

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Orange Grove Power) 08-AFC-4
Plant Project by)
Orange Grove Energy, LLC)
_____)

PALA MESA RESORT
SUN ROOM
2001 OLD HIGHWAY 395
FALLBROOK, CALIFORNIA

FRIDAY, DECEMBER 19, 2008

10:00 a.m.

Reported by:
Troy Ray
Contract No. 170-07-001

COMMITTEE MEMBERS PRESENT

James D. Boyd, Vice Chair and Presiding Member

Arthur H. Rosenfeld, Associate Member (via
telephone)

HEARING OFFICER, ADVISORS PRESENT

Kenneth Celli, Hearing Officer

David Hungerford, Advisor to Commissioner
Rosenfeld

STAFF AND CONSULTANTS PRESENT

James Adams

Jared Babula

Cheryl Closson

Felicia Miller

William Walters

PUBLIC ADVISER'S OFFICE

Nick Bartsch

APPLICANT

Jane E. Luckhardt, Downey|Brand
counsel to J-Power USA

Richard M. (Mike) Jones, J-Power USA

Stephen Thome, J-Power USA

Elisha M. Back, TRC Solutions

Joseph L. Stenger, TRC Solutions

Naomi Ruth Davis

INTERVENORS

Archie D. McPhee

ALSO PRESENT

Melissa Woo, Attorney
Cyndy Day-Wilson, Attorney
Best Best and Krieger
counsels to DFI Funding, Inc.

John Annicchiarico
San Diego County Air Pollution Control District
(via telephone)

Dave Seymour, General Manager
Jack Griffiths, Director
Rainbow Municipal Water District

Taylor Miller
Sempra Energy

Steve Taylor
Jeff Gabey (via telephone)
Ruth Love
Juanita Hayes
San Diego Gas & Electric Company

Ray Gray
Angie Wolf
Tesla Gray and Prominence Partners

Ratha Kea (via telephone)

Jackie Reynolds

Ted Felicetti

Linda Cooper

Greg Valdez

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

2 10:08 a.m.

3 PRESIDING COMMISSIONER BOYD: Good

4 morning everybody. Thanks for your indulgence
5 while we got the phone system to work. Welcome to
6 the Evidentiary Hearing on the Orange Grove Energy
7 power plant petition. Application, I should say.
8 I am Commissioner Jim Boyd, the Presiding Member
9 of the Siting Committee for this particular power
10 plant siting case. The Associate Member is
11 Commissioner Arthur Rosenfeld who is on the
12 telephone. Are you there, Art?

13 ASSOCIATE MEMBER ROSENFELD: Good

14 morning, Jim.

15 PRESIDING MEMBER BOYD: All right, thank
16 you. He was unable to attend but as we hear he is
17 there on the phone.

18 Present here at the head table is on the
19 far left, my far left is David Hungerford who is
20 Commissioner Rosenfeld's advisor. And our Hearing
21 Officer Ken Celli will in a few moments take over
22 the chairing of this hearing, as is the custom of
23 the Commission siting practice, two Commissioners
24 and a Hearing Officer with the Hearing Officer
25 doing the heavy lifting in the hearing cases. So

1 with that I think we need to --

2 ASSOCIATE MEMBER ROSENFELD: Jim Boyd,
3 on behalf of those of us who are listening on the
4 phone, the level of cutoff when your voice fades
5 away is set very low, set very high so you cut out
6 whenever your voice lowers. So if you can talk a
7 little louder and closer to the mic it would help
8 all of us on the phone.

9 PRESIDING MEMBER BOYD: Well lucky for
10 all of you on the phone I'm about ready to quit
11 talking. Thank you Art for the reminder. We will
12 all move the telephones much closer to us when we
13 speak. I was just ready to turn the conduct of
14 the hearing over to the hearing officer, Mr. Ken
15 Celli. So Mr. Celli, it's all yours.

16 HEARING OFFICER CELLI: Thank you. Good
17 morning everybody.

18 The first thing I want to, just as a
19 housekeeping question. I see Mr. McPhee is here.
20 Is there anyone here for Anthony Arand, Intervenor
21 Anthony Arand?

22 Is there anyone here for Intervenor
23 Alliance for a Cleaner Tomorrow, Art Moreau?

24 Okay. At this point we are going to
25 make introductions from the parties.

1 Can you all hear me on the phone okay?

2 ASSOCIATE MEMBER ROSENFELD: Yes Ken,
3 you are better than Jim.

4 (Laughter)

5 HEARING OFFICER CELLI: That's because I
6 have the mic right at me. So first from the
7 applicant, Ms. Luckhardt, please.

8 MS. LUCKHARDT: My name is Jane
9 Luckhardt, I'm from Downey Brand, I'm applicant's
10 counsel. With me here today from Orange Grove is
11 on my right is Mike Jones. In the audience is
12 Steve Thome and Jim Pomillo. For applicant's
13 consultants, from TRC we have Joe Stenger, Elisha
14 Back and Josh Taylor. In addition from TPG
15 Consulting, our traffic consultant, we have Ruth
16 Davis. And also in the audience today is Ron
17 Thomas from ICC, the construction contractor.

18 HEARING OFFICER CELLI: Thank you. And
19 representing staff is Jared Babula. Mr. Babula,
20 would you introduce staff.

21 MR. BABULA: Yeah hi, this is Jared
22 Babula, I'm staff counsel. And sitting next to me
23 is the project manager, Felicia Miller. We may
24 have some staff testify but when they come up we
25 will just introduce them at that time.

1 HEARING OFFICER CELLI: Thank you. And
2 now the intervenors, would you introduce
3 yourselves please. Mr. McPhee.

4 MR. MCPHEE: My name is Archie McPhee
5 and I am self-employed. I am a chemical engineer
6 and a civil engineer.

7 HEARING OFFICER CELLI: Thank you.

8 ASSOCIATE MEMBER ROSENFELD: Ken, I
9 can't hear you, you've cut out.

10 MR. MCPHEE: My name is Archie McPhee
11 and I am both a chemical engineer and a civil
12 engineer. A registered professional California
13 civil engineer.

14 HEARING OFFICER CELLI: We have two
15 other intervenors in this case who apparently have
16 not shown up yet. One is Anthony Arand, A-R-A-N-
17 D, and the other is An Alliance for a Cleaner
18 Tomorrow represented by Art Moreau, M-O-R-E-A-U.
19 If they show up Mr. Bartsch from the Public
20 Adviser's Office will certainly let us know.

21 Before we begin with the evidentiary
22 hearing this morning we have a few housekeeping
23 matters to take care of. First I would like to
24 find out if there is anybody here from DFI
25 Funding, Inc.? Please step forward and state your

1 appearance for the record. If you would come to
2 the podium. And you might need to have the mic
3 pointing, as mine is, directly at your mouth.

4 MS. WOO: Melissa Woo and Cyndy Day-
5 Wilson of Best Best and Krieger on behalf of DFI
6 Funding, Inc.

7 HEARING OFFICER CELLI: Cyndy, I'm
8 sorry, I didn't get Cyndy.

9 MS. DAY-WILSON: It's a hyphenated last
10 name. It's D-A-Y, hyphen, Wilson, W-I-L-S-O-N.

11 HEARING OFFICER CELLI: Thank you. And
12 I should state for the record that we did receive
13 your petition to intervene, I have it here with
14 me. It was filed on December 16. I'm sure you
15 are aware that the cutoff for the petition to
16 intervene was December 1 of 2008. This being your
17 petition you have the floor so please make your
18 argument.

19 MS. WOO: We also have submitted a
20 declaration of Steve Anderson and is that in front
21 of the Commissioners as well?

22 HEARING OFFICER CELLI: It is, I
23 received it. Let me tell you what I have just so
24 we are all on the same page.

25 I have DFI Funding, Inc.'s declaration

1 of Steve Anderson in support of petition to
2 intervene. Which is -- It doesn't say how many
3 pages but it looks like it is about five pages
4 with exhibits being largely recorded documents
5 with the county. And I think that's all. Or just
6 documents recorded with San Diego and Placer
7 County.

8 MS. WOO: Correct.

9 HEARING OFFICER CELLI: Is there
10 anything else?

11 MS. WOO: We also submitted a comment
12 letter but I don't think that has anything to do
13 with the application.

14 HEARING OFFICER CELLI: I am not sure I
15 have the comment letter. When did you -- Did you
16 docket that?

17 MS. WOO: Yes, that was docketed on
18 December 18.

19 MS. LUCKHARDT: We have copies if you
20 don't.

21 HEARING OFFICER CELLI: That would be
22 great, I would like to see it.

23 MS. DAY-WILSON: We also have, we also
24 brought copies.

25 MS. LUCKHARDT: Let them --

1 HEARING OFFICER CELLI: Please, if you
2 wouldn't mind. The only thing is, as you come
3 forward you are going to need to come around these
4 folks because there is a wire running between the
5 two tables.

6 MS. LUCKHARDT: Why don't you let them
7 do it.

8 HEARING OFFICER CELLI: If you wouldn't
9 mind I'd like to see a copy of that.

10 While we are waiting I am going to, and
11 forgive me for neglecting to identify anybody from
12 any agencies that may be here today. Is there
13 anyone here from San Diego County Air Pollution
14 Control District or on the telephone?

15 MR. ANNICCHIARICO: John Annicchiarico
16 from San Diego APCD, I'm on the phone.

17 HEARING OFFICER CELLI: Please state
18 your name and spell it.

19 MR. ANNICCHIARICO: John Annicchiarico,
20 A-N-N-I-C-C-H-I-A-R-I-C-O.

21 HEARING OFFICER CELLI: Thank you.

22 Anyone from Rainbow Municipal Water
23 Board? A couple of people. Please come forward
24 and state your name and spell it on the record.

25 MR. SEYMOUR: I'm Dave Seymour. I am

1 the general manager for the Rainbow Municipal
2 Water District.

3 HEARING OFFICER CELLI: Thank you.

4 MR. GRIFFITHS: Jack Griffiths with an S
5 on the end. Director, Division number 2, the
6 Rainbow Municipal Water District.

7 HEARING OFFICER CELLI: Thank you,
8 welcome.

9 Is there anyone here from the Pala
10 tribe? Or Pauma tribe.

11 San Diego County, other agencies from
12 San Diego County?

13 Seeing none. Is there anyone here from
14 Fallbrook Public Utilities District?

15 SDG&E? State your appearance, please.

16 MR. MILLER: Taylor Miller with Sempra
17 Energy Law Department on behalf of SDG&E.

18 HEARING OFFICER CELLI: Good morning.

19 MR. TAYLOR: And Steve Taylor with San
20 Diego Gas and Electric.

21 HEARING OFFICER CELLI: Thank you.

22 MR. GABEY: And Jeff Gabey on the phone
23 for San Diego Gas and Electric.

24 HEARING OFFICER CELLI: Thank you, good
25 morning.

1 MS. LOVE: Ruth Love, San Diego Gas and
2 Electric.

3 MS. HAYES: Juanita Hayes, San Diego Gas
4 and Electric.

5 HEARING OFFICER CELLI: Good morning.

6 Are there any other local, state, county
7 elected officials that wanted to have their
8 presence be known?

9 Seeing none, okay, let's resume. We are
10 having the hearing on the petition to intervene by
11 DFI, Inc.

12 MS. WOO: Commissioners, we are well
13 aware that the deadline was December 1 to
14 intervene. However, DFI had no notice of any of
15 these proceedings until --

16 ASSOCIATE MEMBER ROSENFELD: Excuse me.
17 This is Art Rosenfeld. You are not close enough
18 to the mic.

19 MS. WOO: I'll try to speak up. Does
20 that work better.

21 ASSOCIATE MEMBER ROSENFELD: Thank you.

22 HEARING OFFICER CELLI: Is that better,
23 Commissioner?

24 ASSOCIATE MEMBER ROSENFELD: I can hear
25 you fine, Ken.

1 HEARING OFFICER CELLI: Can you hear
2 Ms. Woo?

3 ASSOCIATE MEMBER ROSENFELD: I can't
4 hear her at all, no.

5 HEARING OFFICER CELLI: There we go.
6 The problem was that the mic for the telephone
7 wasn't hooked up to the mic for the audio inside.
8 So please go ahead, Ms. Woo.

9 MS. WOO: Thank you, Commissioner. We
10 are very well aware of the December 1, 2008
11 deadline to intervene in this process. However,
12 DFI never received any notice of hearings or the
13 proceedings related to this proposed power plant
14 until last week on December 11, '08, which is set
15 forth in the declaration of one of the principals
16 of DFI.

17 As soon as it was made aware of these
18 hearings, as soon as it possibly could it filed
19 this petition to intervene. And under the
20 regulations it can be -- the application can be
21 granted by the Commissioners upon a showing of
22 good cause. And we believe that we have made that
23 showing because it has had no notice of the
24 hearings.

25 I have briefly reviewed the opposition,

1 which was presented by the applicant. And while
2 it is true that DFI may have been generally aware
3 of the project, it never received notice of the
4 hearing.

5 And it does have a substantial interest
6 in the property which is directly adjacent to the
7 proposed power plant. It is a lender and it holds
8 multiple securities on four of the parcels,
9 Parcels 5, 13, 14 and 17, next to this proposed
10 power plant.

11 And I understand as part of the
12 opposition it is also noted that there were signs
13 posted up. However, the lenders are not located
14 here in San Diego County so they wouldn't have
15 viewed any of the signs which were posted up.

16 And in this day and age as a lender
17 there is a high probability or some probability at
18 some point that they could own this property. So
19 based on that we would ask that our application to
20 intervene and become part of this process be
21 granted.

22 HEARING OFFICER CELLI: Thank you. Did
23 you wish to say anything, Ms. Day-Wilson.

24 MS. DAY-WILSON: No.

25 HEARING OFFICER CELLI: Applicant,

1 response please.

2 MS. LUCKHARDT: Based on the comments so
3 far and the documentation I think there is no --
4 there is no question that the application filed is
5 late. I think also based upon the information
6 that we have provided in our response there is no
7 question that the property owner, that is the
8 record property owners of these parcels, have been
9 noticed.

10 We double-checked the information. As
11 you recall this project originally was proposed to
12 go through the Small Power Plant Exemption process
13 with a major use permit application to the County
14 of San Diego. As a part of that process the
15 County noticed property owners.

16 In addition as a part of the SPPE
17 process and the AFC process, and that notice
18 included the properties that are of concern to
19 DFI, as part of the SPPE process and part of the
20 AFC process Orange Grove provided a list of
21 property owners to the Energy Commission. Those
22 lists included these properties as well. We
23 believe, although we will leave it to staff to
24 confirm, that those notices were sent out by the
25 Commission but it is our understanding that they

1 were.

2 In addition to that, as you will also
3 recall, this project originally proposed a water
4 pipeline that would have gone through some of the
5 subject properties. As a part of attempting to
6 obtain easements for that water pipeline there was
7 extensive discussion between Orange Grove and
8 various property owners for the specific
9 properties.

10 And that was also done between our
11 consultant, TRC. Because as a part of a project
12 of this type as you know you have to conduct
13 cultural resources analysis, biological resources
14 studies, and we were attempting to get approval
15 from the property owner to go on that property and
16 conduct those studies. And so as a part of that
17 there was e-mail traffic back and forth.

18 We are also -- We have also included a
19 letter from the property owners from April of 2008
20 to San Diego Gas and Electric Company offering to
21 sell many or all of the parcels that are of
22 concern to DFI at this time to San Diego Gas and
23 Electric Company, clearly identifying their
24 knowledge of the project and of any potential
25 impacts that project might have on the surrounding

1 properties or their future development proposals.

2 So I think there is no question that the
3 property owners had knowledge. And if you think
4 about this and you look at it, that's what the
5 regulations require both at the County and at the
6 Commission, is that the owner of record at the
7 County be notified of these projects.

8 In this instance and if you refer to the
9 declaration of Steve Anderson, he notes -- there
10 are some terms in there including a conveyance of
11 the certain parcels based on a deed of trust. I
12 think they would admit, and we believe, in law
13 that does not make them the record property owner
14 and does not change title to the property. That
15 simply provides a security interest for the loan
16 and it allows them, should the lender (sic)
17 default, to step in and sell the property or take
18 certain actions to, to obtain some recovery of the
19 loss profits from the loan. So that does not put
20 them in the position of a property owner or a
21 record title owner under the County.

22 Now if we were or the Energy Commission
23 or counties and cities were required to notify all
24 the lenders on properties that surround
25 development projects that would be a very

1 extensive and difficult proposition and we think
2 it goes way beyond the requirements to notify
3 property owners. You would have to pull a title
4 report for every single piece of property and look
5 at each title report. Many of them have numerous
6 encumbrances as do these properties with various
7 different lenders as well as lienholders and
8 others. Not only that, loans can be resold.

9 And so it would be very difficult for
10 any kind of entity to properly notify any lender
11 on a piece of property. We think that goes beyond
12 the requirements. It clearly goes beyond the
13 requirements of both the County's requirements
14 that we have included in our opposition and those
15 of the Energy Commission to notify property
16 owners.

17 We also find it interesting that in the
18 declaration they state that they do not have
19 information about the specific hearings. While
20 that may be true we do believe that they had
21 general knowledge of the project itself. These
22 are not uninformed or unsophisticated lenders.
23 They have lent millions of dollars.

24 It is based on our understanding they
25 have significant development experience. So these

1 are not individuals who are not informed in the
2 types of processes that development projects go
3 through. And are dealing with large sums of money
4 and capable of getting themselves into the
5 intervention process in a timely manner.

6 Therefore we feel in this instance that
7 their intervention at this time is simply to
8 stall, delay and cause difficulty in this
9 proceeding. And we believe that their petition is
10 untimely and that they have been unable to show
11 good cause and it should be denied.

12 HEARING OFFICER CELLI: Thank you.
13 Staff, please.

14 MR. BABULA: We basically concur.

15 HEARING OFFICER CELLI: And bend it down
16 straight at you.

17 MR. BABULA: We basically concur with
18 what the applicant just stated. I had very
19 limited time to review the submitted declaration
20 as I was stuck in the airport all day yesterday.

21 ASSOCIATE MEMBER ROSENFELD: Excuse me,
22 this is Art Rosenfeld again. Can you get a little
23 closer to the mic?

24 HEARING OFFICER CELLI: Is that the only
25 one over there?

1 MR. BABULA: Yeah.

2 HEARING OFFICER CELLI: Commissioner,
3 the microphone for the telephone is being handed
4 over to Mr. Babula.

5 MR. BABULA: Okay, is that better?

6 ASSOCIATE MEMBER ROSENFELD: Yes, right.

7 MR. BABULA: Okay.

8 ASSOCIATE MEMBER ROSENFELD: I repeat,
9 the threshold is such that as soon as your voice
10 fades away a little bit the whole phone goes
11 quiet.

12 MR. BABULA: Okay, so let me reiterate.
13 I just said that staff basically concurs with what
14 the applicant just stated. There was ample
15 notice. We did target the lists that we had
16 provided by the applicant, which listed all the
17 owners of record. They were sent notice. We have
18 had five workshops in the area. The extensive
19 negotiations that the applicant had with the
20 property owners of trying to get the easement for
21 the pipeline and also the letter in their
22 materials which indicate a potential sale to San
23 Diego Gas and Electric.

24 So basically reiterating what the
25 applicant said, there has been significant

1 activity and notice going on with regard to this
2 project, which is actually the second go-around
3 since this was originally filed as an SPPE. Those
4 are all our comments.

5 HEARING OFFICER CELLI: Thank you.

6 Archie McPhee, comment, please.

7 MR. MCPHEE: I have no real comment on
8 this at all because I have not been informed of
9 anything that has been going on.

10 HEARING OFFICER CELLI: Thank you. Now
11 is Mr. Arand here or anyone from Alliance for a
12 Cleaner Tomorrow?

13 Mr. Bartsch, if you wouldn't mind coming
14 forward just to hear the perspective of the Public
15 Adviser's Office with regard to notice. And you
16 will need to speak into the telephone speaker that
17 is now being handed over to you.

18 MR. BARTSCH: Nick Bartsch of the Public
19 Adviser's Office of the Energy Commission. Our
20 comments would strictly be with respect to what
21 the regulations say about this. And it is
22 clearly, this particular petition --

23 HEARING OFFICER CELLI: Actually what
24 the Committee is interested in is what, if any,
25 efforts the Public Adviser's Office has exerted in

1 terms of notifying the property owners adjacent to
2 this site.

3 MR. BARTSCH: Oh, I see. We did not
4 separately notify property owners in the area
5 although there is -- We are aware and have
6 confirmed that notices have been sent, both for
7 the previous application when this particular case
8 was filed as a Small Power Plant Exemption as well
9 as the subsequent AFC application. The adjacent
10 property owners on the list, on our Energy
11 Commission list which shows all the owners of
12 record at the Assessor's Office at the time of the
13 filing. Those people have been notified.

14 HEARING OFFICER CELLI: Thank you.

15 MR. BARTSCH: And that's been by the
16 Siting Office of the California Energy Commission.

17 HEARING OFFICER CELLI: Thank you very
18 much. There's another gentleman at the podium.
19 If you wouldn't mind please state your name and
20 spell it for the record.

21 MR. GRAY: My name is Ray Gray and we
22 are the property owners that our lenders have the
23 loans against and that you are talking about here.

24 HEARING OFFICER CELLI: I see. So you
25 are the legal title owner.

1 MR. GRAY: We are the legal title
2 owners. One is through a corporation, one is with
3 my daughter.

4 HEARING OFFICER CELLI: Okay, very good.
5 Thank you. And would you state whether you
6 received notice from the California Energy
7 Commission.

8 MR. GRAY: Well the only notice that we
9 received was through J-Power. And I had talked to
10 -- I can't remember the gentleman's name but we
11 met and we talked. We met here at Pala Mesa and
12 talked about what they wanted to do. They wanted
13 to try to get a right-of-way to go on our property
14 for the water and also they wanted a right-of-way,
15 they wanted the rights to come on the property to
16 do their environmental impact report. We have a
17 subdivision filed.

18 HEARING OFFICER CELLI: Excuse me.

19 MR. GRAY: Yes.

20 HEARING OFFICER CELLI: Do you know
21 about when that was, what date?

22 MR. GRAY: I think it was that first,
23 the one they were talking about doing it through
24 some exemption.

25 HEARING OFFICER CELLI: Okay, that's the

1 Small Power Plant Exemption.

2 MR. GRAY: Yeah. And since then, as far
3 as they are talking about working groups that they
4 have had. We were not informed about any working
5 groups, not invited to any working groups. We
6 didn't go to -- We would have been there. The
7 first thing that we heard about is the newspaper
8 article that talked about this thing going on.

9 The last I talked to Japan Power, J-
10 Power, was that everything was put on hold. San
11 Diego Gas and Electric was not doing anything
12 about it and they weren't going to go through
13 because they had other problems that they were
14 dealing with. And that was the end of it.
15 Otherwise we would have strenuously been out
16 talking about what it does to our properties. It
17 affects us more than anything else.

18 They have caused a fire out there
19 before. They had -- Their power plant caused,
20 their transfer plant caused a fire that burned the
21 whole area up there, they wrecked our road. I
22 paid to put the whole --

23 HEARING OFFICER CELLI: When you say
24 they you are talking about San Diego Gas and
25 Electric?

1 MR. GRAY: San Diego Gas and Electric.
2 This is, you know, ten years ago or so. The whole
3 site, you can see the poppies. I can get a
4 picture of that that shows that because of the
5 fire poppies came up.

6 HEARING OFFICER CELLI: May I -- Before
7 we get into that let me just ask. Are you still
8 the legal title holder?

9 MR. GRAY: Yeah, we're the legal title
10 holders.

11 HEARING OFFICER CELLI: Okay.

12 MR. GRAY: Yeah. And, you know, a key
13 issue is that since they caused a fire before, and
14 we haven't even seen their documents or anything,
15 what are they doing about secondary access. If
16 they have another fire what is going to happen to
17 the house? We have a house up there, we have
18 properties up there. What are they going to do
19 about that?

20 HEARING OFFICER CELLI: You know, we are
21 going to have an opportunity to talk about those,
22 each topic area as we go today.

23 MR. GRAY: Okay.

24 HEARING OFFICER CELLI: But right now we
25 want to just focus on the notice issues.

1 MR. GRAY: And back to the notice of the
2 hearing. The only notice really that we knew
3 about was when I read it in the North County Times
4 that they were going to have a hearing about this
5 ongoing thing.

6 The last I had was J-Power said that
7 SDG&E is not doing anything, they're holding off.
8 And to me it seems like that is -- maybe they
9 forgot to tell me that they are ongoing and going
10 to do more things about this and it would kick up
11 again. But I think I should have, we should have
12 been notified about it so we could -- We're the
13 property that is most affected by what they are
14 trying to do.

15 HEARING OFFICER CELLI: Thank you for
16 your comment. Anything further, Ms. Woo?

17 MS. WOO: Yes. I just wanted to point
18 -- There is really no harm in allowing DFI to
19 intervene and allow it to be a participant in this
20 process. We are not here to try to delay any of
21 the proceedings, it just wants the opportunity to
22 have its voice be heard. It does have a
23 significant interest as the lender in that
24 property. It wouldn't have been difficult to
25 provide them with notice.

1 We are talking about the four parcels
2 which are affected the most by this project. They
3 definitely have an interest in having that
4 property be developed and sold by the owners and
5 have their security be satisfied. So we would ask
6 that the Commissioners consider that.

7 HEARING OFFICER CELLI: Thank you. And
8 is it correct that Mr. Gray --

9 MS. WOO: That's Mr. Gray who is --

10 HEARING OFFICER CELLI: Is the legal
11 title owner and you have an equitable interest in
12 that property and some others.

13 MS. WOO: Correct. Most of our security
14 is attached. There are some other notes, which we
15 didn't want to bombard the Commission with all of
16 our deeds of trust. But the most significant ones
17 are attached.

18 HEARING OFFICER CELLI: Appreciate that.
19 Well thank you very much and thank you for
20 appearing. And here is what, how we would like to
21 proceed at this time if everybody can just sort of
22 relax for a moment. The Committee would like to
23 step out. And Commissioner Rosenfeld.

24 ASSOCIATE MEMBER ROSENFELD: Yes.

25 HEARING OFFICER CELLI: If you wouldn't

1 mind, do you have David Hungerford's cell phone
2 number?

3 ASSOCIATE MEMBER ROSENFELD: I do.

4 HEARING OFFICER CELLI: What we'll do is
5 if you wouldn't mind giving him a call right now,
6 we are going to step out and caucus. We would
7 like you to call, then we can have you on his
8 speaker phone on his cell phone. And we will
9 probably take --

10 ASSOCIATE MEMBER ROSENFELD: I'll dial
11 Dave Hungerford now.

12 HEARING OFFICER CELLI: Please, yes.

13 Taylor Miller, please, you have a comment.

14 Commissioner Rosenfeld are you still on?

15 ASSOCIATE MEMBER ROSENFELD: Yes.

16 HEARING OFFICER CELLI: Okay, good.

17 MR. MILLER: Just a quick comment,

18 Taylor Miller with San Diego Gas and Electric.

19 This is self-evident but I think we need to say it
20 anyway. This project has been on an expedited
21 schedule thanks to the order of the Committee and
22 the great work of staff --

23 ASSOCIATE MEMBER ROSENFELD: Mr. SDG&E,
24 I'm sorry, I didn't even catch your name. You've
25 got to talk closer to the phone.

