 that we need to ask Dr. Weiss. Our cross-examination will
2 be brief. I don't expect it's going to take more than ten
3 minutes but there are some questions I do need to ask.

4 HEARING OFFICER VACCARO: Okay. My assumption,
5 Mr. Sarvey, is that the reason that we are pushing this time
6 back is because this is a witness who is going to be here in
7 person, not testifying by telephone, because we all know we
8 are having telephone difficulties.

9 MR. SARVEY: He is actually in transportation, he
10 is in transport right now. Is it still possible for him to
11 testify by phone with the WebEx down?

12 HEARING OFFICER VACCARO: At this point in time I
13 am not aware of any conference call capabilities that would
14 allow us to have any testimony by witnesses who are not in
15 person. So I think we still have some time to see if WebEx
16 is going to come on-line. It's helpful that Biological
17 Resources is going to be moved probably to the last item but
18 I can't guarantee you that your witness would be able to
19 testify by telephone.

20 MR. SARVEY: Well is it possible to move him to
21 the 25th much like we are going to do with the staff's land
22 use witness if we cannot get the WebEx up?

23 HEARING OFFICER VACCARO: That's something that we
24 will explore later. But if that's the only way that we are
25 able to have this witness available to be cross-examined

1 then I think that's what we will have to do. But staff
2 might, between now and the time we get to that, rethink
3 whether or not these cross-examination questions really are
4 necessary for the purposes of these proceedings.

5 MR. BELL: Of course.

6 HEARING OFFICER VACCARO: Land Use, the topic of
7 Land Use we will move to March 25th unless we are able to
8 get those witnesses to be able to testify by way of
9 telephone.

10 And then again Soil and Water Resources. I think
11 there is no question we will be hearing from witnesses on
12 that topic. And we have the benefit of two districts,
13 special districts here who also indicated a willingness to
14 answer any questions that the Committee might have. Thank
15 you for that.

16 Alternatives we will move to March 25th.

17 And so I think our topics for March 25th as I
18 understand them are Alternatives, Hazardous Materials
19 Management as it relates to pipeline safety. And we will
20 handle Transmission System Engineering Appendix A on March
21 25th as well. However, a hearing for witnesses on March
22 25th does not preclude us from taking in most or all of the
23 evidence on the papers today and we'll discuss that in just
24 another moment.

25 So in terms of what we are going to talk about

1 today: Air Quality, Biology, Soil and Water Resources.

2 Mr. Galati, is that your understanding?

3 MR. GALATI: Yes. I would ask that -- the issue
4 on Biological Resources for us is limited to a crossover in
5 water that has to do with the management of Wetland E. And
6 so I would ask the Committee's indulgence to have those
7 witnesses testify as a panel for that purpose because I
8 think it will provide clarity.

9 HEARING OFFICER VACCARO: Okay. And before the
10 other parties respond I think all the parties will notice
11 that in the notification for today's proceedings the
12 Committee advised that a panel or informal type proceeding
13 might be used to facilitate eliciting testimony. I think
14 that's the best way, in fact, to address the biological
15 resources and soil and water issues. However, we will hear
16 from Mr. Bell and then we'll hear from Mr. Sarvey.

17 MR. BELL: That would be staff's preference, to
18 proceed by way of panel testimony. The staff finds that
19 more informative and more efficient.

20 HEARING OFFICER VACCARO: And one caveat,
21 Mr. Sarvey, before you speak. I think that would be helpful
22 for the testimony from the Air Quality Management District
23 as well, to have the two witnesses sit together and be able
24 to answer any questions that you might have.

25 MR. SARVEY: I have absolutely no issues with

1 that.

2 HEARING OFFICER VACCARO: Okay. I think with that
3 let's move on to the next item of housekeeping which has to
4 do with exhibits.

5 In preparation for today's proceedings I provided
6 all of the parties with a compilation of the exhibits that
7 they intend to rely on and admit or have admitted into the
8 record. You have had several opportunities now to review
9 the exhibit list.

10 However, before we move any further I would like
11 to first give the applicant an opportunity to confirm what
12 the exhibits are and if there are any additions to the list.

13 Right now it reflects Exhibits 1 through 56, all of which
14 have been served on all of the parties, the Hearing Advisor
15 and the Committee. Are there any additional witnesses --
16 excuse me, exhibits that you would like to at least offer at
17 this point, Mr. Galati?

18 MR. GALATI: Yes, I have three additional. They
19 were distributed to everybody, including the Committee,
20 earlier today. Exhibit 57 is the Joint Party Stipulation
21 dated March 14, 2011. For the Committee's edification,
22 that's the stipulation that removed much of the topic areas
23 from our evidentiary hearing today.

24 Exhibit 58 is a letter from the city of Oakley to
25 the Energy Commission dated March 14, 2011. You heard that

1 letter being referred to today in the public comment. In
2 which they expressed that they support the way the Final
3 Staff Assessment treated their conditions of approval.

4 Exhibit 59 was distributed last night. It was a
5 revision, an applicant-proposed revision to Soil and Water
6 condition 16. And that was created in response to -- excuse
7 me, I apologize, that's a correction, Soil and Water 6.
8 That's in response to staff's rebuttal testimony regarding
9 Wetland E.

10 So those three new exhibits, 57, 58 and 59, we
11 would like at least marked for identification.

12 HEARING OFFICER VACCARO: Okay. And I have one
13 question for you regarding the letter from the city of
14 Oakley. Is there any particular reason why that would be
15 treated differently than just submitting it as a --
16 docketing it as a comment letter as opposed to identifying
17 it as an exhibit?

18 MR. GALATI: It was -- I'd like in the record as a
19 piece of evidence. It was actually docketed, sent directly
20 to the Energy Commission. I wanted to be able to refer to
21 it in response to something that came up this morning in
22 public comment. If there is an objection to it --

23 HEARING OFFICER VACCARO: Okay, thank you.

24 (Applicant's Exhibits 57, 58 and 59 were
25 marked for identification.)

1 HEARING OFFICER VACCARO: And before I move to the
2 other parties and ask about their exhibits, I did get the
3 thumbs up from the Public Adviser's Office that WebEx is
4 back on-line. Is that correct, Ms. Sadler?

5 DEPUTY PUBLIC ADVISER SADLER: (Inaudible - away
6 from microphone.)

7 HEARING OFFICER VACCARO: Oh, okay. All right.

8 Those of you who are participating by way of
9 WebEx, welcome. What we ask of you, those of you who are
10 connected by telephone, please hit the mute button so that
11 we don't hear you talking or others talking in the
12 background. We ask that you do not put us on hold. If you
13 do so we will be subject to whatever music or messages play
14 through your hold system.

15 We are not going to address any further public
16 comment until the end of today's proceedings so please stay
17 on the line, listen in and we're glad that you are finally
18 able to join us.

19 I'll turn to Mr. Bell now and let's go over your
20 exhibits.

21 MR. BELL: Staff has a total of four exhibits.
22 Exhibits 300, 301, 302 and 303. Exhibit 300 would be the
23 Final Staff Assessment, which was docketed March 1. Exhibit
24 301 would be -- I believe that's the Final Determination of
25 Compliance. Exhibit 302, the Supplemental Staff Assessment

1 with respect to the downstream transmission system
2 engineering studies. And Exhibit 303, which is the rebuttal
3 testimony filed by staff.

4 (Staff's Exhibits 300, 301, 302 and 303
5 were marked for identification.)

6 HEARING OFFICER VACCARO: Okay. It is my
7 understanding, Mr. Bell, that all of these documents have
8 been served, previously served on the parties. I know that
9 the hearing office has received them, that the Committee has
10 received them; is that correct?

11 MR. BELL: That is correct.

12 HEARING OFFICER VACCARO: Okay. Anything else to
13 add?

14 MR. BELL: No.

15 HEARING OFFICER VACCARO: Okay. Mr. Sarvey, if we
16 can go through your exhibits, please.

17 MR. SARVEY: Did you just want to discuss each
18 exhibit individually?

19 HEARING OFFICER VACCARO: I think we just want to
20 be clear. You did indicate a few moments ago that you
21 withdrew some exhibits. But for the purposes of the clarity
22 of the record and to ensure that all of your intended
23 exhibits are identified that we just want to make sure that
24 we confirm that. So I can tell you what I have on the list.
25 And I believe I gave you a copy of the list just before

1 today's proceedings. It identifies each of your offered
2 exhibits by exhibit number and description.

3 MR. SARVEY: Yes, I have Exhibit 400, which is the
4 Alternatives Testimony of Robert Sarvey. Exhibit 401,
5 Environmental Justice Testimony of Robert Sarvey. I have
6 Exhibit 402 which is the Testimony of Stuart Weiss for
7 Biology.

8 THE REPORTER: Excuse me, Hearing Officer Vaccaro.
9 There is some background talking going on. I don't know if
10 it's coming through the phone but it is quite significant.
11 I'm picking it up as a background voice talking or a
12 recording or something.

13 HEARING OFFICER VACCARO: Thank you. And I think
14 part of what you are hearing is the echo, we are having
15 quite a --

16 THE REPORTER: No, this is not an echo, this is
17 like a radio that is on or something of that nature.

18 HEARING OFFICER VACCARO: Okay, those of you
19 participating by WebEx. What the court reporter has
20 indicated to us is that you haven't yet followed the
21 instruction to put us on mute. But again, it is very
22 important that you mute your telephone while we are speaking
23 here in the prehearing conference and in the hearing because
24 we can hear all of your background noise and it is quite
25 distracting and causes interference in the recording o

1 today's proceedings. So again we thank you in advance for
2 hitting the mute button and allowing us to continue.

3 THE REPORTER: Flash flooding, which we call
4 whatever. This is what I'm picking up. I mean, it's very
5 clear and it is being recorded.

6 HEARING OFFICER VACCARO: Okay. And I just
7 received indication from the Public Adviser's Office that
8 all of the WebEx users are muted so that is, unfortunately,
9 not our problem. So we will do the best we can. We will
10 project and we will move forward and do the best that we
11 can. Sorry, Mr. Sarvey.

12 MR. SARVEY: Exhibit 403, the Air Quality
13 Testimony of Robert Sarvey. Exhibit 404 is withdrawn.
14 Exhibit 405 is withdrawn. Exhibit 406, the Fine Particulate
15 Data and Analysis Modeling for the Bay Area Air Quality
16 Management District. And then I have requested that a new
17 exhibit be entered into the record. And that would be
18 Exhibit 407 and its title is Impacts of Climate Change on
19 Global Energy Production and Consumption: Recent Literature
20 and a Useful California Case Study.

21 HEARING OFFICER VACCARO: And it is my
22 understanding, Mr. Sarvey, that all of these documents have
23 been served on all of the parties prior to today's
24 proceedings; that everyone has received them. I know the
25 Hearing Advisor's Office has received them and the Committee

1 Members have as well. Is that your understanding?

2 MR. SARVEY: Yes, that's correct.

3 HEARING OFFICER VACCARO: And in fact I know that
4 everyone received the email from yesterday evening regarding
5 the climate change.

6 (Intervenor's Exhibits 400, 401, 402, 403, 406
7 and 407 were marked for identification.)

8 HEARING OFFICER VACCARO: Okay. So I think what
9 we are going to do is move over to the applicant first to
10 find out is there any question, objection or problem that
11 you have, applicant, notwithstanding the fact that we are
12 going to have some witness testimony today do you have a
13 problem at all with admitting on all of the topical areas
14 based on all of the evidence that we have identified,
15 admitting all of this on the papers. And if so, to what
16 exhibit do you object and why.

17 MR. GALATI: No objection to either parties'
18 exhibits. And I will actually move my own as well, 1
19 through 59.

20 HEARING OFFICER VACCARO: Okay, so I'll take
21 motions in just a moment. I'm first trying to get
22 objections to see if we have any problems and then we'll go
23 through with the motions, thank you. Mr. Bell, do you have
24 any concerns, objections with taking in all of the evidence
25 as identified on the papers, even though we will have

1 witness testimony on some of these topical areas?

2 MR. BELL: The staff has no objection to any of
3 the proposed evidence that has been submitted thus far by
4 the applicant or Mr. Sarvey.

5 HEARING OFFICER VACCARO: And Mr. Sarvey, I pose
6 the same question to you.

7 MR. SARVEY: I have no objection to any of the
8 evidence submitted.

9 HEARING OFFICER VACCARO: Okay. I think with that
10 then, Mr. Galati, I would like to go ahead and do this
11 formally through a motion. And if you would please
12 identify, since you have the longest list, just identify 1
13 through the ending number. Here is what the Committee is
14 going to be using as a road map for the applicant's
15 exhibits.

16 You have already submitted opening testimony,
17 which I believe is your exhibit 55. And in that opening
18 testimony each declaration identifies the specific exhibit
19 that supports the testimony for each topical area. In
20 addition the applicant submitted a document called Table 2A,
21 which was an attachment to the prehearing conference
22 statement.

23 Everyone has had an opportunity to review those
24 documents and I think they provide what the applicant
25 intends as the road map for the Committee to follow in

1 preparing the Presiding Member's Proposed Decision. Are
2 there any changes that you need to make to the exhibits
3 identified in the opening testimony or on that Table 2A?
4 And if so, why don't you make it a part of your motion.

5 MR. GALATI: Yes. First of all, the changes.
6 What I do not have identified on the existing Table 2A is
7 Exhibits 56 through 59, what subject matters that they
8 actually are relevant to. So if I could read that into the
9 record at the moment.

10 HEARING OFFICER VACCARO: Yes, please do.

11 MR. GALATI: Exhibit 56 is rebuttal testimony. It
12 is relevant to the subject of Air Quality.

13 Exhibit 57 is the Joint Party Stipulation. It is
14 relevant to the areas of Air Quality, Public Health,
15 Socioeconomics as it applies to Environmental Justice and
16 Hazardous Materials. Although it could be referred to as
17 Worker Safety, specifically to the gas, the natural gas
18 purging activities.

19 Exhibit 58 I would ask that that is the City
20 letter regarding their conditions of approval. I would say
21 that that is most relevant to Land Use.

22 And Exhibit 59 is relevant to Soil and Water with
23 respect to Soil and Water 6.

24 HEARING OFFICER VACCARO: Okay.

25 MR. GALATI: And with those changes I would move

1 Exhibits 1 through 59 into evidence at this time.

2 HEARING OFFICER VACCARO: Okay. Again just for
3 the purposes of clarity of the record, any objections,
4 Mr. Bell?

5 MR. BELL: Not on behalf of staff.

6 HEARING OFFICER VACCARO: Any objections,
7 Mr. Sarvey?

8 MR. SARVEY: No objection.

9 HEARING OFFICER VACCARO: Okay. Applicant's
10 Exhibits 1 through 59 are deemed admitted.

11 (Applicant's Exhibits 1 through 59
12 were received into evidence.)