1 MR. MILLER: Okay, sorry. Can you hear
2 me now, Commissioner Rosenfeld?

3 ASSOCIATE MEMBER ROSENFELD: Yes.

4 MR. MILLER: Okay. I'll keep this phone
5 thing as close to me as I can.

6 ASSOCIATE MEMBER ROSENFELD: Sorry to be
7 such a hound.

8 MR. MILLER: That's all right, I'm glad
9 you are. We want to make sure you hear whatever
10 is being said. This is Taylor Miller representing
11 San Diego Gas and Electric.

12 And I am just reiterating that the
13 project is on a tight timeline. That we have
14 succeeded up to now in keeping it on schedule.
15 The decision is due April 1. I have read the
16 petition for intervention and I have also read the
17 extensive comment letter that was filed yesterday
18 on its heels.

19 The concern that we have at SDG&E is
20 that if this late intervention should be allowed
21 it would seem that it could easily delay the
22 proceedings. Therefore we would oppose the
23 intervention and suggest that the comment letter
24 can be received and considered along with any
25 other comment letters that might be, or comments

1 made today, to keep the project on schedule.

2 So that's just our view of it and we
3 wanted to make sure that you are aware of that.

4 It is very concerning to us. We have an
5 opportunity, as the letter that was that submitted
6 by the president of our company and CEO Debra Reed
7 last spring, that this project could be very
8 important to enable the less operation of older
9 facilities for peaking purposes and perhaps even
10 allow for the cancellation of the RMR contract for
11 the South Bay facility.

12 These deadlines are there for a reason.
13 And that there are other very significant
14 interests at stake here other than the sort of
15 extra bending over backward for notice for those
16 folks that seems to have had an opportunity, and
17 that is the property owner. So I won't go on any
18 longer. Thank you very much for the opportunity
19 to speak.

20 HEARING OFFICER CELLI: Thank you.

21 PRESIDING MEMBER BOYD: Don't leave the
22 podium. I have a question for the record.

23 MR. MILLER: Okay.

24 PRESIDING MEMBER BOYD: Just so it's
25 clear. San Diego Gas and Electric is not the

1 applicant, correct?

2 MR. MILLER: Yes Commissioner and thank
3 you, I should have pointed that out. We are not
4 the applicant, we are a -- we expect to receive
5 the power from the project.

6 PRESIDING MEMBER BOYD: You are the
7 purchaser of power from this agreement.

8 MR. MILLER: Correct.

9 PRESIDING MEMBER BOYD: And the
10 applicant is Orange Grove Energy LLC.

11 MR. MILLER: Correct. Thank you for
12 pointing that out.

13 HEARING OFFICER CELLI: Thank you. And
14 as such SDG&E is not really a party to these
15 proceedings.

16 MR. MILLER: Correct.

17 HEARING OFFICER CELLI: I don't think
18 we, at this point we are not going to open it up
19 to comment from non-parties because this is
20 strictly a procedural issue as to whether the
21 intervenor may -- the petitioner may intervene or
22 not. So I see Ms. Day-Wilson is standing up and
23 wishes to make a final comment.

24 MS. DAY-WILSON: Yes.

25 MR. MILLER: Thank you for hearing out.

1 HEARING OFFICER CELLI: Thank you.

2 Briefly?

3 MS. DAY-WILSON: Yes. I just want to --
4 Just for the record, DFI is not here to delay
5 this. DFI wants to be part of the process. It
6 has a very significant interest. I realize that
7 we are coming late to the game. I realize we put
8 in a 17 page comment letter yesterday. But we had
9 48 hours basically to review an 800 page
10 environmental assessment basically. I think when
11 you bring all parties --

12 HEARING OFFICER CELLI: I know the
13 feeling.

14 MS. DAY-WILSON: Pardon me?

15 HEARING OFFICER CELLI: I said, I know
16 the feeling. Go ahead.

17 MS. DAY-WILSON: Yes. When you bring
18 all parties to the table it makes a better
19 project. And that's the point, is to make a better
20 project so that everyone's interests are
21 protected.

22 HEARING OFFICER CELLI: Thank you.

23 MS. DAY-WILSON: That's the point of our
24 request for intervention.

25 HEARING OFFICER CELLI: Thank you.

1 MS. DAY-WILSON: Thank you.

2 HEARING OFFICER CELLI: At this time we
3 are going to go off the record. The Committee --
4 Everyone is welcome. The Pala Mesa Resort has
5 graciously put out a nice --

6 MS. LUCKHARDT: You mean Orange Grove
7 has graciously --

8 HEARING OFFICER CELLI: Orange Grove.

9 (Laughter)

10 HEARING OFFICER CELLI: I stand
11 corrected, my apologies. Orange Grove Energy LLC
12 has put out a beautiful spread of snacks, help
13 yourself. We will probably be five minutes,
14 hopefully not more than ten minutes before we come
15 back on the record. Okay, at this point we are
16 off the record.

17 (Whereupon, a recess was taken
18 off the record.)

19 HEARING OFFICER CELLI: We will go back
20 on the record, it is ten to eleven by my watch, in
21 the evidentiary hearing of the Orange Grove
22 project's Application for Certification.

23 The Committee has had an opportunity to
24 deliberate, review the papers and the petition in
25 opposition to DFI Funding, Inc.'s petition for

1 intervention. At this time the petition to
2 intervene as filed by DFI Funding, Inc. is denied.

3 However, DFI Inc. and Mr. Gray, in fact
4 anybody can participate still in these proceedings
5 as public commentators. And as we go through the
6 evidence today each subject area, we will provide
7 an opportunity for the public to comment. We have
8 received the comments from Best Best and Krieger,
9 I guess representing Mr. Gray and Prominence -- is
10 it Prominence Partners?

11 MS. WOO: Um-hmm.

12 HEARING OFFICER CELLI: So with that,
13 thank you for your presentations, we are going to
14 move on to the next part.

15 MS. DAY-WILSON: Actually, I just want
16 it clear for the record. Best Best and Krieger
17 represents DFI Funding.

18 HEARING OFFICER CELLI: DFI Funding,
19 correct?

20 MS. DAY-WILSON: Yes. Okay.

21 HEARING OFFICER CELLI: Okay, thank you
22 very much.

23 MS. DAY-WILSON: You said Mr. Gray so
24 I -- Thank you.

25 HEARING OFFICER CELLI: Okay. So the

1 finding is that it was untimely and that adequate
2 notice was provided.

3 Now the second matter we have is
4 Mr. McPhee filed a financial hardship petition.
5 And in this matter I just want to point out that
6 Mr. McPhee, your petition specifically requested
7 that you not be excused from serving papers on
8 other parties but that you be excused from filing
9 12 copies with the Commission Docket Unit.

10 As a procedural matter this is supposed
11 to be something that would go through the
12 Executive Director of the Commission. However, at
13 this late point in the proceedings, because really
14 after this there's going to be briefs and then we
15 are filing a Presiding Member's Proposed Decision
16 and then that's the end of it really, it goes up
17 to the Commission. We see no problem with that
18 and so your motion is granted and you will be
19 excused from having to file 12 copies.

20 However, we are going to order that you
21 file all of your copies with the Public Adviser's
22 Office and the Public Adviser has graciously
23 decided that they will file the 12 copies for you
24 and serve your papers for you.

25 MR. MCPHEE: Thank you.

1 HEARING OFFICER CELLI: Okay?

2 MR. McPHEE: Thank you.

3 HEARING OFFICER CELLI: So with that we
4 are going to move to one quick little housekeeping
5 matter which is the Prehearing Conference
6 transcript. I just want to say briefly that at
7 page 50 of the transcript at line 10 it says, Good
8 morning and the statement is ascribed to Presiding
9 Member Boyd. The fact was the person speaking at
10 that time was Anthony Arand. And then on page 52
11 at line 11 it says, Hearing Officer Celli,
12 however, that is a continuation of Mr. Arand's
13 speaking. Those aren't comments that I made.

14 Now with that we can move on to the
15 evidentiary hearing. I am going to do a little
16 reading. I'm sorry, I don't mean to be boring
17 folks.

18 The Evidentiary Hearing is a formal,
19 adjudicatory proceeding to receive evidence into
20 the formal evidentiary record from the parties.
21 Only the parties, which would be the applicant,
22 intervenors and Energy Commission staff, may
23 present evidence for introduction into the formal,
24 evidentiary record, which is the only evidence
25 upon which the Commission may base its decision

1 under the law.

2 The technical rules of evidence are
3 generally followed. However, any relevant, non-
4 cumulative evidence may be admitted if it is the
5 sort of evidence upon which responsible persons
6 are accustomed to rely in the conduct of serious
7 affairs.

8 Testimony offered by the parties shall
9 be under oath. Each party has the right to
10 represent and cross-examine witnesses, introduce
11 exhibits and rebut evidence of another party.

12 Questions of relevance will be decided
13 by the Committee. Hearsay evidence may be used to
14 supplement or explain other evidence but shall not
15 be sufficient in itself to support a finding.

16 The Committee will rule on motions and
17 objections. The Committee may take official
18 notice of matters within the Energy Commission's
19 field of competence and of any fact that may be
20 judicially noticed by the California courts.

21 The official record of this proceeding
22 includes the sworn testimony of the parties'
23 witnesses, the reporter's transcript of the
24 Evidentiary Hearing, the exhibits received into
25 evidence, briefs, pleadings, orders, notices and

1 comments submitted by members of the public.

2 The Committee's decision will be based
3 solely on the record of competent evidence in
4 order to determine whether the project complies
5 with applicable law.

6 Members of the public who are not
7 parties are welcome and invited to observe the
8 proceedings. There will be an opportunity for the
9 public to provide comment before we close the
10 hearing. Depending upon the number of persons who
11 wish to speak the Committee may limit the time
12 allowed for each speaker.

13 The public comment period is intended to
14 provide an opportunity for persons who attend the
15 hearing in person to address the Committee and
16 people also on the telephone may address the
17 Committee at the time that we take public comment.
18 It is not an opportunity to present written,
19 recorded or documentary materials. However, such
20 materials may be docketed and submitted to the
21 Energy Commission for inclusion in the
22 administrative record.

23 Members of the public who wish to speak
24 fill out a blue card provided by the Public
25 Adviser. In this case it is Nick Bartsch. If you

1 wouldn't mind holding up your hand, Nick. And he
2 has blue cards. If you wish to address the
3 Committee later as public comment please fill out
4 a blue card.

5 If you would prefer not to speak
6 publicly the blue card has a little space where
7 you can actually handwrite a comment and it says
8 whether you oppose or favor the project.

9 The Witness List and Exhibit List have
10 been distributed to the parties electronically and
11 the parties were asked to bring copies for their
12 use today. We have provided copies of Witness
13 Lists, Exhibit Lists on that table over there. If
14 you wanted to get one you can. We will use these
15 lists to organize the receipt of evidence into the
16 record.

17 We will do it topic by topic this
18 morning. There are several uncontested topics,
19 and maybe all of them, I'm not sure, we'll find
20 out, which are identified in the topic and witness
21 list. None of the parties have filed any
22 objection to submittal of these topics by
23 declaration.

24 First we will allow the applicant to
25 offer into evidence the relevant sections of the

1 Application for Certification, relevant
2 supplements and testimony in support of the
3 uncontested topics. Then we will ask staff to
4 offer those sections of the FSA, the Final Staff
5 Assessment, and supplemental testimony which
6 constitutes staff's testimony in support of the
7 uncontested topics. In addition the parties may
8 offer into evidence any other listed exhibits
9 relevant to the uncontested topics.

10 After that the parties may offer their
11 listed exhibits as to contested topics into
12 evidence.

13 The applicant's and staff's project
14 managers and environmental consultants will be
15 sworn along with the intervenors who will be
16 testifying as experts and we will proceed through
17 the uncontested topics at this time.

18 Has anyone come in for the Alliance for
19 a Cleaner Tomorrow or Anthony Arand?

20 Okay. At this time if Mr. McPhee,
21 Ms. Miller and your project manager,
22 Ms. Luckhardt, would please stand. Raise your
23 hand. We'll administer an oath.

24 MS. LUCKHARDT: Do you want just the --

25 MR. BABULA: We have some staff too to

1 get sworn in.

2 HEARING OFFICER CELLI: As we call them
3 we will swear them in.

4 MS. LUCKHARDT: Okay, so you want the
5 project managers.

6 HEARING OFFICER CELLI: Right now, yes.
7 Whereupon,

8 FELICIA MILLER

9 ARCHIE MCPHEE

10 JOSEPH STENGER

11 Were duly sworn.

12 HEARING OFFICER CELLI: Thank you. You
13 may be seated.

14 The parties agree that the following
15 topics set forth in the Application for
16 Certification and Final Staff Analysis are
17 undisputed and that the evidence and testimony on
18 these topics shall be solely by declaration. And
19 I am going to call each topic by topic. So first,
20 applicant, as to Executive Summary and Project
21 Description, do you have a motion?

22 MS. LUCKHARDT: Applicant moves Exhibit
23 1 section 1 and Exhibit 18(a).

24 HEARING OFFICER CELLI: Any objection,
25 staff?

1 MR. BABULA: No objection.

2 HEARING OFFICER CELLI: Mr. McPhee?

3 MR. MCPHEE: No objection.

4 HEARING OFFICER CELLI: Okay, Exhibit 1
5 and 18 are received.

6 (The above-referenced documents,
7 previously marked as Applicant's
8 Exhibits 1 and 18 were received
9 into evidence.)

10 HEARING OFFICER CELLI: Biological
11 Resources. Applicant.

12 MS. LUCKHARDT: Under Biological
13 Resources there are the specified sections. Would
14 you like me to read all the sections separately?

15 HEARING OFFICER CELLI: Actually I just
16 want Exhibit 1, Exhibit 2.

17 MS. LUCKHARDT: Okay.

18 HEARING OFFICER CELLI: Except for
19 Exhibit 18, which had the A, B, Cs.

20 MS. LUCKHARDT: Okay. So that's Exhibit
21 1, Exhibit 2, Exhibit 7, Exhibit 10, Exhibit 13,
22 Exhibit 18(c), Exhibit 20, Exhibit 22, Exhibit 53,
23 Exhibit 55 and exhibit 59.

24 HEARING OFFICER CELLI: Staff, any
25 objection to those exhibits?

1 MR. BABULA: No objection.

2 HEARING OFFICER CELLI: Mr. McPhee, any
3 objection?

4 MR. MCPHEE: I am not aware of any
5 objections. But that is not my comment section so
6 I have no objections.

7 HEARING OFFICER CELLI: Thank you. I
8 have some questions, though. I would state
9 Exhibit 1 Appendix 6.6-F, the 2008 Southern Willow
10 Flycatcher Survey Report for the Proposed Orange
11 Grove Project, I show it as pending.

12 MS. LUCKHARDT: You know what, that came
13 in as a response to either a supplement or a data
14 request. So we could actually delete that out of
15 there.

16 HEARING OFFICER CELLI: Thank you. I am
17 going to delete the word pending. I also have the
18 same thing for the Least Bell's Vireo Survey
19 Report for Orange Grove, Appendix 6.6-G.

20 MS. LUCKHARDT: I believe that also was
21 submitted as either a supplemental filing or a
22 data response.

23 HEARING OFFICER CELLI: Thank you.

24 MS. LUCKHARDT: So both of those could
25 be deleted.

1 HEARING OFFICER CELLI: As to Exhibit
2 20, Habitat Loss Permit Status from Orange Grove's
3 Prehearing Conference Statement. I have a note to
4 myself that says, needs foundation, it was filed
5 after the declaration of Ms. Elisha Back and
6 Ms. Williams-Dodd. In other words, when I
7 received from --

8 MS. LUCKHARDT: I have Ms. Elisha Back
9 here if you would like to have her address that
10 document.

11 HEARING OFFICER CELLI: Yes, let me just
12 to be clear so that as we go through this you
13 understand what I am talking about. We received
14 the declaration list, applicant's testimony.

15 MS. LUCKHARDT: Right.

16 HEARING OFFICER CELLI: And in that
17 there were, there were declarations. And for each
18 topic area it describes prior filings, which we
19 took to mean that was what was included in the
20 declaration. But this was an after-filed exhibit.
21 In other words, I think it was produced after the
22 declaration was signed and so we wanted just to be
23 clear for the record. So you might need Ms. Back
24 or Williams-Dodd to testify that that document
25 would be included.

1 MS. LUCKHARDT: As I understand from
2 Ms. Back, this particular document --

3 HEARING OFFICER CELLI: I think it is a
4 single-page document that was written in response
5 to our questions.

6 MS. LUCKHARDT: It is.

7 MS. BACK: It is.

8 MS. LUCKHARDT: Yes, it is. If I could
9 have Ms. Back.

10 HEARING OFFICER CELLI: You know what,
11 Mr. Back, if you wouldn't mind stepping towards
12 the podium.

13 MS. LUCKHARDT: Yes, we need to have her
14 sworn.

15 HEARING OFFICER CELLI: I am going to
16 swear you in.

17 MS. LUCKHARDT: We'll need to have her
18 sworn.

19 HEARING OFFICER CELLI: Please raise
20 your right hand.

21 Whereupon,

22 ELISHA BACK

23 Was duly sworn.

24 HEARING OFFICER CELLI: Do you include
25 Exhibit 20 in your declaration under Exhibit

1 18 (c)?

2 MR. BACK: I do.

3 HEARING OFFICER CELLI: Thank you.

4 Any objections, staff?

5 MR. BABULA: I'm trying to figure out
6 what exactly -- are we talking about the response
7 to the habitat loss permit?

8 MS. LUCKHARDT: Right.

9 MR. BABULA: Staff's general position is
10 that the CEC process subsumes the habitat loss
11 permit and that the County doesn't need to issue
12 the permit itself. Our condition of certification
13 and our mitigation, that was developed in
14 conjunction with the County, with Fish and Game,
15 Fish and Wildlife.

16 HEARING OFFICER CELLI: The only
17 question is whether this document, because the
18 document came in after all of the other documents.

19 MR. BABULA: We're fine with that one.

20 HEARING OFFICER CELLI: And that's all.
21 And Mr. McPhee, do you have any objection to this
22 document?

23 MR. MCPHEE: This is not my area of
24 competence and it is not my area of concern so I
25 don't have any objections whatsoever.

1 HEARING OFFICER CELLI: Thank you, sir.
2 With that exhibits, Exhibit 1 is already in the
3 record. Exhibit 2, 7, 10, 13, 18(c), Exhibit 20,
4 Exhibit 22, Exhibit 53, Exhibit 55 and exhibit 59
5 are received into evidence.

6 (The above-referenced documents,
7 previously marked as Applicant's
8 Exhibits 2, 7, 10, 13, 18(c), 20,
9 22, 53, 55, 59 were received into
10 evidence.)

11 HEARING OFFICER CELLI: Cultural.

12 MS. LUCKHARDT: Okay, Applicant moves,
13 we have already moved Exhibit 1. Exhibits 7, 10,
14 18(d) and Exhibit 15.

15 HEARING OFFICER CELLI: Okay. And if I
16 could call Ms. Back back to the podium, you are
17 under oath still. My question is that, the
18 letter, the Report of the Geoarcheological
19 Investigation for the OGP Gas Pipeline of October
20 30, 2008, was that included?

21 MS. LUCKHARDT: You should be asking
22 Mr. Stenger.

23 HEARING OFFICER CELLI: I'm sorry.

24 MS. LUCKHARDT: That's all right.

25 HEARING OFFICER CELLI: Mr. Stenger,

1 this wasn't listed as one of the documents with
2 your declaration so do you intend, is it your
3 testimony that this document, Exhibit 15 would be
4 included within that declaration?

5 MR. STENGER: Yes.

6 HEARING OFFICER CELLI: Thank you. Any
7 objection, staff?

8 MR. BABULA: No objection.

9 HEARING OFFICER CELLI: Mr. McPhee, any
10 objection?

11 MR. McPHEE: No objections.

12 HEARING OFFICER CELLI: Those exhibits
13 will be received into evidence.

14 (The above-referenced documents,
15 previously marked as Applicant's
16 Exhibits 7, 10, 18(d), 15 were
17 received into evidence.)

18 HEARING OFFICER CELLI: Land Use.

19 MS. LUCKHARDT: Land use. Applicant
20 offers Exhibit 1 and Exhibit 18(f).

21 HEARING OFFICER CELLI: Any objection,
22 staff?

23 MR. BABULA: No objection.

24 HEARING OFFICER CELLI: Mr. McPhee?

25 MR. McPHEE: No objections.

1 HEARING OFFICER CELLI: Received.

2 (The above-referenced documents,
3 previously marked as Applicant's
4 Exhibits 1 and 18(f) were received
5 into evidence.)

6 HEARING OFFICER CELLI: Public Health.

7 MS. LUCKHARDT: Public Health applicant
8 offers Exhibit 1 and Exhibit 7 and Exhibit 18(h).

9 HEARING OFFICER CELLI: Objections
10 staff?

11 MR. BABULA: No objection.

12 HEARING OFFICER CELLI: Any objection,
13 Mr. McPhee?

14 MR. MCPHEE: I have no knowledge of what
15 is concerned about in the Public Health. But as
16 long it is not concerned with water, with recycled
17 water, I have no objections.

18 HEARING OFFICER CELLI: Thank you.
19 Received.

20 (The above-referenced documents,
21 previously marked as Applicant's
22 Exhibits 1, 7, 18(h) were received
23 into evidence.)

24 HEARING OFFICER CELLI: Socioeconomic
25 Resources.

1 MS. LUCKHARDT: Applicant offers Exhibit
2 1, Exhibit 7 and Exhibit 18(i).

3 HEARING OFFICER CELLI: Staff, any
4 objection?

5 MR. BABULA: No objection.

6 HEARING OFFICER CELLI: Mr. McPhee, any
7 objection?

8 MR. MCPHEE: No objections.

9 HEARING OFFICER CELLI: Received.

10 (The above-referenced documents,
11 previously marked as Applicant's
12 Exhibits 1, 7, 18(i) were received
13 into evidence.)

14 HEARING OFFICER CELLI: Transmission
15 Line Safety and Nuisance.

16 MS. LUCKHARDT: Applicant offers Exhibit
17 1 and Exhibit 18(o).

18 HEARING OFFICER CELLI: Staff?

19 MR. BABULA: No objection.

20 HEARING OFFICER CELLI: Mr. McPhee?

21 MR. MCPHEE: As long as it doesn't
22 concern a noise ordinance I have no objections.

23 HEARING OFFICER CELLI: Thank you.
24 Those are received into evidence, 1 and 18(o).

25 (The above-referenced documents,

1 previously marked as Applicant's
2 Exhibits 1, 18(o) were received
3 into evidence.)

4 HEARING OFFICER CELLI: Visual
5 Resources.

6 MS. LUCKHARDT: Applicant offers Exhibit
7 1, Exhibit 18(l).

8 HEARING OFFICER CELLI: Staff?

9 MR. BABULA: No objection.

10 HEARING OFFICER CELLI: Mr. McPhee?

11 MR. MCPHEE: No objections.

12 HEARING OFFICER CELLI: Received into
13 evidence.

14 (The above-referenced documents,
15 previously marked as Applicant's
16 Exhibits 1, 18(l) were received
17 into evidence.)

18 HEARING OFFICER CELLI: Waste
19 Management.

20 MS. LUCKHARDT: Applicant offers Exhibit
21 1, Exhibit 7, Exhibit 10 and Exhibit 18(m).

22 HEARING OFFICER CELLI: Any objections,
23 staff?

24 MR. BABULA: No objections.

25 MR. MCPHEE: No objections.

1 HEARING OFFICER CELLI: Any objections,
2 Mr. McPhee?

3 MR. MCPHEE: No objection.

4 HEARING OFFICER CELLI: Thank you.
5 Those exhibits will be received.

6 (The above-referenced documents,
7 previously marked as Applicant's
8 Exhibits 1, 7, 10, 18(m) were
9 received into evidence.)

10 HEARING OFFICER CELLI: Worker Safety.

11 MS. LUCKHARDT: Applicant offers Exhibit
12 1, Exhibit 7, Exhibit 10, Exhibit 18(n) and
13 Exhibit 54.

14 HEARING OFFICER CELLI: Objection?

15 MR. BABULA: No objection.

16 MR. MCPHEE: As long as it doesn't
17 concern water and wastewater I have no objections.

18 HEARING OFFICER CELLI: Thank you.

19 Those exhibits will be received into evidence.

20 (The above-referenced documents,
21 previously marked as Applicant's
22 Exhibits 1, 7, 10, 18(n) were
23 received into evidence.)

24 HEARING OFFICER CELLI: Facility Design.

25 MS. LUCKHARDT: Applicant offers Exhibit

1 1, Exhibit 2, Exhibit 18(o) and Exhibit 24.

2 HEARING OFFICER CELLI: Staff?

3 MR. BABULA: No objection.

4 HEARING OFFICER CELLI: Mr. McPhee?

5 MR. MCPHEE: As long as it doesn't
6 concern water and wastewater I have no objection.

7 HEARING OFFICER CELLI: Thank you.

8 Those are received.

9 (The above-referenced documents,
10 previously marked as Applicant's
11 Exhibits 1, 2, 18(o), 24 were
12 received into evidence.)

13 HEARING OFFICER CELLI: Geology and
14 Paleontology.

15 MS. LUCKHARDT: Applicant moves Exhibit
16 1 and Exhibit 18(p).

17 HEARING OFFICER CELLI: Any objection
18 from staff?

19 MR. BABULA: No objection.

20 HEARING OFFICER CELLI: Any objection
21 from Mr. McPhee?

22 MR. MCPHEE: No objections.

23 HEARING OFFICER CELLI: So 1 and 18(p)
24 are received.

25 (The above-referenced documents,

1 previously marked as Applicant's
2 Exhibits 1, 18(p) were received
3 into evidence.)

4 HEARING OFFICER CELLI: Power Plant
5 Efficiency.

6 MS. LUCKHARDT: Applicant moves Exhibit
7 1 and Exhibit 18(o).

8 HEARING OFFICER CELLI: Any objection
9 from staff?

10 MR. BABULA: No objection.

11 HEARING OFFICER CELLI: Mr. McPhee?

12 MR. MCPHEE: As long as it doesn't
13 consider water and wastewater I have no
14 objections.

15 HEARING OFFICER CELLI: Thank you.
16 Those will be received.

17 (The above-referenced documents,
18 previously marked as Applicant's
19 Exhibits 1, 18(o) were received
20 into evidence.)

21 HEARING OFFICER CELLI: I haven't been
22 paying much attention but I did notice some people
23 came is. Is anyone here from Alliance for a
24 Cleaner Tomorrow or Anthony Arand?

25 Okay, moving on, Power Plant

1 Reliability.

2 MS. LUCKHARDT: Applicant offers Exhibit
3 1 and Exhibit 18(o).

4 HEARING OFFICER CELLI: Any objection
5 from staff?

6 MR. BABULA: No objection?

7 HEARING OFFICER CELLI: Mr. McPhee?

8 MR. MCPHEE: As long as it doesn't
9 consider water and wastewater I have no
10 objections.

11 HEARING OFFICER CELLI: Okay, 1 and
12 18(o) are received.

13 (The above-referenced documents,
14 previously marked as Applicant's
15 Exhibits 1, 18(o) were received
16 into evidence.)

17 HEARING OFFICER CELLI: Transmission
18 System Engineering, Exhibit 1. I'm sorry, please,
19 applicant.

20 MS. LUCKHARDT: Applicant offers Exhibit
21 1, Exhibit 2, Exhibit 7, Exhibit 10, Exhibit 18(o)
22 and Exhibit 50.

23 HEARING OFFICER CELLI: Any objection
24 from staff?

25 MR. BABULA: No objection.

1 HEARING OFFICER CELLI: Mr. McPhee?

2 MR. MCPHEE: As long as it doesn't
3 consider water and wastewater I have no
4 objections.

5 HEARING OFFICER CELLI: Actually just so
6 you know, Soils and Water is considered contested
7 because of the filing that you lodged and so we
8 are not going to include the Soil and Water in the
9 uncontested. These are the uncontested topics.

10 MR. MCPHEE: Okay, great, thank you.

11 (The above-referenced documents,
12 previously marked as Applicant's
13 Exhibits 1, 2, 7, 10, 18(o), 50
14 were received into evidence.)

15 HEARING OFFICER CELLI: Thank you.

16 Alternatives.

17 MS. LUCKHARDT: Applicant offers Exhibit
18 1, Exhibit 7 and Exhibit 18(q).

19 HEARING OFFICER CELLI: Any objections,
20 staff?

21 MR. BABULA: No objections from staff?

22 HEARING OFFICER CELLI: Mr. McPhee?

23 MR. MCPHEE: No objections.

24 HEARING OFFICER CELLI: Thank you.

25 (The above-referenced documents,

1 previously marked as Applicant's
2 Exhibits 1, 7, 18(q) were received
3 into evidence.)

4 HEARING OFFICER CELLI: General
5 Conditions.

6 MS. LUCKHARDT: Applicant offers Exhibit
7 18(r).

8 MR. BABULA: No objection.

9 HEARING OFFICER CELLI: I have -- Any
10 objection from Mr. McPhee?

11 MR. McPHEE: No objection.

12 HEARING OFFICER CELLI: I have -- Is
13 Exhibit 19 withdrawn?

14 MS. LUCKHARDT: Exhibit 19 is withdrawn.
15 It was never necessary to prepare so we did not
16 ever provide it.

17 HEARING OFFICER CELLI: Thank you.

18 (The above-referenced document,
19 previously marked as Applicant's
20 Exhibit 18(r) was received into
21 evidence.)

22 HEARING OFFICER CELLI: Now at the
23 Prehearing Conference the following topics were
24 considered disputed and we are prepared to receive
25 evidence in the form of written and live testimony

1 and enable the parties to cross-examine and enter
2 -- except that I have the feeling that probably
3 there's been some movement. I have that it that
4 Hazardous Materials, Soil and Water, Traffic and
5 Transportation and Air Quality and Noise and
6 Vibration are disputed topics. Unless the parties
7 can educate me as to whether any of these topics
8 are now undisputed.

9 MR. McPHEE: Would you repeat that,
10 please.

11 HEARING OFFICER CELLI: Hazardous
12 Materials, Soil and Water Resources, Traffic and
13 Transportation, Air Quality and Noise and
14 Vibration.

15 MR. McPHEE: Right.

16 MS. LUCKHARDT: based on the workshop
17 that occurred on December 1, applicant believes
18 that in the areas of Hazardous Materials and Noise
19 and Vibration that our concerns about the staff
20 assessment have been resolved and that we are no
21 longer contesting either of those subject areas.

22 HEARING OFFICER CELLI: In which case we
23 would allow the parties to enter that evidence by
24 declaration unless there is an objection. Any
25 objection by staff?

1 MR. BABULA: No objection.

2 HEARING OFFICER CELLI: Mr. McPhee?

3 MR. MCPHEE: No objection.

4 HEARING OFFICER CELLI: Okay, at this
5 point then Hazardous Materials.

6 MS. LUCKHARDT: Applicant offers under
7 the subject area of Hazardous Materials Exhibit 1,
8 Exhibit 7, Exhibit 10 and Exhibit 18(e).

9 MR. BABULA: No objection.

10 HEARING OFFICER CELLI: Any objection,
11 Mr. McPhee?

12 MR. MCPHEE: I don't know what those
13 exhibits are. But if it concerns hazardous
14 material and reclaimed or recycled water then I
15 have an objection.

16 HEARING OFFICER CELLI: Hazardous
17 Materials. Applicant, perhaps you can give him a
18 little taste of what --

19 MS. LUCKHARDT: Hazardous Materials is
20 primarily focused ammonia transportation and all
21 other hazardous materials that are brought to the
22 site.

23 HEARING OFFICER CELLI: That would
24 include paint thinner.

25 MS. LUCKHARDT: Yes.

1 HEARING OFFICER CELLI: I mean,
2 everything, anything.

3 MR. McPHEE: The reclaimed water that is
4 transported to the site by --

5 HEARING OFFICER CELLI: By trucks?

6 PRESIDING MEMBER BOYD: -- contains
7 ammonia.

8 MS. LUCKHARDT: It is our understanding
9 that it is not considered to be a hazardous
10 material and it was not analyzed under the
11 Hazardous Materials section.

12 HEARING OFFICER CELLI: The water is
13 analyzed under Soils and Water. So the Hazardous
14 Materials would not include water.

15 MR. McPHEE: Great, thank you very much.
16 I have no objection.

17 HEARING OFFICER CELLI: Thank you. At
18 this time those documents will be received as
19 evidence.

20 (The above-referenced documents,
21 previously marked as Applicant's
22 Exhibits 1, 7, 10, 18(e) were
23 received into evidence.)

24 HEARING OFFICER CELLI: And then Noise
25 and Vibration.

1 MS. LUCKHARDT: Applicant offers Exhibit
2 1 and Exhibit 18(g).

3 MR. BABULA: No objections.

4 MR. MCPHEE: Would you repeat that.
5 What are we talking about now?

6 HEARING OFFICER CELLI: Noise and
7 Vibration. And the applicant has offered in
8 Exhibit 1, which is the AFC, and Exhibit 18(g),
9 which is the witnesses declarations and responses.
10 Do you have any objection to that evidence being
11 admitted into evidence?

12 MR. MCPHEE: No, I have no objection.

13 HEARING OFFICER CELLI: Okay, those
14 exhibits will be received.

15 (The above-referenced documents,
16 previously marked as Applicant's
17 Exhibits 1, 18(g) were received
18 into evidence.)

19 HEARING OFFICER CELLI: That leaves us
20 now with Traffic and Transportation, Air Quality
21 and Soil and Water. So with that --

22 MS. LUCKHARDT: The only issue I believe
23 that's been raised on Air Quality relates to the
24 comments of Mr. Arand at this point.

25 HEARING OFFICER CELLI: That's correct.

1 Mr. Arand, are you on the telephone? Is there
2 anyone representing Anthony Arand on the telephone
3 or present?

4 We received documents from Mr. Arand
5 which were not supported by a declaration under
6 penalty of perjury. The comments themselves seem
7 to be more on the order of comment than evidence
8 that I could see. Although Mr. Arand included in
9 the documents his professional qualifications.
10 And he is not present today. And unfortunately
11 the only way we would be able to take that
12 evidence into the record would be --

13 (The door opened.)

14 HEARING OFFICER CELLI: The door opens.
15 No. The only way we would be able to take that
16 evidence into the record today would be under
17 oath. So unfortunately at this point I don't
18 believe that the Committee can receive those as
19 anything other than comment. So with that I think
20 we should proceed by way of declaration.

21 MS. LUCKHARDT: Okay. Then applicant
22 offers under the subject matter of Air Quality
23 Exhibit 1, Exhibit 7, Exhibit 10, Exhibit 12,
24 Exhibit 17, Exhibit 18(b) and Exhibit 60, which is
25 the Final Determination of Compliance.

1 HEARING OFFICER CELLI: Staff.

2 MR. BABULA: I have no objection. And
3 also we have the Air District on the phone. So if
4 you need their input to sponsor the FDOC --

5 HEARING OFFICER CELLI: Yes.

6 MR. BABULA: We could maybe do that at
7 this point.

8 MS. LUCKHARDT: Now?

9 HEARING OFFICER CELLI: Let me first
10 hear from Mr. McPhee.

11 MR. BABULA: Okay.

12 HEARING OFFICER CELLI: Mr. McPhee, do
13 you have any objection to --

14 MR. MCPHEE: The applicant speaks rather
15 fast but I think it is Air Quality, is it not?

16 HEARING OFFICER CELLI: Correct.

17 MR. MCPHEE: I have no objections.

18 HEARING OFFICER CELLI: Thank you. Now
19 on the phone who do we have from the San Diego Air
20 Pollution Control District?

21 MR. ANNICCHIARICO: Hello, this is John
22 Annicchiarico.

23 HEARING OFFICER CELLI: Okay, good
24 morning, Mr. Annicchiarico.

25 MR. ANNICCHIARICO: Sure, that's fine.

1 (Laughter)

2 HEARING OFFICER CELLI: Sorry. I'm
3 doing my best.

4 MR. ANNICCHIARICO: I appreciate it.

5 HEARING OFFICER CELLI: Applicant, do
6 you have some direct of Mr. Annicchiarico?

7 DIRECT EXAMINATION

8 BY MS. LUCKHARDT:

9 Q Mr. Annicchiarico, is the final, was the
10 Final Determination of Compliance prepared by you
11 or under your direction?

12 A Yes.

13 Q And is it true and correct to the best
14 of your knowledge?

15 A Yes.

16 Q And where it contains professional
17 judgment does it contain your best professional
18 judgment?

19 A Yes.

20 MS. LUCKHARDT: At this point we
21 would --

22 HEARING OFFICER CELLI: Cross?

23 MR. BABULA: I have no cross.

24 HEARING OFFICER CELLI: Mr. McPhee, any
25 cross?

1 MR. MCPHEE: No cross.

2 HEARING OFFICER CELLI: Thank you.

3 Thank you, Mr. --

4 MS. LUCKHARDT: Annicchiarico.

5 HEARING OFFICER CELLI: Annicchiarico.

6 At this point then Exhibits marked for
7 identification 1, 7, 10, 12, 17, 18(b) and Exhibit
8 60 as they relate to Air Quality will be received.

9 (The above-referenced documents,
10 previously marked as Applicant's
11 Exhibits 1, 7, 10, 12, 17, 18(b),
12 60 were received into evidence.)

13 HEARING OFFICER CELLI: So Noise, Air.
14 There's Traffic and Soil. Let's take care of Soil
15 and Water.

16 MR. BABULA: Wait, do we need him any
17 longer or can he be excused.

18 HEARING OFFICER CELLI: Yes, you may be
19 excused, Mr. Annicchiarico.

20 MR. ANNICCHIARICO: Thank you.

21 HEARING OFFICER CELLI: Thank you. And
22 you are also welcome to remain on the phone if you
23 wanted to make a comment later.

24 Staff, you have a question.

25 MR. BABULA: I have a comment. I have

1 Will Walter's on the line to address Tony's
2 submission so I don't know if we need -- What is
3 your plan?

4 HEARING OFFICER CELLI: You know what.

5 MR. BABULA: He was going to address --

6 HEARING OFFICER CELLI: I am going to,
7 what I would like to do is have -- Let's take that
8 evidence, in an abundance of caution just because
9 we have some comments that need to be addressed.
10 And so if you would. Now who is on the line, Will
11 Walters?

12 MR. BABULA: Will Walters.

13 HEARING OFFICER CELLI: Mr. Walters, can
14 you hear me?

15 MR. WALTERS: Just barely.

16 HEARING OFFICER CELLI: Can you hear me
17 better now?

18 MR. WALTERS: Yes I can.

19 HEARING OFFICER CELLI: What happened to
20 our telephone?

21 ADVISOR HUNGERFORD: I just moved it
22 over to Jared.

23 MS. LUCKHARDT: Here, put it between the
24 two of you.

25 HEARING OFFICER CELLI: Okay.

1 Mr. Walters, would you please stand and raise your
2 right hand.

3 Whereupon,

4 WILLIAM WALTERS

5 Was duly sworn.

6 HEARING OFFICER CELLI: Thank you. Your
7 witness.

8 MR. BABULA: Okay.

9 DIRECT EXAMINATION

10 BY MR. BABULA:

11 Q Hey Will, Tony is not present but we are
12 going to try to address some of his comments in
13 that letter that I had sent you, which was his
14 submission for this hearing. And I pretty much
15 just want you to address, he had some issues
16 regarding some of the potential developments that
17 might occur in the region and whether those were
18 considered in your analysis of the air impacts and
19 air quality issues.

20 So you just want to address quickly what
21 your analysis -- or why you did or did not include
22 the things he listed, which included the 10,000
23 housing development, the commuter college. So if
24 you want to just address that, that would be glad.

25 (Whereupon there was background

1 telephone line noise.)

2 A Okay, I'll try through what is going on
3 here with the phone.

4 In fact, what I am going to do is I am
5 going to through the points just before --

6 HEARING OFFICER CELLI: One moment, it
7 appears that somebody's line, somebody hung up
8 their line or is on hold. Is that --

9 UNIDENTIFIED SPEAKER: Do you want me to
10 hang up now?

11 HEARING OFFICER CELLI: Whose ever line
12 that is.

13 UNIDENTIFIED SPEAKER: Hello?

14 MR. BABULA: Is that the Air District
15 talking?

16 UNIDENTIFIED SPEAKER: I don't think so.

17 HEARING OFFICER CELLI: Okay. Please
18 proceed.

19 BY MR. BABULA:

20 Q Go ahead, Will.

21 A I was going to go through Mr. Arand's
22 points one through four. First he made a point
23 that we didn't specifically identify impacts to
24 the Pala Reservation and how that would impact
25 their Clean Air Act requirements. And at issue

1 there is that we generally address that issue for
2 the entire air basin, which would include the
3 reservation, with both the federal and state Clean
4 Air Act requirements and ambient air quality
5 standards.

6 He also had questions about requirements
7 for mitigation, and particularly offsets. We are
8 requiring or are recommending the requirement of
9 offsets up to what we consider a reasonable worst
10 case for operation for this type of facility. So
11 I believe that our analysis includes everything
12 that would be necessary to address that particular
13 comment.

14 His second comment has to do with the
15 procedural requirement for the California Air
16 Resources Board. Their Title 20 Section 1722.5.3
17 or B. I may be over-stepping myself a little bit
18 and this may actually be a question more for
19 Jared. However, I did talk to staff counsel this
20 morning about this and apparently he is mentioning
21 an incorrect section for the air quality analysis
22 that has to be done under AFC.

23 HEARING OFFICER CELLI: Mr. Walters, it
24 sounds like you are breaking up a little bit. If
25 you could speak directly into the mic on your

1 phone.

2 MR. WALTERS: Okay, I'll be as loud as I
3 can here.

4 HEARING OFFICER CELLI: Much better.

5 MR. WALTERS: The section of Title 20
6 that he is referring to is for Notice of Intention
7 and not for the review of the AFC, which is
8 1744.5. So I believe that staff has met all its
9 requirements under 1744.5. There are no specific
10 requirements for the California Air Resources
11 Board under that.

12 HEARING OFFICER CELLI: That is as to
13 Mr. Arand's point number two, correct?

14 MR. WALTERS: Yes.

15 HEARING OFFICER CELLI: Okay, so we are
16 now on to point number three.

17 MR. WALTERS: Point number three I
18 believe isn't actually an air quality issue.

19 HEARING OFFICER CELLI: That's correct.
20 Point number four.

21 MR. WALTERS: Point number four has to
22 do with the cumulative impact analysis. What
23 staff typically does for the cumulative impact
24 analysis is take a look at what we consider to be
25 fairly definitive projects in the area. And in

1 particular we look at stationary source projects
2 as they are projects that can be modeled and
3 generally have information available for modeling.

4 In the review of the information that we
5 obtained, those projects, those within -- and we
6 generally take a look at projects within six
7 miles, ten kilometers essentially, around the
8 site. Those projects that we were aware of were
9 the Gregory Canyon Landfill and Rosemary's
10 Mountain Rock Quarry. And while he mentions that
11 we did not actually include both of those we did
12 include both of those in the cumulative analysis
13 or in the request for cumulative analysis that the
14 applicant provided and that we reviewed.

15 The other three projects, we are not
16 aware of being in a state under which we would
17 need to do that review. Also, those types of
18 projects have emissions that are more diffuse in
19 terms of, particularly operating emissions where
20 they would be mobile emissions throughout the
21 region, it would not have as significant a local
22 impact. So we proceeded with the information that
23 we had for those projects.

24 Also when taking a look at some of the
25 information he provided for emissions, he used

1 very dated information that overstated emissions
2 from construction of these facilities. He
3 essentially used information from a 1993 guidance
4 document that itself was using emission factors
5 from the 1980s. So just to let the Commissioners
6 know that those emissions are very overstated for
7 the project.

8 HEARING OFFICER CELLI: Thank you.

9 MR. WALTERS: That's essentially all of
10 my review on his comments.

11 HEARING OFFICER CELLI: Mr. McPhee, do
12 you have any cross-examination of Mr. Walters?

13 MR. MCPHEE: None whatsoever.

14 HEARING OFFICER CELLI: Applicant, any
15 cross-examination?

16 MS. LUCKHARDT: None.

17 HEARING OFFICER CELLI: Okay. I have a
18 few questions if I may, Mr. Walters, about air.
19 Specifically, AQSC-8 requires new model year
20 engines for the trucks or that new model year
21 engines be dropped into old trucks. Are you with
22 me on this?

23 MR. WALTERS: Yes.

24 HEARING OFFICER CELLI: Okay. The
25 question I have is, initially when the AFC came in

1 there was talk about ultra-low sulfur diesel fuel.
2 And there is no mention of that in the condition
3 and I wanted to know what happened to that part of
4 the analysis, if any.

5 MR. WALTERS: Yes, actually that's a
6 very simple answer. Ultra-low sulfur diesel --

7 HEARING OFFICER CELLI: Again,
8 Mr. Walters, I need you to --

9 MR. WALTERS: -- is now the California
10 standard.

11 HEARING OFFICER CELLI: Mr. Walters.

12 MR. WALTERS: And they essentially would
13 not have the ability to use any other sort of
14 fuel. So we don't need to have it as a specified
15 mitigation measure, it is the standard.

16 HEARING OFFICER CELLI: I didn't mean to
17 cut you off at the beginning but I wanted you to
18 know, I was just going to ask you again to speak
19 directly into the mic on your phone.

20 MR. WALTERS: Okay. My mouth is so
21 close I am essentially licking the phone at this
22 point.

23 (Laughter)

24 HEARING OFFICER CELLI: But we hear you
25 fine.

1 MR. WALTERS: Okay. In terms of the
2 fuel sulfur requirements. Ultra-low sulfur diesel
3 is now the California standard so there is really
4 no ability for them to obtain other types of fuel
5 to run in the trucks. So we don't really
6 essentially require, at least for motor vehicles,
7 we do not really require an additional mitigation
8 measure for something that we expect as a normal
9 requirement.

10 HEARING OFFICER CELLI: Thank you. And
11 then I have another question with regard to
12 whether there was any air quality analysis of the
13 emissions of the water trucks.

14 MR. WALTERS: Yes, we in fact did
15 include those emissions and those emissions are
16 included as part of what we are requiring them to
17 mitigate. So in terms of the total tons of
18 pollutants for mitigation, they are included in
19 those numbers.

20 HEARING OFFICER CELLI: Thank you. Any
21 further questions from staff?

22 MR. BABULA: I have no further
23 questions.

24 HEARING OFFICER CELLI: Mr. McPhee?

25 MR. MCPHEE: Yes, I have one comment.

1 Reclaimed water or recycled water, whatever you
2 want to call it, has dissolved methane gas in it.
3 In the summer months on those roads gets up to be
4 around 100 degrees fahrenheit and the methane gas
5 will come out of the, will come out of the
6 dissolved, reclaimed or recycled water. This to
7 me is a hazardous material.

8 HEARING OFFICER CELLI: Do you have a
9 question to pose to Mr. Walters?

10 CROSS EXAMINATION

11 MR. McPHEE: Was that considered?

12 HEARING OFFICER CELLI: Did you get the
13 question, Mr. Walters?

14 MR. WALTERS: Yes. We certainly took a
15 look at the comments we had received in terms of
16 tertiary reclaimed water. You know, that quality
17 of water is nearly tap quality. And yes, there
18 are some trihalomethanes and other things in very
19 low PPM or maybe even PPB levels, so off-gassing
20 of those materials would be essentially
21 negligible.

22 HEARING OFFICER CELLI: Anything
23 further, Mr. McPhee.

24 MR. McPHEE: I disagree.

25 HEARING OFFICER CELLI: But do you have

1 any further question of Mr. Walters.

2 MR. McPHEE: I have no further
3 questions.

4 HEARING OFFICER CELLI: Thank you.
5 Applicant.

6 MS. LUCKHARDT: I have no questions for
7 Mr. Walters.

8 HEARING OFFICER CELLI: Okay. Thank
9 you, Mr. Walters.

10 MR. WALTERS: You're welcome.

11 HEARING OFFICER CELLI: As I see it the
12 only topic area we have left is Soil and Water.
13 Am I right about that?

14 MS. LUCKHARDT: Soil and Water and
15 Traffic and Transportation.

16 HEARING OFFICER CELLI: Ah yes. Okay,
17 let's get to the Soil and Water first. Applicant,
18 is there a motion?

19 MS. LUCKHARDT: Okay. Would you prefer
20 that I move the exhibits first or introduce the
21 witnesses first?

22 HEARING OFFICER CELLI: You might as
23 well introduce your witnesses.

24 MS. LUCKHARDT: Okay, applicant is going
25 to call Mr. Stenger and Mr. Jones. I don't

1 believe -- Mr. Jones has not been sworn.

2 HEARING OFFICER CELLI: Please stand and
3 raise your right hand.

4 Whereupon,

5 RICHARD MICHAEL JONES

6 Was duly sworn.

7 HEARING OFFICER CELLI: Thank you.

8 DIRECT EXAMINATION

9 BY MS. LUCKHARDT:

10 Q Okay, starting with Mr. Jones. Can you
11 please state your full name and spell it for the
12 record.

13 A Richard Michael Jones, I go by Mike, J-
14 O-N-E-S.

15 Q And does your testimony include -- was a
16 statement of your qualifications attached to your
17 testimony?

18 A Yes.

19 Q And does your testimony include a list
20 of the exhibits that you are sponsoring?

21 A Yes.

22 Q And does that list include the following
23 exhibits, or the identified sections of the
24 following exhibits, Exhibits 1, 2, 6, 7, 10, 14,
25 18(j), 23, 51, 52 and 56?

1 A Yes.

2 Q Do you have any corrections to your
3 testimony at this time?

4 A No.

5 Q Insofar as your testimony contains
6 statements of fact are those facts correct to the
7 best of your knowledge?

8 A Yes.

9 Q Insofar as your testimony contains
10 statements of opinion do they represent your best
11 professional judgment?

12 A Yes.

13 Q Do you now adopt these exhibits as your
14 sworn testimony?

15 A Yes.

16 HEARING OFFICER CELLI: May I just
17 inquire? I have Exhibit 6, which is the grading
18 permit application dated August 26, 2008, is
19 mentioned in Exhibit 18(o) but not in 18(j). And
20 18(o) I think is -- I don't remember who --

21 MS. LUCKHARDT: That would have come in
22 under the Engineering.

23 HEARING OFFICER CELLI: Exhibit 18(o) is
24 whose?

25 MS. LUCKHARDT: Exhibit 18(o) would have

1 come in under, it would have been also sponsored
2 under Engineering. It's probably sponsored by one
3 of the, by one of the engineers.

4 HEARING OFFICER CELLI: That's as to
5 Exhibit 6.

6 MS. LUCKHARDT: Yeah. I don't have a
7 problem if that has already come in.

8 HEARING OFFICER CELLI: Okay.

9 MS. LUCKHARDT: And not sponsoring it in
10 at this time.

11 HEARING OFFICER CELLI: I just wanted to
12 be clear about that.

13 MS. LUCKHARDT: Yes, that's fine.

14 HEARING OFFICER CELLI: I'm sorry,
15 please proceed.

16 MS. LUCKHARDT: Okay. So we will move
17 to Mr. Stenger.

18 DIRECT EXAMINATION

19 MS. LUCKHARDT: If you could please
20 state your full name and spell your last name for
21 the record.

22 HEARING OFFICER CELLI: Before you do I
23 just want to give staff and the intervenor an
24 opportunity to cross. Any cross, staff?

25 MS. LUCKHARDT: Well we have both of

1 them sponsoring them.

2 HEARING OFFICER CELLI: Okay.

3 MS. LUCKHARDT: And so it seems to make
4 more sense.

5 HEARING OFFICER CELLI: So you want to
6 tag-team and let them cross them both then, okay.

7 MR. BABULA: By committee.

8 HEARING OFFICER CELLI: Let's proceed.
9 That's fine, go ahead.

10 MS. LUCKHARDT: Unless you have an
11 objection.

12 HEARING OFFICER CELLI: No, go ahead.

13 MR. STENGER: Joseph Lawrence Stenger,
14 S-T-E-N-G-E-R.

15 BY MS. LUCKHARDT:

16 Q And was a statement of your
17 qualifications attached to your testimony?

18 A Yes.

19 Q And does your testimony include a list
20 of the exhibits you are sponsoring?

21 A Yes.

22 Q And does it include the identified
23 sections of the following exhibits, 1, 2, 7, 10,
24 14, 18(j), 23, 51, 52 and 56?

25 A Yes.

1 Q And do you have any corrections to your
2 testimony at this time?

3 A No.

4 Q And insofar as your testimony contains
5 statements of fact are those facts correct to the
6 best of your knowledge?

7 A Yes.

8 Q And insofar as your testimony contains
9 statements of opinion do they represent your best
10 professional judgment?

11 A Yes.

12 Q And do you now adopt all these exhibits
13 as your sworn testimony?

14 A Yes.

15 MS. LUCKHARDT: And then at this time I
16 have Mr. Stenger prepared to give a summary of the
17 rebuttal testimony. Is this the appropriate time
18 to have him do that?

19 HEARING OFFICER CELLI: Certainly, sure.

20 BY MS. LUCKHARDT:

21 Q Mr. Stenger, if you would proceed.

22 A Yes. Mr. McPhee submitted testimony
23 bringing up several items and concerns and we
24 submitted rebuttal testimony that addressed, first
25 of all, the issue of the terminology of the water

1 being used from the Fallbrook Public Utility
2 District Water Reclamation Plant.

3 And as part of preparing our testimony I
4 have reviewed the various regulations potentially
5 applicable to the project, looked at various
6 regulatory definitions and so forth, and came to
7 the conclusion that for this particular project
8 recycled water appears to be the more appropriate
9 terminology.

10 Both terms, recycled water and reclaimed
11 water, are out there in common usage and there are
12 a number of California laws and regulations that
13 make reference to these terms. But in my review
14 and to my knowledge of the regulations the
15 regulations that I found that are directly
16 applicable to the project use the recycled water
17 terminology. The reclaimed water terminology is
18 in some regulations but none that I am aware of
19 that are directly applicable to this project.