13 HEARING OFFICER VACCARO: Staff, we'll entertain a
14 motion.

15 MR. BELL: Yes. The staff would move Staff's
16 Exhibits 300, 301, 302 and 303 into evidence.

17 HEARING OFFICER VACCARO: Thank you. Again for
18 clarity of the record, applicant, any objections?

19 MR. GALATI: No objection.

20 HEARING OFFICER VACCARO: Mr. Sarvey, any
21 objections?

22 MR. SARVEY: No objection.

23 HEARING OFFICER VACCARO: Okay, staff's Exhibits
24 300 through 303 are deemed admitted into the record.

25 (Staff's Exhibits 300 through 303

1 were received into evidence.)

2 HEARING OFFICER VACCARO: Mr. Sarvey, please make
3 a motion.

4 MR. SARVEY: Yes, I will move exhibits 400 through
5 407 into the record, please.

6 HEARING OFFICER VACCARO: With the exception of
7 Exhibits 404 and 405, correct, which were withdrawn?

8 MR. SARVEY: That's correct, thank you.

9 HEARING OFFICER VACCARO: Okay. Mr. Galati, any
10 objections?

11 MR. GALATI: No objection.

12 HEARING OFFICER VACCARO: Mr. Bell?

13 MR. BELL: None on behalf of staff.

14 HEARING OFFICER VACCARO: You answered before I
15 asked but thank you. No objections, well then, Mr. Sarvey,
16 your exhibits are deemed admitted.

17 (Intervenor's Exhibits 400, 401, 402, 403,
18 406 and 407 were received into evidence.)

19 HEARING OFFICER VACCARO: I think what we have
20 done is accomplished quite a bit at this point in time. I
21 think we are actually ready to hear from witnesses. And it
22 appears to me that because we have the Bay Area Air Quality
23 Management District witnesses here and they probably have
24 other things to do today, why don't we have them come up
25 first. We'll take both of them and then we'll have them

1 sworn in by the court reporter. Yes, thank you. We'll need
2 some musical chairs because we need them to have access to a
3 microphone. So let's work out the logistics of where they
4 are going to sit. And Mr. Bell, if you could direct them to
5 an appropriate seating area, thank you.

6 Ms. Truesdell and Ms. Cabral, thank you for being
7 here today. I think in part you're here because the
8 Committee asked you to sponsor the District's FDOC and also
9 one of the intervenors has cross-examination questions.

10 But what we need to do right now is have the court
11 reporter swear you in, so please raise your right hand and
12 be sworn.

13 Whereupon,

14 KATHLEEN TRUESDELL

15 BRENDA CABRAL

16 Were duly sworn.

17 EXAMINATION

18 HEARING OFFICER VACCARO: So the first question
19 will be that of the Committee. And I'm not sure -- either
20 one of you can answer. The question is, we have a document
21 identified as Exhibit 301 submitted by staff. Who is going
22 to answer this, is it going to be Ms. Truesdell or
23 Ms. Cabral who is going to sponsor the document?

24 MS. TRUESDELL: I'll answer.

25 HEARING OFFICER VACCARO: Okay. And you are?

1 MS. TRUESDELL: I'm Kathleen Truesdell.

2 HEARING OFFICER VACCARO: Thank you. So,
3 Ms. Truesdell, is that a true and correct document of the
4 Bay Area Air Quality Management District?

5 MS. TRUESDELL: Yes it is.

6 HEARING OFFICER VACCARO: And you are sponsoring
7 that document on behalf of the Air Quality Management
8 District?

9 MS. TRUESDELL: I am.

10 HEARING OFFICER VACCARO: And are there any
11 changes or corrections to that document that you need to
12 make the Committee aware of today?

13 MS. TRUESDELL: No.

14 HEARING OFFICER VACCARO: Okay, thank you. I
15 think what we will do is make you available now for
16 questions by Mr. Sarvey.

17 CROSS-EXAMINATION

18 BY MR. SARVEY:

19 Q Yes. Page five of the FDOC states that the
20 proposed Oakley Generating Station project is a combined-
21 cycle intermediate-to-baseload power plant, meaning it will
22 be able to operate efficiently to meet both contractual load
23 and spot demand for electrical power and on a full-time
24 baseload basis. And as a footnote you footnote: "See PG&E
25 *All Source Long-Term Request for Offers*, dated April 1,

1 2008." Has anybody on the panel ever seen the PG&E Long-
2 Term Request for Offers?

3 MS. TRUESDELL: I have the load shaping and
4 following request that was specifically -- that this plant
5 was proposed for, yes.

6 MR. SARVEY: And to your knowledge does that All
7 Source Request for Offers provide any information on fast-
8 start technology at the Oakley Generating Station?

9 MS. TRUESDELL: Not that I believe.

10 HEARING OFFICER VACCARO: Before you proceed,
11 Mr. Sarvey. Ms. Truesdell, please let the record reflect
12 that Ms. Truesdell has provided those previous answers on
13 behalf of the District. I would ask the witnesses before
14 you speak, if you would identify yourselves. That way the
15 transcript correctly and accurately identifies the speaker.
16 And those who are listening in on WebEx will also know who
17 the speaker is, thank you.

18 MR. SARVEY: The District has previously expressed
19 reservations about the performance of the fast-start
20 technology because it is a new technology and has never been
21 utilized. The District is pointing to the Inland Empire
22 project, which utilized first-of-its-kind technology. Has
23 the District changed its position on the technology risk
24 from the utilization of the fast-start technology in the
25 Oakley Generating Station?

1 MS. TRUESDELL: I am not aware that the Inland
2 Empire facility uses fast-start.

3 MR. SARVEY: No, the question is, have you changed
4 your position on the technology risk presented by the Oakley
5 Generating Station's fast-start technology?

6 MS. TRUESDELL: We believe as presented the
7 applicants will be able to build and construct and operate
8 the plant as proposed and that it is a feasible technology
9 for this plant.

10 MR. SARVEY: Have you identified any technology
11 risk?

12 MS. TRUESDELL: No.

13 MR. SARVEY: Okay. Page five of the PDOC states
14 the fast start-up capability coupled with high efficiency
15 will give the plant a high degree of operational
16 flexibility, which will allow it to rapidly respond to grid
17 fluctuations that will result as more intermittent renewable
18 resources are integrated into the grid. Has the District
19 analyzed whether the Oakley Generating Station is needed to
20 integrate renewables in the Bay Area load pocket,
21 considering they have approved over 1,000 megawatts of
22 generation in the last 12 months?

23 MS. TRUESDELL: Kathleen Truesdell, no.

24 HEARING OFFICER VACCARO: Mr. Sarvey, if I could
25 just ask you to slow the question down just a little bit so

1 we can all keep up. And as a point of clarification, I
2 think in your question you referenced the PDOC but you were
3 intending to reference the FDOC, correct?

4 MR. SARVEY: Yeah.

5 HEARING OFFICER VACCARO: Okay.

6 MR. SARVEY: It's a hangover from the Mariposa
7 proceeding where I was being prodded to hurry up. So I'll
8 slow down.

9 MR. GALATI: I would also like to lodge an
10 objection to the line of questioning about the need for the
11 project for the Bay Area Air Quality Management District. I
12 think that's beyond the scope of their review. And we would
13 just like to ask the Committee to direct Mr. Sarvey to stay
14 away from "need" and ask about the FDOC or the Bay Area Air
15 Quality's jurisdiction.

16 HEARING OFFICER VACCARO: For the record that was
17 Scott Galati on behalf of the applicant. And I think your
18 objection is noted. And while Mr. Sarvey is asking
19 questions directly from the FDOC I think, Mr. Sarvey, you
20 had indicated that under Project Alternatives discussion is
21 when you would be actually making argument regarding project
22 need. However, at this point if you are asking specific
23 questions about specific language in the FDOC you may
24 continue.

25 MR. SARVEY: Thank you.

1 MR. SARVEY: On page five of the FDOC it states:
2 "Using this Rapid Response package, the proposed
3 plant will be able to complete hot startups
4 in less than 30 minutes and cold startups in
5 less than 90 minutes.

6 "The fast startup capability coupled with high
7 efficiency will give the plant a high degree
8 of operational flexibility, which will allow
9 it to respond to grid fluctuations that will
10 result as more intermittent renewable
11 resources are integrated into the grid while
12 providing highly efficient generating
13 capacity."

14 Do you know what the minimum output that this
15 project can provide?

16 MS. TRUESEL: Minimum load?

17 MR. SARVEY: Yes.

18 MS. TRUESEL: No.

19 MR. SARVEY: Thank you.

20 MS. CABRAL: Any turbines of this size would be
21 able to go to at least 60 percent.

22 MS. TRUESEL: I believe I do know, sorry, I
23 forgot. It's around 49 to 52 percent.

24 MR. SARVEY: Forty-nine to 52 percent of the --

25 MS. CABRAL: Of baseload.

1 MR. SARVEY: Which is, baseload?

2 MS. CABRAL: Two hundred and 13 megawatts from
3 each of the natural gas turbines.

4 MR. SARVEY: Okay.

5 HEARING OFFICER VACCARO: Mr. Sarvey, I apologize.
6 I need to stop your line of questioning just at this
7 moment. There is no impropriety to your questions. The
8 court reporter has alerted me to an issue that we need to
9 attend to with the recording of the proceedings. We are
10 experiencing significant interference from some other
11 proceeding that is making it difficult to discern the
12 questions and answers in this proceeding. So at this moment
13 we are going to go off the record.

14 (Off the record.)

15 HEARING OFFICER VACCARO: Okay, I think I'll take
16 it from there. I think once we complete this test, and
17 thank you, Ms. Truesdell, for being willing to be our audio
18 tester. Once we finish with this process with the court
19 reporter what we are going to do is break for lunch because
20 it seems like it is an appropriate time to do so. Please
21 keep in mind this will be a half-hour lunch.

22 The applicant, as I understand it, has kindly
23 provided lunch for pretty much everyone, members of the
24 public and everyone who is in attendance today. What is
25 important for the Commission to make clear to everyone here

1 today is if the Committee Members, their advisors or if I
2 decide that we will eat that lunch we will make compensation
3 in advance to the applicant because it is inappropriate for
4 anyone up here to receive anything from the applicant if
5 there isn't compensation given.

6 So I just want to make sure that everyone
7 understands that. There is no undue influence by providing
8 lunch. And we are going to go ahead and find out if the
9 court reporter is finished with the test.

10 (Off the record at 12:50 p.m.)

11 (On the record at 1:34 p.m.)

12 HEARING OFFICER VACCARO: We are going to finish
13 where we left off, which is Intervenor Sarvey was asking
14 questions of the Bay Area Air Quality Management District.

15 It appears that we have reconciled our audio
16 problems but what that means is that WebEx is no longer
17 operating for the purposes of this proceeding. So those who
18 were on WebEx unfortunately are no longer able to hear what
19 we're doing.

20 Let's go ahead, Mr. Sarvey, and get started. The
21 good news is you don't have to repeat any of the questions
22 that you have already asked. We have determined that they
23 can be segregated on the record so that the record is
24 preserved on the questions and the answers. So if you just
25 go ahead with the next question in order.

1 And we have Ms. Truesdell and Ms. Cabral and they
2 have both been sworn in and we are now continuing their
3 testimony.

4 MR. SARVEY: Page 56 of the FDOC states that:

5 "Based on all this analysis, the

6 District is proposing the startup and
7 shutdown conditions described above as BACT
8 for the Generating Station."

9 Is it now the District's position that fast-start
10 technology is BACT for combined cycle projects?

11 MS. TRUEDELLE: It is the determination for this
12 project.

13 MR. SARVEY: No precedent?

14 HEARING OFFICER VACCARO: Please ask a full and
15 complete question.

16 MR. SARVEY: Sorry.

17 HEARING OFFICER VACCARO: Thank you.

18 MR. SARVEY: So it's not a precedent for fast-
19 start technology for combined cycle projects now?

20 MS. TRUEDELLE: I can't answer that question.

21 MR. SARVEY: Okay, thank you.

22 The District states on page 32 of the FDOC that
23 the use of Dry Low-NOx combusters and SCR as BACT for this
24 project. But the FDOC also provides a numerical emission
25 limit for NOx. Why both limits?

1 MS. TRUEDELLE: Because SCR can be designed to
2 have an outlet of different limits and 2.0 has been
3 determined to be the most stringent.

4 HEARING OFFICER VACCARO: Again for the record
5 that was Ms. Truesdell answering the questions. Witnesses,
6 when you answer if you could please state your name first so
7 that we are all clear on who is providing the answer, thank
8 you. Go ahead, Mr. Sarvey.

9 MR. SARVEY: From a BACT perspective which would
10 be considered more stringent, the numerical emission limit
11 or just the use of Dry Low-NOx combusters and SCR?

12 MS. TRUEDELLE: Truesdell. For NOx the numerical
13 emission limit. However, you have to use the technology to
14 get there.

15 MR. SARVEY: For the Russell City project the
16 District provided both a technological limit and a numeric
17 limit for PM2.5 and PM10 but why is there no limit on this
18 project?

19 MS. TRUEDELLE: The District has reconsidered its
20 policy on BACT for particulate matter. We have decided that
21 BACT is the technology.

22 HEARING OFFICER VACCARO: Again that was
23 Ms. Truesdell answering the question.

24 MR. SARVEY: In terms of the numeric limit. That
25 would still be the most stringent technology. Would that be

1 correct?

2 MS. TRUEDELLE: Truesdell. A numerical limit is
3 not a technology.

4 MR. SARVEY: The project's emission rates for NOx
5 and CO are similar to other projects which have required PSD
6 permits. Does this project emit at emission rates that
7 would be comparable to other projects that require PSD
8 permits?

9 MS. TRUEDELLE: Truesdell. What do you mean by
10 emission rates?

11 MR. SARVEY: The hourly emission rates. In this
12 case 15.62 pounds per hour for NOx.

13 MS. TRUEDELLE: Truesdell. This is not a PSD
14 subject project.

15 MR. SARVEY: And why is that?

16 MS. TRUEDELLE: Truesdell. Because emissions are
17 all under major source thresholds.

18 MR. SARVEY: So if the project actually does emit
19 more CO or NOx than 100 tons will the District require a PSD
20 permit, shut down the project or commence enforcement
21 proceedings?

22 MS. TRUEDELLE: Truesdell. I can't speak to which
23 one but it would be in violation of its permit conditions.

24 MR. SARVEY: On page 22 of the FDOC, Table 7. You
25 provide operating scenarios for the project's maximum

1 emissions. Why are you evaluating the project's emissions
2 on more than one operating scenario?

3 MS. TRUEDELLE: Truesdell. Because to find the
4 maximum emissions, annual emissions for different
5 pollutants, different scenarios were evaluated.

6 MR. SARVEY: So if the project runs 8,463 hours it
7 will not exceed its 100 ton emission limit for NOx but what
8 will the CO emissions be for the project if it runs 8,463
9 hours?

10 MS. TRUEDELLE: Truesdell. It will be less than
11 98 tons.

12 MR. SARVEY: Do you have those calculations in the
13 PDO -- in the FDOC?

14 MS. TRUEDELLE: No, they are footnoted and they
15 are on our web site.

16 MR. SARVEY: Okay.

17 MS. TRUEDELLE: Truesdell. And they are also in
18 the AFC.

19 MR. SARVEY: Page 23 of the FDOC states "that the
20 facility will not be required to offset its PM10 and SO2
21 emissions under District Regulation 2-2-303 because
22 emissions of each of these pollutants will be less than 100
23 tons per year." Since the Bay Area Air Quality Management
24 District is in violation of the PM2.5 standard how does the
25 District rationalize not requiring particulate matter

1 offsets?

2 MS. TRUEDELLE: Truesdell. Particulate matter,
3 fine particulate matter is not currently regulated under
4 District rules. We are developing a program to be proposed
5 to EPA to reach attainment..

6 MR. SARVEY: And why wouldn't the District require
7 offsets for PM10, which there is a regulatory program in
8 place?

9 MS. TRUEDELLE: Truesdell. We do have a
10 requirement, it's at a threshold of 100 tons per year.

11 MR. SARVEY: What is the national design value for
12 the nearest monitoring station to the Oakley Generating
13 Station for PM2.5, 24 hour?

14 MS. TRUEDELLE: Truesdell. I believe it's Concord
15 and I believe it's 36.

16 MR. SARVEY: Thank you. Page 31 of the FDOC
17 states: "The District has recently been reevaluating whether
18 ammonia is in fact a significant contributor to secondary
19 PM2.5." Does the District study conclude that ammonia
20 emissions are a greater contributor or have more potential
21 to form secondary PM2.5 in than the NOx emissions?

22 MS. TRUEDELLE: The study I believe you're
23 referring to is one of your exhibits and that analysis shows
24 that preliminarily with our current emissions inventory,
25 which was just a first cut as the report describes. Across

1 the board reductions in ammonia emissions from the Bay Area
2 of 20 percent results in a reduction of zero to four percent
3 reduction of PM2.5 and it is less sensitive to reductions of
4 NOx and VOC. But the District is conducting further
5 modeling and that may not continue to be true.

6 HEARING OFFICER VACCARO: Mr. Sarvey, for the
7 Committee's benefit. Ms. Truesdell just referenced an
8 exhibit and she was referencing an exhibit that was --

9 MR. SARVEY: 406.

10 HEARING OFFICER VACCARO: Okay, thank you.

11 MR. SARVEY: In the District's evaluation of
12 collateral impacts from the use of SCR on page 30 of the
13 FDOC, why has the District failed to mention nitrogen
14 deposition as an impact from the use of SCR?

15 MS. TRUESDELL: Truesdell. Nitrogen deposition is
16 addressed in the Biological Resources section for this
17 project under CEC staff. It is not subject to PSD so the
18 District did not evaluate it.

19 MR. SARVEY: So if this project were a PSD project
20 you would evaluate nitrogen deposition?

21 MS. TRUESDELL: Truesdell. If this project were a
22 PSD then yes.

23 MR. SARVEY: The Gateway facility also emits
24 similar amounts of ammonia. Was a nitrogen deposition study
25 done for the Gateway project?

1 MS. TRUEDELL: Truesdell. I am not familiar with
2 that project.

3 MR. SARVEY: How about the Marsh Landing project?

4 MS. TRUEDELL: Truesdell. No, that project was
5 not subject to PSD.

6 MR. SARVEY: Do you have any idea how many power
7 projects are within a six mile radius of this project?

8 MS. TRUEDELL: No but I think the public does.

9 MR. SARVEY: Does the District's Health Risk
10 Assessment Study evaluate the health impacts of particulate
11 matter?

12 MS. TRUEDELL: Truesdell. No. A formal health
13 risk assessment currently does not evaluate PM2.5 because
14 OEHHA has -- Office of Environmental Health Hazard
15 Assessment has not developed procedures yet for us to
16 incorporate in our guidelines.

17 MR. SARVEY: And in the District's health risk
18 assessment do they include the emissions from Marsh Landing
19 and Oakley as a cumulative assessment of health risks?

20 MS. TRUEDELL: I'm sorry, can you repeat the
21 question.

22 MR. SARVEY: In the District's health risk
23 assessment does the District include the emissions from the
24 Oakley and Marsh Landing Generating Station in the
25 cumulative assessment of the health impact from criteria

1 pollutants?

2 MS. TRUEDELLE: The health risk assessment does
3 not include criteria pollutants.

4 MR. SARVEY: Does it include cumulative assessment
5 of the -- in the projects around this particular project and
6 provide a health risk assessment number?

7 MS. TRUEDELLE: In response to one of your
8 comments the District did evaluate this project, ancillary
9 projects, in accordance with our 2010 CEQA guidelines.

10 MR. SARVEY: Does your analysis provide a cancer
11 risk assessment or some sort of number that we can refer to?

12 MS. TRUEDELLE: Yes. It's on our website as well
13 and it's footnote 4 of Appendix C of the FDOC and I believe
14 it's around 52 in a million.

15 MR. SARVEY: Fifty-two in a million. Appendix A
16 page two provides the District's calculations for the NOx
17 emission rate, for NO2 of .00732 pounds of NO2/MM Btu. The
18 District then uses the applicant's emission rate for NO2 of
19 .00722 pounds. Why would the District use the applicant's
20 emission rate when they calculate their own?

21 MS. TRUEDELLE: The District is just verifying the
22 applicant's submittal. It's just a rough calculation based
23 on F-factor.

24 HEARING OFFICER VACCARO: Again, Truesdell
25 answering.

1 MR. SARVEY: And have you calculated the project's
2 annual emissions, NOx emissions for this project utilizing
3 your emission rate for NOx?

4 MS. TRUEDELL: Truesdell. No, we use the
5 applicant's submission calculations but we check them.

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

7 HEARING OFFICER VACCARO: Thank you. I think
8 Mr. Sarvey was the only party who indicated a desire to ask
9 questions of these particular witnesses. Mr. Galati, is
10 your position still that you have no questions for these
11 witnesses? Sorry, you have no microphone at your table.

12 MR. GALATI: No questions.

13 HEARING OFFICER VACCARO: Mr. Bell?

14 MR. BELL: No questions.

15 HEARING OFFICER VACCARO: Thank you. Thank you
16 both for coming and participating in today's proceedings.

17 MS. TRUEDELL: Thank you.

18 MS. CABRAL: Thank you very much.

19 HEARING OFFICER VACCARO: I think next in order of
20 our topics will be Water Resources. The objective was to
21 convene a panel to address the various issues. Applicant
22 wanted to provide direct testimony as did staff and all of
23 the parties were interested in engaging in cross-
24 examination.

25 I think what we'll do is we will convene the

1 applicant's panel first unless there is objection to that.
2 What we need to do though, I think, is play musical chairs
3 once again to ensure sufficient seating for applicant's
4 panel. I believe it's two individuals so I think we can
5 accommodate them just as we accommodated the last two
6 witnesses. Mr. Galati.

7 MR. GALATI: I'd be more than happy to work from
8 here and my panel can sit over there if that's okay.

9 HEARING OFFICER VACCARO: Okay, thank you.

10 MR. GALATI: You might have to move over and share
11 that one. But could I have just a moment to confer with my
12 panel?

13 HEARING OFFICER VACCARO: Yes, we'll go off the
14 record for just a minute or two.

15 (Off the record at 1:49 p.m.)

16 (On the record at 1:55 p.m.)

17 HEARING OFFICER VACCARO: Thank you all. During
18 that time that we were off record, as you noticed, all three
19 of the parties approached and had a few questions for the
20 Commissioner and for me. Mr. Galati is going to catch
21 everyone up to speed on what it is that the parties
22 communicated and they have a request. I think we'll hear
23 from Mr. Galati and then respond.

24 MR. GALATI: Every rule has a good side and a down
25 side. The down side of the ex parte rule where the parties

1 cannot communicate except in a public forum, is that
2 sometimes when we come to a public forum we are ready to
3 have a conversation and be productive. I believe that we
4 are ready to have a conversation on soil and water that may
5 resolve both the Wetland E issue as well as the recycled
6 water issue.

7 And so we are asking the Committee to please bear
8 with us. Give us a little bit of time. Because it should
9 be public we would actually ask you guys to leave as opposed
10 to us so that the public could hear what we're doing and we
11 could have a conversation about those two issues. Hopefully
12 with the idea that we could bring a resolution to the
13 Committee that they could consider as opposed to sitting
14 through hours of testimony.

15 HEARING OFFICER VACCARO: Mr. Sarvey, you're way
16 there in the back. But since this is something proposed by
17 Mr. Galati and what is important is to ensure that all of
18 the parties are on the same page, is that also your request
19 of the Committee?

20 MR. SARVEY: I will leave it to whatever the
21 Committee desires.

22 HEARING OFFICER VACCARO: Mr. Bell, is that also
23 your request?

24 MR. BELL: It is, ma'am.

25 HEARING OFFICER VACCARO: Okay. I think what I'll

1 do is turn to --

2 PRESIDING MEMBER BOYD: Who were the parties who
3 wanted -- I guess it's the whole group.

4 HEARING OFFICER VACCARO: It's all three. All
5 three parties indicated an interest. I think at this point
6 -- I think basically what you're asking for, if I understand
7 it, is to have sort of public settlement discussions among
8 the three parties to the action. You want that in the
9 absence of the folks sitting up here on the dais.

10 That said, you are aware that there are still
11 members, representatives of other public agencies who may or
12 may not be in agreement with whatever you are proposing and
13 the Committee will hear from everyone on the topics when we
14 return to the room, if in fact Commissioner Boyd agrees to
15 grant that request.

16 MR. GALATI: Yes. I would phrase it as ordering
17 us to go into a workshop and we will embrace the water
18 agencies that are here in these discussions. And then at
19 the end of that discussion tell you where we can -- I think
20 it might be that all parties could agree, including the
21 water agencies.

22 HEARING OFFICER VACCARO: And we remain on record
23 when you conduct those conversations, correct?

24 MR. GALATI: I don't know if we -- we don't
25 normally do a transcript on a workshop but we certainly make

1 it available to the public.

2 HEARING OFFICER VACCARO: Commissioner Boyd?

3 PRESIDING MEMBER BOYD: So ordered on the
4 assumption that this -- well, two things. You are going to
5 resolve the issue thus the expenditure of time is going to
6 be overall reduced because we will probably do away with the
7 panel discussions, cross-examination, et cetera. All right,
8 we are --

9 THE REPORTER: Commissioner Boyd, before we get
10 off the record, just clarification for the record. Since
11 Mr. Galati and you all have agreed that this is to be
12 transcribed, when they go into their deliberations they are
13 going to voice identify themselves just as if you all were
14 still here, is that correct?

15 PRESIDING MEMBER BOYD: I guess that would be a
16 condition if we keep this on the record.

17 MR. GALATI: And I would ask that we actually not
18 put it on the record for the purposes of treating this like
19 a workshop because I think that is going to complicate
20 things.

21 PRESIDING MEMBER BOYD: I agree so we will go off
22 the record and this will be -- we will recess this hearing.
23 We will convene instantly a public workshop equivalent to
24 any public workshop that the parties have in situations like
25 this and you will -- we will go for 15 minutes and then

1 you'll give us a thumbs up/thumbs down whether we can come
2 back in the room and we'll go from there.

3 MR. GALATI: Okay, thank you very much.

4 PRESIDING MEMBER BOYD: So ordered.

5 (Off the record at 2:00 p.m.)

6 (On the record at 3:24 p.m.)

7 HEARING OFFICER VACCARO: You're smiling, good.

8 That was a long 15 minutes but we are guessing that it was
9 productive and you have reached some sort of agreement that
10 all of the parties are able to live with. So Mr. Galati,
11 why don't you get us started by reporting out whatever it is
12 that you believe the Committee needs to hear and then we'll
13 hear from staff and Mr. Sarvey.

14 MR. GALATI: We had three remaining issues with
15 staff. It was how is this recycled water -- the applicant's
16 commitment to use recycled water if it becomes available and
17 feasible, how is that memorialized in a condition. That was
18 issue number one and it was the issue that we needed to talk
19 about the most.

20 And with Mr. Williams from ISD, he participated so
21 that it was very helpful in understanding what ISD can and
22 cannot do. We resolved that issue and we have a proposed
23 condition which looks similar to the applicant's proposed
24 condition with two minor changes.

25 It would be Soil and Water 4 that would also

1 extend the reach when the recycled water pipeline backbone,
2 so to speak, was built within one mile instead of a half-
3 mile. The applicant would connect to that system and use
4 recycled water. In addition there needed to be a reporting
5 mechanism in the compliance plan so that the staff is
6 updated as the satisfaction of those particular conditions.

7 If I could summarize what I think the disconnect
8 was, was that I think -- and Mr. Williams described, we pay
9 a connection fee. And that connection fee is to take the
10 waste and treat the waste. It's not easy for Mr. Williams
11 to take that connection fee and use it for recycled water.

12 And so we have come up with a way to have an
13 agreement that we pay the connection fee. And if Mr.
14 Williams is able to do his recycled water program, instead
15 of refunding that money to use he can apply it to the
16 recycled water program. So that was one thing that I think
17 relieved the administrative burden, which made the same
18 amount of money freed up to Mr. Williams.

19 Our concern, the applicant's concern was having
20 costs -- not knowing what the costs are going to be in the
21 future. It's an ongoing, burdensome economic feasibility
22 test, which we didn't know what the rules were. So we think
23 now Soil and Water 4, the bullet items there, capture when
24 the recycled water will be available, when it will be
25 economical and has a reporting mechanism so staff knows

1 whether those things are truly existing. So that is Soil
2 and Water 4.

3 HEARING OFFICER VACCARO: Is that already
4 commemorated in writing? Is that something we will get a
5 hard copy of today or is that something that you are going
6 to want sort of reserved with an identification number as an
7 exhibit and to come in after today?

8 MR. GALATI: Well we -- I'll cut to that part of
9 it because I was going to try to build up good news because
10 we resolved the other water issue and the Bio issue.

11 HEARING OFFICER VACCARO: Okay.

12 MR. GALATI: And that we anticipate doing a joint
13 stipulation between the staff and the applicant. And we
14 understand that Mr. Sarvey has no objection to a joint
15 stipulation that will revise those conditions with the
16 things that we hammered out today but could not reduce to
17 writing. We all have our notes.

18 And what our plan was would be to circulate this
19 to each other before the end of the week and docket it and
20 then have you take it into evidence on the 25th as a
21 resolution of these disputes. But we can describe, just
22 like Soil and Water 4 we can now, I can describe for you the
23 resolution on the Wetland E conditions.

24 HEARING OFFICER VACCARO: Okay.

25 MR. GALATI: So you have some idea. So the

1 biology condition. We were concerned about a condition that
2 set the standard as no change when we wanted the ability to
3 have adaptive management to make change to the wetland that
4 may be beneficial. So we have been working on language.