20 In addition, as far as the concern that
21 trucking of recycled water could potentially not
22 be allowed under regulations, I am aware of no
23 state or federal or local law or regulation that
24 would prohibit the trucking of the recycled water.

25 HEARING OFFICER CELLI: Didn't you file

1 a rebuttal document containing this information?

2 MS. LUCKHARDT: Yes.

3 HEARING OFFICER CELLI: Which exhibit is
4 that?

5 MS. LUCKHARDT: That is Exhibit 23.

6 HEARING OFFICER CELLI: Thank you. I'm
7 sorry, please continue.

8 MR. STENGER: And I am basically just
9 giving a brief summary of that, of that document.

10 Another concern that was brought up by
11 Mr. McPhee was the potential for the recycled
12 water to be used at times as source water that
13 would be injected into the turbines. And the
14 concern that was expressed in his testimony was
15 that the recycled water is of inappropriate
16 quality and would not be able to be used for the
17 turbines. But it would appear to me as though his
18 testimony failed to recognize that any of the
19 water, any of the source water for the project
20 would have to go through a treatment process
21 before it would be injected into the turbines.

22 In addition, the recycled water quality
23 is pretty high quality as it is so when it is used
24 to go into the turbines it would go through the
25 demineralizer. It would be purified and that

1 would yield high-quality water that would be
2 sufficient to inject into the turbines without
3 causing them damage.

4 Another issue that was brought up in his
5 testimony was the question as to why a water
6 pipeline is not proposed for the project instead
7 of the trucking of water. A water pipeline was
8 actually extensively pursued when the project was
9 initially being designed. A water pipeline was
10 actually proposed as part of the project when this
11 project was pursuing a Small Power Plant
12 Exemption.

13 And the water pipeline necessarily had
14 to be eliminated from the project design because
15 it was determined to be infeasible for a couple of
16 reasons, one of the most important being land
17 issues. The project could not get an easement to
18 put in the water pipeline and there is no
19 currently feasible route to construct a water
20 pipeline to the site.

21 And in addition that water pipeline, if
22 there was a feasible way to get it to the site, it
23 would pipe water from the Rainbow Municipal Water
24 District. And the District has a policy that
25 basically would not allow them to issue a will-

1 serve letter for the life of the project as is
2 required by the Energy Commission data adequacy
3 requirements.

4 So a water pipeline would be nice. I
5 think maybe all parties would like to see that.
6 But it is just not feasible at this time and the
7 project needs to be permitted based on a design
8 that is feasible.

9 In regards to Mr. McPhee's comments on
10 the water, the level of disinfection of the water.
11 This water will be required under the water
12 agreement from Fallbrook Public Utilities District
13 to meet the requirements for tertiary treated
14 recycled water, which basically is found in
15 California Code of Regulations Title 22 and
16 requires a certain degree of disinfection so the
17 water is, the water is very clean by the time that
18 it would go into the water trucks. The
19 disinfection criteria is specified in Title 22
20 Section 60301.230.

21 And just in general, there were some
22 comments in his testimony about concerns on this
23 water either possibly being able to cause
24 contamination or being of some type of hazard to
25 the environment.

1 Tertiary treated recycled water, again
2 tightly controlled by regulations, is very clean
3 water. Title 22 specifically states that this
4 water can be used for irrigation of food crops
5 including things like lettuce where you would
6 directly ingest the vegetative material that this
7 water has been applied to.

8 This water is allowed to be used on
9 parks and playgrounds, schoolyards. In fact,
10 recreational impoundments where people can swim.
11 It's allowed to be used in industrial air
12 conditioning and cooling towers, toilets,
13 structural fire fighting and a number of widely
14 varying applications that demonstrate that this
15 water is safe.

16 There are areas in the state laws and
17 regulations that in fact come right out and
18 declare that the use of this type of recycled
19 water is safe.

20 MS. LUCKHARDT: Thank you. I have no
21 further questions. The witnesses are available
22 for cross.

23 HEARING OFFICER CELLI: Do you have a
24 motion as to any of the -- Have you moved the
25 exhibits in on Soil and Water yet?

1 MS. LUCKHARDT: I believe we have
2 introduced them but we may not have moved them.
3 So at this time Applicant moves Exhibit 1, Exhibit
4 2, Exhibit 7, Exhibit 10, Exhibit 14, Exhibit
5 18(j), Exhibit 23, Exhibit 51, Exhibit 52 and
6 Exhibit 56.

7 HEARING OFFICER CELLI: Thank you.
8 Before I rule on that then I am going to give the
9 parties an opportunity to cross-examine. Staff?

10 MR. BABULA: I have just two questions
11 for your committee of experts there.

12 HEARING OFFICER CELLI: Actually, you
13 know, leave that one David and take this one,
14 please.

15 MR. BABULA: Yes, because they are going
16 to have to answer.

17 HEARING OFFICER CELLI: Because they
18 need to answer on the record.

19 For the record, David Hungerford is
20 moving microphones around.

21 MR. BABULA: Okay, I just have two
22 questions.

23 CROSS EXAMINATION

24 MR. BABULA: Where this water, this
25 recycled water is going to be used in the power

1 plant, is there public access? Will there be
2 public access to the power plant facility?

3 MR. JONES: No, there will not be.

4 MR. BABULA: Okay. And then the workers
5 who will be working at the power plant facility,
6 will they have training in the water use and what
7 water is appropriate to drink? Will that be
8 addressed?

9 MR. JONES: Yes. Yes, absolutely.

10 MR. BABULA: No further questions.

11 HEARING OFFICER CELLI: Mr. McPhee, you
12 may cross-examine the witnesses.

13 MR. MCPHEE: Can I --

14 HEARING OFFICER CELLI: Before you do
15 let me just say, witnesses, identify yourselves
16 for the record before you speak since we are going
17 to allow that two people are responding. So just
18 state your name and then answer the question.

19 Please go ahead, Mr. McPhee.

20 MR. MCPHEE: This is Archie McPhee. Can
21 I just put off my cross-examination to my
22 presentation?

23 HEARING OFFICER CELLI: Actually the way
24 that we proceed is the applicant has the burden of
25 proof. The applicant has the duty to present

1 their evidence and so they just finished putting
2 in all of their evidence. But before we get to
3 any of the other parties' witnesses, including
4 yourself, all the other parties have an
5 opportunity to cross-examine and test any of the
6 evidence or testimony that they stated. So you
7 will have an opportunity to put in your evidence
8 when we get to your turn.

9 MR. McPHEE: Okay.

10 HEARING OFFICER CELLI: But at this
11 moment you have the opportunity to cross-examine
12 these two witnesses.

13 CROSS EXAMINATION

14 MR. McPHEE: Tertiary treated recycled
15 water. Is that your terminology for this stuff
16 that you are going to be using?

17 MR. STENGER: That is the terminology
18 out of California Title 22. And the water that
19 will be used for the project will meet that
20 criteria.

21 HEARING OFFICER CELLI: And that was
22 Joseph Stenger. And if you would just say Joseph
23 Stenger and answer your question.

24 MR. McPHEE: So I'll have to ask.

25 HEARING OFFICER CELLI: Any further

1 questions?

2 MR. McPHEE: Yes. Would you repeat the
3 uses, the allowed uses. There are certain allowed
4 uses in Title 22. Would you repeat the allowed
5 uses that you mentioned, you stated.

6 MR. STENGER: Yes, this is Joe Stenger.
7 This may not be an entirely inclusive list but I
8 think that it well documents the quality of this
9 water. Title 22 allows tertiary treated recycled
10 water to be used for irrigation of food crops,
11 including crops where recycled water comes into
12 contact with the edible portion of the crop. And
13 many other irrigation uses including parks and
14 playgrounds, schoolyards, residential landscaping,
15 golf courses and any other irrigation not
16 otherwise prohibited.

17 Title 22 also allows tertiary treated
18 recycled water to be used in recreational
19 impoundments and in industrial air conditioning
20 and cooling towers, in toilets, structural fire
21 fighting, water supply, decorative fountains,
22 commercial laundries, car washes and a wide
23 variety of other uses where there's direct contact
24 with humans and wildlife.

25 MR. McPHEE: Good, thank you. Thank

1 you.

2 HEARING OFFICER CELLI: Any further
3 questions, Mr. McPhee, of these witnesses?

4 MR. MCPHEE: At this particular time no.

5 HEARING OFFICER CELLI: Thank you. At
6 this time is there any objection from staff for
7 the receipt of the evidence?

8 MR. BABULA: No objection.

9 HEARING OFFICER CELLI: Mr. McPhee, do
10 you have any objection to the documentary evidence
11 that the applicant seeks to put -- have received
12 into evidence at this time?

13 MR. MCPHEE: I have no objections to the
14 stated evidence that Mr. Stenger presented.

15 HEARING OFFICER CELLI: Thank you. At
16 this time then we will receive Soil and Water
17 Exhibit 1, Exhibit 2. Exhibit 6 is offered in?

18 MS. LUCKHARDT: Exhibit 6 we would want
19 to offer in. It was initially listed under
20 Engineering and Facility Design. In that section
21 Mr. Jones was also listed as sponsoring that
22 document so I think it is appropriate to bring it
23 in here as well.

24 HEARING OFFICER CELLI: Okay.

25 MS. LUCKHARDT: So we are offering

1 Exhibit 6.

2 HEARING OFFICER CELLI: And Mr. Jones,
3 Exhibit 6 was included in your declaration, is
4 that correct?

5 MR. JONES: Yes.

6 MS. LUCKHARDT: Under Facility Design.

7 HEARING OFFICER CELLI: Okay. So
8 Exhibit 6 will be admitted and received. Exhibit
9 7, 10, Exhibit 14, 18(j), Exhibit 23, Exhibit 51,
10 Exhibit 52 and Exhibit 56 are now received into
11 evidence.

12 (The above-referenced documents,
13 previously marked as Applicant's
14 Exhibits 1, 2, 6, 7, 10, 14, 18(j),
15 23, 51, 52, 56 were received into
16 evidence.)

17 HEARING OFFICER CELLI: And now staff,
18 any evidence that you wish or testimony, any
19 witnesses you would like to call?

20 MR. BABULA: Yes, I would like to have
21 our water expert, Cheryl Closson, testify.

22 HEARING OFFICER CELLI: Would you please
23 stand. Would you please state and spell your name
24 for the record.

25 HEARING OFFICER CELLI: My name is

1 Cheryl Closson, C-L-O-S-S-O-N.

2 HEARING OFFICER CELLI: Thank you,
3 Ms. Closson. Would you raise your right hand.
4 Whereupon,

5 CHERYL CLOSSON

6 Was duly sworn.

7 HEARING OFFICER CELLI: Thank you, you
8 may be seated.

9 MS. CLOSSON: Thank you.

10 HEARING OFFICER CELLI: Mr. Babula, you
11 may proceed.

12 DIRECT EXAMINATION

13 BY MR. BABULA:

14 Q Okay, you have just heard the testimony
15 from the applicant. I would like you to just
16 address what they have stated, whether you concur
17 with what they have said. And if you have any
18 other responses. I know you have gotten a chance
19 to review Archie McPhee's submissions. And so if
20 you just want to discuss the staff's view on his
21 submissions and the applicant's statements, thank
22 you.

23 A Thank you. I generally concur with the
24 applicant's statements. All the citations to
25 Title 22, the recycled water requirements are

1 valid and appropriate.

2 In response to Mr. McPhee's comments I
3 would offer up the Water Recycling Act of 1991
4 that was passed by the Legislature. And the
5 Legislature as part of that Act found that the use
6 of recycled water has proven to be safe from a
7 public health standpoint.

8 HEARING OFFICER CELLI: Excuse me one
9 moment. Are we taping this?

10 THE REPORTER: Yes.

11 HEARING OFFICER CELLI: Okay, I'm sorry,
12 I didn't mean to interrupt. Keep going.

13 MS. CLOSSON: And also reaffirm that the
14 Department of Health Services, at that time they
15 were known as that, they have now been renamed to
16 California Department of Public Health. And they
17 have developed the regulations that were cited by
18 Mr. Stenger that regulate use of recycled water in
19 the state of California.

20 The terminology reclaimed water versus
21 recycled water. In other parts of the country the
22 term reclamation, reclaimed water is used
23 extensively. However, in California we have
24 largely moved toward use of the term recycled. So
25 most of the more recent regulations and guidelines

1 address the term recycled. But they are used
2 interchangeably.

3 And just kind of as an example of that,
4 the City of San Diego has published their own
5 rules and regulations for recycled water use and
6 they in effect define reclaimed water to mean the
7 same thing as recycled water and cite back to the
8 Title 22 regulations.

9 And so local water use, the County of
10 San Diego implements the Title 22 regulations,
11 whereas the City of San Diego actually has
12 developed their own regulations in addition to
13 those. Generally the state and local agencies
14 have found recycled water use to be safe and
15 appropriate, especially in drought conditions and
16 areas where potable water use may be limited.

17 BY MR. BABULA:

18 Q Regardless of the terminology, when you
19 have looked at the project do you feel, based on
20 your professional opinion and analysis, that the
21 water use is safe the way the plant is designed,
22 with the water agreement with Fallbrook and the
23 conditions in the agreement, and then the
24 conditions that you have laid out in your Staff
25 Assessment? That the water use will be safe and

1 it will minimize or eliminate any potential harm
2 to humans or the environment.

3 A I do agree. We have so conditioned the
4 project in Soil and Water-8 I believe it is. That
5 the project must comply with all applicable
6 recycled water use regulations, either state or
7 local. And to my understanding and my review of
8 the project as assessed, or excuse me, as
9 presented it would meet those requirements.

10 HEARING OFFICER CELLI: Thank you.

11 MR. BABULA: I have no further
12 questions. Anyone, if they have cross go ahead.

13 HEARING OFFICER CELLI: Thank you.
14 Mr. McPhee, you may cross-examine this witness.

15 MR. MCPHEE: I don't really need to
16 cross-examine, I agree with a lot of the things
17 that she said. But my presentation will clarify a
18 lot of the information she has presented.

19 HEARING OFFICER CELLI: And you will be
20 going next if you have no further cross.

21 Any cross from the applicant, cross-
22 examination?

23 MS. LUCKHARDT: No cross.

24 HEARING OFFICER CELLI: Thank you.

25 Now Mr. McPhee, before -- This is not

1 the last topic, we have Transportation. At this
2 time this is our opportunity to put into the
3 record any evidence that you want to say.

4 You submitted a declaration of your
5 qualifications and as I understood it you wanted
6 to testify as an expert. So at this time -- You
7 have already been placed under oath, isn't that
8 correct?

9 MR. MCPHEE: I have already been what?

10 HEARING OFFICER CELLI: You have already
11 been sworn in?

12 MR. MCPHEE: Yes.

13 HEARING OFFICER CELLI: So you are still
14 under oath. At this time please make any, give
15 any testimony you wish to give at this time.

16 MR. MCPHEE: I request that my previous
17 statements be considered as comments and that my
18 present statements to be presented today be
19 considered as comments rather than evidence. And
20 that they both be docketed.

21 HEARING OFFICER CELLI: Very well. So
22 what we had done is we have filed as Exhibit 500
23 -- Let me just tell you what we did. Exhibit 500
24 was a letter to the Commissioners, your Prehearing
25 Conference Statement, your Stipulation, your

1 Financial Hardship Petition, and page one, two and
2 three of your letter to the California Energy
3 Commission Docket Unit dated November 23, 2008, a
4 page simply entitled Attachments, the FPUD
5 Reclaimed Water Quality Chemistry Profile for 2006
6 and 2007. That is the sum total of the documents
7 that we have received from you.

8 I had tentatively marked them for
9 identification as Exhibit 500. And at this time
10 is it your intention to withdraw those as exhibits
11 but submit them as comment, public comment?

12 MR. MCPHEE: Yes I do. And that is
13 Reclaimed Water Quality Chemistry not just water
14 quality chemistry.

15 HEARING OFFICER CELLI: Okay, that
16 motion is granted.

17 MR. MCPHEE: Thank you.

18 HEARING OFFICER CELLI: And any further
19 testimony you wish to provide?

20 MR. MCPHEE: Yes. I would like to get
21 -- Can you hear me from here?

22 As an intervenor for the Orange Grove
23 Power Plant I submit the following concerns about
24 violations of the California Health Laws Related
25 to Recycled Water and of the proposed use of

1 recycled water by Orange Grove Power in place of
2 potable water per approved California Energy
3 Commission design specifications for the Orange
4 Grove Plant.

5 Now my background and experience is I
6 have a bachelor's and master's degree in chemical
7 engineering. I was also a PhD candidate at the
8 University of Maryland where I completed all the
9 course work and started my PhD thesis when money
10 became a problem.

11 I then worked as a GS-13 supervisory
12 grade for the US Navy for 15 years as the aircraft
13 carrier water resources manager and also in the
14 Navy wastewater engineering. I worked for the
15 City of San Diego in water and wastewater
16 engineering for 13 years and I am also a
17 California registered professional civil engineer.
18 I have as well a California community college
19 teaching credential in mathematics and
20 engineering.

21 I worked in refineries and chemical
22 plants as an operator, as a chemical engineer and
23 as a chief engineer. I worked on US aircraft
24 carriers at sea, designing, teaching our sailors,
25 and developing manuals in water resource

1 management and in wastewater. I received letters
2 of commendation from Navy Admirals, aircraft
3 carrier captains and chief engineers.

4 I worked for the San Diego City as a
5 hands-on, practical engineer in water, wastewater,
6 and I specialized in pump station certification
7 and energy conservation. I have recently worked
8 in home construction as an owner/builder. So I
9 have knowledge and practical experience as well as
10 supervision in water and wastewater engineering.

11 My first concern was the noise ordinance
12 monitoring. The Orange Grove Power Plant proposes
13 to monitor the proposed California Energy
14 Commission approved noise ordinance by --

15 HEARING OFFICER CELLI: Can I interrupt,
16 Mr. McPhee? Ken Celli speaking here. I just want
17 to ask the parties if there is any objection to
18 Mr. McPhee being deemed an expert in reclaimed
19 water? Any objection, applicant?

20 MS. LUCKHARDT: I don't have an
21 objection to the reclaimed water.

22 HEARING OFFICER CELLI: Thank you.
23 Staff, any objection?

24 MR. BABULA: I don't have an objection.

25 HEARING OFFICER CELLI: So you shall be

1 deemed an expert in reclaimed water.

2 MR. McPHEE: Thank you.

3 HEARING OFFICER CELLI: Recycled water I
4 guess is the word we are using now.

5 MR. McPHEE: Okay. Orange Grove Energy
6 has a proposed ordinance, a sound ordinance. The
7 last I heard of it the noise ordinance was going
8 to be controlled by people responding. And
9 animals have much better hearing than humans and
10 that's what we are concerned with. My experience
11 in noise ordinance is, out of 100 humans bothered
12 by extremely loud noises only one or two people
13 will bother to report this discomfort. And if
14 they have to --

15 MS. LUCKHARDT: I guess my question is,
16 is this being considered expert testimony in
17 Noise?

18 HEARING OFFICER CELLI: It sounds like
19 that is where this is going. Is there an
20 objection?

21 MS. LUCKHARDT: Yes, we would object to
22 Mr. McPhee being considered an expert in noise.
23 We don't have an objection with him being
24 considered an expert in water.

25 HEARING OFFICER CELLI: Staff?

1 MR. BABULA: I would concur with that.
2 And I thought we were talking about water right
3 now.

4 HEARING OFFICER CELLI: And we are
5 talking about water.

6 MS. LUCKHARDT: We also, I guess we
7 would just -- It might be helpful to note that one
8 of the conditions of certification has been
9 modified since I think Mr. McPhee last learned.
10 And that the noise will be monitored at the
11 locations of construction. I think it's --

12 MR. BABULA: I think it's like BIO-7
13 perhaps or -8. It deals with the acoustical
14 screen and having acoustical monitors. So that
15 has been changed since we had the --

16 MS. LUCKHARDT: The workshops.

17 MR. BABULA: The workshop and
18 preconference hearing. Somewhere in that area it
19 got changed and modified. So that might address
20 his concern.

21 HEARING OFFICER CELLI: And that might
22 satisfy your concern, Mr. McPhee.

23 MR. MCPHEE: My concern is that it be
24 monitored 24/7 with a decibel meter.

25 MR. BABULA: The acoustical monitor is a

1 sound expert so they would use whatever tools they
2 need beyond just having a designated biologist
3 present to observe interaction on the nesting of
4 birds.

5 HEARING OFFICER CELLI: But we are going
6 a little far afield because we are talking about
7 Soil and Water. And the reason, the basis for the
8 objection, unless you have some evidence that you
9 are an acoustical engineer or have some --

10 MR. McPHEE: No, I am not an acoustical
11 engineer.

12 HEARING OFFICER CELLI: Do you have any
13 special training?

14 MR. McPHEE: But I made some comments
15 previously about their monitoring. And what I
16 wanted was a 24/7 monitoring service be required
17 by Orange Grove Power Plant.

18 HEARING OFFICER CELLI: Okay.

19 MR. McPHEE: If that's what is going to
20 happen then that's acceptable to me.

21 HEARING OFFICER CELLI: Well at this
22 point you are testifying so we would like to hear
23 what you need to testify about. But what you are
24 able to testify within is your field of expertise.

25 MR. McPHEE: Okay.

1 HEARING OFFICER CELLI: Which is Soil
2 and Water, not Noise.

3 MR. MCPHEE: Okay.

4 HEARING OFFICER CELLI: Please proceed.

5 MR. MCPHEE: Tertiary treated sewage
6 water. The water and wastewater industries name
7 for tertiary treated sewage water is reclaimed
8 water. California Health Laws Related to
9 Reclaimed Water defines recycled water as water as
10 a result of treatment of waste, is suitable to a
11 direct beneficial use --

12 HEARING OFFICER CELLI: Excuse me,
13 Mr. McPhee, I am going to interrupt you because we
14 are a little bit time-constrained. I noticed that
15 you are reading from your three page letter.

16 MR. MCPHEE: No, it's not from my three
17 page letter, this is a new document.

18 HEARING OFFICER CELLI: Okay. Because I
19 am reading right along with you where it says:
20 "The water and wastewater industries standard for
21 tertiary water, et cetera."

22 MR. MCPHEE: I didn't define recycled
23 water in that statement that you are talking about
24 there.

25 HEARING OFFICER CELLI: What if we do

1 this, if this is acceptable to all the parties.
2 What I would do is this three-page letter that
3 expresses six items that you wanted to raise, what
4 if we treat that as -- because we now have you
5 under oath and you declare that everything within
6 this letter is true and accurate to the best of
7 your knowledge, information and belief. Then we
8 would take that in as evidence. You can add
9 whatever -- Instead of making you read through
10 this whole document.

11 MR. McPHEE: It's not from that
12 document, it's from add-ons to that document.

13 HEARING OFFICER CELLI: Okay. So what I
14 am suggesting is we accept into evidence your
15 Exhibit 500, which would be this three page
16 document, then you testify as to what you wanted
17 to add to it instead of having to re-read all of
18 this information.

19 MR. McPHEE: Well the California Health
20 Laws Related to Reclaimed Water, I never, ever
21 expressed their description of recycled water.

22 HEARING OFFICER CELLI: Let's get into
23 that. But before you do let me ask you this.
24 Would you move into evidence this three page
25 letter as Exhibit 500?

1 MR. McPHEE: Yes.

2 HEARING OFFICER CELLI: Any objection.

3 MR. McPHEE: I'm telling you that it
4 should be added in as comments.

5 HEARING OFFICER CELLI: Okay. We can
6 accept it as comments as well.

7 PRESIDING MEMBER BOYD: I think what he
8 is saying is what he is saying he wants considered
9 as comments and then add on to this document. So
10 I would suggest move the document in with his
11 comments.

12 HEARING OFFICER CELLI: But before I do
13 that though, you are actually testifying under
14 oath at this time so this is testimony.

15 MR. McPHEE: Okay.

16 HEARING OFFICER CELLI: I am just trying
17 to see if we could be a little more efficient
18 about it was all.

19 MR. McPHEE: I'm trying to rationalize
20 what I said previously with what I have found out
21 since.

22 HEARING OFFICER CELLI: Okay. Well then
23 you just go ahead as you are and we'll take it
24 that way.

25 MR. McPHEE: The California Health Laws

1 Related to Reclaimed Waters defines recycled water
2 as water which, as the result of treatment of
3 waste, is suitable for direct beneficial use or a
4 controlled use that would not otherwise occur and
5 is therefore considered to be a valuable resource.

6 This is a wide description. Reclaimed
7 water and recycled water have really two different
8 descriptions but the California Health Laws
9 Related to definition is so wide that reclaimed
10 water can fit into their descriptive term. And
11 that agrees with you and you.

12 For this reason the terminology
13 reclaimed water and recycled water are used
14 interchangeably in the California Energy
15 Commission's approved design specifications for
16 the Orange Grove plant. And that's exactly what
17 you said.

18 Reclaimed water is, in reality, toilet
19 water. It is domestic, commercial wastewater
20 which has been flushed into sewer mains and is
21 then subjected to primary, then secondary and
22 finally tertiary sewage treatment processes. It
23 stinks, it is not disinfected, it is contaminated
24 with water-borne diseases, harmful bacteria and
25 commercial and hospital waste containing blood and

1 chemicals. That's a fact. It also contains
2 dissolved methane gas, which makes it a hazardous
3 material in my opinion.

4 Recycled water may or may not be
5 tertiary treated water but FPUD's standard
6 wastewater treatment process is only capable of
7 tertiary treated sewage water, also known as
8 reclaimed water.

9 Orange Grove and FPUD plan on
10 transporting this reclaimed, recycled water by
11 tanker truck from FPUD's sewage plant in Fallbrook
12 to the Orange Grove plant approximately 20 miles
13 on mostly two lane highways. And this is
14 dangerous and impractical in my opinion.

15 Transportation of reclaimed water. A,
16 the wastewater industry's transportation
17 requirements for tertiary treated sewage water,
18 reclaimed water, or if one prefers the term
19 recycled water, is it must be transported in
20 purple piping and labeled, contaminated, do not
21 drink. Orange Grove Power and FPUD plan on
22 violating this requirement by transporting
23 tertiary treated sewage water by tanker truck.

24 B, California Health Laws related to
25 recycled, reclaimed water Section 13555.3,

1 Separate Pipelines, part C states:

2 "This section does not preempt
3 local regulations of the delivery
4 of water for potable and non-
5 potable uses and any local
6 governing body may adopt
7 requirements which are more
8 restrictive than the requirements
9 of this section."

10 That is right in the California health laws.
11 Consequently, tertiary treated sewage water must
12 be transported in purple piping and not inside
13 tanker trucks per wastewater industry standards.
14 Tanker trucks are subjected to highway accidents
15 and are a potential forest fire hazard. For
16 example, reclaimed, recycled water contains
17 dissolved methane gas. That's where the odor
18 comes from.

19 The only approved use of recycled water
20 by the California Health Laws Related to Recycled
21 Water, 1991 Edition, Sections 13552.4 and 13552.8
22 are: One, for irrigation, floor trap priming,
23 cooling towers and air conditioning. This is the
24 standard, normal recycled water. That's all it
25 can be used for.

1 Now we have the 2001 Edition of Title 22
2 of the California Health Laws Related to Reclaimed
3 Water, Section 607 stipulates, stipulates that
4 recycled wastewater used for industrial water that
5 comes in contact with workers as well as recycled
6 water used for toiletry and other defined uses
7 must be disinfected, tertiary water.