5 And staff proposed something to us today that we
6 read very quickly but it looks like it captures what we were
7 trying to do in a way that staff feels comfortable being
8 able to enforce. But it, once again, doesn't limit us, for
9 example, to not change the wetland if the change is
10 beneficial and that's all we were trying to accomplish
11 there. That's Bio-19. And so we have a revised Bio-19 that
12 will be included in this stipulation.

13 Soil and Water 6 wa also more of a water quality
14 monitoring of Wetland E. And we have agreed -- applicant
15 originally objected to having to test for the life of the
16 project water quality sampling. We proposed two years.
17 Staff has now agreed to five years if we meet certain
18 criteria such as we are not violating certain water quality
19 standards, that the water quality monitoring may not be
20 necessary any more. As well as certain reporting
21 requirements left up to the discretion of the CPM. That if
22 there is no reason to report anymore we wouldn't have to.

23 So that's kind of it in layman's terms. But as
24 you know, it's like a contract. It takes a little while to
25 work out the language, that's what took us so long. But I

1 think we're in very good shape to be able to have a
2 stipulation that has an agreed to Soil and Water 6, an
3 agreed to Soil and Water 4 or whatever staff is using it as
4 now for recycled water, an agreed to Bio-19. Which would
5 resolve all of the discrepancies between applicant and
6 staff.

7 HEARING OFFICER VACCARO: Okay so just following
8 up with you, Mr. Galati, before we move on to hear from
9 staff and Mr. Sarvey. You had originally indicated the
10 desire to have direct testimony from Mr. McLucas and
11 Mr. Davy, which you no longer need to do. And apparently
12 there seems to be no need for those individuals to be
13 available for cross at least by staff based on what you just
14 said. Is that your understanding?

15 MR. GALATI: That's my understanding. And there
16 is no reason for me to cross staff's witnesses on Soil and
17 Water or Biology either.

18 HEARING OFFICER VACCARO: Okay. Mr. Bell?

19 PRESIDING MEMBER BOYD: May I ask a question
20 before you move over? Mr. Galati, you referenced this will
21 contain -- you made reference to the knowledge of roughly
22 when this water would be available. Could you give the
23 Committee an idea of when that "when" is?

24 MR. GALATI: Actually I can't, that's one of our
25 problems. I don't know when this will be available. But we

1 know that at least the money we pay for connection won't be
2 an impediment to it. And so, again, maybe ISD can tell you
3 the steps that they might need to go through.

4 So we are continuing to keep the condition that
5 when it is, when it gets to a particular point we will file
6 an amendment to connect and there will probably be some
7 specifics there that the Commission has to look at. There
8 probably will still be a little bit of potable water used
9 for potable use. At that time we will be able to describe
10 to you the full program but I don't have a time for when.
11 Although I think what we did today made it a lot more
12 foreseeable than it was.

13 PRESIDING MEMBER BOYD: Okay. Later on when we
14 get to it I would like the water district to at least give
15 us a ballpark guesstimate of when that might be, just time-
16 wise. As you know, we are not real wild about the use of
17 potable water for power plant use other than the absolute
18 minimum necessary needs. So anyway, thank you.

19 HEARING OFFICER VACCARO: Okay, so Mr. Bell, are
20 you in agreement with Mr. Galati's characterization with
21 respect to those conditions of certification and the meeting
22 of the minds between or among the parties?

23 MR. BELL: I am in agreement. I do want to say,
24 Commissioner Boyd, that staff shares your feelings about the
25 use of reclaimed water, the preference for reclaimed water

1 for potable water. Which is one of the reasons why we had
2 as much difficulty and took as much time hammering this out.

3 Staff stood their ground on this issue. But I think that
4 the resolution we came to, the compromise with the
5 applicant, is one that is going to be most beneficial for
6 the environment. So we share your feelings about issues.

7 We also appreciate the time that you spent waiting
8 for us to hammer this out. It was, honestly, through the
9 participation of Mr. Williams from ISD and the input that he
10 was able to give us during our workshop session that allowed
11 us to all come to the same understanding. And so this was
12 time well spent.

13 I can tell you that had we called witnesses from
14 both sides we would still be here cross-examining them right
15 now, I believe, and we would be going on much longer than
16 this has taken. So this was a good use of our time. This
17 is from staff's view. These few conditions that we have
18 discussed, truly the most meaty of the issues, and this
19 would have taken the most time for us to go through the
20 hearing on. So again, this was, I believe, time well spent.

21 We apologize for the amount of time it took but I think
22 this was in everybody's interest to hammer this out.

23 PRESIDING MEMBER BOYD: Okay. I don't think
24 apologies are necessary. Appreciate the efforts you made
25 and we'll take your word for the fact we'd still be at it.

1 And we did put the city's little park across the street here
2 to good use for quite a while. The air is much fresher out
3 there than in this room, by the way, so you were at it hot
4 and heavy I presume. Thank you.

5 HEARING OFFICER VACCARO: And just as I asked
6 Mr. Galati just by way of confirmation, you have no desire
7 or wish to put on any witnesses or to cross-examine any of
8 the applicant's witnesses on anything else relating to Soil
9 and Water, is that correct?

10 MR. BELL: No, ma'am. Based on our discussions
11 here I believe that we are in agreement so I have no desire
12 to cross-examine their witnesses. I'm familiar with what
13 their testimony is. And likewise our witnesses have had a
14 chance to be heard through our discussions here and we have
15 no intention of calling them.

16 HEARING OFFICER VACCARO: Okay, thank you.
17 Mr. Sarvey, you had reserved the right to cross-examine
18 staff witnesses on the topic of Water Resources and it
19 seemed as though you had indicated an interest in the
20 project's use of recycled water. So based on what we have
21 heard from Mr. Galati and Mr. Bell are you also in
22 conceptual agreement with the language of those conditions?

23 MR. SARVEY: I wouldn't say that I'm in agreement
24 but I would say that I heard enough information here that I
25 no longer need to cross-examine their witnesses. And pretty

1 much everything I was concerned about was discussed. But
2 I'll brief the issue; I wouldn't participate in a
3 stipulation on it.

4 HEARING OFFICER VACCARO: Okay, thank you. Wait,
5 please don't leave the podium, I just want to be clear that
6 I am understanding exactly what you said. You no longer
7 wish to cross-examine. You are not going to be a party to
8 whatever the stipulation would be. And that you are
9 requesting the opportunity to brief the issue of Water
10 Resources as you see it.

11 MR. SARVEY: If the Committee sees fit to have a
12 brief on it, yes I would.

13 HEARING OFFICER VACCARO: Okay. Thank you.

14 MR. SARVEY: Thank you.

15 HEARING OFFICER VACCARO: Okay. Well then I think
16 that puts to rest at this point Water Resources. I think it
17 addresses the parties' concerns but we do have a
18 representative from ISD here as well as a representative
19 from Diablo Water District. I think this is an appropriate
20 time to hear from you if you have any comments.

21 And I think Commissioner Boyd did indicate that he
22 would like to hear from ISD on the timing of when recycled
23 water would be available to industrial users, including the
24 OGS project. So why don't we hear from ISD first and then
25 after that if Diablo Water District would like to make a

1 comment we would certainly like to hear it.

2 MR. WILLIAMS: Thank you. Again, my name is Tom
3 Williams, general manager at Iron House Sanitary District.

4 Regarding the timing for recycled water becoming
5 available, Iron House is currently in the process of
6 building a membrane bioreactor treatment facility, which is
7 going to be a full tertiary treatment plant with ultraviolet
8 light disinfections; a state-of-the-art facility. And we'll
9 produce, we believe, the highest quality of water in Contra
10 Costa County.

11 That facility will be up and running by October of
12 this year so it's coming pretty close. Because we don't
13 have a current facility such as this we are still going to
14 want to see over a period of time exactly our water quality
15 and how consistent that is and so forth. But the water
16 would really be available soon. Of course the difficulty
17 with recycled water oftentimes is the infrastructure it
18 takes to deliver that recycled water to users.

19 We currently do not collect money from developers
20 and/or ratepayers for recycled water at this point in time.

21 Primarily that's because our current treatment facility is
22 advanced primary and not really subject for recycling, other
23 than the recycling we do at our own facility. We own about
24 4,000 acres of land, we irrigate approximately 600 acres and
25 we grow lots of hay crops that we sell to feedlots in the

1 Central Valley as well as local ranchers. But, you know,
2 that process will change a bit in that we will have the
3 extremely high quality of water.

4 One of the challenges with this project in
5 providing the recycled water is, again, the infrastructure.

6 But also the regional aspect that we would like to see as
7 Iron House for pipelines such as this. As mentioned
8 earlier, Iron House participated in a industrial recycled
9 water master plan for the Wilbur Avenue corridor, which is
10 actually just west of the applicant's site.

11 And, you know, it appears there is certainly a
12 demand for recycled water in the Wilbur corridor, which this
13 then would become part of. So one of the things we would
14 not want to do is run a pipeline that is sized only for one
15 facility, which presents a challenge, you know, for this
16 project. You know, use recycled water, put the pipeline in,
17 you know.

18 And financing is a big concern. The only reason
19 we are looking at a connection charge of approximately \$8.3
20 million is they were -- the only certainty we could provide
21 them is that utilizing Diablo Water District's potable water
22 we could have them utilize that, blow it down, put it in the
23 sewer system and run it through the treatment plant for
24 process and still meet all of our permitting requirements
25 for discharge.

1 Ideally though we would like to disconnect them
2 from the system or have them never connect to the system.
3 Instead utilize those connection funds for the installation
4 of the infrastructure to get from our facility to theirs.
5 And I think that was one of the things that was missing in
6 both the staff's conditions as well as the applicant's
7 conditions.

8 It really wasn't recognized that there is this
9 ability to utilize the money that would otherwise be used
10 for connection to install infrastructure and get it to the
11 site, be it more on a regional basis so that it's sized for
12 multiple facilities. Down the road it could be used for the
13 DuPont industrial location, it could be used for the Wilbur
14 Avenue corridor and so forth. This certainly provides us an
15 opportunity to do that.

16 So when would it actually be available? We have
17 quite a bit of environmental work done already at a project
18 level of analysis for a pipeline heading that direction. We
19 would want to investigate a slight change to that alignment,
20 which would make it shorter distance and potentially serve
21 some additional properties. That's a good start.

22 With the monies that we would receive and
23 depending on when we receive them -- normally they are not
24 due until the time they connect, which would be the time
25 they are done building everything.

1 However, you know, we could receive some of the
2 monies up front to do those environmental amendments to our
3 report that we currently have. Get a, you know, a design
4 for the facility, an estimate for its installation costs, et
5 cetera, you know, going.

6 Ideally, by the time they come on-line we would
7 have a recycled water line in place. That's a pretty fast
8 track though. So I would certainly say within two years of
9 the project coming on-line if that's 2014, you know. And
10 that's the date I'm currently using but maybe it's actually
11 2016.

12 And so by that time, assuming the money were
13 available to us, we could hopefully combine it with grant
14 funds, we're currently in that process of applying for money
15 through Congress as well as making applications to the state
16 of California for assistance. Hopefully combining those for
17 50 percent, you know, dollar value.

18 All that being said, for timing it's a bit
19 uncertain. But I would say what we would strive for is to
20 have it on-line when the facility itself comes on-line so
21 that they would never have to connect and utilize capacity
22 through our treatment facility.

23 PRESIDING MEMBER BOYD: Okay, thank you very much,
24 appreciate that explanation.

25 HEARING OFFICER VACCARO: I believe our

1 representative from Diablo Water District is still here.
2 Thank you. It has been a very long day but we're glad you
3 have been able to stay this long to provide any comments or
4 input you might have. You have heard all of the discussion.
5 I think you are aware that water supply and reliability of
6 water supply have been raised as an issue. Is there
7 anything that you would like to add or comment on with
8 respect to the project?

9 MR. YERAKA: No, not really. Again, Mike Yeraka,
10 Diablo Water District general manager and speaking for the
11 water district. And from what I've heard we have no
12 objection to the conditions that both the applicant and the
13 staff have reached here and have presented to you in
14 summary. So no objections.

15 HEARING OFFICER VACCARO: Thank you.

16 MR. YERAKA: You're welcome.

17 HEARING OFFICER VACCARO: Okay. I think with all
18 of those comments and the conceptual agreements that have
19 been reached by some of the parties as well as Mr. Sarvey's
20 request for briefing I think we can move past Soil and Water
21 Resources now and move to the topic of Biological Resources.
22 Mr. Sarvey, is your witness here?

23 MR. SARVEY: It's my understanding that both staff
24 and applicant wish to stipulate to his testimony.

25 HEARING OFFICER VACCARO: Okay.

1 MR. BELL: That's Mr. Weiss?

2 HEARING OFFICER VACCARO: Yes, that would be
3 Mr. Weiss.

4 MR. SARVEY: Dr. Weiss.

5 MR. BELL: Yes, that's correct. Not stipulating,
6 of course, to the substance of the testimony. However the
7 staff is not objecting to its submission into evidence. I'm
8 sorry, admission into evidence. Nor does staff desire to
9 cross-examine Dr. Weiss.

10 HEARING OFFICER VACCARO: Okay. Mr. Galati?

11 MR. GALATI: The applicant has no objection to the
12 admission of the evidence and does not wish to cross-examine
13 Dr. Weiss.

14 HEARING OFFICER VACCARO: Okay. And you have
15 already had your exhibits admitted into evidence at this
16 point so thank you.

17 MR. SARVEY: Yes we did, thank you.

18 HEARING OFFICER VACCARO: On the topic though of
19 Biological Resources there are two final points. We do have
20 a representative here from U.S. Fish & Wildlife Service. I
21 think maybe it might be appropriate at this time if that
22 individual is still here. Mr. Nagano, since you have been
23 here for quite a while today I think we'll go ahead and hear
24 any comments that you may have because you have come all
25 this distance and didn't appear by phone.

1 Now one question I have for you, Mr. Nagano, is
2 because Fish & Wildlife Service has made written comments
3 before the PSA was issued, comments have come out on the
4 Preliminary Staff Assessment and now you are going to make
5 additional comments and they are factual and substantive in
6 nature, would you be agreeable to providing sworn testimony
7 today or would you prefer to just do it by way of comment?

8 MR. NAGANO: I was admonished again before I left
9 by my solicitor that I can't be sworn in.

10 HEARING OFFICER VACCARO: Okay, okay. So why
11 don't we go ahead then and hear what the comments are of
12 Fish & Wildlife Service and we'll go ahead and proceed with
13 the Committee questions for a panel of applicant and staff's
14 witnesses.

15 MR. NAGANO: Okay. I'm Chris Nagano, I am chief
16 of the Endangered Species Division of the Endangered Species
17 Program at the Sacramento Field Office, U.S. Fish & Wildlife
18 Service.

19 What I would like to do is -- I have to confess I
20 am not sure how this process works but I did, I did put
21 together a two and a half page presentation but it
22 essentially reiterates what our previous letters have said.

23 But what we would like to emphasize is Lange's
24 Metalmark is an endangered species. It's fully protected
25 under the Endangered Species Act. We believe based on its

1 precipitous population decline in the last ten years that it
2 is in imminent danger of extinction.

3 The counts have gone from about 5,000 in 1972, in
4 2000 the P-count during the surveys during the flight period
5 was down to 1185 and then last year the P-count was 28
6 individuals. So we believe that indicates the animal is
7 very close to extinction.

8 And one of the threats to the species is airborne
9 nitrogen emissions, which encourage non-native plants to
10 grow; it crowds out the food plants of the butterfly. And
11 so our previous letters have discussed, based on CEC staff
12 information, the amount of nitrogen that would be deposited
13 on the refuge as a result of this project. We are concerned
14 that even a small amount could be the final factor that
15 pushes the animal into extinction.

16 So in summary we have three recommendations. One
17 is the California Energy Commission obtain the written
18 concurrence from the Service that the proposed Oakley
19 Generating Station won't jeopardize the Lange's Metalmark
20 butterfly, Contra Costa Wallflower and Antioch Dunes Evening
21 Primrose or result in adverse modification or destruction of
22 critical habitat for these two endangered plants.

23 Two, the California Energy Commission and/or the
24 applicant obtain authorization for what's known as
25 incidental take of the endangered Lange's Metalmark pursuant

1 to the Endangered Species Act prior to adoption of the final
2 environmental document. And we are interested in assisting
3 the Commission and/or the applicant in developing
4 conservation measures that will minimize the adverse effects
5 on the butterfly.

6 And the last is, rather than providing a specific
7 dollar amount, which may not accurately reflect the
8 conservation that may be necessary to prevent the extinction
9 of the Lange's Metalmark Butterfly we recommend the
10 California Energy Commission and the applicant commit to
11 ensuring the release of at least 150 caterpillars of Lange's
12 Metalmark Butterfly at the Antioch Dunes National Wildlife
13 Refuge. And these caterpillars should be reared at a
14 Service-approved facility because the species does have some
15 rather specific life history requirements. And the rearing
16 should be carried out each year the plant is in operation
17 and we recommend that it be initiated as soon as possible.

18 Just to summarize, we are interested in working
19 with you and the applicant in preventing the extinction of
20 the butterfly and ensuring California's energy needs are
21 met. So do you want a copy of this? I'm not sure how it
22 works.

23 PRESIDING MEMBER BOYD: Is that the letter of
24 February 14?

25 MR. NAGANO: Yes. It's the same information

1 although number three, the number three that I just read has
2 a more specific conservation measure to prevent the
3 extinction of the butterfly.

4 PRESIDING MEMBER BOYD: What is the date of this
5 letter or is this just a statement?

6 MR. NAGANO: This is --

7 PRESIDING MEMBER BOYD: This is your statement?

8 MR. NAGANO: Right.

9 PRESIDING MEMBER BOYD: Okay. We're going to need
10 that in writing.

11 HEARING OFFICER VACCARO: Actually we'd like that.
12 And what we'll do, if you could bring that to me I'll make
13 sure that it gets docketed.

14 MR. NAGANO: Okay.

15 HEARING OFFICER VACCARO: Because it is provided,
16 as you stated, by way of comment and not by way of
17 testimony.

18 MR. NAGANO: Okay.

19 HEARING OFFICER VACCARO: So I'll ensure that this
20 gets docketed. I think we might have one question for you,
21 if you would just bear with us for one moment. Let's see if
22 we have a question. So when you're ready we have a question
23 or two for you.

24 MR. NAGANO: Okay. I think I'm set.

25 HEARING OFFICER VACCARO: Thank you for your

1 patience. You had identified basically three/four I think
2 criteria or concerns that Fish & Wildlife has, things that
3 you would like to see happen. One of them, if I understood
4 you correctly, is that you believe that the Energy
5 Commission needs to obtain the concurrence of the Service.
6 Could you explain that a little bit more. I'm not quite
7 sure what that means. Because at this point in the process
8 it appears there has been quite a bit of dialogue.

9 MR. NAGANO: Right.

10 HEARING OFFICER VACCARO: So what does obtaining
11 concurrence --

12 MR. NAGANO: Well we're -- you know, we're
13 certainly not saying that, you know, we're trying to tell
14 the Commission what to do. What our intent with that is is
15 that we agree upon the conservation measures that will be
16 implemented by the power plant for the butterfly.

17 HEARING OFFICER VACCARO: And so is it fair to say
18 that you don't currently agree with the measures that have
19 been proposed by the applicant and the staff?

20 MR. NAGANO: Correct.

21 HEARING OFFICER VACCARO: Okay. And has the
22 Service itself submitted its own ideas of what those
23 measures might look like?

24 MR. NAGANO: Well, the measure would be that the
25 power plant ensure that 150 caterpillars of the Lange's

1 Metalmark are reared and then released each year at the
2 refuge. It's only one conservation measure.

3 HEARING OFFICER VACCARO: Okay. So if there was
4 agreement on that measure then the Service would give its
5 concurrence?

6 MR. NAGANO: Well, actually as part of that we
7 believe that there is an adverse effect from -- there will
8 be an adverse effect from the power plant because of the
9 nitrogen emissions. We do have a permit process that, you
10 know, once conservation measures are agreed upon by the
11 Service and the applicant that we can issue what's called
12 incidental take, authorization for incidental take of the
13 butterfly. I believe that's number two.

14 HEARING OFFICER VACCARO: Okay. So you would
15 require not just the initiation of the process for getting
16 the take permit. You actually want that approval issued as
17 a precondition to the Energy Commission approving this
18 project.

19 MR. NAGANO: We would like to be in agreement with
20 the Commission's vital finding.

21 HEARING OFFICER VACCARO: Thank you, I think those
22 are all the questions I have. Commissioner Boyd or Susan?

23 PRESIDING MEMBER BOYD: No other questions.

24 MR. NAGANO: Any other questions?

25 HEARING OFFICER VACCARO: No.

1 MR. NAGANO: Okay, thank you.

2 HEARING OFFICER VACCARO: Thank you, thank you for
3 being here.

4 Okay, so back to the parties' other issues with
5 respect to Biological Resources. Mr. Galati, you had
6 reserved time for direct. Are you still interested in
7 providing direct testimony or were you going to make your
8 panel available just to answer the questions that the
9 Committee had just to better understand the role of the
10 Conservancy and that process?

11 MR. GALATI: Yeah, I can certainly let the
12 Committee know an offer of proof and if they think that's
13 worth bringing them in and swearing them in for that. But
14 that is the only purpose is to answer the Committee's
15 question about the habitat conservation plan and the
16 process.

17 HEARING OFFICER VACCARO: Okay, thank you.
18 Mr. Bell?

19 MR. BELL: I'm sorry, yes.

20 HEARING OFFICER VACCARO: You had also reserved
21 time for direct for staff witnesses. Again, is it that you
22 had your own direct testimony you wanted to provide or is
23 that by way of making witnesses available to answer
24 Committee questions or clarify for the Committee the role of
25 the Conservancy and the timing of that process as it relates

1 to this process?

2 MR. BELL: Staff is submitting on the pre-filed
3 testimony. The panel is present if the Committee has any
4 questions for them. I was not going to proceed by way of
5 any more direct live testimony except when you see a need
6 for that.

7 HEARING OFFICER VACCARO: Okay. It was my
8 understanding that there might be someone from the
9 Conservancy here, on their way here. Has that happened or
10 are we just going to go with the staff witnesses that have
11 been identified?

12 MR. BELL: It did happen but the staff witnesses
13 are still here.

14 HEARING OFFICER VACCARO: And who is it that is
15 here on behalf of the Conservancy?

16 MR. BELL: That individual had some time
17 constraints, they were present, but John Kopcheck was
18 available. And can be available on the 25th if the
19 Committee does have any questions remaining after staff
20 attempts to answer any questions that the Committee might
21 have.

22 HEARING OFFICER VACCARO: Okay, thank you. I
23 think what we'll do is --

24 MR. BELL: I do remain confident that staff can
25 answer all the Committee's questions.

1 HEARING OFFICER VACCARO: Okay, good. We'll
2 harness that confidence and let's convene the two panels.
3 Let's have them up at once and we'll go ahead and get them
4 sworn in.

5 And I think what we'll do is we will take
6 advantage of the invitation of Mr. Galati to have this done
7 by way of an offer of proof where the parties will be
8 explaining to us their -- giving us the narrative of how the
9 Conservancy, how the regional plans apply to the biological
10 resources and the mitigation that is being imposed and that
11 is woven into the conditions of certification.

12 The Committee is also interested in the timing.
13 We understand that there's something that's supposed to take
14 place in the early months of 2011 with the Conservancy but
15 it seems still a bit ambiguous so if that could be explained
16 as well. So really this is in the nature of educating.

17 So what we'll do is we'll start with the
18 applicant. If there are any questions raised by what you're
19 saying the Committee will ask it, otherwise we will let you
20 say what you have to say. I'll let the staff go ahead and
21 respond to that as well as fleshing out and supplementing
22 whatever else it appears the Committee might need to know
23 that is not clearly articulated by the information currently
24 in the record. So we'll go ahead and get your witnesses
25 sworn in, Mr. Galati.

1 Whereupon,

2 DOUG DAVY, PhD

3 RICK CROWE

4 Were duly sworn.

5 DIRECT EXAMINATION

6 BY MR. GALATI:

7 Q Dr. Davy, could you describe for us the East
8 Contra Costa County Conservancy and the plan and how that
9 ties in to the Oakley Generating Station.

10 DR. DAVY: Yes. My understanding of the East
11 Contra Costa Conservancy and the East Contra Costa County
12 Habitat Conservation Plan, the Natural Communities
13 Conservation Plan, is that it provides a regional planning
14 basis for managing biological resources, and particularly
15 effects of development projects to native species or species
16 that are listed in terms of the Habitat Conservation Plan
17 part of it under the federal Endangered Species Act. And
18 for the Natural Communities Conservation Plan under the
19 California Endangered Species Act.

20 The system of developing and certifying habitat
21 conservation plans, natural communities conservation plans,
22 was developed, I believe, just to provide a more coordinated
23 regional-based way to manage projects and permit projects.

24 Rather than each individual project applying for
25 coverage, for take coverage under the federal or the state

1 Endangered Species Act, it takes -- it may take several
2 years to develop a plan like the East Contra Costa County
3 Plan which applies to East Contra County. But once that's
4 done we have a way to permit projects. And essentially
5 projects that are permitted under the authority of a county
6 or a city who are issuing development permits then --

7 To follow-up, our members of the Conservancy and
8 participate in the Conservancy have agreed to the plan, have
9 signed up for the plan. The Conservancy then develops a
10 regional mitigation approach and specific measures that
11 would apply to individual projects. So then when a project
12 comes along like the Oakley Generating Station, you apply
13 for your permit and it's formulaic and procedural.

14 And an applicant will pay a fee. It's a graduated
15 fee based on acreage and the types of habitat that the
16 project will affect. An applicant will pay the fee and then
17 also follow the specific measures that are prescribed,
18 depending on the type of habitat that's affected.

19 So in this case as it applies to the Oakley
20 Generating Station, the owner will pay the per-acre fee.
21 And the owner will follow the conservation measures or the
22 mitigation measures which are captured in the participating
23 special entity agreement. That it's our understanding that
24 the East Contra Costa County Conservancy is scheduled to
25 approve at their board meeting March 23rd.

1 Those conservation measures, I believe the staff
2 and the staff can speak to this, have been working with the
3 East Contra Costa County Conservancy, which is the, I
4 believe, Joint Powers Agency or agency affiliated with the
5 county that administers the program.

6 So it is my understanding that the special
7 conditions of the ACP and CCP have been captured and adopted
8 by staff and included as conditions of certification for the
9 OGS. And then there will also be incorporated into the
10 biological resources mitigation implementation monitoring
11 plans that the owner will prepare.

12 So I think that's it in a nutshell. But the
13 regulatory agencies, Fish & Wildlife Service and CDFG meet
14 monthly with the Board of the East Contra Costa County
15 Conservancy, it's my understanding.

16 But again to sort of -- again, it's -- once the
17 Conservancy board approves the plan, it is our understanding
18 that the project will be covered for incidental take under
19 the federal and the state laws rather than having to get an
20 individual permit.

21 MR. GALATI: If I could ask one question here. Do
22 all projects have to go through getting a participating
23 special entity agreement approved by the board?

24 DR. DAVY: If the project were not under the
25 jurisdiction of the Energy Commission, if there were -- for

1 example, if I were going to build a subdivision in the city
2 of Oakley and I needed coverage, state coverage for my
3 subdivision development, I would go with the city and I
4 would obtain my permit through the city. The city is a
5 participant in the Conservancy and I would obtain my
6 coverage, coverage that way.

7 The project owner is participating -- there is a
8 provision in the plan, I should say, for entities that
9 participate, entities like PG&E or other entities that are
10 non-governmental to participate as, quote, as participating
11 special entities. So there is a provision in the plan for
12 entities like the Contra Costa Generating Station LLC to
13 participate in the plan.

14 MR. GALATI: And is the reason that we are having
15 to participate as a participating special entity is there is
16 a portion of the transmission line that will be outside the
17 plan or it actually would be inside the plan but within a
18 jurisdiction that has not signed on to the plan?

19 DR. DAVY: Well, that's correct. The plan region,
20 the plan is designed for conservation in all of eastern
21 Contra Costa County. Not all of the -- not all of the
22 municipalities within eastern Contra Costa County have
23 ratified the plan. Antioch, the city of Antioch in specific
24 has not ratified the plan. Although the project is in
25 Oakley the transmission line process through part of the

1 city of Antioch.

2 MR. GALATI: And Antioch is not a participant in
3 the plan, is that correct?

4 DR. DAVY: That's correct.

5 MR. GALATI: If they were a participant in the
6 plan they would make the Oakley project comply with the plan
7 by their permit process, right, the city of Antioch would?

8 DR. DAVY: They would, that's right.

9 MR. GALATI: And so the participating special
10 entity agreement takes the place because there is no
11 permitting entity for that piece, correct?

12 DR. DAVY: That is my understanding, yes.

13 MR. GALATI: No further questions from me. I hope
14 that answers the Committee's questions.

15 HEARING OFFICER VACCARO: Actually I have a couple
16 and Commissioner Boyd might as well.

17 I think focusing on the March 23rd date because
18 that was really something that the Committee was interested
19 in, the timing of this matter being put before the
20 Conservancy. And you used an interesting word choice,
21 Mr. Davy. You said, once it's approved. In my mind it's,
22 if it's approved because it is still a public entity. I
23 think it does have discretion to, I'm assuming, to
24 disapprove or to make modifications to the proposed
25 mitigation measures. And if that's incorrect please tell me

1 why it's wrong and what the expectation is.