8 You used the term, you used the term
9 tertiary treated reclaimed water. There is no
10 such a thing as tertiary treated reclaimed water
11 in the California Health Laws Related to Reclaimed
12 Water.

13 HEARING OFFICER CELLI: And for the
14 record, when you say you, you are pointing to the
15 applicant.

16 MR. MCPHEE: To the applicant, yes.

17 HEARING OFFICER CELLI: Thank you.

18 MR. MCPHEE: Section 60301 through
19 603.620 of Title 22 defines disinfected tertiary
20 water as filtered, oxygenated, clarified and
21 subsequently disinfected water which meets
22 certain, strict specifications. The production of
23 disinfected, not tertiary treated reclaimed water,
24 disinfected tertiary reclaimed water requires
25 specific and defined disinfection and filtration

1 procedures and limits the total acceptable
2 coliform bacteria count in the treated effluent.
3 This means it must be oxidized wastewater, it
4 contains dissolved oxygen, Section 60301.320 and
5 60301.650, filtered and clarified, turbidity less
6 than a 0.5 NTU rating at any time, Section
7 60301.230 and 60301.630 and strict disinfection,
8 Section 60301.230 by chlorine or other processes,
9 removing 99.9 percent of the polio virus, or MS2.

10 Scientific procedures to obtain these
11 results are described in the above sections of the
12 year 2001 Title 22 of the California Health Laws
13 Related to Reclaimed Water. This disinfected
14 tertiary recycled water is added -- is an added
15 personnel health requirement to the use of
16 recycled water. It is a much higher health
17 quality than ordinary recycled water or reclaimed
18 water. It's good stuff.

19 FPUD cannot provide this quality of
20 disinfected tertiary treated water, it can only
21 provide reclaimed water, also known as tertiary
22 treated sewage water. Therefore by delivering
23 only standard reclaimed water to Orange Grove
24 Power as proposed, both Orange Grove and FPUD are
25 knowingly violating California health laws.

1 Potable water use. The California
2 Energy Commission-approved designed specifications
3 in the Generation Facility Design and Operations,
4 Section 2.6 and 2.6.1, Water Use Requirements,
5 stipulates the use of from 62 acre feet per year
6 to 21.1 acre feet per year of fresh water as well
7 as reclaimed water. And they use the term
8 reclaimed water in that specification.

9 The fresh water is designed for sprint
10 power augmentation and NOx control. It has
11 nitrogen oxides control. The water is
12 demineralized because water used for NOx emission
13 control and power augmentation must be very high
14 purity or turbine blade damage will -- turbine
15 blade damage will occur. It has been reported
16 that Orange Grove Power intends to use FPUD's
17 recycled water, it is actually reclaimed water,
18 which is really tertiary treated sewage water,
19 replacing the potable water -- replacing potable
20 water used for the above use.

21 This is a violation of the permitted
22 uses of recycled water. The California health law
23 related to recycled water Section 13552 permits
24 recycled water to be used, that's plain recycled
25 water, to be used only for floor trap priming,

1 cooling towers, air conditioning and irrigation.
2 That's all they allow it for.

3 In addition, if Orange Grove Power
4 intends to use recycled, actually reclaimed water,
5 in place of potable fresh water for NOx control
6 and sprint power plant augmentation, is in
7 violation of 22 -- of the California Health Laws
8 Related to Reclaimed or Recycled Water, 2001
9 Edition, Section 60301-3, which requires the use
10 of disinfected tertiary, not what you said.
11 Tertiary treated recycled water when used in
12 industrial processes -- in industrial process
13 water that may come in contact with workers. I
14 suggest the use of recycled water in place of
15 potable water for the above use is an unlawful
16 act.

17 Now, you know, you bring in this stuff
18 that you're calling water by tanker truck. You
19 pump it from the tanker truck into a container.
20 Then you pump it from a container into the
21 process. Now my experience with pumps has been
22 extensive and I am an expert in that area. The
23 only things that you have that you can use for a
24 pump is a mechanical seal and a packing.

25 Now a mechanical seal, it burns out

1 eventually so it sprays all over the darn place.
2 And a packing gland, your packing gland has to
3 have water leaking through the packing gland
4 periodically to make sure packing gland doesn't
5 burn up. So you are going to -- It is going to
6 come in contact with workers.

7 Then you have the piping from your tanks
8 to your, to your process and you have packing
9 glands all over the place. And you are going to
10 have connections and these connections are not
11 going to last forever. I was working in a
12 refinery one time when the piping blew and we had
13 a huge fire. So it happens. This is -- The stuff
14 that they are going to be using in this power
15 plant is going to come in contact with workers and
16 it has to be, it has to be disinfected, tertiary
17 recycled water, nothing less.

18 The Rainbow Municipal Water District can
19 provide Orange Grove Power with sufficient potable
20 water to operate their power plant if Orange Grove
21 Power will install a 1.8 mile potable water
22 pipeline connecting the existing Rainbow Municipal
23 Water District potable water main to its plant
24 site. This is not an unreasonable requirement for
25 new construction in a remote area.

1 I have talked with the general manager
2 of the Rainbow Water District and he informed me
3 that Rainbow Water District's only requirement for
4 his water district is for Orange Grove to connect
5 -- to provide this connection from their water
6 main to the Orange Grove power plant.

7 This is the proper solution instead of
8 the stupid solution of trucking water and causing
9 hate, hell and disconnect with those who already
10 share congested two lane highways. And it could
11 also provide needed fire hydrants, needed fire
12 hydrants that somebody is complaining about for
13 the Orange Grove for forest fire fighting. You
14 import this potable water and they will provide
15 the fire hydrants for your plant.

16 Rainbow Municipal Water District rights.
17 The California Energy Commission Staff Assessment,
18 Orange Grove Project 08-AFC, Soil and Water
19 Resources Section, page 4.9-29 and -30 states:

20 "If water trucking is to be
21 considered a permanent arrangement
22 then Rainbow Water District is
23 opposed to the water agreement
24 between Orange Grove Power and FPUD
25 because Rainbow Municipal Water

1 District considered these contrary
2 to their rules and regulations and
3 counter to the rights of the
4 residents --"

5 HEARING OFFICER CELLI: Mr. McPhee.

6 Mr. McPhee, may I ask a question. Are you
7 representing the Rainbow Water District?

8 MR. MCPHEE: No I am not.

9 HEARING OFFICER CELLI: Okay.

10 MR. MCPHEE: I am just quoting some of
11 the stuff in your, that's the Soil and Water
12 section.

13 HEARING OFFICER CELLI: Thank you.

14 MR. MCPHEE: "-- the rights of the
15 residents of the District to have a voice in the
16 decision-making process." The unsigned portion of
17 FPUD's potable water option agreement and the
18 undated portion of the recycled water agreement is
19 for 25 years and two months. The Rainbow
20 Municipal Water District stated it might agree if
21 trucking is allowed for a short term, preferably a
22 three year term or less, in order to allow Orange
23 Grove Energy to design and construct a water line
24 for Rainbow Municipal Water District service to
25 the project.

1 What scheme is going on here? In other
2 words, Orange Grove is only requiring -- only
3 required by the Rainbow Municipal Water District
4 to build a 1.8 mile pipeline from their water main
5 to the Orange Grove plant and Orange Grove is
6 refusing to do it. That doesn't sound like what I
7 heard just recently. The Orange Grove action
8 thereby creates unnecessary hate, hell and
9 discontent simply to save construction and
10 operating costs. Part of the CEC Staff Assessment
11 is in error. Rainbow Municipal Water District has
12 not refused to provide a permanent water supply to
13 Orange Grove Plant.

14 Truck transportation. The reclaimed
15 water provided by FPUD must be transported in
16 purple piping and labeled, contaminated, do not
17 drink, by wastewater industry standards in this
18 area. And that is allowed by the health, the
19 California health laws. In accordance with the
20 California Health Laws Related to Section 13555.3
21 part c, the Orange Grove -- now you know, the City
22 of San Diego has a huge water reclamation plant up
23 in the north city and I've worked in it. And they
24 don't use that reclaimed water because they can't
25 pay the costs of the purple piping.

1 HEARING OFFICER CELLI: Excuse me, your
2 hand is in the way of the microphone.

3 MR. MCPHEE: Oh.

4 HEARING OFFICER CELLI: Thank you.

5 MR. MCPHEE: They can't pay the cost of
6 the purple piping so they are just losing money on
7 that. And this is not, this is not something I
8 dreamed up.

9 The Orange Grove and FPUD intention of
10 transporting recycled -- actually it's actually
11 reclaimed water, by tank truck is dangerous and
12 impractical and harmful to animals as well as
13 humans. There is nothing in the California health
14 laws that permits transportation of recycled water
15 by truck. And to my knowledge, no power plant in
16 California that uses truck transportation exists,
17 that uses truck transportation for a 25 year
18 supply of water. It's a Mickey Mouse solution to
19 save construction and operating expenses.

20 Profiteering. San Diego County Water
21 Authority has not restricted any allowance of
22 potable water to any of its water agencies during
23 2008, see attachments. FPUD and Orange Grove
24 have conspired to exchange only recycled water,
25 actually reclaimed water, instead of the

1 California Energy Commission's approved design
2 combination of reclaimed water plus potable water.

3 In collusion with Orange Grove Power,
4 FPUD claimed a State 1 drought condition and
5 forbade the use of potable water for Orange Grove
6 Power but not for new construction. FPUD
7 therefore benefits by selling unqualified
8 reclaimed water, which it must otherwise discard.
9 It is not qualified --

10 MS. LUCKHARDT: I guess I would have to
11 at some point object to all this information
12 coming in. I mean, we're trying to take notes on
13 the new stuff that's coming in.

14 HEARING OFFICER CELLI: What is the
15 objection?

16 MS. LUCKHARDT: The objection is that it
17 isn't pre-filed testimony so I don't know if we
18 are going to be able to adequately cross-examine
19 or even take a look at it or have an opportunity
20 to respond. I mean, testimony, pre-filed
21 testimony was supposed to be filed I think before
22 Thanksgiving.

23 HEARING OFFICER CELLI: Yes.

24 MS. LUCKHARDT: Responsive testimony was
25 filed on the 1st. We provided that in the

1 expectation that this might be considered
2 testimony. I mean, I'm willing to be flexible to
3 a certain extent but as it goes on and on I am
4 having trouble. There's no way I am going to be
5 able to take notes on it like this.

6 HEARING OFFICER CELLI: Well, so your
7 objection is overruled. I am going to allow
8 Mr. McPhee to continue to testify and then you
9 will be given an opportunity to cross-examine
10 Mr. McPhee on whatever he is testifying about
11 today. Please proceed.

12 MR. MCPHEE: FPUD thereby benefits by
13 selling unqualified reclaimed water not permitted
14 by the California Health Laws Related to Reclaimed
15 Water, Title 22, Section 60307 which it must
16 otherwise discard. FPUD can sell this water that
17 it has to discard right now. Orange Grove Power
18 benefits by receiving recycled or reclaimed water
19 at a much cheaper, controlled cost than the cost
20 of potable water and by not having to construct a
21 1.8 mile pipeline from the Rainbow Municipal Water
22 District's potable water main to their power
23 plant.

24 Summary. Reclaimed water is standard
25 wastewater industry, tertiary treated sewage

1 water, which is to be supplied by FPUD to Orange
2 Grove Power. It must be transported from Point A
3 to Point B in purple piping by wastewater industry
4 standards and labeled, contaminated, do not drink,
5 not by tanker truck.

6 California Health Laws Related to
7 Reclaimed Water Section 13554.3 part c states that
8 wastewater industry standards prevail if they are
9 more restrictive to the transportation of recycled
10 and/or reclaimed water. In other words, it is a
11 lot more restrictive, a lot more healthy to
12 transport reclaimed water by pipeline than it is
13 by tanker truck.

14 The California health laws limit the use
15 of reclaimed water for irrigation/landscaping,
16 Section 13552.4, floor trap priming, cooling
17 towers and air conditioning, Sections 13552.6 and
18 13552.8.

19 Title 22 of the California health laws
20 June 2001 Edition defines, specifies and states
21 procedures for the preparation of new and more
22 detailed health and health-related definitions and
23 variations of recycled water and their required
24 usage. Namely there's disinfected secondary 2.2
25 recycled water, Section 60301.220, disinfected

1 secondary 23 recycled water, Section 60301.225,
2 disinfected tertiary recycled water, Section
3 60301.230.

4 California Health Laws Related to
5 Reclaimed Water, Title 22, June 2001 Edition,
6 Section 60301 specifies that recycled water used
7 for the following shall be, shall be disinfected
8 tertiary, disinfected tertiary recycled water with
9 strict provisions concerning its clarity via NTU
10 turbidity measurement: Flushing of toilets and
11 urinals, priming drain traps, industrial process
12 water that may come in contact with workers. And
13 it sure as heck is going to come in contact with
14 workers. Structural fire fighting, decorative
15 fountains, commercial laundries, consolidation of
16 backfill around potable water lines, artificial
17 snow-making for commercial outdoor use, and
18 commercial car washes, including hand washes, if
19 the disinfected tertiary recycled water is not
20 heated where the general public is excluded from
21 the washing process. That's it. There's no more
22 uses that are approved by the California Health
23 Laws Related to Reclaimed Water.

24 FPUD produces only wastewater industry
25 standard tertiary treated sewage water, not

1 disinfecting tertiary treated -- not disinfecting
2 tertiary recycled water as required by the
3 California Health Laws Related to Reclaimed Water,
4 Title 22, 2001 Edition.

5 A practical business solution
6 suggestion: require Orange Grove Power to
7 construct a 1.8 mile potable water pipeline from
8 the Rainbow Municipal water main to the Orange
9 Grove plant site.

10 Now I would like to read in addition
11 some of the descriptions here. Filtered
12 wastewater. Filtered wastewater means an oxidized
13 wastewater that meets the criteria in subsection A
14 or B. That's Section 60301.320.

15 HEARING OFFICER CELLI: Of what code?
16 Of which code?

17 MR. MCPHEE: Of the California Health
18 Laws Related to Recycled Water, Title 22, dated
19 the June 2001 Edition.

20 HEARING OFFICER CELLI: Okay.

21 MR. MCPHEE: Oxidized waste water.
22 Oxidized waste water, the same California Health
23 Laws Related to Recycled Water, Title 22, June
24 2001 Edition. "Oxidized wastewater means
25 wastewater in which the organic matter has been

1 stabilized, is nonputrescible --" I don't know how
2 to pronounce it. "-- and contains dissolved
3 oxygen. It contains dissolved oxygen."

4 Now 60301.230, disinfected tertiary
5 recycled water.

6 HEARING OFFICER CELLI: Of what code
7 section?

8 MR. MCPHEE: California Health Laws
9 Related to Recycled Water, Title 22, June 2001
10 Edition. The filtered wastewater -- Disinfected
11 tertiary wastewater means a filtered and
12 subsequently disinfected wastewater that meets the
13 following criteria.

14 I already read the description of
15 filtered wastewater which means its oxidized as
16 well.

17 "Filtered wastewater has been
18 disinfected by either a chlorine
19 disinfection process following
20 filtration that provides a CT, the
21 product of total chlorine residual
22 and modular -- and modal contact
23 time measured at the same time.
24 The value of not less than 450
25 milligram-minutes per liter at all

1 times with a modal contact time of
2 at least 90 minutes, based on peak
3 dry weather design flow; or

4 "A disinfected process -- a
5 disinfection process which when
6 combined with the filtration
7 process, has been demonstrated to
8 inactivate and/or remove 99.999
9 percent of the plaque-forming units
10 of F-specific bacteriophage MS2, or
11 polio virus in the wastewater. A
12 virus that is at least as resistant
13 to disinfection as polio may be
14 used for purposes of demonstration.

15 "B: The median concentration
16 of total coliform bacteria measured
17 in the disinfected effluent may not
18 exceed an MPN of 2.2 per 100
19 milliliters utilizing the
20 bacteriological results of the last
21 days for which analyses has been
22 completed and the number of total
23 coliform bacteria does not exceed
24 an MPN --

25 Most probable number.

1 "-- of 23 per 100 milliliters
2 in more than one sample in any 30
3 period. No sample shall exceed an
4 MPN --

5 And that's most probable number.

6 "-- of 240 total coliform
7 bacteria per 100 milliliters."

8 That is not recycled water. That is disinfected
9 tertiary recycled water and it is not the same.
10 And it sure as heck is not reclaimed water. And
11 that is all that FPUD is going to supply to Orange
12 Grove Power. The only thing they can supply,
13 possibly supply to Orange Grove Power is tertiary
14 treated sewage water, also known as reclaimed
15 water.

16 HEARING OFFICER CELLI: Do you have
17 anything further, Mr. McPhee?

18 MR. MCPHEE: That's it.

19 HEARING OFFICER CELLI: Thank you. At
20 this time, applicant, do you have any questions
21 for Mr. McPhee?

22 MS. LUCKHARDT: I am going to need five
23 minutes with my experts to discuss the new
24 information that was presented here today.

25 PRESIDING MEMBER BOYD: Can I ask a

1 question before we take our five minutes?

2 I have read your material in the past
3 and I have listened closely to what you said today
4 and I want to try to render what I am hearing into
5 a few, somewhat lay terms so I can understand the
6 issue.

7 MR. MCPHEE: Okay.

8 PRESIDING MEMBER BOYD: Number one, I
9 understand your allegations that the water they
10 propose to use may be not legal to be used in the
11 fashion to which they propose.

12 Number two, you are proposing that there
13 is, quote, a simple solution to that dilemma. And
14 that is, to build this pipeline to deliver potable
15 water from the Rainbow District. Do I understand
16 you correctly?

17 MR. MCPHEE: Yes.

18 PRESIDING MEMBER BOYD: All right.

19 MR. MCPHEE: That would be, that would
20 be the easiest way.

21 PRESIDING MEMBER BOYD: Okay. Well let
22 me just say that the State of California has a
23 policy against using potable water for these types
24 of processes in power plants. So that constitutes
25 a dilemma for us as a solution. That doesn't get

1 to the question about the type of reclaimed versus
2 recycled water.

3 But the potable solution water I don't
4 see as a solution to this issue because we have
5 policies against using potable water. It is too
6 valuable to be used in the fashion that is
7 proposed in power plants. And we use other types
8 of water throughout the state for power plant
9 applications. So that's the dilemma we will have
10 as the Siting Committee.

11 HEARING OFFICER CELLI: But that
12 certainly isn't a decision that is made yet.

13 PRESIDING MEMBER BOYD: No.

14 HEARING OFFICER CELLI: But it is an
15 important policy that you should be aware of.

16 MR. MCPHEE: I'm aware of that policy,
17 yes.

18 HEARING OFFICER CELLI: Okay, what we
19 are going to do right now is we will take a ten
20 minute break. I have --

21 MR. MCPHEE: I would like to add a
22 little bit of something to my presentation here if
23 you don't mind.

24 HEARING OFFICER CELLI: Okay, please, if
25 you quickly.

1 MR. MCPHEE: I have here in my
2 presentation. As a matter of fact I have copies
3 of this if you people want it. The FPUD reclaimed
4 water quality contains ammonia. This is an
5 ammonia curve. This is a disinfection curve I'm
6 looking at. I got it from Wastewater Engineering.

7 HEARING OFFICER CELLI: For the record,
8 Mr. McPhee is pointing to a piece of paper.
9 Please proceed.

10 MR. MCPHEE: And it states:

11 "After meeting the immediate
12 demand the chlorine will continue
13 to react with ammonia to form
14 chloramines between points A and
15 B."

16 Well, the reclaimed water quality standards
17 indicate that ammonia is present in the reclaimed
18 water to 11.1 milligrams per liter. So if there's
19 ammonia there there is no disinfection.

20 And between points B and C, the
21 breakpoint, some of the chloramines will be
22 converted to nitrogen trichloride while the
23 remaining chloramines will be oxidized to nitrous
24 oxide. Well nitrous oxide is the stuff that you
25 want to eliminate when you are feeding this stuff

1 to the, to the blades of the, of the power plant.
2 That's it.

3 HEARING OFFICER CELLI: Thank you,
4 Mr. McPhee. Ladies and gentlemen, at this time we
5 are going to take a ten minute break. I have that
6 it is 25 to one. So let's be back in our seats
7 ready to go at a quarter to. Thank you. We will
8 be off the record.

9 (Whereupon, a recess was taken
10 off the record.)

11 HEARING OFFICER CELLI: We are on the
12 record, thank you. We are resuming after a ten
13 minute of so break in the Orange Grove Project.
14 All present are the applicant, staff, intervenor
15 Mr. McPhee.

16 We have continually been asking for
17 Mr. Arand and any representatives, Mr. Moreau or
18 anyone from the Alliance for a Cleaner Tomorrow,
19 and we have not heard from any of those two
20 intervenors. And the only conclusion we can draw
21 was that they chose not to participate in today's
22 evidentiary hearing. So we are going to proceed
23 with those parties who were able to show up.

24 We just concluded the direct testimony
25 of Mr. Archie McPhee and at this time we are going

1 to open up the record to cross-examination of
2 Mr. McPhee by first the applicant and then staff.
3 So with that, Ms. Luckhardt.

4 MS. LUCKHARDT: We have no questions at
5 this time.

6 HEARING OFFICER CELLI: Mr. Babula.

7 MR. BABULA: I've just got two
8 questions.

9 CROSS EXAMINATION

10 BY MR. BABULA:

11 Q Mr. McPhee, I'll let you chew for a
12 second. You are a resident of the San Diego area
13 or the Fallbrook area?

14 HEARING OFFICER CELLI: Time out. We
15 actually --

16 MR. MCPHEE: Yes I am.

17 HEARING OFFICER CELLI: When asking a
18 question or answering a question you need to get a
19 yes or no. You need something audible that can go
20 into the record.

21 And the other thing ladies and gentlemen
22 just to be clear, especially when we get to the
23 public comment part, is that when the court
24 reporter takes this information down they can
25 really only hear one person speaking at once, at a

1 time. So we want everybody to be conscious of not
2 speaking over each other. So with that,
3 Mr. Babula, please.

4 BY MR. BABULA:

5 Q I'll reiterate that question. You are a
6 resident of the Fallbrook or San Diego area?

7 A Yes I am. I am a resident of Fallbrook.

8 Q Okay.

9 A And I have been a resident previously of
10 Escondido.

11 Q Okay. You indicate in your testimony
12 you would prefer to see a pipeline of fresh water
13 use and the Commissioner indicated in response
14 that we would prefer recycled water or some
15 nonpotable water use. As a resident of San Diego
16 and aware of drought conditions that you
17 mentioned, wouldn't the use of disinfected, clean
18 recycled water be preferred than potable water for
19 industrial use?

20 A I think tertiary, disinfected tertiary
21 recycled water would be preferred for some of the
22 obvious uses. For example, for the cooling
23 portion of the problem. But how do you overcome
24 the tear and wear on your blades for the power
25 plant?

1 HEARING OFFICER CELLI: Actually this is
2 cross examination so they ask the questions.

3 MR. McPHEE: Okay.

4 HEARING OFFICER CELLI: You answer the
5 questions.

6 MR. McPHEE: Yes I do, for certain
7 aspects I think. And if we could overcome the
8 problem with other aspects I think I would agree
9 with you as well.

10 BY MR. BABULA:

11 Q Okay. I wasn't clear from your
12 testimony why you believe that the Fallbrook
13 facility isn't able to provide this disinfected
14 whatever you want to call it. But the recycled,
15 reclaimed tertiary disinfected water that would be
16 clean enough because there was disinfection. You
17 seemed to indicate that they can't do that. And I
18 am not clear what basis you have that the facility
19 isn't able to provide a disinfected-type water.

20 A They are not set up right now to do it.
21 They are only set up right now to give the Orange
22 Grove Power Plant reclaimed water. That's all
23 they have available.

24 Q What about their NPDES permit for their
25 Unit 1 where it indicates that they have

1 disinfecting water and that they currently have
2 been supplying that to other uses in the area?

3 A If there's ammonia in their, in their,
4 in their chemical makeup they are not disinfecting
5 that water.

6 Q Okay, well let me ask you this. This is
7 -- If I were to tell you that in their NPDES
8 permit they mention that plant number one is
9 treated. It says, all wastewater entering Plant
10 number one is treated to a full tertiary treatment
11 with disinfection would that change your opinion
12 on the ability of the facility to provide Orange
13 Grove with appropriately disinfected water?

14 A I am a man that looks at the facts. And
15 the fact of the matter is in their analysis of the
16 reclaimed water they claim there is ammonia. And
17 it is not -- No water is disinfected unless they
18 have chlorine in the residual, and they don't.

19 MR. BABULA: Okay. No further questions
20 then.

21 HEARING OFFICER CELLI: Nothing further.
22 Thank you, Mr. McPhee. At this time if you have
23 no further evidence to submit then we will close
24 the record on Soil and Water. Anything further,
25 Mr. McPhee? Any documents?

1 MR. McPHEE: One of the things that I am
2 having a problem with and some of the comments
3 I've got from the people behind me is that are we
4 willing to sacrifice everything just to conserve
5 water.

6 HEARING OFFICER CELLI: So the question
7 I have -- That would constitute an argument and
8 what I am asking is, do you have any further
9 evidence?

10 MR. McPHEE: I really can't see where
11 you can replace tertiary -- where you can replace
12 disinfected tertiary recycled water with potable
13 water and not do damage to the, to the Orange
14 Grove Power Plant turbine blades.

15 HEARING OFFICER CELLI: And I appreciate
16 that, that's your position. The only question I
17 have is, at this time you have no evidence that
18 you wanted to submit in terms of documents or
19 anything further.

20 MR. McPHEE: I have 12 copies of the
21 document I just presented if you want copies of
22 those.

23 HEARING OFFICER CELLI: Did you read the
24 whole thing into the record?

25 MR. McPHEE: Yes.

1 HEARING OFFICER CELLI: Okay. I think
2 that it wouldn't hurt. I'll receive it as comment
3 because that was your request. We have the
4 testimony in as evidence now anyway. So with that
5 then we will close the record on Soil and Water.

6 Next we are going to -- we are into our
7 last topic which is Traffic and Transportation.

8 MR. BABULA: Before you go on, would I
9 be able to excuse our water staff?

10 HEARING OFFICER CELLI: Yes, thank you
11 for coming, Ms. Closson.

12 MS. CLOSSON: Thank you.

13 HEARING OFFICER CELLI: So at this time
14 we will now open the record as to Traffic and
15 Transportation. Starting with the applicant.

16 I'm getting confused. It's the little
17 mic that is the -- Just for the record, we are
18 having to share microphones so that the people on
19 the telephone can hear. And now we are moving the
20 telephone microphone back to the applicant.

21 MS. LUCKHARDT: Okay. And at this time
22 the applicant calls Joe Stenger and Ruth Davis to
23 testify on Traffic and Transportation.
24 Mr. Stenger has been sworn, Ms. Davis has not.

25 HEARING OFFICER CELLI: Ms. Davis, if

1 you would remain standing and raise your right
2 hand.

3 Whereupon,

4 NAOMI RUTH DAVIS

5 Was duly sworn.

6 HEARING OFFICER CELLI: Thank you, you
7 may be seated. Please state your name and spell
8 it for the record.

9 MS. DAVIS: Naomi Ruth Davis, last name
10 D-A-V-I-S.

11 DIRECT EXAMINATION

12 BY MS. LUCKHARDT:

13 Q Ms. Davis, was a statement of your
14 qualifications attached to your testimony?

15 A Yes.

16 Q And does your testimony include the list
17 of exhibits that you are sponsoring?

18 A Yes.

19 Q And does that list include the Traffic
20 and Transportation portions of Exhibit 1, Exhibit
21 4, Exhibit 8, Exhibit 9, Exhibit 18(k) and Exhibit
22 21?

23 A Yes.

24 Q And do you have any corrections to your
25 testimony at this time?

1 A No.

2 Q Insofar as your testimony contains
3 statements of fact are those facts correct to the
4 best of your knowledge?

5 A Yes.

6 Q Insofar as your testimony contains
7 statements of opinion do they represent your best
8 professional judgment?

9 A Yes.

10 Q Do you now adopt all these exhibits as
11 your sworn testimony?

12 A Yes.

13 MS. LUCKHARDT: And then in this
14 situation, as in Soil and Water, we also have a
15 panel. So I would like to also introduce
16 Mr. Stenger. He has been previously sworn, stated
17 his name and spelled his last name for the record.
18 So at this point I would ask him.

19 DIRECT EXAMINATION

20 BY MS. LUCKHARDT:

21 Q Mr. Stenger, were your qualifications
22 attached to your testimony?

23 A Yes.

24 Q And does your testimony include a list
25 of exhibits that you are sponsoring in the area of

1 Traffic and Transportation?

2 A Yes.

3 Q And do those exhibits include the
4 Traffic and Transportation portions of Exhibit 1,
5 Exhibit 4, Exhibit 5, Exhibit 8, Exhibit 9,
6 Exhibit 18(k) and Exhibit 21?

7 A Yes.

8 Q And do you have any corrections to your
9 testimony at this time?

10 A No.

11 Q Insofar as your testimony contains
12 statements of fact are those facts correct to the
13 best of your knowledge?

14 A Yes.

15 Q Insofar as your testimony contains
16 statements of opinion do they represent your best
17 professional judgment?

18 A Yes.

19 Q Do you now adopt all these exhibits as
20 your sworn testimony?

21 A Yes.

22 MS. LUCKHARDT: And then at this time I
23 would like to have Mr. Stenger go through a short
24 summary of the truck impacts on State Route 76.
25 We handed this out earlier, there should also be

1 copies on the back table. It includes tables from
2 the AFC and other information.

3 HEARING OFFICER CELLI: May I just ask a
4 couple of housekeeping questions?

5 MS. LUCKHARDT: Sure. We can enter this
6 as a separate exhibit if you'd like. At this
7 point I don't know how you want to do it.

8 HEARING OFFICER CELLI: Before we get to
9 that let me just say that I have no -- What is the
10 source of Exhibit 4, the Circulation Element Draft
11 and Agency E-Mail? Exhibit 4 is the Circulation
12 Element Draft.

13 MR. STENGER: That is a -- I believe
14 that that is an e-mail between myself and staff.
15 Yes, this is information that was contained in an
16 e-mail that I sent to staff specifically
17 addressing the project's conformance with the
18 circulation element. So this could be viewed as
19 an addendum to the Traffic section of the AFC.

20 HEARING OFFICER CELLI: I know there's a
21 lot of documents but my recollection was there was
22 some sort of table. The circulation element, was
23 it not some sort of table? Is there a table
24 attached to that?

25 MS. LUCKHARDT: Exhibit 4?

1 HEARING OFFICER CELLI: We're talking
2 about Exhibit 4. Okay, I --

3 MS. LUCKHARDT: What we are looking at
4 is a -- We pulled Exhibit 4. And what we are
5 looking at is an e-mail correspondence.

6 HEARING OFFICER CELLI: So the
7 Circulation Element Draft and Agency E-Mail
8 Contacts is just a single-page e-mail?

9 MR. STENGER: To my best recollection,
10 yes, this looks like it. There really was not
11 much to it.

12 MS. LUCKHARDT: It's a two page document
13 as we see it. It has the agency contact follow-
14 through to the second page. And the discussion of
15 the circulation element is on the first page.

16 HEARING OFFICER CELLI: Thank you. Also
17 Exhibit 21, I have no foundation regarding the
18 source of the document. It isn't mentioned in
19 Exhibit 18(k). It was, I guess, one of those
20 after filed.

21 MS. LUCKHARDT: This was, this was filed
22 in conjunction with I think the prehearing
23 conference statement, which was filed after our
24 testimony was filed.

25 BY MS. LUCKHARDT:

1 Q Mr. Stenger, did you prepare or oversee
2 the preparation of that document?

3 A Yes.

4 Q And would you include it as part of your
5 sworn testimony in this proceeding?

6 A Yes.

7 HEARING OFFICER CELLI: Thank you.

8 MR. STENGER: And I need to look at this
9 a minute but I believe that there was a correction
10 made to this paragraph at the Prehearing
11 Conference. In the fifth line the sentence says,
12 "One small topographic saddle was identified on
13 the route just east of I-15." And at the
14 Prehearing Conference we corrected that to say
15 west of I-15.

16 HEARING OFFICER CELLI: West. Okay, I
17 remember that.

18 And just in terms of this last document
19 which we are going to call the Orange Grove
20 Project Water Haul Routes. I see that Exhibit --
21 let's see. Exhibits 57 through 58 were withdrawn,
22 Exhibits 59 through 60. So would we make this
23 Exhibit 61?

24 MS. LUCKHARDT: We could make it 61 or
25 we could make it in the earlier. Let me look at

1 my list.

2 HEARING OFFICER CELLI: You know what,
3 let's make it 61 just so I don't go crazy.

4 MS. LUCKHARDT: Okay, that's fine. That
5 will be marked as Exhibit 61.

6 HEARING OFFICER CELLI: So the Orange
7 Grove Project Water Haul Routes, which is sort of
8 a pictorial document, nine pages, will be marked
9 for identification as Exhibit 61. If you could
10 lay a foundation.

11 (Whereupon, the above-referenced
12 document was marked as Applicant's
13 Exhibit 61 for identification.)

14 BY MS. LUCKHARDT:

15 Q Mr. Stenger, did you prepare this
16 document that has been marked as Exhibit 61?

17 A Yes.

18 Q And does it contain -- insofar as it
19 contains facts are those facts true and correct to
20 the best of your knowledge?

21 A Yes.

22 Q And insofar as it contains professional
23 opinion are those professional -- do they
24 represent your best professional judgment?

25 A Yes.

1 MS. LUCKHARDT: At this time would you
2 prefer that I move our exhibits or have
3 Mr. Stenger go through Exhibit 61?

4 HEARING OFFICER CELLI: Please go
5 through Exhibit 61 first.

6 MS. LUCKHARDT: Okay.

7 MR. STENGER: Okay, thank you. The
8 purpose of this exhibit really is only to provide
9 some visual aids for some testimony that I wanted
10 to provide. All of the information in this
11 exhibit is in the AFC.

12 There is no new information here except
13 that one of the slides, which I will point out
14 when we get to it, does have some generic
15 information from the Federal Highway
16 Administration. It's a pictorial of different
17 types of vehicles so it's really nothing project-
18 specific. But that would be the only piece of
19 information in here that really is new compared to
20 the existing record.

21 And what I wanted to do was just take
22 about five minutes because we understand that
23 there has been some interest expressed by one or
24 more of the Commissioners regarding the
25 possibility of the water trucks on State Route 76

1 causing some kind of a hold-up in traffic either
2 due to hills or due to sharp corners.

3 So I just put together some slides and
4 wanted to talk just a little bit about how we have
5 looked at those issues and do not believe that
6 those issues are going to present any concern.

7 This slide shows the water haul routes
8 and the recycled water haul route along State
9 Route 76 is down here. The site is over here.
10 And the fresh water also would be hauled along a
11 shorter segment of State Route 76. But both fresh
12 and recycled water would utilize State Route 76.

13 First we looked at the hills issue. And
14 what we did is we looked at the USGS maps for the
15 area and concluded that there are no significant
16 uphill that would be encountered when the water
17 trucks are full and hauling water to the site.
18 Both of the water pickup locations are at a higher
19 location than the site overall.

20 The site entrance is at about 340 feet.
21 The water pickups are at about 700 feet and 1,000
22 feet respectively. So the overall grade is
23 downhill. And State Route 76 is really just a
24 very gentle uphill grade here because you are
25 going upstream along the river. But there are no

1 steep hills whatsoever.

2 The only area we were able to identify
3 from the topo maps that had any sort of a grade to
4 speak of is located right here just west of
5 Interstate 15, so this would be along the recycled
6 water haul route. That is not a substantial hill
7 in any sense of the description.

8 It is about 1,000 feet long. It's got a
9 grade of about six percent. So based on grade
10 alone, I mean, if you had a six percent grade that
11 was miles long it might be something worth looking
12 at. But this hill is about two-tenths of a mile
13 so you're talking a travel time of something on
14 the order of 15 or 20 seconds.

15 Just the momentum of the truck alone.
16 We don't believe that a 15 second hill or a 20
17 second hill is going to have any material impact
18 at all on traffic flow. There are no sharp
19 corners coming into this hill or anything else
20 that would limit the speed of that truck going
21 into the hill so there is no reason they wouldn't
22 have momentum to carry, to carry that short hill.
23 So overall we believe that there is no issue
24 whatsoever related to hills.

25 This is Table 6-11.1 out of the AFC and

1 it just shows, I just wanted to point out here the
2 55 mile an hour speed limit. So on this hill that
3 we are talking about, if traffic is flowing 55
4 that's where you would expect the water truck to
5 be.

6 And this slide is very washed out but it
7 is probably worthwhile talking about just the
8 point where the evidence is in the record. This
9 is AFC Figure 2.2-2. And the hill that we are
10 talking about is right down here in the corner of
11 this map in the topographic lines that are shown
12 in the AFC. You can see there's a very small
13 topographic saddle here. And that's where this
14 very small hill is, just west of I-15.

15 Okay, next I just wanted to talk about
16 the issue of the corners. The portion of State
17 Route 76 that does have some tight corners and
18 some windy road is really located right over here
19 in the easternmost segment of this road before you
20 get out to the site. Here is Interstate 15 right
21 here. Coming off of Interstate 15 the road is
22 pretty straight and then once you start to hit
23 this mountainous terrain there are some corners in
24 here.

25 This is a closeup showing where these

1 corners are. So coming off of Interstate 15 this
2 road segment is all pretty straight in here. It
3 doesn't start to get into the corners until you
4 hit this segment in here and then you have got a
5 number of corners until you get up to the site.

6 This is Figure 6.1-2 out of the AFC.
7 And what this shows is -- This is actually out of
8 the section of the AFC that talks about projects
9 with potential for cumulative impacts. This is a
10 figure that came out of the Rosemary's Mountain
11 EIR. And what it shows is that State Route 76 out
12 to Rosemary's Mountain is in the process of being
13 upgraded to a four lane road and they are also
14 taking out a couple of these bad bends.

15 This project construction work is
16 currently underway. If anybody drove out there
17 towards the site in the last couple of days in
18 preparation for this meeting you would have seen
19 the road barriers and the roadwork underway. This
20 is all underway right now and is expected to be
21 completed by the time this project goes into
22 operation.

23 So once this work is completed the more
24 torturous road pathway is going to be even shorter
25 and it basically is going to be this continuation

1 of the road over here.

2 Which on this more detailed map ends up
3 starting here and then continuing up to the site.
4 That's about a two mile segment of road. It's got
5 some straight segments in it as you can see, but
6 it also has a number of corners.

7 So that two mile segment of road.

8 Driving that road I noted that a pretty safe speed
9 is probably something on the order of 40 miles an
10 hour, beside from some of those corners that are
11 posted for a much lower speed. So you are talking
12 about maybe three minutes of travel time on a
13 windy road.

14 We are going to, the project would have
15 a maximum of two water trucks along there per hour
16 because you could have both fresh water trucks and
17 recycled water trucks. That small number of
18 trucks on a three minute segment of road is going
19 to be much too minor to cause any effect on the
20 level of service.

21 And in addition to that I think it is
22 important to keep in mind that these are going to
23 be new trucks purchased for the project. They
24 will be designed for the loads that they are
25 carrying. So we are not expecting them to be

1 under-powered or old or have poor suspension or
2 anything like that. They will be designed for the
3 work that they are given.

4 In addition those trucks are not going
5 to be really different from existing conditions.
6 We took a look at the vehicle counts that are
7 provided in the AFC Appendices. And the vehicle
8 counts were done, broken down by Federal Highway
9 Administration vehicle classes. This is the one
10 slide I mentioned earlier. This is nowhere in the
11 AFC, this is just generic information.

12 And we took a look at it and we
13 considered, well, Class 4 are large busses, there
14 are a number of these. These are the big casino
15 busses, for example, that go out here. Class 5
16 you're moving into RVs, tow trucks, dump trucks,
17 other types of large vehicles. So the way we
18 really looked at it we said, you know, anything
19 above a Class 4 might also have a potential to
20 lead traffic through.

21 So we looked at the number of vehicles
22 that are currently on that road that are of that
23 size. And this is a summary table of information
24 that was provided in the applicant's Exhibit 8.

25 So all these numbers and all this data is already

1 in Exhibit 8. This is just a little bit more
2 convenient format.

3 And what we noted from this table is
4 that if you look at this broken down by classes,
5 for the east bound segment of State Route 76, here
6 are the number of vehicles counted in a 24 hour
7 period. There's a total of 4476 vehicles
8 eastbound and about 5.5 percent of those are these
9 Class 4 or larger.

10 The other thing to note on this is
11 virtually every kind of vehicle is already out
12 there. On this particular day there were no Class
13 12 vehicles counted but those are going to be
14 traveling this road as well. So you have already
15 got a good mix of vehicles out there.

16 I may have just mis-stated. 5.5 percent
17 is the number of Class 4 and larger vehicles
18 currently out there.

19 If we took a conservative scenario of a
20 12 hour operating day for the power plant and two
21 trucks per hour for that entire operating day we
22 would add 24 trucks to this, which would increase
23 the percentage of these types of vehicles to about
24 5.9 percent. So it's really not a substantial
25 difference.

1 In addition to that we have observed
2 traffic out there and we have observed all kinds
3 of vehicles out here not holding up traffic. One
4 reason may be the fact that we are only talking a
5 three minute stretch of road. But for all these
6 various reasons we have concluded that the curves
7 are just not going to be an issue. With two
8 trucks an hour maximum and a three minute road
9 segment it doesn't appear to be a substantial
10 problem.

11 HEARING OFFICER CELLI: Thank you.

12 MS. LUCKHARDT: Okay. And that
13 concludes our direct testimony. So at this time
14 applicant would like to move applicant's exhibits
15 on Traffic and Transportation to include the
16 Traffic and Transportation portions of Exhibit 1,
17 Exhibit 4, 5, 8, 9, 18(k), 21 and newly marked
18 Exhibit 61.

19 HEARING OFFICER CELLI: Any objection,
20 staff?

21 MR. BABULA: No objections.

22 HEARING OFFICER CELLI: Any objection,
23 Mr. McPhee?

24 MR. MCPHEE: Yes, I would like some
25 definitions here. On Exhibit 8 is this a seven

1 day or a five day week that your Exhibit 8 is
2 based on?

3 MS. DAVIS: It's a 24 hour count.

4 MR. STENGER: It's a 24 hour count.

5 MR. McPHEE: So every 24 hours you have
6 8,317 total Class 2 vehicles. Would that be
7 right?

8 MR. STENGER: Eight thousand, nine
9 hundred and eighty-seven in both directions.

10 MR. McPHEE: No, that total --

11 MR. STENGER: Yes, in both directions.

12 MR. McPHEE: Yes, I was talking about
13 Class 2 vehicles. This is the total number, yes.

14 Okay. Is that a seven day or a five day
15 week?

16 MR. STENGER: Those counts were done on
17 a Tuesday.

18 PRESIDING MEMBER BOYD: It's not a week,
19 it's one day.

20 MR. McPHEE: It's just one day.

21 HEARING OFFICER CELLI: So before --

22 MR. McPHEE: Wait a minute, I have
23 another, I have one more question.

24 HEARING OFFICER CELLI: Mr. McPhee,
25 excuse me one moment. You are going to have an

1 opportunity to cross examine this witness but this
2 isn't the opportunity. The question before you
3 now is only do you object to the admission into
4 the record of any of the documents that they are
5 offering into the record at this time?

6 MR. McPHEE: Well the only thing that I
7 was asking for, I didn't understand what the time
8 was, you know. Whether it was a seven day average
9 or a one day average or a one point average. It
10 appears to be just a one day average.

11 HEARING OFFICER CELLI: Right. And then
12 they extrapolate out. So do you have an issue
13 with any of the documents that they are putting
14 in?

15 MR. McPHEE: I have an issue with this
16 document, AFC Figure 6.1-2. I thought the state
17 discontinued all roadwork as of yesterday or today
18 or something like that because of problems with
19 the budget.

20 HEARING OFFICER CELLI: That may be the
21 case, I have no idea. It looked to me like there
22 was -- when I drove in last night there was some
23 construction going on at Pala Road.

24 But you know what, I'll hold the
25 question of the admission of the evidence until we

1 are finished with the cross-examination. So
2 staff, I am going to allow you to cross at this
3 time.

4 MR. BABULA: I have no cross.

5 HEARING OFFICER CELLI: Okay, thank you.
6 Mr. McPhee, now you may cross-examine these
7 witnesses.

8 MR. MCPHEE: Well, I have no cross
9 except I just needed some information, that's all.

10 HEARING OFFICER CELLI: Well this is
11 your chance to get whatever else you need.

12 CROSS EXAMINATION

13 MR. MCPHEE: Well, the state is
14 discontinuing all road work. Can you check that
15 out and verify that this is not going to be a four
16 lane highway. It is a county proposal but I am
17 not certain that the state is not involved in it.

18 HEARING OFFICER CELLI: I am just
19 questioning the relevance of that, really.
20 Whether that's the case or not, I think that the
21 AFC is written under the assumption that the roads
22 aren't growing. That they are basically the state
23 in which they are currently, which is the one
24 lane; is that correct?

25 MS. MILLER: The analysis in the AFC?

1 HEARING OFFICER CELLI: When the AFC was
2 drafted.

3 MS. MILLER: Did you assume the --

4 HEARING OFFICER CELLI: We're assuming
5 the existing roads, not future roads, is that
6 correct?

7 MR. STENGER: The AFC was drafted -- I
8 guess I am not clear on how exactly it would be
9 applied. The anticipation is that there would be
10 no, there would be no road improvements past
11 Rosemary's Mountain because that is an ongoing
12 project. There was no direct, I don't believe
13 that there was any direct assessment that would
14 have made any difference on that. Ruth may be in
15 a better position to answer that question.

16 MS. DAVIS: No sir. The only thing that
17 was assumed was projects that were in play at the
18 time and had funding, which was the Rosemary
19 Mountain improvements. There was other documents
20 that alluded to potentially the widening of 76,
21 Caltrans concept reports and such. But those had
22 no funding and they had no investigation performed
23 on them so they were not assumed to be in play.

24 HEARING OFFICER CELLI: Okay. Does that
25 answer your question, Mr. McPhee?

1 MR. MCPHEE: Not really. What I'm
2 looking at here is passenger cars, 8,317 on a
3 Tuesday. Is that typical of the whole week?
4 Tuesday is not a Monday and it's not a Friday, and
5 Friday is a real bad day at that intersection.
6 Because I live not too far from there, from the
7 intersection of 15 and 76 and I know it's a real
8 bad day.

9 HEARING OFFICER CELLI: Staff? I'm
10 sorry. Applicant, did you have a response?

11 MS. DAVIS: The state of the practice
12 for doing traffic evaluations is to do a typical
13 Tuesday, Wednesday or Thursday. We do not
14 generally look at a Wednesday or a Friday unless
15 requested by Caltrans or some other entity for a
16 special condition. So we did a typical traffic
17 evaluation in this case.

18 HEARING OFFICER CELLI: You just said
19 you don't typically look at a Wednesday or a
20 Friday. Did you mean a --

21 MS. DAVIS: Excuse me, Monday and a
22 Friday.

23 HEARING OFFICER CELLI: Thank you. Just
24 to be clear.

25 MR. MCPHEE: Thank you.

1 HEARING OFFICER CELLI: Anything
2 further, Mr. McPhee?

3 MR. MCPHEE: Nothing further, thank you.

4 HEARING OFFICER CELLI: Thank you.
5 Anything further from the applicant?

6 MS. LUCKHARDT: Nothing further.

7 HEARING OFFICER CELLI: You have a
8 motion.

9 MS. LUCKHARDT: You want me to move them
10 again?

11 MR. KEA: Excuse me, I am a member of
12 the public. May I be heard?

13 HEARING OFFICER CELLI: Who is speaking?

14 MR. KEA: This is Ratha Kea, I'm a
15 resident of Southern California.

16 HEARING OFFICER CELLI: I am not able to
17 hear you very well, we are going to have to change
18 the microphone. But we are going to take public
19 comment in about -- very shortly but we are still
20 taking evidence at this time. So if you could
21 just hold your comment until the public comment
22 period we would appreciate that.

23 MR. KEA: Absolutely, thank you.

24 HEARING OFFICER CELLI: Thank you.

25 You have already moved those exhibits

1 into evidence. There's no objection from staff.
2 Mr. McPhee, you don't have any objection to any
3 particular exhibit?

4 MR. MCPHEE: No further objections, no.

5 HEARING OFFICER CELLI: Okay, thank you.
6 Then those exhibits will be received into
7 evidence.

8 (The above-referenced documents,
9 previously marked as Applicant's
10 Exhibits 1, 4, 5, 8, 9, 18(k), 21,
11 61 were received into evidence.)

12 HEARING OFFICER CELLI: Applicant, what
13 I am receiving is Exhibit 1, 2, 3 was withdrawn at
14 the Prehearing Conference on 12/1.

15 MS. LUCKHARDT: Now are you back on
16 the --

17 HEARING OFFICER CELLI: I'm going
18 through the, I'm telling you what is in the record
19 right now.

20 MS. LUCKHARDT: Okay.

21 HEARING OFFICER CELLI: And staff,
22 everyone should take a look at this because I want
23 to make sure that we are all on the same page.

24 MS. LUCKHARDT: Okay.

25 HEARING OFFICER CELLI: I have received

1 into evidence Exhibit 1, Exhibit 2, we are not
2 receiving Exhibit 3.

3 MS. LUCKHARDT: Correct.

4 HEARING OFFICER CELLI: We are receiving
5 Exhibits 4 through 10. We are not receiving
6 Exhibit 11, which was withdrawn at the Prehearing
7 Conference on 12/1.

8 MS. LUCKHARDT: Okay.

9 HEARING OFFICER CELLI: We are receiving
10 Exhibits 12 through 15. Exhibit 16 was reserved
11 but I don't believe it was used.

12 MS. LUCKHARDT: No, that's correct.

13 HEARING OFFICER CELLI: So there is no
14 Exhibit 16. So 12 through 15. We are receiving
15 Exhibit 17. We are receiving Exhibits 18(a)
16 through (r). Exhibit 19 was not used.

17 MS. LUCKHARDT: It was not, not used.

18 HEARING OFFICER CELLI: Exhibit 20
19 through 24 are received. Exhibits 25 through 49
20 were reserved but not used, correct?

21 MS. LUCKHARDT: Correct.

22 HEARING OFFICER CELLI: Okay. Exhibits
23 50 through 56 are received. Exhibits 57 and 58
24 were withdrawn at the Prehearing Conference.
25 Exhibits 59, 60 and 61 are received. Exhibits 62

1 through 199 were reserved but not used.

2 MS. LUCKHARDT: That is correct.

3 HEARING OFFICER CELLI: Okay, thank you.
4 We now turn the hearing over to staff. Staff, at
5 this time do you wish to move evidence into the
6 record.

7 MR. BABULA: Do you want us to have Jim
8 speak on traffic?

9 HEARING OFFICER CELLI: Oh, I am so
10 sorry, I am so sorry.

11 MR. BABULA: That's fine. Because now
12 with all the exhibits, I could have Jim --

13 HEARING OFFICER CELLI: Mr. Adams, we
14 are going to need you to stand and be sworn.
15 Whereupon,

16 JAMES ADAMS
17 Was duly sworn.

18 HEARING OFFICER CELLI: Thank you,
19 please be seated. You know, really the reason we
20 needed the traffic, just to cut things, cut to it,
21 was really issues that the Committee had. Staff,
22 was there any direct testimony that you wanted
23 from Mr. Adams?

24 MR. BABULA: It's mainly to answer the
25 Committee's questions. If the Committee is

1 satisfied with the applicant's presentation I can
2 just have Jim quickly speak to whether he concurs
3 with what they said and his opinion of it.

4 HEARING OFFICER CELLI: And that's
5 probably the case. Here is what I would like to
6 do. I would like to voice for everyone the
7 concerns that the Committee has about Traffic and
8 Transportation in general and then Mr. Adams can
9 speak to that.

10 MR. BABULA: That's fine, that would be
11 fine.

12 HEARING OFFICER CELLI: The first
13 concern we had. And I am looking at the new,
14 Revised Staff Assessment. If I can just find my
15 -- here they are. I think it was Mr. McPhee who
16 said this is probably the riskiest water delivery
17 system in the state. We are not aware of any
18 other power plant that has water trucked into it.

19 And therefore the Committee really
20 wanted the parties to take a closer look at this.
21 We are not sure how comfortable we are with this
22 as a precedent. And we think that it is incumbent
23 upon staff and the applicant to really make sure
24 that the system protects public health and the
25 environment and public safety. So with that in

1 mind this area gets a little more attention, I
2 guess, or a little closer scrutiny than the rest
3 of the -- some of the other areas.

4 One of the concerns we have. And really
5 it flows from Trans-4. If you look at Trans-4,
6 there were some changes made to Trans-4 between
7 the Staff Assessment and the new Final Staff
8 Assessment.

9 MR. ADAMS: Actually we took it out,
10 Hearing Officer.

11 HEARING OFFICER CELLI: There is no
12 longer a Trans-4?

13 MR. ADAMS: There isn't. If you take a
14 look at the revised analysis on page 4.10-6.

15 HEARING OFFICER CELLI: Give me one
16 second, I have the FSA here. Let me get to this.

17 PRESIDING MEMBER BOYD: Say that page
18 again.

19 MR. ADAMS: Yes. The testimony that
20 kind of addresses some of the concerns raised by
21 the Committee is at 4.10-6 of the revised
22 analysis.

23 HEARING OFFICER CELLI: Yes, I have
24 that.

25 MR. ADAMS: Okay. Let me just say that

1 took the questions and the seriousness raised by
2 the Committee and we tried to spell out in more
3 detail in that bottom paragraph why we felt that
4 the use of water truck delivery is not a
5 significant hazard, given the reasons that I laid
6 out in that paragraph.

7 We also decided that we didn't need
8 Condition of Certification Trans-4 because we felt
9 that given our analysis that condition really
10 wasn't required. And I think that is the
11 fundamental change. And we tried to spell out
12 more detail in the paragraph that's underlying the
13 specific reasons why we felt there wasn't a
14 problem. That's what we tried to do to address
15 the concerns that were raised.