2 Because I'm wondering if there are potential
3 changes to some of the mitigation measures based on the
4 action of the Conservancy on the 23rd. Wouldn't that in
5 turn impact or affect the language of some of the conditions
6 of certification that are currently proposed by the
7 documents in the record?

8 MR. GALATI: If I could try to answer that
9 question for you. I think it's one of procedure and law so
10 I'll answer it this way. The participating special entity
11 agreement is only required for that portion that goes
12 through the city of Antioch.

13 HEARING OFFICER VACCARO: Okay.

14 MR. GALATI: The rest of it would be -- there
15 would not be an action. We would pay the fee and have an
16 enforcement mechanism through the city's permitting if the
17 city had jurisdiction to have caused a simple condition,
18 thou shall comply with the plan. Since they don't have
19 jurisdiction for that they have asked you to do that, which
20 your staff has done.

21 So there are no different mitigation measures.
22 This is not a discretionary action in that way where there
23 is an evaluation of what should this project do. Once you
24 obtain coverage from the plan, paying the fee and the
25 participating special entity agreement is actually now their

1 Were duly sworn.

2 HEARING OFFICER VACCARO: Can I please get the
3 identification of the two witnesses?

4 MS. CRISP: Ann Crisp, staff biologist with the
5 California Energy Commission.

6 PRESIDING MEMBER BOYD: Speak up.

7 MS. CRISP: Ann Crisp.

8 HEARING OFFICER VACCARO: Thank you.

9 MS. BLAIR: Heather Blair with Aspen Environmental
10 Group. I authored the nitrogen deposition portion of the
11 staff assessment.

12 HEARING OFFICER VACCARO: Thank you.

13 EXAMINATION

14 BY HEARING OFFICER VACCARO:

15 Q You have just heard from the applicant's witnesses
16 explaining the role of the two plans and the role of the
17 Conservancy. Is there anything that you heard that you take
18 issue with? Is that consistent with staff's understanding
19 and is there anything that you might want to add? Yes, it's
20 a compound question so you can kind of take one at a time.
21 But we're allowed to ask compound up here.

22 MS. CRISP: Okay, yes. The staff has been working
23 closely with the Conservancy staff to ensure that all impact
24 and avoidance and minimization measures that would be
25 required as a participating special entity have been

1 incorporated in the conditions of certification. And staff
2 was informed that these are not subject to modification,
3 these are standard impact minimization measures so those
4 aspects of the conditions would not be subject to change.

5 It is staff's understanding that the Conservancy
6 board will be occurring on the 21st or the 23rd. At that
7 point they will give conditional approval of the
8 participating special entity agreement. Upon the issuance
9 of the final Commission decision the Conservancy will then
10 execute that agreement.

11 HEARING OFFICER VACCARO: Okay, so to be clear,
12 the Conservancy is actually -- so they'll do sort of a
13 tentative and then they'll wait to see what the Energy
14 Commission does and then they'll take a final action.

15 MS. CRISP: Correct.

16 HEARING OFFICER VACCARO: As opposed to us waiting
17 for them to take a final action.

18 MS. CRISP: Correct. They're relying on the
19 Energy Commission's final Commission decision for CEQA
20 compliance.

21 HEARING OFFICER VACCARO: Okay, thank you.

22 PRESIDING MEMBER BOYD: I'm going to ask the staff
23 a strange question perhaps, perhaps not.

24 The jurisdiction of the Conservancy and the dunes
25 issue. I'd like to understand what connection, if any,

1 there is. What jurisdiction of the Conservancy plan may
2 apply or not to the dunes area and the endangered species
3 that have been referenced in the dunes?

4 MS. BLAIR: The Conservancy -- the East Contra
5 Costa County Conservancy Plan does not cover the dunes
6 species. They cover a select group of special status
7 species within the county but not those particular species
8 at issue.

9 PRESIDING MEMBER BOYD: That's what I thought but
10 I wanted to clarify it, thank you.

11 HEARING OFFICER VACCARO: Okay, I think both
12 panels have answered the questions. Again as we stated at
13 the status conference, it was really for purposes of
14 clarification to flesh out some of what had already been
15 presented in your various submittals so I think that's
16 helpful and it connects some of the dots for the Committee
17 so thank you.

18 So at this point it looks like we have covered all
19 of the topics that we stated we were going to cover today.
20 Is there anything that we have missed or that we have yet to
21 cover, Mr. Galati, in terms of the items that were discussed
22 during the prehearing conference portion of today's
23 proceedings?

24 MR. GALATI: No I don't, I don't believe so. I
25 would ask the Committee to hold the record open for water

1 and biology for our joint stipulation which we can either
2 call a staff exhibit or my exhibit next in order, 60.

3 HEARING OFFICER VACCARO: Okay, I think that's a
4 good suggestion. I think we should also ensure that while
5 we hold the record open that some evidence is submitted,
6 whether it's by applicant or staff, that shows the action of
7 the Conservancy on March 23rd as well. It's going to be
8 some sort of formal action that they take so I think you can
9 give us the writing and submit it into the record.

10 MR. GALATI: Okay. I would add one thing and that
11 is, I would just throw it out because we have all assumed
12 that Transmission System Engineering and Appendix A, that we
13 need to spend some time on it next week. It has been
14 admitted into the record. And I would just -- I have no
15 questions regarding it. And if staff and the intervenor had
16 no questions I would ask for an order that we don't need to
17 do Transmission System Engineering on the 25th as well.

18 HEARING OFFICER VACCARO: When we hear from the
19 other parties we can address that issue. I think one thing
20 to keep in mind is that that is the document that came out
21 after the Final Staff Assessment, it did lag in time.

22 And some of the reasons why we've built a second
23 day into these proceedings was because of the very short two
24 week window between the Final Staff Assessment and the
25 commencement of this hearing and some of the other concerns

1 that were raised by other parties in the proceeding in terms
2 of time constraint. So we'll talk about that. And if no
3 one has an objection the Committee will entertain that
4 motion but I think we'll hear from the other parties on
5 that. Is that it or is there anything else that you might
6 want to add?

7 MR. GALATI: That's it.

8 HEARING OFFICER VACCARO: Okay. Staff?

9 MR. BELL: Staff had -- of course we had all
10 anticipated the 25th was going to be left open for the
11 limited purpose of admitting into evidence the transmission
12 study, the Appendix A that we referred to. The staff was
13 able to complete that and admit that into evidence here
14 today and I know the 25th is now going to be used for other
15 purposes.

16 However, I think it's important to note that the
17 Appendix A is informational in nature. That there is
18 nothing within Appendix A that the Commission is going to be
19 making any determinations that would lead to any condition
20 of certification. It involves downstream effects from a
21 possible reconductoring as a result of this project. It's
22 information that the Commission needs to consider the whole
23 of the action but does go beyond the first point of
24 interconnection which is the end of the Commission's license
25 and jurisdiction.

1 I just want to point that out, that I don't
2 believe that there is any need for additional live testimony
3 or cross-examination based on the information that is
4 contained in Appendix A; it is informational in nature only.

5 HEARING OFFICER VACCARO: Okay, so we have heard
6 from applicant and staff on that. And Mr. Sarvey, anything
7 that we haven't covered today that we discussed during the
8 prehearing conference? And then if you would please address
9 whether or not with respect to Transmission System and
10 Engineering Appendix A, which staff filed very recently, if
11 that's a topic that you believe you might want to do some
12 cross-examination on.

13 MR. SARVEY: Well, I did reserve some time to ask
14 staff a couple of questions in Biology. And I would still
15 like to ask them but I can wait until the 25th, I have no
16 issues with that.

17 As far as the Transmission System Engineering
18 study, I haven't even had an opportunity to thoroughly read
19 it. And I would like to read it before I commit to not
20 asking any questions. And if you give me a deadline when I
21 have to let you know that I'll do my best to read it as
22 quickly as possible and get back to you on that.

23 MR. BELL: If I may, ma'am. Ms. Crisp and
24 Ms. Blair are present today and are available for cross-
25 examination.

1 HEARING OFFICER VACCARO: Yes they are.

2 MR. BELL: It would be staff's preference to allow
3 Mr. Sarvey to ask them questions today rather than have them
4 come back for yet another day since they are here and
5 available.

6 HEARING OFFICER VACCARO: I think that's a good
7 point. And of course, Mr. Sarvey, that's why we go ahead
8 and make sure we didn't leave anything out and we give
9 everybody the opportunity to speak. So why don't we go
10 ahead and bring that panel back, they have already been
11 sworn, you can go ahead and conduct your cross-examination.

12 Because I think all that we will hold the record open on
13 are the two items that have been raised by the applicant
14 with respect to Biological Resources.

15 CROSS EXAMINATION

16 BY MR. SARVEY:

17 Q Well first of all, Commissioner Boyd asked the one
18 question that was burning in the back of my mind so we
19 eliminated that one. But as far as staff's testimony. Did
20 staff provide their own nitrogen deposition study or did you
21 rely on the applicant's?

22 MS. BLAIR: I relied on the applicant's.

23 MR. SARVEY: And you reviewed the deposition
24 study, that's correct?

25 MS. BLAIR: That is correct.

1 MR. SARVEY: And how was that study conducted?

2 HEARING OFFICER VACCARO: Mr. Sarvey, please, just
3 one moment. It's important that the witnesses identify
4 themselves since there is a panel. If you would let us know
5 who is speaking.

6 MS. BLAIR: Sure.

7 HEARING OFFICER VACCARO: Thank you.

8 MR. SARVEY: And how was that study conducted? Is
9 it like a regional inventory, is it a source by source study
10 where you actually examine the sources near the deposition
11 area and make your determination or is it just like an
12 inventory that you assume an even deposition rate?

13 MS. BLAIR: The technical aspects of how -- the
14 quantity of nitrogen that would be deposited from the Oakley
15 project at the dunes is beyond the area of my expertise. I,
16 however, did consult with staff air quality experts to
17 ensure that the number provided by the applicant was indeed
18 appropriate for my analysis.

19 MR. SARVEY: And in your analysis there's a lot of
20 point sources around here emitting ammonia and nitrogen.
21 Did you take any consideration of the cumulative impact of
22 these sources? And I'll just stick to power plants, their
23 impact and what their nitrogen deposition rate was
24 cumulatively on this particular area.

25 MS. BLAIR: Yes. The power plants that I

1 considered in my cumulative impact analysis are listed in my
2 testimony. And many of the existing sources would have been
3 considered in the baseline deposition rate that was provided
4 by the Energy Commission peer study.

5 MR. SARVEY: And what was that cumulative nitrogen
6 deposition rate for the power plants that you had in your
7 analysis?

8 MS. BLAIR: Excuse me. Could you repeat the
9 question, please.

10 MR. SARVEY: What was the cumulative deposition
11 rate on the Antioch Bay Dunes from the power plant sources
12 that you examined?

13 MS. BLAIR: 6.39 kilograms per hectare per year.
14 And that is more than just power plants, that's all emission
15 sources.

16 MR. SARVEY: But you don't have a specific number
17 for just the power plants themselves? That's what I'm
18 getting at.

19 MS. BLAIR: This is Heather Blair. You are
20 correct.

21 MR. SARVEY: Okay. Now, did you do the analysis
22 on the Marsh Landing facility's impact on the Antioch Bay
23 Dunes or was that another staff member?

24 MS. BLAIR: Heather Blair, yes I did.

25 MR. SARVEY: And you arrived at a number of I

1 believe it was \$2,300, somewhere in that area, is that
2 correct?

3 MS. BLAIR: For Marsh Landing?

4 MR. SARVEY: Um-hmm.

5 MS. BLAIR: That is correct. I believe. I don't
6 have Marsh Landing in front of me.

7 MR. BELL: Ma'am, at this time we lodge an
8 objection as to relevance.

9 HEARING OFFICER VACCARO: Mr. Bell, will you come
10 to the podium and do it on the microphone. Thank you.

11 MR. BELL: I'm sorry, I tried to project. We'd
12 like to lodge an objection as to relevance. This is not the
13 Marsh Landing project, this is Oakley. And our projects are
14 themselves not precedential, each project is analyzed
15 individually based on the unique facts and circumstances
16 that are presented by each project.

17 HEARING OFFICER VACCARO: I think your objection
18 is noted. At this point it is not clear exactly where
19 Mr. Sarvey is going with his questioning. I think the only
20 question he asked was really a question about mitigation.
21 There is mitigation imposed in this project with respect to
22 the species at the Antioch Dunes. I think he is asking
23 about mitigation that was imposed in another case so let's
24 hear where he's going. And if it looks as though it's going
25 far afield then I will let Mr. Sarvey know.

1 MR. BELL: Thank you.

2 MR. SARVEY: I'm going to withdraw the question.

3 I think I have everything I need, thank you.

4 HEARING OFFICER VACCARO: So you are finished with
5 these witnesses?

6 MR. SARVEY: I'm finished with these witnesses and
7 I thank them for appearing.

8 HEARING OFFICER VACCARO: Thank you.

9 MR. BELL: No redirect.

10 HEARING OFFICER VACCARO: I think with that the
11 witnesses can be excused. And if Mr. Bell, you'd come back
12 up to a chair and a microphone that would be greatly
13 appreciated.

14 Mr. Sarvey, I think I'm going to need you to just
15 stay there at a microphone because this is where we can do
16 some of the final, I think, housekeeping to close out what
17 we have accomplished today and to set the stage for what is
18 going to happen on March 25th.

19 Here is my understanding, I'll do a round robin
20 afterwards, correct me where I'm wrong. Mr. Sarvey, you had
21 requested briefing on the topic of Water Resources.

22 Mr. Galati, do you have any interest in doing any
23 briefing on any topical area that we have discussed today?

24 MR. GALATI: I'm confused at the point with
25 Mr. Sarvey briefing water so I need to reserve the right to

1 brief water. I don't know if what he will be briefing would
2 be adverse to me so at a minimum to reply.

3 I also would like to brief the issue of nitrogen
4 deposition and biology.

5 HEARING OFFICER VACCARO: Okay. Mr. Bell.

6 MR. BELL: The staff finds themselves in the same
7 position as Mr. Galati. I have no idea what Mr. Sarvey is
8 going to raise as an issue on Water Resources, therefore I'd
9 reserve the right to brief those issues in response to
10 anything that he may raise.

11 Based on the testimony that has been provided by
12 Mr. Sarvey the staff would request briefing on the issue of
13 Biological Resources, specifically nitrogen deposition and
14 on the issue of mitigation.

15 HEARING OFFICER VACCARO: Okay. I think what we
16 will do is we will go ahead and allow the briefing as
17 requested. What the Committee will do -- we're not going to
18 set a schedule as we sit here today; we will send an email
19 out with a reasonable schedule for opening briefs and reply
20 briefs. Just one second, excuse me.

21 I apologize for that, I basically interrupted
22 myself mid-sentence so let me start that again. We will set
23 a schedule for opening briefs and responsive briefs. It
24 will be a reasonable schedule.