16 HEARING OFFICER CELLI: Okay. So what
17 it says, I'll just read it into the record:

18 "Staff has been advised that
19 the project owner will purchase new
20 trucks that when fully loaded with
21 water are capable of maintaining
22 the appropriate speed needed to
23 blend in with existing traffic on
24 the applicable roads, and will be
25 able to handle curves in the roads

1 without significantly slowing down
2 traffic.

3 "Staff believes that the water
4 truck delivery will not adversely
5 affect existing traffic flow
6 because --"

7 And then there are these four points. My
8 understanding, and the Committee has been
9 operating under the assumption that the trucks
10 have not yet been acquired; isn't that correct?

11 MR. ADAMS: That's correct.

12 HEARING OFFICER CELLI: Okay. And so
13 have you been provided any specs of the trucks
14 that they intend to use?

15 MR. ADAMS: We did have one figure that
16 showed the size of the truck. A single trailer
17 with basic sides. And I was actually going to ask
18 Mr. Stenger to point out where you had all those
19 different type of trucks what would be the truck
20 class that you think would apply to this
21 particular one.

22 So it was understanding they would buy
23 trucks that would be big enough to carry 6500
24 gallons, that would be able to maintain the speed
25 that was needed on the roads that were being used

1 and that could handle the curves, and all the
2 things that would need to happen to make sure that
3 truck would blend in with what -- I think he
4 demonstrated there's a lot of truck activity on
5 those roads at this time.

6 HEARING OFFICER CELLI: One of the
7 things -- I am just going to, I'll just say that
8 this is sort of a logical non sequitur, what
9 follows after the because part of this paragraph.

10 What the Committee would be interested
11 in knowing and seeing is some sort of an
12 assurance, and in the form of a condition, that
13 requires the applicant to provide a demonstration
14 that the trucks that are purchased can and will,
15 when they are fully laden with their 20-some-odd
16 tons of water, will be able to flow with traffic
17 at 55 miles an hour. Make the turns at whatever
18 turns the cars and the other cars are making. And
19 we feel that that is necessary as a condition
20 because we are delivering water to a power plant.
21 So that was one point I wanted to make.

22 The fact that whether one or two trucks
23 is insignificant, therefore it's okay, doesn't
24 really address kind of the safety issue and the
25 concerns, public health concerns that the

1 Committee had. And so, again, the fact that
2 Caltrans and the CHP don't care, okay. I mean,
3 that again doesn't give the assurances we are
4 looking for.

5 MR. ADAMS: I don't think don't care
6 is -- What they said to me was --

7 HEARING OFFICER CELLI: Are not
8 concerned.

9 MR. ADAMS: No. They looked at the
10 project and they looked at the traffic flow and
11 they said basically, we really don't have a
12 problem with adding two maximum trucks per hour on
13 a road that has the activity that it has there
14 now. And that was expressed by both agencies.

15 And as I mentioned, we also contacted
16 the Bonsall Unified School District and they said,
17 well, you know, our drivers are trained to deal
18 with traffic that is on there now but we think it
19 might be a good idea to stagger construction
20 workers just so they don't interfere with the
21 school bus routes.

22 So my impression from them was they
23 looked at it, they didn't think it was a major
24 concern. And it's not that they didn't care, it's
25 that they didn't think it was a concern.

1 HEARING OFFICER CELLI: And I probably
2 used the wrong word. But I wanted to raise some
3 other issues that are all having to do with this
4 one point that we don't think is really here in
5 the conditions. Which is these assurances, a test
6 that would give the CPM the ability to track and
7 verify and provide to the public assurances that
8 said, okay, we looked into this, we checked it
9 out. These trucks will perform as promised.
10 These trucks will go at this speed, they won't
11 slow up traffic.

12 The evidence before us in your report,
13 Mr. Adams, says something to the effect of, and
14 forgive me if I misquote, but there is a higher
15 incidence of traffic accidents on SR-76 than there
16 are in similar situated roads, similarly situated
17 roads in the area.

18 MR. ADAMS: That was actually a
19 consultant report that was attached to the
20 analysis and we had them look because of the issue
21 of safety. We had them look at accident rates on
22 the roads compared to a statewide average. And it
23 was slightly higher than the statewide average.

24 That was sort of the original impetus
25 for thinking about Condition 4. Which would bring

1 in these other agencies to say, listen, we would
2 like you to look at, here is our analysis, here is
3 our Committee report, here is what we are
4 proposing. Do you think that there is any
5 additional safety measures that could be done to
6 ensure that the water truck delivery was not in
7 any way adversely affecting traffic.

8 And that was the original reason why I
9 thought about that. However, after thinking about
10 it we felt that -- And I am not opposed to the
11 condition that you are talking about. I think an
12 actual demonstration of it is a reasonable thing
13 to do, just to see if they can do it. I guess I
14 was supposing that a truck the same size as
15 hundreds of trucks that are already out there is
16 probably going to perform the same way that
17 existing ones are.

18 The difference is we have never allowed,
19 we have never had water delivery before. And that
20 is something new so I am willing to err on the
21 side of caution. But fundamentally as a traffic
22 expert or opinion, my opinion is that it will be
23 able to do just as the other trucks do every day.
24 And there won't be anything particularly different
25 about it's carrying water or gravel. Especially

1 double trailer trucks, which are even more
2 problematic in terms of dealing with these curves.

3 So I still think staff's sort of concern
4 and acceptance of the fact that the truck would be
5 able to do the things required to do is more than
6 likely. It is more than likely.

7 HEARING OFFICER CELLI: And I am sure
8 that is the case. We just don't have jurisdiction
9 over all the other trucks.

10 MR. ADAMS: Exactly.

11 HEARING OFFICER CELLI: So what we would
12 want to make sure is that there is a condition
13 that satisfies the CPM, the compliance project
14 manager, that the trucks when fully laden with
15 water will be able to travel the speed limit and
16 that they will be able to conform to whatever
17 standards, the maximal safety standards on the
18 road.

19 The other thing we would want to see is
20 a condition -- Now we don't necessarily care to
21 limit applicant's -- Now if you want to buy a
22 fleet of trucks that is up to the applicant to do.
23 But we wanted to limit it and make sure that there
24 were not more than two trucks per hour. We felt
25 that that was a reasonable condition since all of

1 the description of this project we have ever heard
2 was that there would be no more than two trucks
3 per hour.

4 Obviously if you throw in another truck
5 that would definitely affect this and we wouldn't
6 be in favor of that. Well we may if you made the
7 case but the point is, up until now all the
8 evidence before us is two trucks. So we would
9 want to see a condition so that if there were a
10 need for a new, an extra truck, it would require
11 an amendment and an analysis to be run by the CPM.

12 Other things that we talked about would
13 be signs near the site that warn of slowing or
14 turning trucks. Because I imagine a truck
15 carrying that much weight needs quite a distance
16 to slow before it can turn if you are on a 55 mile
17 an hour road. And I think that the people should
18 be, that the other drivers in cars should be on
19 notice that there's a likelihood or a possibility,
20 with two trucks per hour, that they may be behind
21 a truck that's going to make a turn. Signage.

22 The other thought we talked about might
23 be, and this is borrowing -- again, I am putting
24 this out to the parties, the applicant and staff
25 to put your heads together and the intervenors.

1 We have seen the 1-800 numbers on the back of
2 trucks, How am I driving?

3 We have conditions when it comes to -- I
4 believe it's Noise. We typically have a big sign
5 on the fence outside of the power plant that says,
6 if you have a problem with the noise here is the
7 number to call and here is how we are going to
8 adjudicate those complaints.

9 I think it would be reasonable to give
10 the public an opportunity to say, you know, I have
11 to go through this SR-76 to get to work every day
12 and every day I get stuck behind some slow water
13 truck and that's why I am calling this number.
14 Something like that.

15 The other question we had was what about
16 expanding the size of the water storage to reduce
17 the number of truck trips, if that is a
18 possibility? We don't know, you know. The
19 Committee isn't offering anything more than
20 suggestions that we thought better addressed the
21 concerns about safety than what we had received.
22 I mean, up until now I think Trans-4 was really
23 nothing more than deferred comment. It was asking
24 for more comment. Well, that's just more levels
25 of bureaucracy that we don't need.

1 MR. ADAMS: That's why we struck it.

2 HEARING OFFICER CELLI: And I appreciate
3 that, I thought that that was, that's good.
4 Although my copy doesn't show that Trans-4 was
5 stricken, it shows that it was edited.

6 MR. ADAMS: Actually the language that
7 was taken away had strike-through and the new
8 language was underlined. So if you looked at page
9 4.10-6, the discussion of Trans-4 has strike-
10 through and the Condition Trans-4 itself is
11 completely, has strike-through. So I don't know
12 if you got --

13 HEARING OFFICER CELLI: Right, but the
14 condition itself still exists as a condition.

15 MR. ADAMS: No, no. The discussion of
16 Trans-4 in the text was stricken and the Condition
17 was stricken. So if you look at the bottom of
18 4.10-6, my copy anyway has the reference to
19 Condition-4 stricken.

20 HEARING OFFICER CELLI: I thought I
21 remembered reading that. But if you look at page
22 4.10-13 it says:

23 "Prior to the start of filling
24 the project's potable and recycled
25 water tanks the project owner shall

1 consult with Caltrans, the
2 California Highway Patrol, et
3 cetera."

4 MS. LUCKHARDT: I think that may have
5 been an editing error where only the verification
6 was struck and not the --

7 HEARING OFFICER CELLI: Not the
8 condition. So we need to strike --

9 MR. ADAMS: Right. Actually on my copy
10 Trans-4 at the bottom of 4.10-13, the condition
11 and the verification are both stricken.

12 HEARING OFFICER CELLI: Okay. We'll
13 let's let the record reflect then that Trans-4 is
14 stricken.

15 What the Committee would like to -- And
16 I wonder if the parties think this would be
17 productive. To take perhaps a moment to see if
18 the parties could craft, while we are still
19 together and have everybody, a condition that
20 would satisfy use that the CPM in this case --

21 When I say CPM folks I am talking about
22 the compliance project manager. Because after
23 this case, if this power plant gets certified the
24 Energy Commission continues to monitor compliance
25 and has what is called a compliance project

1 manager whose job it is to see that all of the
2 conditions that are put into the Final Order are
3 complied with by the project owner. So that is
4 what we are looking for. Again --

5 MR. ADAMS: Now could it be one
6 condition with all of these provisions? With all
7 these --

8 HEARING OFFICER CELLI: One condition;
9 you can make bullet points. But it has to do with
10 the safety of the truck. We want to make sure
11 that the CPM can come out -- there's some means by
12 which the CPM can say, check, yes. The truck does
13 55 fully laden with water, does the turns at the
14 same speed that cars do, whatever.

15 And we would like to see those signs
16 perhaps. I don't know if that's -- You know, I
17 don't know if you can just unilaterally do that
18 without permission from Caltrans.

19 MR. ADAMS: You can't really. The other
20 thing is, if we were to verify that the trucks
21 could behave just as other trucks I am not sure if
22 signage would be needed. In other words, if you
23 can't distinguish between water truck behavior and
24 any other truck behavior then what is your sign
25 going to say? I mean, is it warranted to say,

1 beware of water trucks?

2 HEARING OFFICER CELLI: What I can say
3 is this, that we are talking about a power plant.
4 And the public right now doesn't have to worry
5 about the delivery of water to any other power
6 plant in the state.

7 But this one could affect lives because
8 we are talking about a very powerful, very heavy
9 truck at 55 miles an hour, on the roads with a
10 whole lot of people, where there wouldn't be if
11 this project had pipeline delivery. And since we
12 have jurisdiction over that we need to make sure
13 that we don't let the people down by turning a
14 blind eye towards any dangers that there might be
15 with regard to the environment and public safety.

16 (Commissioner Boyd and Hearing
17 Officer Celli conferred.)

18 HEARING OFFICER CELLI: And Commissioner
19 Boyd makes a good point which is, we are only
20 talking about in the vicinity of the entrance to
21 the project, not the entire roadway.

22 MR. ADAMS: Right. That's a good point.
23 Because those trucks, as Mr. Stenger mentioned,
24 are doing maybe average 40 miles an hour and 25
25 miles an hour going through the curves. So I

1 don't think it's fair to characterize it as 55
2 miles an hour. And that's only that two mile
3 segment.

4 So I think, I mean, we're willing to
5 take a crack at a condition that can address some
6 of these as bullet points. I wish we had a little
7 bit more time to think about it and talk about it
8 because here we are in an evidentiary hearing.

9 HEARING OFFICER CELLI: I appreciate
10 that. I want to make the record clear though that
11 there are -- in fact, we have about ten pages
12 devoted to talking about this at the Informational
13 Hearing. At the end of the Informational Hearing
14 about the safety of trucks, the speed of trucks.
15 We have raised it before in a letter, an e-mail
16 that was sent to all of the parties prior to the
17 Prehearing Conference Statement. And so the
18 Committee was a little disappointed actually that
19 we didn't get a little more traction, if you'll
20 pardon the pun, in the context of transportation
21 and traffic.

22 Do you think, Applicant, that it would
23 be productive right now to take a break and see if
24 you could fashion something?

25 MS. LUCKHARDT: Yes, we could sit down

1 and draft it.

2 PRESIDING MEMBER BOYD: Can I ask the
3 applicant a question?

4 HEARING OFFICER CELLI: Yes.

5 PRESIDING MEMBER BOYD: What class of
6 truck were you presuming you would be purchasing?

7 MR. STENGER: It's likely going to be a
8 Class --

9 MR. ADAMS: Number 9.

10 MR. STENGER: Nine.

11 PRESIDING MEMBER BOYD: Okay. Are there
12 performance criteria, fairly standard performance
13 criteria for a Class 9 truck in terms of its
14 hauling capacity, engine size, et cetera, et
15 cetera?

16 MS. LUCKHARDT: Are you guys listening?

17 MR. STENGER: Yes.

18 MS. LUCKHARDT: You guys need to listen.

19 MR. STENGER: Yes.

20 MS. LUCKHARDT: Yes it is?

21 MR. STENGER: I am asking Ruth if she
22 was -- I can't answer that question. I was asking
23 Ruth if she could answer that question.

24 PRESIDING MEMBER BOYD: I should be able
25 to but -- I used to regulate trucks but I don't

1 remember anymore.

2 MS. DAVIS: I think Mr. Adams can concur
3 with what I am fixing to say, or hopefully he can.
4 When you get into the multi-axle trucks -- and I'm
5 going to try to put this in more layman's terms,
6 hopefully I am successful. You don't see a
7 standard truck, per se, that is out there on the
8 road that fits this description to a T as shown up
9 in this graphic.

10 What you have is a certain amount per
11 axle. And how the axles are located on the truck
12 go into the specifications per the California
13 Vehicle Code that says, for this type of axle
14 weight or this type of axle design spaced along
15 the truck, the type of weight and such, you can
16 carry a max load of X pounds. The legal limit in
17 California is 80,000 pounds total, I believe, and
18 a max axle, depending on the spacing of course, is
19 20,000 pounds per axle, I believe. Is that
20 correct?

21 MR. ADAMS: I think so but I'd have to,
22 it is subject to checking.

23 MS. DAVIS: Yes. And so what will
24 happen, and we have run some preliminary calcs.
25 We have made calls to manufacturers of trailers,

1 we have made calls to manufacturers of trucks.
2 And none of the manufacturers per se have
3 standards that are attached that says, unloaded
4 weight of a truck is this, unloaded weight of a
5 trailer is this. It all depends on the design
6 that is put together for the type of load that is
7 going to be hauled.

8 And based on some rudimentary
9 calculations that we put together we feel that the
10 Class 9 truck will be able to carry the weight of
11 the water as well as the empty weight of the truck
12 and still fall below the 80,000 pound weight limit
13 per the California Vehicle Code.

14 PRESIDING MEMBER BOYD: Do you have a
15 requirement, an operating requirement for X
16 gallons per delivery that you are going to need?

17 MR. JONES: Well in order to -- This is
18 Mike Jones speaking. In order to keep up with the
19 two trucks per hour, yes, absolutely.

20 PRESIDING MEMBER BOYD: So you need a
21 truck that carries a specific number of gallons,
22 20,000 --

23 MR. JONES: Roughly 6,500 gallons.

24 PRESIDING MEMBER BOYD: Okay, 6,500
25 gallons.

1 MR. ADAMS: That was the number we used
2 in our analysis too.

3 PRESIDING MEMBER BOYD: Right.

4 MR. ADAMS: And I concur with what the
5 applicant said. Based on my memory of the figure
6 that was sent to us, that number nine truck is
7 roughly the size that I recall from seeing the
8 schematic drawing of it. And that's what I had
9 envisioned when I was thinking about the ability
10 for the truck to make the turns. And that's why I
11 thought that that truck was capable of handling
12 this two mile segment at the speed limit and the
13 curves. It wouldn't have any trouble making those
14 curves.

15 But I haven't -- It didn't occur to me
16 and this is the first I have heard of the idea of
17 having a demonstration of a water delivery truck,
18 or something to verify they could actually do
19 that. I have not heard that, I have not heard
20 about signage or some of these other things. I
21 don't know why I don't know about these things but
22 I didn't know the Committee was considering those.

23 MR. BABULA: I would be open if you want
24 to take ten minute and we can work with the
25 applicant.

1 HEARING OFFICER CELLI: Do you think you
2 could do that?

3 MS. LUCKHARDT: Yes.

4 HEARING OFFICER CELLI: Let's take,
5 seriously, ten minutes.

6 MS. LUCKHARDT: And we can type it up
7 and put it up on the screen.

8 PRESIDING MEMBER BOYD: One thing that
9 is going through my mind is how do we assure that
10 you buy Class 9 trucks?

11 HEARING OFFICER CELLI: Yes.

12 PRESIDING MEMBER BOYD: I mean, I would
13 say -- You know, I own a truck and sometimes I
14 pull or carry stuff that is almost beyond the
15 capability and thus I would be slow. You should
16 see me pulling my boat up to Tahoe a few times.

17 So if there is some way of specifying a
18 classification of truck that guarantees that it is
19 going to have the carrying capacity and the engine
20 size, et cetera, et cetera.

21 HEARING OFFICER CELLI: The performance.
22 It needs to --

23 PRESIDING MEMBER BOYD: To perform.
24 Some kind of performance criteria.

25 HEARING OFFICER CELLI: Right. That's

1 what we are looking for.

2 MR. ADAMS: I think that could be part
3 of the condition is that the applicant will
4 purchase appropriately sized vehicles, Class 9.

5 HEARING OFFICER CELLI: We'll do that.
6 Now ladies and gentlemen and people on the
7 telephone. I just want to say that we have one
8 more -- before we get to public comment we need to
9 deal with a couple of questions the Committee has
10 regarding comments that did come in since the
11 Staff Analysis.

12 So if the parties can huddle now, take
13 your ten minutes. I have that it is five minutes
14 until two. At ten minutes after two we will
15 reconvene. We will look at your new condition,
16 Trans-4. And after that we will discuss the
17 remaining comment.

18 After that we will then open the
19 microphone to public comment. So I want to thank
20 all the public for being here all day. I know
21 it's long and can be boring but we definitely need
22 to hear from you.

23 MR. BABULA: We also need to get our
24 exhibits in.

25 HEARING OFFICER CELLI: Oh yes.

1 MR. BABULA: Staff hasn't done that.

2 HEARING OFFICER CELLI: And at this time
3 is there a motion by the staff?

4 MR. BABULA: I would like to make a
5 motion for staff Exhibit 200, which is the Staff
6 Assessment, to be entered into the record. And
7 then also 201, which would be the e-mails
8 confirming the parties agree by stipulation that
9 Will Walters could call in and testify by phone.

10 HEARING OFFICER CELLI: Any objection,
11 Mr. McPhee, to staff's exhibits?

12 MR. MCPHEE: I have no objection. But
13 could I make a comment during the public comment
14 section?

15 HEARING OFFICER CELLI: Certainly but
16 let me just ask. Applicant, any objection to
17 staff's Exhibits 200 and 201?

18 MS. LUCKHARDT: No. I was just trying
19 to confirm, is 200 the -- I guess the Amended
20 Staff Assessment. As I look at it Exhibit 200 is
21 the Final Staff Assessment dated November 6. I
22 would want to ensure that it would be the
23 December --

24 MR. BABULA: It's the only, it's the
25 one -- It's the amended one as a result --

1 MS. LUCKHARDT: Okay.

2 MR. BABULA: In fact, the other never
3 came in to any record so this is the first
4 introduction of a Staff Assessment into the
5 record.

6 MS. LUCKHARDT: Okay. I just would want
7 to make sure that it would be the December --

8 MR. BABULA: It would be, right, right.

9 HEARING OFFICER CELLI: Actually there's
10 going to be 200, 201. And then this new Trans-4 I
11 believe would be staff's 202 when you get it
12 drafted and if you want to submit it.

13 MR. BABULA: Okay.

14 HEARING OFFICER CELLI: So at least for
15 now there's no objection?

16 MS. LUCKHARDT: No.

17 HEARING OFFICER CELLI: We will receive
18 into evidence staff's 200 and 201.

19 (The above-referenced documents,
20 previously marked as Staff's
21 Exhibits 200, 201 were received
22 into evidence.)

23 HEARING OFFICER CELLI: And we will
24 resume at 2:10.

25 (Whereupon, a recess was taken

1 off the record.)

2 HEARING OFFICER CELLI: We are back on
3 the record. This is the Evidentiary Hearing in
4 the Orange Grove Project. It is now 2:20. We
5 took a break so that the parties could confer on a
6 new condition that would satisfy the concerns of
7 the Committee with regard to public safety, public
8 health and environmental protection. And with
9 that, what have you come up with, Mr. Adams, who
10 is currently on the record.

11 MR. ADAMS: Well, I think we have tried
12 to put something together that addresses the
13 concerns. And since you folks are closer to it,
14 Joe, why don't you read it.

15 MR. STENGER: Okay. The condition that
16 we came up. I guess this is Trans-4.

17 MR. ADAMS: Trans-4.

18 MR. STENGER: Project water trucks shall
19 average no more than two trucks per hour during
20 operations.

21 The applicant will conduct a
22 demonstration that the loaded trucks can maintain
23 a safe speed and handle the curves in the roads
24 and not hamper existing traffic flow.

25 The applicant shall include a notice on

1 the back of each water truck, including a phone
2 number to call to register complaints.

3 The applicant shall post signage
4 noticing other drivers of the water truck traffic
5 if determined appropriate by Caltrans.

6 That is the condition. And then we have
7 a verification.

8 HEARING OFFICER CELLI: That's great. I
9 just wonder, just for consistency's sake. The
10 second sentence says the applicant will and
11 everything else is shall. You might want to just
12 make the will a shall.

13 MR. ADAMS: Yes.

14 HEARING OFFICER CELLI: And then why
15 don't you go ahead and read the verification into
16 the record, please.

17 MR. STENGER: Okay. The verification:
18 A log of daily water truck deliveries shall be
19 maintained on site and provided in the annual
20 report. Within 30 days prior to the start of
21 first filling of water tanks on site for
22 commercial operations the applicant shall provide
23 evidence to the CPM that the project water truck
24 specifications meet all applicable state and
25 federal requirements for designed loads.

1 The applicant shall provide within 30
2 days prior to the start of first filling of the
3 water tanks the proposed language for the posting
4 on the back of the trucks.

5 Within 60 days of commercial operation
6 the applicant shall provide a demonstration that
7 the trucks can maintain a safe speed and handle
8 the curves in the roads and not hamper existing
9 traffic flow.

10 The applicant shall consult with
11 Caltrans via written record regarding the need for
12 signage and shall provide a copy of written
13 correspondence to the CPM. Any complaints
14 registered for the water trucks shall be reported
15 to the CPM within 24 hours.

16 HEARING OFFICER CELLI: Well you did
17 good work in ten minutes or less. But I just had
18 a question because as you were reading it it
19 struck me as awkward.

20 "The applicant shall provide
21 within 30 days prior to the start
22 of first filling of the water
23 trucks the proposed language for
24 the posting on the back of the
25 trucks."

1 So is that what we were talking about in terms of
2 a bumper sticker or something like that?

3 MR. STENGER: Right.

4 HEARING OFFICER CELLI: Okay. All
5 right. Any --

6 MR. ADAMS: The only other thing is
7 that --

8 HEARING OFFICER CELLI: Wait. For the
9 record Mr. Adams is speaking. Go ahead.

10 MR. ADAMS: Sorry. If on the one hand
11 we have no more than two trucks per hour during
12 operation. There was some discussion of how many,
13 how fast would you want to fill the water tanks
14 during construction. Would you want to exceed
15 that two trucks per hour to get the things filled
16 quickly, or would you use the two trucks per hour
17 both during the first fill during construction as
18 well as the operation because you don't want to
19 exceed that two truck per hour threshold.

20 And I don't think we quite came up with
21 language that would address that so that's one
22 concern that I think we have sort of hanging out
23 there a little bit.

24 HEARING OFFICER CELLI: That's a good
25 question. And also I want the record to reflect

1 that Joe Stenger was the person who was reading
2 into the record Trans-4 and the verification.

3 And my question for you, Mr. Stenger, is
4 how many trucks can you do in an hour at the speed
5 limit? How long does it take to fill a truck with
6 6500 gallons of water?

7 MR. STENGER: We have estimated that --
8 The project plans to purchase two new trucks. And
9 considering the distance to the fill stations and
10 using round numbers we have anticipated that the
11 round trip haul and filling and unloading will be
12 on the order of an hour. So that was actually the
13 origin of the two trucks per hour. We are
14 figuring about an hour cycle time.

15 HEARING OFFICER CELLI: So there is
16 really no need to change this, is there?

17 MR. ADAMS: No. I did the math. If you
18 take 6500 gallons per truck and you do two trucks
19 per hour for the full size of the tanks it would
20 take you about ten working days to fill both tanks
21 doing two trucks an hour. And I think I might
22 have even referenced that in the analysis. So
23 that would stay within the two truck per hour
24 threshold.

25 HEARING OFFICER CELLI: Okay.

1 Mr. McPhee, any comment about this?

2 MR. MCPHEE: I have a lot of comments
3 about this.

4 HEARING OFFICER CELLI: We're just
5 talking about the Transportation, Trans-4.

6 MR. MCPHEE: No, I don't have any
7 comments about that.

8 HEARING OFFICER CELLI: Thank you.
9 Commissioner Boyd, did you want to say anything
10 about Trans-4 as proposed?

11 PRESIDING MEMBER BOYD: No, I am quite
12 satisfied.

13 HEARING OFFICER CELLI: Okay, with that
14 then I am -- Your mics are both off.

15 PRESIDING MEMBER BOYD: As I said, I am
16 quite satisfied, thank you. Thanks to all parties
17 for very good work.

18 HEARING OFFICER CELLI: Yes, good work.
19 Now what I am going to do is admit into evidence
20 staff's 200, which is the FSA; 201, which are the
21 stipulations to the --

22 MR. ADAMS: The Amended FSA?

23 HEARING OFFICER CELLI: The Amended --

24 MR. ADAMS: The Amended FSA.

25 HEARING OFFICER CELLI: -- Staff

1 Assessment is what 200 is; 201 are the
2 stipulations that Mr. Will Walters could testify
3 by telephone. Thank you all for your cooperation
4 in that. And then 202 will be the new proposed
5 language for Trans-4, which we see before us on
6 the record and staff will provide the Committee.