25 The transcripts, we have asked for a three-day

1 turnaround on the transcripts. I think those are going to
2 be helpful to you in your briefing. Of course you will be
3 notified as soon as they are available. Today is Tuesday,
4 we expect to receive them I'd say somewhere between Friday
5 or Monday.

6 What we would ask is for those of you who are
7 going to brief the issue of nitrogen deposition, in light of
8 the comments that were received today for the Fish &
9 Wildlife Service we would like for you to address those
10 comments as well. I will docket the statement that was
11 received this afternoon. I'll do that, submit it to dockets
12 when I return to the Energy Commission. You'll have that in
13 plenty of time. Again, we will give you a reasonable
14 briefing schedule.

15 We noticed in prehearing conferences there were
16 some dates suggested by both Mr. Sarvey and by staff. Those
17 aren't workable dates given the schedule that we are trying
18 to stick with here but we will give you a reasonable
19 opportunity to file opening testimony or opening briefs and
20 to file rebuttal. So that's it on briefing.

21 As far as the record. The record is now closed on
22 all topics except the following: It will remain open as
23 requested by the applicant on the topic of Soil and Water
24 and Biological Resources. It was both topics, right, or
25 just Biological Resources?

1 MR. GALATI: Both of those.

2 HEARING OFFICER VACCARO: And that's for the
3 receipt of papers, that's not for the receipt of further
4 oral testimony from witnesses. The record is also open
5 still on Hazardous Materials Management as it relates to
6 pipeline safety. That will be addressed March 25th.

7 The topic of Transmission System Engineering will
8 still be left open and that will be addressed March 25th.

9 Land Use, because we were unable to have cross-
10 examination as planned today of the two staff witnesses.
11 Mr. Sarvey, you indicated you needed about ten minutes of
12 their time. I assume that you would still like to be able
13 to cross-examine those witnesses on March 25th?

14 MR. SARVEY: Yes I would.

15 HEARING OFFICER VACCARO: Okay, then we will keep
16 the record open for to allow that cross-examination on March
17 25th.

18 And we also held open the topic of Alternatives to
19 be addressed.

20 If there is any cross-examination or further
21 questions based on these last topical areas that will be
22 March 25th.

23 Is there anything else that we need to cover
24 today?

25 MR. BELL: The only thing that I would want to

1 point out to you --

2 HEARING OFFICER VACCARO: One second.

3 MR. BELL: Sorry.

4 HEARING OFFICER VACCARO: Mr. Sarvey had his hand
5 over here first.

6 MR. SARVEY: I just wanted to mention that I would
7 probably be wanting to brief, probably Alternatives. I
8 don't know what we're going to hear later so I'm not -- I'm
9 just saying that I will reserve the right to brief those
10 other issues as well.

11 HEARING OFFICER VACCARO: That's understood. And
12 I think once we address those issues on the 25th we'll talk
13 about briefing as appropriate. But right now you are going
14 to want to get started fairly soon once that transcript is
15 available on briefing these issues. And so we'll give you a
16 deadline on those and then we'll address the other issues
17 during the hearing.

18 MR. SARVEY: I'm already juggling Mariposa so --
19 yeah.

20 HEARING OFFICER VACCARO: Anything else,
21 Mr. Galati, that we need to cover today?

22 MR. GALATI: No.

23 HEARING OFFICER VACCARO: Okay. Mr. Bell?

24 MR. BELL: Yes. I just wanted to point out to the
25 Committee that in the original hearing order the parties

1 were directed to notify the Committee of any scheduling
2 concerns that we had. And I did want to point out that on a
3 footnote on page four of our prehearing conference I did
4 make note of a scheduling concern, a personal concern that I
5 have over my family's vacation schedule and my availability.

6 And I'm hoping that -- I wanted to highlight that so that
7 the Committee can take that into consideration when setting
8 out a briefing schedule.

9 HEARING OFFICER VACCARO: Thank you for pointing
10 out the footnote. That's actually important information
11 that is buried in a footnote. But what I think, Mr. Bell,
12 if we are not able to accommodate your schedule then I think
13 I would ask you to work with attorneys within the Siting
14 Division or those who work on siting matters to see if there
15 is someone else who might be able to take over the briefing
16 task in your absence.

17 MR. BELL: Yes, ma'am. Either that or I'd be
18 briefing on the beach.

19 MR. GALATI: For what it's worth, Mr. Bell, my
20 vacation plans started on the 25th. Now it starts on the
21 26th and I'll be doing my briefing from some other location.

22 HEARING OFFICER VACCARO: I think we have
23 completed today's business. I am going to turn this matter
24 now over to Commissioner Boyd for some final words with
25 respect to the hearing itself but we do have public comments

1 that we are still going to be taking.

2 Actually we are not going to close the hearing
3 until after the public comment so we are going to go ahead
4 and start now with public comment. We have a number of blue
5 cards. I am going to need the Public Adviser maybe to come
6 up and help sort through. Some of these were individuals
7 who made their comments only on blue card and some of you
8 are still here and wanted to speak. So we are just going to
9 take these in the order, hopefully, in which they were
10 received this morning.

11 So I have Mike Heckathorn. Are you still here?

12 SPEAKER FROM THE AUDIENCE: He is not here but he
13 may be coming. He asked to be notified (inaudible).

14 HEARING OFFICER VACCARO: Okay. Well I'll put his
15 card to the side. And if there is any way that anyone can
16 contact him and he can get here within the next say 20
17 minutes to 40 minutes that would be helpful.

18 SPEAKER FROM THE AUDIENCE: I'll do that.

19 HEARING OFFICER VACCARO: Okay. Rick Onalfo.

20 MR. ONALFO: Hello, good afternoon. Thank you all
21 for coming out here. I wanted to urge this Committee not to
22 let this power plant come into our neighborhood, into our
23 town. I live a little less than a mile away from that
24 thing. That thing is going to put out all those emissions,
25 it is going to destroy this environment.

1 We already have -- we already have -- somebody
2 asked -- I think somebody on this panel asked how many power
3 plants do we have at Oakley. We have five. We don't need a
4 sixth one. We do not need a sixth power plant in this town.

5 No matter how much emissions are coming out from those, we
6 don't need more.

7 We already have an asthmatic community in this --
8 asthmatic folks in this community, we have people with
9 cancer in this community. And this thing is going to just
10 bring in more.

11 We have -- we don't need this power plant in this
12 community. Thank you.

13 HEARING OFFICER VACCARO: Thank you. Neil
14 Altimari. Matt Mattson. Ronald Paris. Tom Baca. Steve
15 Eckley. Aubrey Van Buren. Gary Dennis.

16 And for all of these cards I'm reading no one is
17 making a comment with respect to the project. When I get to
18 a card where I call a name, someone is not here and there is
19 a comment, I'll make sure to read that into the record.

20 Eve Diamond.

21 MS. DIAMOND: Good afternoon, ladies and
22 gentlemen. I would just like to say for Ronald Paris, he is
23 an asthmatic and he is against the power plant. I know him
24 personally. I just wanted to add that.

25 I am going to read an extract from a letter I sent

1 to the California Public Utilities Commission last year. I
2 have three copies of it here which I shall hand to you the
3 entire letter.

4 The first point is that there are nine counties in
5 the San Francisco Bay Area. Contra Costa County supplies
6 more than 50 percent of the power for all those nine
7 counties already.

8 As far as health issues go there are several
9 critical health issues that have not been addressed as yet
10 to the satisfaction of Oakley and local area residents who
11 have voiced serious concerns on this subject. Some of these
12 issues are respiratory diseases including asthma, emphysema
13 and COPD as well as cancer, reproduction issues, to name a
14 few. Here are some examples: health impacts linked to power
15 plant emissions.

16 Quote. The U.S. Environmental Protection Agency
17 has found that air pollutants emitted from industrial
18 sources such as power plants increase the likelihood of
19 adverse cardiovascular and respiratory impacts as well as
20 cause and worsen chronic health conditions such as asthma.
21 These were -- the end notes here will explain where these
22 come from.

23 Children suffering from asthma. Quote: Childhood
24 asthma rates for children ages 5 to 17 in Contra Costa is
25 23.7 percent while the national average is 14.2 percent.

1 That's almost double.

2 Chronic Obstructive Pulmonary Disease, COPD,
3 quote: Air pollution may be an important contributor to
4 COPD.

5 Cancer, quote: Lung cancer has been linked to
6 breathing polluted air in addition to other factors. In
7 fact it has been shown that air pollution, mainly from
8 vehicles, industries and power plants raises the changes of
9 lung cancer and heart disease in people exposed to it long
10 term.

11 Quote: Estimated toxic air pollution related
12 cancer risk in the Antioch area, which includes Oakley, is
13 30 to 60 times higher than the level commonly deemed
14 acceptable in California.

15 Quote: The incidence of stroke and cancer related
16 deaths in Contra Costa County are both significantly higher
17 than the state average.

18 Quote: Rates of breast cancer are more
19 disproportionate for women in Contra Costa County over other
20 women in the state and especially amongst African-American
21 women.

22 As far as these quote state-of-the-art pollution,
23 my comment is that Radback Energy has touted the proposed
24 new Oakley Generating Station as a, quote, state-of-the-art
25 project with a much lower level of pollution emissions,

1 apparently 25 to 30 percent less.

2 However, upon speaking to one of the
3 representatives last year at the CPUC hearings, Mr. Greg
4 Lamberg, I was told that the annual pollution output for
5 this proposed plant is approximately one million tons per
6 annum. This was deemed satisfactory but I beg to differ so
7 I calculated what the pollution output would be per hour,
8 114 tons hour. One-one-four tons per hour. This is
9 deplorable and truly hard to believe that 114 tons per hour
10 is deemed acceptable. In whose mind? Certainly not in
11 mine. Thank you.

12 HEARING OFFICER VACCARO: Thank you. Did you want
13 to give us your handouts?

14 MS. DIAMOND: Yes I will. I have three copies. I
15 also sent it -- Jennifer Jennings entered it into the
16 docket. But I made three copies of it and at the end I put
17 my name, address, email address and phone number.

18 HEARING OFFICER VACCARO: Thank you.

19 MS. DIAMOND: Thank you so much for your time.

20 HEARING OFFICER VACCARO: Greg Levy.

21 MR. LEVY: Hello, everyone. My name is Greg Levy.
22 I am also a almost-50 year East County resident and I also
23 live here in Oakley. I am also a union member and I fully
24 support the project. I think it would do real good for the
25 city of Oakley. Thank you very much.

1 HEARING OFFICER VACCARO: Thank you. Paul
2 Dolittle. I'm not sure if I'm pronouncing that correctly.
3 He's gone? Okay. His remark is that I support the Oakley
4 Generating Station.

5 Ray Robertson.

6 MR. ROBERTSON: Is this on? Hello, Commission.
7 Ray Robertson. I'm a 25-year resident of Oakley. I am also
8 a chief electrical engineer for Contra Costa Electric. I'm
9 a LEEDS associated, accredited professional, a member of the
10 U.S. Green Building Council.

11 I support this project for numerous reasons, least
12 of all is the technology. It is the most advanced, state-
13 of-the-art plant to be built yet. I think it will reduce
14 emissions as compared to other plants.

15 The economic impact to Oakley is huge. The city
16 needs the help and the workers that live in Contra Costa
17 County need this project. Thank you.

18 HEARING OFFICER VACCARO: Thank you. Leonard
19 Lloyd. It doesn't appear that he is present. He wrote a
20 remark. He is in favor of the project. "Proposed electric
21 generator station would increase use of" -- a word I can't
22 make out -- "and solar energy and is low emission itself."
23 Mary Lou Shively.

24 MS. DARLING: If permissible I'll be a double
25 person today. Mary Lou had to leave and Mary Lou is our

1 current Pocahontas at our Redmon Hall at 1403 Main Street,
2 which is across from the property we are talking about for
3 our -- anyway, Mary Lou is a 60 year member of our council,
4 Pocahontas, which has been in the Oakley area for 75 years.

5 And she considers our organization to be an important part
6 of our community.

7 In May I'll be 85 years old. I've seen all these
8 East County towns grow from outposts to what I think are
9 very large cities today. And for the life of me I can't
10 understand why anyone would not want to support this
11 project.

12 Antioch is so desperate for revenue right now. We
13 are so lucky we are not in their position. We have to be
14 very careful we don't start to look this gift horse in the
15 mouth. For the first time in years we have private industry
16 trying to locate in our city, which brings us tax base,
17 which every city needs.

18 More important to me, the backers of Oakley
19 Generating Station, have made a binding commitment to our
20 nonprofit community. Which if properly nurtured could last
21 10 to 15 years, helping our residents for years to come. In
22 the nonprofit world we believe in supporting not only our
23 own case but other people and issues have shared our values.
24 We feel the backers of the Oakley Generating Station share
25 our values and because of that we ask you to quickly approve

1 their project.

2 Thank you for letting me read Mary Lou's message
3 to you. And when I was up here the first time I wanted to
4 tell you that we are the sixth generation on our property so
5 we're proud of that.

6 HEARING OFFICER VACCARO: Thank you. Did you want
7 to submit that written statement so that we can have that
8 docketed?

9 MS. DARLING: I'll be happy to.

10 HEARING OFFICER VACCARO: Dorothy Lashbrook.
11 Dorothy Lashbrook? Okay, I don't see her here but she did
12 make remarks in favor of the project. "I came to speak in
13 favor of this power plant. It is a matter of adequate
14 power." And she had to leave apparently by 2:30.

15 Inez Thornton. She didn't make a remark but she
16 did indicate that she is in favor of the project.

17 Mark, the last name is spelled G-A-G --

18 PRESIDING MEMBER BOYD: Here he comes.

19 HEARING OFFICER VACCARO: You knew.

20 MR. GAGUARDI: I knew.

21 HEARING OFFICER VACCARO: Please state it and
22 pronounce it.

23 MR. GAGUARDI: It's Gaguardi.

24 HEARING OFFICER VACCARO: Okay, thank you.

25 MR. GAGUARDI: Unless you want the Italian

1 pronunciation, then it's Gulliati. However you want to do
2 it. My name is Mark Gaguardi. I'm an Oakley resident. I'm
3 also a member of the Contra Costa Central Labor Council and
4 I am also the Deputy Grand Knight for the Knights of
5 Columbus here in Oakley at Saint Anthony's.

6 And I just wanted to come up and say that I am in
7 favor of this project.

8 I recently ran for office here in Oakley and I
9 think we did the numbers on, you know, local working
10 families here in Oakley and we have close to 10,000 skilled
11 craftsmen of different crafts that live in this city. And,
12 I mean, it's a shocking number when you look at the number
13 of registered voters but it was almost 10,000.

14 And what I can tell you is that a lot of those
15 folks don't have jobs. And the tax base, you know, hiring
16 locally, having projects here, you know.

17 You want to talk about pollution. You know, all
18 those vehicles aren't out there trying to go out and find a
19 job and they're working right here in their town. That's
20 going to cut pollution, okay.

21 The power plants that are there now, they're 50
22 years old. They're dirty, some of the dirtiest in the
23 world. And here we're going to put a state-of-the-art
24 facility in here that has room as the technology advances to
25 advance with the technology. I mean, we would be absolutely

1 -- I can't say the word but it would not be very prudent for
2 us not to take advantage of this for lots of reasons.

3 So, you know, we have local craftsmen here that
4 need work. We would be supporting the town here locally
5 with the tax base and we would be putting in one of the
6 greenest plants in the country. So I am in support of it
7 and I thank you.

8 HEARING OFFICER VACCARO: Thank you. Doug
9 Hardcastle. Okay, is he here? No. He wrote kind of a
10 lengthy note, I'll read it in. "I believe it's great
11 planning to have the power plant built and on-line as
12 opposed to build a plant to catch up to our needs because
13 the process is such a long process.

14 "I also don't like pollution but this plant will
15 be state-of-the-art with less pollution from neighboring
16 plants. Everyone talks about our carbon footprint. But
17 with such concerns you would think there would be rows of
18 bikes parked out front. Or who out there has their roof and
19 backyard covered with solar panels? Or who has wind
20 turbines that they have purchased?

21 "I also don't like pollution but this plant design
22 is supposed to be less than any other facility. I believe
23 it's good planning to have the plant on-line and ready as
24 opposed to have to build one to catch up. As we know the
25 process is not a quick one."

1 Wayne Ellis. Mr. Ellis is in favor of the project
2 and stated: "I want to see the power plant built. It's
3 needed and the jobs are extremely important in this harsh
4 economic climate."

5 Steve Carroll. Mr. Carroll is in favor of the
6 project and states: "I support Oakley power plant."

7 Bonnie Sublett. She states: "I am in favor of
8 this project."

9 Manuel DeLuna. He states that he is in favor of
10 the project.

11 Don Brown. "I support the Oakley power plant."

12 Marlon Hurtado. He states: "I am in favor of this
13 project."

14 Richard Atkinson. He states: "I support Oakley
15 power plant."

16 Charles Knox. He states: "I am a local resident
17 in favor of this power plant."

18 Ken Edgecomb. He indicates he is in favor but
19 with no comment.

20 Bob Sewell. No comment but indicates he is in
21 favor.

22 Jeanne Rayford. She states: "I am in favor of the
23 project."

24 Rick Alcaraz. Just indicates he is in favor, no
25 comment.

1 Ron Paris.

2 MS. DIAMOND: That's Robert Paris. He has asthma
3 and had to leave.

4 HEARING OFFICER VACCARO: That you were referring
5 to earlier?

6 MS. DIAMOND: Yes.

7 HEARING OFFICER VACCARO: Thank you. He did make
8 a notation on the card, I'm going to go ahead and read that.
9 He indicates that he opposes the project. "I am concerned
10 over clean --" word missing. "I have asthma and my children
11 --" another word I can't make out.

12 SPEAKER FROM THE AUDIENCE: Are athletes.

13 HEARING OFFICER VACCARO: Oh, "are runners." I am
14 having difficulty making out the rest of the comment but
15 generally speaking he is concerned about health and that he
16 is opposed to the project.

17 Tom Hansen states that he is in favor of the
18 project.

19 Robert Peitso states he is in favor. "Support
20 approval and construction of proposed power plant at former
21 DuPont chemical site."

22 Curtis Branson states that he is in favor. "If we
23 had a revenue stream from the power plant we wouldn't be
24 compelled to build horrific projects like the low-income
25 housing behind my house."

1 John Malcomb. He states this is a comment only.
2 "Job base, tax base, clean energy, surplus revenue for local
3 businesses. It's a win-win situation." He's in favor of
4 the project.

5 George Seligman, comment only, didn't request to
6 speak. He's in favor of the project. "I am in favor of
7 this plant. It's the best thing for this land use and the
8 city of Oakley."

9 The final card that I have is Paul Seger who made
10 no comment but he is here and he is in opposition to the
11 project.

12 MR. SEGER: You can tell by the way I dress.

13 HEARING OFFICER VACCARO: No, because you marked
14 it on the card.

15 MR. SEGER: Oh, there you go. Okay, well yes, I'm
16 opposed. I would like to mention that Radback, General
17 Electric and PG&E all ought to be very happy about the way
18 the economy was handled through the Bush Administration to
19 put us in such dire need that unions would stand for such a
20 conservative project at a time when we are trying to clean
21 up our energy.

22 Also the city council of Oakley should be quite
23 indebted to the unions who actually made the turn for this.

24 And I believe even though this is a blue-collar town that
25 the city of Oakley should stand for the unions and make a

1 resolution in support of labor standing behind the union
2 people and the rights to negotiate in Wisconsin. I'd really
3 love to see that.

4 Now for my opposition. Basically I was afraid
5 this would happen. I have been coming to council meetings
6 for years and I have been asking them, let's talk about the
7 power plant. Let's have a real deal live conversation about
8 the power plant. And I was very polite and I was very
9 insistent. And it's like, you know, I was afraid that
10 something like this would happen. And in the newspaper and
11 in public comment city council members and city officials
12 were talking about, well we're on the fence. We want to get
13 everybody's opinion. We want to know what everybody thinks.

14 And what ended up happening is when I was saying,
15 let's have a conversation, they would go, we can't talk
16 about this or we don't know anything about this. Well, lo
17 and behold to my surprise when I show up to a CPUC meeting
18 the mayor is telling the CPUC that we have put in countless
19 hours, a number of years, to get this project on the ground.

20 So to me, I was offended that this is the way that
21 we are treated in our town. And all I was asking for is
22 that all sides of the argument are presented and not once
23 have they ever suggested that they know anything about the
24 negative aspects of the power plant and the type of fossil
25 fuel that is being burned.

1 So what I did is I made a flyer and I started
2 going door to door. And I found that over 90 percent of the
3 people that I'm speaking to have no idea about the power
4 plant. They don't even know it's there.

5 But I'll tell you what, when the city council was
6 changing the recycling supply or how we were doing our
7 recycling in town everybody knew it because they knew to go
8 to the schools and start with the youth and get it to the
9 parents through there and start that conversation. That
10 didn't happen this way. What happened is the first time
11 that I heard that they were in favor of it all of a sudden
12 there was a community agreement where clubs had already been
13 lined up to accept money from the power plant. They were
14 not, they were not bashful about using 4-H children to come
15 forward and say, you know, hey, Radback rocks, you know.
16 But not one person will speak of the negative impacts.

17 Now while I was going door to door I would be
18 talking to mothers who are crying because their child was in
19 the hospital with asthma for a week, a week at a time. And
20 it's scary.

21 And what I would challenge the city council to do
22 is say, listen, we have put a price tag on that suffering
23 that you are having that you have to go through all the
24 time. Probably for the rest of their lives, you know,
25 because it's always your baby, you know. We put a price tag

1 on that and that price tag is X. But they won't even say
2 that and I'm offended.

3 I hate that the unions have been pushed to the
4 point where we are so desperate. This economy is terrible
5 and they do need work. I absolutely, 100 percent understand
6 that and agree with that. I have listened to all sides of
7 the argument. The problem is that people that have been
8 paid off won't hear both sides of the argument. They make a
9 snap judgment.

10 So thank you very much for coming out and hearing
11 us and doing this for us.

12 HEARING OFFICER VACCARO: Thank you. I understand
13 Donna Lagano would like to make a comment.

14 MR. SEGER: I'm sorry, can I hand in my flyer?

15 HEARING OFFICER VACCARO: Oh yes, please.

16 MS. LAGANO: Hello, my name is Donna Lagano.
17 Commissioners and staff, welcome back to Oakley. As an
18 Oakley resident who is actively involved in my community I
19 want to offer my full support for the Oakley Generating
20 Station. Over the past year I have sent in letters of
21 support, joined conference calls when needed and now stand
22 before you urging you to quickly approve this project so
23 that we can break ground this summer.

24 I also want to state for the record that I am a
25 member of a local community tasked with improving the

1 quality of life for all of our residents, young and old.
2 Many of our members are civic minded individuals with close
3 ties to long-time residents and our small business
4 community.

5 For years both groups have hoped major industry
6 would locate in Oakley to offset the tax burden currently
7 placed on them. We have waited patiently, maybe too
8 patiently, and now we have a very desirable product ready to
9 break ground and we just need the help of regulatory
10 agencies like the CEC.

11 It's important that you are aware that the
12 economic impact this project will have on Oakley is
13 unprecedented. Millions in sales tax revenue, millions in
14 property tax revenue, a community grant program to support
15 the local nonprofit community. Hundreds and hundreds of
16 construction jobs and secondary jobs and income created for
17 business and vendors servicing the plant.

18 We don't have the luxury on passing up this type
19 of revenue. There isn't another Oakley Generating Station.

20 Please vote to approve this project as soon as possible. I
21 have been a resident in this community for 17 years. I
22 highly encourage you to do that. Thank you.

23 HEARING OFFICER VACCARO: Thank you. I notice
24 that you're reading from notes. Is that anything that you
25 wanted docketed?

1 MS. LAGANO: Sure. I don't have my name on it.

2 HEARING OFFICER VACCARO: Can you spell your last
3 name.

4 MS. LAGANO: Yes, L-A-G-A-N-O.

5 HEARING OFFICER VACCARO: Thank you.

6 MS. LAGANO: Thank you for your time.

7 HEARING OFFICER VACCARO: Okay, we have gone
8 through all the blue cards. Are there any -- and we'll go
9 back through. There was one speaker who wasn't here, I
10 don't know if he's arrived. But if there are any other
11 individuals who are here who haven't already completed a
12 blue card and would like to speak or would like to just make
13 a comment on a blue card please do so because we are, it
14 appears, winding up the public comment portion of today's
15 proceedings.

16 Are you Mr. Heckathorn?

17 MR. HECKATHORN: Heckathorn, yes, thank you. My
18 name is Michael Heckathorn. I have been a local resident
19 living in Antioch for the last 21 years. And we have a
20 local business, Trident Engineering, that's here.

21 And actually what we have seen is what a lot of
22 the other people have talked about, a downturn in business.

23 A lot of the municipalities, cities, et cetera, don't have
24 any money to spend due to, you know, the property tax
25 situations et cetera. So we have lost a lot of our

1 clientele that we, you know, did a lot of municipal work
2 for.

3 We are extremely excited about the Oakley
4 Generating Station, the opportunities it will provide for
5 the local community here, local businesses. And some of
6 people talked about, you know, you have a large number of
7 construction people but there will be a lot of basically
8 other people involved. Small companies like ourselves. And
9 I think in this economy it's a welcome boost to the area so
10 we strongly support, strongly support this project.

11 We also do environmental work and this is a very
12 environmentally friendly plant. They have the newest GE
13 engines which are very clean burning and basically should
14 have minimal impact on the area and they have taken all the
15 proper mitigation steps, et cetera. So we strongly support
16 the plant and hope it to be approved. Thank you.

17 HEARING OFFICER VACCARO: Thank you. Okay, I have
18 received a few more blue cards. Joe. I don't know if Munal
19 or Muñoz.

20 MR. MUÑOZ: Muñoz. Hello. I'm Joe, I'm a
21 plumber. I'm a 40 year resident here. I have watched
22 Oakley become a town to a city. And I do approve of it.

23 What I'd like to say is the power plant will be
24 built whether it be here or somewhere else. Why not here?
25 We need the jobs here. I believe life is full of choices,

1 it's balanced, it's 50-50.

2 And of all the people I do live in Contra Costa
3 County, you've got to remember, for the past 40 years of my
4 life. There used to be DuPont, steel mill, Dow Chemical.
5 We all chose to live here so, you know.

6 I'll take the bus to work. So I don't take a car
7 so I do believe in the green and all that stuff. But I do
8 believe we should have a job here. I'd just like to say,
9 you know, that's what I want to say, okay.

10 HEARING OFFICER VACCARO: Thank you. Jeff McEuen.

11 MR. MCEUEN: Hello, good evening. I am a
12 representative of the iron workers and I just want to --
13 some people are getting a mis-communication of the way the
14 building trades are. We don't want to build something at
15 any cost. We have people that live in this community as you
16 heard. My grandchildren just live about five miles away so
17 I am very concerned.

18 But I am also concerned about the way clean power
19 and cleaner environment is going, you know. We have the
20 lights on right now. They are being powered by a plant that
21 produces pollutants at 40 percent the rate that this plant,
22 that Radback has introduced, you know. The best technology
23 out there. You've heard this. So that's what we are
24 looking at, you know. We are looking at a cleaner plant.
25 To get it on-line.

1 It's going to take some time to get it on-line so
2 we need to get going. We need to stop living in the past,
3 you know. We are operating in the past. We are living in
4 the future and we are operating in the past. So I just want
5 to get going, get started.

6 I'm in favor of this project as you probably can
7 tell. I just want to get started and get some people
8 working again. Thank you for your time.

9 HEARING OFFICER VACCARO: Thank you. I think what
10 we will do is make this the last call for public comments.
11 So if there is anyone else present in the room who would
12 like to make a comment please come to the podium. Otherwise
13 I really will this time turn it over to Commissioner Boyd to
14 make closing comments and to close out today's proceedings.

15 I see no other individuals coming to the podium
16 for public comment so the comment period is now closed.

17 PRESIDING MEMBER BOYD: Thank you, Madam Hearing
18 Officer. Job well done too under the circumstances.

19 I want to thank all of you for being here today.
20 And the folks who preceded you hopefully will hear our
21 thanks from some of you.

22 I will apologize for the somewhat broken up
23 conduct of the meeting caused by technology that surprised
24 us some since the dry run was engaged in yesterday. But as
25 luck would have it -- so the speaker system and the WebEx

1 didn't work too well for some folks.

2 As indicated before, there will be another
3 hearing. This in effect will be a continuation of the
4 evidentiary hearing component of this effort on the 25th of
5 March in Sacramento. I apologize for the distance. That
6 was reserved as just in case and just in case has become
7 obviously a necessity.

8 I will assure you that for those of you who cannot
9 or do not make the trip and for anyone, our WebEx works. I
10 better not curse the thing but it has worked reliably most
11 times so you all can check our website and the hearing
12 notice and tune in by WebEx if you'd like to watch that way
13 and participate. I'd certainly invite any of you who would
14 like to come to Sacramento.

15 But we will finish, we believe, the hearing, the
16 evidentiary hearing phase on those items you heard that
17 remain open and unresolved as of the close of this hearing
18 today.

19 My thanks to the city for providing this facility
20 for us. A new city and apparently a new city hall and we
21 appreciate that fact. We appreciate the courtesy extended
22 to us by the mayor who I believe is still here or was a --
23 there he is. He stuck with us throughout the day.

24 We hope you now have a better understanding
25 perhaps than you did before of the process that we are

CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing Conference and Evidentiary Hearing; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of March, 2011.

JOHN COTA

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

Ramona Cota, AAERT CERT*00479

March 20, 2011