7 (The above-referenced documents,
8 previously marked as Staff's
9 Exhibit 202 was received into
10 evidence.)

11 HEARING OFFICER CELLI: And with that
12 any further evidence from staff?

13 MR. ADAMS: I was just thinking. If we
14 are going to have a condition, right now we don't
15 have any text in the analysis that would warrant
16 this condition and/or -- I mean, ideally I guess I
17 need to come up with some language that would say,
18 in lieu of concerns about whether or not the
19 trucks, water trucks can perform safely. I would
20 need to have some language that I would have to
21 come up with in the text and then maybe have this
22 as one of my bullets in the conclusion. And then
23 you have the justification to have a
24 certification. You can't have a certification if
25 you don't have any analysis to refer to.

1 HEARING OFFICER CELLI: Well we do have
2 testimony.

3 MS. LUCKHARDT: Yes, you've got a
4 record.

5 PRESIDING MEMBER BOYD: We've got a
6 record of this testimony.

7 MR. ADAMS: Okay, okay. Okay.

8 MR. BABULA: I would propose that his
9 testimony -- I would propose that if you want to
10 say a few things to add to the analysis and
11 testimony and debate that we just had, that's all
12 in the record.

13 MR. ADAMS: Yes.

14 MR. BABULA: Then that could be used as
15 part of the PMPD.

16 MR. ADAMS: That would be fine. I think
17 there's enough in the record that hopefully the
18 PMPD will.

19 HEARING OFFICER CELLI: Ms. Miller?

20 MS. MILLER: I'm just concerned that as
21 a stand-alone document there wouldn't be language
22 to support the -- there wouldn't be an argument to
23 support the condition.

24 MS. LUCKHARDT: But the argument for the
25 support of the condition would come out of the

1 PMPD.

2 MR. ADAMS: Out of this record.

3 MS. LUCKHARDT: And out of the record
4 and discussion that we have had here today.

5 HEARING OFFICER CELLI: Right.

6 MS. LUCKHARDT: The expression of the
7 concern --

8 HEARING OFFICER CELLI: I will be
9 referring to the record.

10 MS. LUCKHARDT: -- and the response to
11 the expressed concern.

12 MS. MILLER: Okay.

13 MR. ADAMS: That would suffice.

14 HEARING OFFICER CELLI: But I do
15 appreciate that, I do share that concern. But I
16 will rectify that in the record. So with that
17 then the evidence in the Orange Grove Power Plant
18 Project is closed at this point.

19 Before I take public comment I want to
20 refer to some comments that were received in the
21 mail prior to today's date. On 8/13 -- I raised
22 this at -- Let me take a look at this. Because
23 there was, on 8/13 there is a Caltrans, a comment
24 from Caltrans. Jacob Armstrong, Chief Development
25 Review Branch. That's right.

1 And what happened was at the Prehearing
2 Conference I had requested that the parties
3 address all of the listed comments that we thought
4 we had received to that point. And Ms. Miller,
5 you had talked about you couldn't verify one way
6 or the other. Do you need to run out and grab
7 Mr. Adams?

8 MS. MILLER: Probably not.

9 HEARING OFFICER CELLI: Okay.

10 MS. MILLER: I am going to respond and
11 say that was able to verify it later with Jim that
12 yes, Jim took those comments into consideration
13 when he made his evaluation.

14 HEARING OFFICER CELLI: Thank you. The
15 only other comment that we were aware of came on
16 December 3 from Rebecca Lafreniere, a supervisor
17 from the County of San Diego regarding the Gregory
18 Canyon Landfill mitigation lands and the assertion
19 that the dairy land that was anticipated as some
20 mitigation for I believe some of the linears had
21 already been designated as mitigation land for the
22 Gregory Canyon Landfill. And I would open it
23 first to applicant to respond to that comment.

24 MS. LUCKHARDT: That has been taken into
25 account in the calculation of mitigation ratios

1 for that section of the gas pipeline. That is
2 what involved discussion between not only
3 Commission staff but also Fish and Wildlife and
4 Fish and Game. Because that mitigation applies to
5 Gregory Canyon and then had to be mitigated for
6 again by Orange Grove. So that has been
7 addressed, I believe, and is included in the
8 biological mitigation.

9 HEARING OFFICER CELLI: So USFS and CDFG
10 were aware that there was mitigation land already
11 there. The assertion I took from that comment was
12 that the land was pretty much all used up for
13 mitigation and that you couldn't double dip on it.

14 MS. LUCKHARDT: That's right. The
15 mitigation ratios that are being proposed include
16 quote/unquote mitigation for mitigation. So the
17 mitigation ratios for the power plant site, for
18 the gas line that goes through the Gregory Canyon
19 area, are mitigated at a higher level because it
20 is assumed that the land that they are disturbing
21 is already mitigation land. If that makes any
22 sense.

23 HEARING OFFICER CELLI: Well I just want
24 to make sure that we have new mitigation land.

25 MS. LUCKHARDT: Right, right. The power

1 plant is proposing two-to-one mitigation for the
2 area that the pipeline goes through. Which is a
3 total of 2.2 acres.

4 HEARING OFFICER CELLI: And here is the
5 concern. We just want to make sure that this is
6 new land that is being set aside as mitigation
7 land that isn't already being set aside for
8 someone else's mitigation.

9 MS. BACK: That's correct. This is
10 Elisha Back. We had taken into account that the
11 Gregory mitigation is going to go in that area,
12 it's not there yet. But in communications with
13 both the County of San Diego, US Fish and Wildlife
14 and Fish and Game we took the right of way that
15 would be dedicated for the pipeline, which comes
16 to 2.2 acres. We are mitigating at a ratio of
17 two-to-one, which is taking into account that that
18 would be mitigation so typically you mitigate at a
19 higher ratio. And we will be mitigating that off-
20 site.

21 In the conditions of certification it
22 identifies that we would mitigate that. Right now
23 we are proposing to mitigate that out of
24 mitigation bank Red Mountain, which is located in
25 Fallbrook. It's the Red Mountain mitigation bank.

1 Gregory Canyon is putting in Live Oak mitigation
2 in that area and we would mitigate in kind with
3 Live Oak mitigation at Red Mountain.

4 HEARING OFFICER CELLI: In addition to?

5 MS. BACK: It would be brand new
6 mitigation.

7 HEARING OFFICER CELLI: It is not
8 congruent mitigation.

9 MS. BACK: It is not congruent.

10 HEARING OFFICER CELLI: Okay.

11 MS. BACK: It's 4.4 acres of brand new
12 land that would be set aside because we are
13 impacting mitigation, Gregory Canyon's mitigation
14 land.

15 HEARING OFFICER CELLI: Thank you for
16 that clarification, that's what we needed to know.
17 Okay. Other than that we have not received any
18 other comments that we are aware of.

19 So at this time it is time to open up
20 the mic and the podium for public comment. First
21 I am going to ask for comment from those people
22 who are still on the phone. How many people are
23 still on the phone, if I may?

24 MR. KEA: Yes.

25 HEARING OFFICER CELLI: Would you please

1 identify yourselves if you are on the phone,
2 please.

3 MR. KEA: Ratha Kea, a resident of
4 Southern California.

5 HEARING OFFICER CELLI: I didn't get the
6 name.

7 MR. KEA: Kea, K-E-A.

8 HEARING OFFICER CELLI: And your first
9 name?

10 MR. KEA: Ratha, R-A-T-H-A

11 HEARING OFFICER CELLI: Ratha Kea. And
12 anyone else on the line on the telephone?

13 MR. KEA: I'm sorry?

14 HEARING OFFICER CELLI: I just wanted to
15 find out if there was anyone else on the telephone
16 who wished to make a comment?

17 Hearing none, Mr. Ratha Kea, you have
18 the floor. Please comment.

19 MR. KEA: Okay. In the Visual Resource
20 section the project is listed as being 700 feet
21 from the site boundary from one of the key
22 observation points, State Route 76. Staff's
23 assessment states that State Route 76 runs long
24 the southern boundary of the project site.

25 This portion of State Route 76 is not

1 designated as a state scenic highway nor is listed
2 as eligible by the California Department of
3 Transportation. However, according to the
4 Caltrans website, State Route 76 is listed as
5 eligible in its entirety. So I wanted to see if
6 staff or applicant can reconcile that conflict.

7 HEARING OFFICER CELLI: That's a good
8 question. Applicant has the burden, I'll let
9 applicant go first.

10 MS. LUCKHARDT: Actually I would have to
11 say that normally during public comment is not a
12 time when we respond to questions. Nonetheless,
13 we are not aware of this listing on the Caltrans
14 website. I believe we looked at it at one point
15 and it was not listed at that point in time.
16 Whether anything has changed at this point in
17 time, I don't know. We don't have our Visual
18 Resources experts here because that wasn't an area
19 of contention. We'll see if we can't find any
20 other information out. I don't know if staff has
21 any information.

22 HEARING OFFICER CELLI: Staff.

23 MS. MILLER: This is Felicia Miller. My
24 understanding is that that highway was eligible
25 for designation as a scenic highway. However, at

1 this time it hadn't received that designation.

2 MR. KEA: That's correct. Okay.

3 HEARING OFFICER CELLI: Thank you very
4 much, Mr. Kea, for your comments.

5 MR. KEA: You're welcome.

6 HEARING OFFICER CELLI: I don't believe
7 we have anyone else on the telephone who wished to
8 make a comment. Is that true?

9 Okay, then we are down to the people who
10 are in the room. I have a request not to speak by
11 Keith Battle who says -- but if you want to, if
12 you have changed your mind, Mr. Battle, feel free
13 to come forward. That says:

14 "The Palomar Mountain Spring
15 Water uses Highway 76 from Palomar
16 Mountain, which isn't far from
17 here, to Interstate 15 for spring
18 water transportation in 6,500
19 gallon tanks."

20 So thank you for that comment.

21 We have Rua M. Petty from the Rainbow
22 Water District, Rainbow Municipal Water District.
23 I'm sorry if I am mispronouncing the name. Rua M.
24 Petty. Not here? No longer here.

25 Archie McPhee, intervenor. Who has got

1 a lot of comment on the record already so I am
2 going to ask Mr. McPhee if you could briefly.

3 MR. MCPHEE: Okay. My problem with the
4 trucking is that there have been no provisions
5 made for future expansion. Now for example, the
6 Pardee construction project is to construct at
7 Palomar College a large industrial complex and 380
8 homes at the intersection of 15 and 76. That's
9 going to add a lot of, a lot of congestion to that
10 highway.

11 Another comment I have is there's a
12 school on Mission Road and it extends all the way
13 from about Fallbrook Street, Fallbrook Street, all
14 the way down to Pico and it's a 25 mile an hour
15 speed limit down there. That was not considered.

16 And the study is not based on the worst-
17 case scenario. It was not included in that study.

18 And trucking for 25 years and two months
19 is not temporary. Now water weighs 8.54 pounds
20 per gallon and 1,000 gallons of water weighs 8,540
21 gallons (sic). Ten thousand gallons weighs 85,400
22 gallons (sic). So your 6,500 gallons weigh 55,100
23 pounds.

24 You have to limit the weight of that
25 truck because you are not supposed to go over 85.

1 And you are going to have to limit the weight of
2 that tank because they are going to put more than
3 6,500 gallons in there if they can get away with
4 it. So you have got to limit the size of the tank
5 and you have got to limit the weight of the truck.
6 Because you have a truck that is hauling 55,100
7 pounds. And that's my comments.

8 HEARING OFFICER CELLI: Thank you for
9 your comments.

10 Jackie Reynolds. Ms. Reynolds, please
11 come forward.

12 MS. REYNOLDS: Hi. My name is Jackie
13 Reynolds. And I think that this power plant is
14 needed to provide power for when the demand is
15 high, especially in the summer months.

16 One of my concerns is for people who
17 have medical conditions who live in their home and
18 they need to have power provided at all times.
19 And if there is a shortage or an outage then it
20 could be potentially life-threatening for them.

21 With the growth that we have had in San
22 Diego in the last couple of years something has to
23 be done about the higher demand for power. And I
24 think this power plant will provide that. It's a
25 clear choice and I hope that it gets approved

1 sooner rather than later. Thank you.

2 HEARING OFFICER CELLI: Thank you for
3 your comments, Ms. Reynolds.

4 Ray Gray from Tesla Gray Prominence
5 Partners.

6 MR. GRAY: Yes. Ray Gray speaking
7 again. I just wanted to state that, and I haven't
8 looked at their whole -- unfortunately I haven't
9 looked at their whole presentation on some of the
10 things that you approved on. But I am wondering
11 about what are they doing as far as fire is
12 concerned. Do they have, if they have a fire with
13 their gas plant there do they have, do they have
14 approval or do they have a commitment from
15 Fallbrook Fire District to handle that fire?
16 Where is that? That's one question I have.

17 And then the other is, again, they had a
18 fire before. We have on their map that they
19 submitted here with this Orange Grove and the
20 package that they put in with the County. It
21 shows that Pala Del Norte Road loops around and
22 comes back onto Highway 76. Are they going to
23 make sure that that road is at least fire, that
24 you can use it as a fire exit for the loop part of
25 it to come down to 76 if they have a fire on the

1 front side of that property. Anybody behind them
2 would then be trapped and you'll have loss of
3 life. So I'm just, I'm wondering if that is in
4 this, in the report.

5 HEARING OFFICER CELLI: Thank you.

6 MR. GRAY: Thank you.

7 HEARING OFFICER CELLI: Thank you for
8 the comment and the question. And I want to say
9 for your benefit and everybody's benefit that yes,
10 there is a whole section on fire. The AFC is on
11 the Internet. And if you go to the California
12 Energy Commission -- And when I say AFC I'm
13 talking about the Application for Certification,
14 which is what this process is.

15 If you go there you can see almost all
16 of the documents posted up there that are
17 intervenor's documents, applicant's documents, the
18 staff's documents. And you can see the entire
19 history of things that have been challenged and
20 all of their proposed mitigation for various
21 things including fire.

22 And I just want to be clear that there
23 is no approval right now. The only thing that has
24 happened today is we have said, these are the
25 records, this is the testimony and these are the

1 documents that we are going to use. And this is
2 our universe that we are going to be using to make
3 a decision and a proposed decision to the
4 Commission. So there is no approval yet, okay, we
5 are in the process. So thank you for your
6 question.

7 MR. BABULA: I would just also like to
8 point out. In our Staff Assessment we go through
9 -- If you look at Dr. Alvin Greenberg's testimony,
10 go to the section on Fire Safety. There's a whole
11 area that deals with both on-site fire suppression
12 mechanism as well as what type of fire protection
13 the facility has for outside fire protection from
14 the local community. So it's addressed there.
15 It's a good place to start.

16 HEARING OFFICER CELLI: Thank you. Ted
17 Felicetti. Is present and coming forward.

18 MR. FELICETTI: Again with the correct
19 pronunciation. I just wanted to come up here and
20 reaffirm my belief that the Orange Grove Project
21 is the option that we need for the energy here in
22 our community.

23 The other thing, as far as our concern
24 with State Route 76. With the two trucks here
25 hour I think is feasible. For the simple reason

1 that the facility is basically non-abrupt as far
2 as the region is concerned. It fits very well
3 into the rural community.

4 So what I wanted to do, and just again
5 reiterate what Ms. Reynolds said, we need
6 something to ensure more energy here in our
7 community. So basically that's all I wanted to
8 say.

9 HEARING OFFICER CELLI: Thank you for
10 your comments and for your brevity.

11 Angie Wolf. Is Angie Wolf here? Please
12 come forward. Representing Ray Gray, Tesla Gray,
13 Prominence Partners and Angie Wolf personally.

14 MS. WOLF: Hi. I live on the property.
15 I live above where they are proposing to put in
16 the peaker plant. And I am very concerned because
17 I was there this last year when the fire started.
18 There is no way out for me besides going down that
19 road. So if there is a fire at the bottom of that
20 road, how am I supposed to get out? And who is
21 going to save me and all my animals that I have
22 that are my babies?

23 That's a huge concern for me and I just
24 want to be clear on who is going to service that.
25 If that is Fallbrook Fire Department, if they have

1 an agreement with Fallbrook.

2 I just heard about the website so I'll
3 go on there and check the website. But I just
4 want to be sure that they are going to, you know,
5 have secondary access for me and for the other
6 neighbor that lives up there. I know he just had
7 two new babies, they are two years old, so he is
8 very concerned with that also.

9 And we do have -- I'm a consultant for
10 Ray Gray, Tesla Gray and Prominence Partners. And
11 we do have a \$1 million housing project submitted
12 with the County of San Diego. And this project at
13 the bottom where our entrance is, is going to ruin
14 it. It's totally going to ruin it. So that's my
15 concern because that's how I get paid and that's
16 how I support myself. So I just want to make that
17 statement and maybe you guys can address that.

18 HEARING OFFICER CELLI: Thank you for
19 your question and your comments. I recall there
20 was something having to do with the fire. Was it
21 to annex? Did they have to annex additional fire?
22 I can't remember. What was happening with fire in
23 this case?

24 MR. JONES: This is Mike Jones speaking.
25 There are two mechanisms included in the staff

1 assessment by which we can prove that we adequate
2 fire protection services provided.

3 The one that looks like it is moving
4 forward is as a result of the County of San Diego
5 taking over fire protection services for Service
6 Area 135, which is where the project sits. We are
7 in contact with the County of San Diego as to
8 which entity is physically going to provide those
9 services. And the latest indication is that they
10 are in consultation with North County Fire
11 Department, which is who we have been speaking
12 with all along, about providing those services.

13 HEARING OFFICER CELLI: Thank you. So
14 just so you know, there is going to be no
15 certification here if they can't adequately
16 protect you all from -- and prove. They have to
17 demonstrate that they are covered by fire
18 protection in that area.

19 MS. WOLF: It's very dry in there.

20 HEARING OFFICER CELLI: Yes.

21 MS. WOLF: Once a fire starts --

22 THE REPORTER: I can't hear from there
23 if she wants to be on the record. Sorry.

24 HEARING OFFICER CELLI: Okay. So I just
25 wanted to make that comment. She just basically

1 said it's very dry up there. Thank you Angie
2 Wolf.

3 Linda Cooper. Is Linda Cooper here.
4 Coming forward, thank you.

5 MS. COOPER: Hi. I support the Orange
6 Grove Project. We can't wait around for a
7 solution that pleases everyone because that is
8 probably not going to happen. We need an adequate
9 electrical infrastructure that assures us that our
10 power is not going to go out during the long, hot
11 summer months when the temperatures reach 100 and
12 more. The Orange Grove plant will meet our local
13 needs efficiently and quickly. And I support it
14 and it needs to be approved as soon as possible.
15 Thank you.

16 HEARING OFFICER CELLI: Thank you for
17 your comments.

18 Cyndy Day-Wilson from Best Best and
19 Krieger representing DFI Funding, Inc. Hello
20 again, Ms. Day-Wilson.

21 MS. DAY-WILSON: Thank you. I'll be
22 brief. As I indicated earlier, I submitted, on
23 behalf of our client DFI Funding we submitted I
24 think a 16 or 17 page comment letter that was on
25 the site, the staff's assessment, addressing

1 environmental concerns. I won't stand up here and
2 read that today.

3 HEARING OFFICER CELLI: Thank you.

4 MS. DAY-WILSON: But I do have a couple
5 of things that I noted in sitting here and
6 listening to everyone.

7 One of the things that comes to mind
8 that I guess relates back to the application for
9 intervention is that we live in a very uncertain
10 economy today. We have properties that are being
11 foreclosed upon. We have people that have
12 substantial interests, such as DFI Funding, in
13 these properties.

14 I noted on the proof of service that was
15 supplied in the opposition to our application for
16 intervention that there were some mortgage
17 companies that were served. I think it would
18 behoove the Committee and the CEC to do a little
19 research and make sure that all interested parties
20 are involved in this process.

21 My client has a substantial monetary
22 interest in that property. And as has been noted
23 by the current property owner, that interest could
24 be significantly affected by this project. It's
25 simple to run a title report. I know they can

1 often be confusing but I think they cost \$25.
2 It's very simple to do. It doesn't take a lot of
3 time. So I think that's just food for thought for
4 the Committee.

5 In listening to some of the comments
6 about water from Mr. McPhee and about traffic. My
7 client shares those concerns. They are outlined
8 in the comment letter in more detail so I won't go
9 over those again.

10 One of the things that I haven't heard,
11 and again this is just food for thought, is this
12 is a project as the Committee has noted, that is
13 going to truck in water into a project. I've
14 never heard of that. I think you mentioned,
15 Mr. Celli, that this could be setting a precedent.
16 It's interesting.

17 I guess I haven't heard anybody talk
18 about what happens -- We are in the middle of a
19 huge drought here in Southern California. What if
20 there isn't any water to truck in? I haven't
21 heard that, what happens. Again, food for thought
22 that I leave with the Committee. Thank you.

23 HEARING OFFICER CELLI: Thank you for
24 your -- And I wanted just to let you know that it
25 doesn't end today. I think in -- I can't remember

1 but by around February there's a PMPD, a Presiding
2 Member's Proposed Decision that comes out. You
3 will have opportunity to comment on that.

4 And there will be a few -- Go to our
5 website, go to the California Energy Commission's
6 website for Orange Grove. You can put yourself on
7 the mailing list so that you will get mailings of
8 everything as they come out like I do. I get
9 something every other day from Dockets saying this
10 or that was filed with Dockets today. Your
11 documents can be filed with Dockets. And I
12 encourage you to file them with Dockets, your
13 comments, and continue to participate that way.

14 MS. DAY-WILSON: Thank you. And that
15 is, you bring up a good point. I just wanted to
16 make sure that -- as I mentioned earlier, we had a
17 very limited amount of time because of the notice
18 issues we had to review that staff assessment.
19 It's an 800 page document. We did the best we
20 could under the circumstances.

21 But I do want to make sure that the
22 Committee understands that we are reserving our
23 rights to further participate in the process. And
24 those do not -- That 16 page comment letter is not
25 all that you will be hearing from my client.

1 HEARING OFFICER CELLI: Thank you very
2 much. And thanks for participating.

3 MS. DAY-WILSON: Yes, thank you.

4 PRESIDING MEMBER BOYD: I would point
5 out, you make a good point. I have been doing
6 this for seven years and this is the first time
7 that I have ever heard that a land owner did not
8 get notice. But it is a different world right now
9 so we will look into that.

10 MS. DAY-WILSON: Thank you.

11 HEARING OFFICER CELLI: And the other
12 thing is, if the applicant is willing to try to
13 put up a power plant, when there is no water I
14 don't think they can run.

15 But in any event I have lastly, Greg
16 Valdez who is representing himself. He is coming
17 forward. Is there anyone else? If there is
18 anybody else who cares to make a comment please
19 fill out one of these blue cards and give it to
20 Mr. Bartsch and he will run it up to us.
21 Mr. Valdez, please.

22 MR. VALDEZ: Yes, good afternoon, ladies
23 and gentlemen. My name is Greg Valdez, lifetime
24 Fallbrook and Pala resident. I am a Native
25 American. My family lives on Pala.

1 I support the Orange Grove project. I
2 believe it's the right thing at the right time.
3 Actually I think it's about 20 years late, my
4 opinion. The number of people moving to
5 California is not slowing down any, or certainly
6 not significantly, as the polls lately reflect.

7 Sure we are in the middle of a drought
8 and so forth but that's ongoing. It's been going
9 on for 100 years, check the papers.

10 During the time that the power shortage
11 actually happens and that thing comes on-line I
12 doubt seriously anybody is going to be running for
13 a glass of water, for instance. I think that the
14 power shortage thing needs to be addressed now. I
15 believe that it can be done cost-effectively.

16 And in regards to the water, I think
17 that we can work this thing out. It's the right
18 thing to do using the reclaimed water and so
19 forth. And I believe that this project should
20 just go forward. We can get this thing done with
21 quickly and move on to something else. That would
22 be great. Thank you very much.

23 HEARING OFFICER CELLI: Thank you for
24 all of your comments, Mr. Valdez. And for all of
25 you who hung out throughout this Evidentiary

1 Hearing we appreciate your participation. We
2 really can't do it without you.

3 At this time I just want to reiterate
4 that parties' opening briefs on all topics must be
5 filed no later than three p.m. Friday, January 9,
6 and reply briefs must be filed no later than three
7 p.m. on Friday, January 23, 2009. Copies must be
8 provided to the Committee, the Hearing Advisor and
9 those on the Proof of Service and Mailing Lists.

10 Except Mr. McPhee, who would provide it
11 to the Public Adviser who will make those, will
12 serve those documents for you. And you do not
13 have to file a brief. But if you choose to then
14 you would serve it on the Public Adviser, okay.

15 As to the parties, I made a note to
16 myself that I would expect applicant and staff to
17 address some of the issues raised by Mr. McPhee
18 with regard to transportation of water and use of
19 the recycled water. He cited many, many code
20 sections that we would like you to address.

21 And it seems to me that these are legal
22 issues only, not factual, and so it can be
23 addressed and handled in briefs. Staff also.
24 Including the disinfected tertiary, tertiarilly
25 treated water issue.

1 MR. MCPHEE: Disinfected tertiary
2 recycled water.

3 (Laughter)

4 HEARING OFFICER CELLI: That's what we
5 are talking about, that.

6 And if there are any other issues.
7 Parties, you are free to raise, address, rebut
8 whatever you need to. Please, please do. It
9 helps the Committee.

10 Also the parties will have to provide
11 electronic copies of these filings to the Hearing
12 Officer via e-mail in Microsoft Word format, if
13 you would.

14 We have now taken public comment. With
15 that I want to thank you and I am going to hand it
16 over to Commissioner Boyd to adjourn.

17 PRESIDING MEMBER BOYD: I too want to
18 thank all of you for your time here today and
19 taking the time out of your life to appear before
20 us. This probably sounds quite confusing to some
21 of you who are kind of new to this but there is a
22 method to this process. Some of us have been
23 doing this a long time. It is an extremely public
24 process.

25 And I just say in defense of the staff

1 of the Energy Commission, not with specific
2 reference to this project but -- I know people are
3 worried about lots of features and facets of this
4 particular power plant and it is represented in
5 many of the power plant cases we hear. This is my
6 third case in two days so we are quite busy.

7 But the staff of the Energy Commission
8 is almost world-renown for the depth and breadth
9 of the work they do. And power plant siting is
10 often cited to others as an example of how this
11 kind of process should be done.

12 So I am just saying that to reassure you
13 that they really do dig deep into all of the
14 issues and I think they do a pretty good job of
15 serving the public interest. And this is coming
16 from somebody who is celebrating his 47th year as
17 a state employee. I am very pleased with the work
18 that they do and I think you --

19 As the Hearing Officer indicated, look
20 at that website. The Energy Commission's website
21 is one of the best ones you will every find in
22 general if you want to understand anything about
23 energy in the state. And of course it is very
24 thorough with regard to the individual siting
25 cases.

1 So again, thank you and this hearing is
2 adjourned.

3 HEARING OFFICER CELLI: Thank you,
4 Commissioner.

5 (Whereupon, at 2:56 p.m., the
6 Evidentiary Hearing was
7 adjourned.)

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CERTIFICATE OF REPORTER

I, RAMONA COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing Conference; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of January, 2009.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345□