

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification for the) Docket No. 99-AFC-5
OTAY MESA GENERATING)
PROJECT (PG&E Generating))
_____)

CALIFORNIA ENERGY COMMISSION
1516 9TH STREET
SACRAMENTO, CALIFORNIA

MONDAY, DECEMBER 4, 2000

1:08 P.M.

Reported by:
Valorie Phillips
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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Robert Laurie, Presiding Member

Robert Pernell, Associate Member

STAFF PRESENT

Susan Gefter, Hearing Officer

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Commissioner Laurie

Ellen Townsend-Smith, Advisor to
Commissioner Pernell

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Holly Duncan

ALSO PRESENT

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Robert Guralta
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Robert Simmons, Executive Director
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I N D E X

	Page
Proceedings	1
Introductions	1
Committee Remarks	7
Witnesses - Identification and Estimated Times	10
Evidentiary Topics	
Traffic and Transportation	26
Applicant witness C. Smith (declaration)	26
Exhibits	26/30
Direct Examination by Mr. Thompson	27
CEC Staff witness J. Adams	30
Direct Examination by Mr. Ogata	30
Exhibits	30
Examination by Committee	35
Questions, J. Kempf, Caltrans	37
Land Use	44
Applicant witness K. Bartsch	45
Direct Examination by Mr. Thompson	45
Exhibits	45
CEC Staff witness E. Knight	46
Direct Examination by Mr. Ogata	46
Exhibits	46
Examination by Committee	52
Cross-Examination by Ms. Duncan	58
Cross-Examination by Mr. Thompson	65
CEC Staff witness E. Allen	66
Direct Examination by Mr. Ogata	66
Exhibits	66

I N D E X

	Page
Evidentiary Topics	
CEC Staff Recommendation on Potential Cumulative Impacts to Regional Air Quality from Burning Fuel Oil by Encina and South Bay	67
CEC Staff witness M. Layton	68
Direct Examination by Mr. Ogata	69
Exhibits	68
Cross-Examination by Ms. Luckhardt	75
Cross-Examination by Mr. Goldman	79
Testimony of San Diego APCD witnesses	
S. Moore and M. Lake	84
Questions by Mr. Goldman	89,94
Questions by Mr. Thompson	93
Compliance	99
Applicant witness T. Gault (declaration)	100
Exhibits	99/101
CEC Staff witness J. Scott	101
Direct Examination by Mr. Ogata	101
Exhibits	101
Alternatives - Supplemental Testimony	103
Exhibits	103
CEC Staff witness E. Allen	105
Direct Examination by Mr. Ogata	105
Cross-Examination by Ms. Duncan	107
Cross-Examination by Mr. Claycomb	120
Other Issues	
Rebuttal testimonies, J. Filippi and R. Weatherwax, to J. Caldwell's testimony	122
Applicant witness J. Filippi	125
Direct Examination by Mr. Hanschen	125
Exhibit 99	125/146
Cross-Examination by Ms. Luckhardt	129
Redirect Examination by Mr. Hanschen	144
Exhibit 104	149/149
Exhibit 100	149/150

I N D E X

	Page
Exhibit List	154
CEC Staff	154
Applicant	155,165
Witness W. Chilson	156
Direct Examination by Mr. Thompson	156
Witness S. Segner	158
Direct Examination by Mr. Thompson	159
San Diego County APCD	102
San Diego Gas and Electric Company	162
Intervenor Duke Energy North America	164
Schedule	165
Briefing Topics	169
Adjournment	182
Certificate of Reporter	183

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
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P R O C E E D I N G S

1:08 p.m.

PRESIDING MEMBER LAURIE: Ladies and gentlemen, my name is Robert Laurie. I'm a Commissioner of the California Energy Commission, and Presiding Member of the Siting Committee hearing the Otay Mesa Generating Project case.

This is a continued evidentiary hearing. We have a specified agenda for the day.

To my left is Ms. Susan Gefter. Ms. Gefter is the Hearing Officer assigned to this case, and she will be administering today's proceedings.

To Ms. Gefter's left is Ms. Ellie Townsend-Smith, who is Commissioner Pernell's Advisor. Commissioner Pernell will be in attendance today.

The first thing I'd like to note is that this hearing is being recorded, and any interruption in the proceedings, any difficulties during the course of the hearing, we'll stop the proceedings until that matter is rectified.

Ms. Gefter, if we can have introductions at this point, please.

HEARING OFFICER GEFTER: Yes. This

1 hearing is being conducted in Sacramento as a
2 teleconference so that parties who cannot travel
3 to Sacramento can participate via a toll free
4 number. So, we'll ask you to speak up when you
5 wish to participate.

6 But we want to introduce the parties,
7 and as we go through we'll ask the people on the
8 phone to introduce themselves when your party is
9 called.

10 First, we'll hear from the applicant.

11 MR. THOMPSON: Allan Thompson
12 representing PG&E National Energy Group.

13 MS. SEGNER: Sharon Segner, PG&E
14 National Energy Group.

15 HEARING OFFICER GEFTER: Anyone else
16 present here from PG&E? Would you come to a
17 microphone, please.

18 MR. HANSCHEN: Peter Hanschen for PG&E
19 National Energy Group.

20 PRESIDING MEMBER LAURIE: Let's use the
21 microphone at the end of the table.

22 HEARING OFFICER GEFTER: Yes.

23 MR. FILIPPI: James Filippi, PG&E
24 National Energy Group.

25 HEARING OFFICER GEFTER: Anyone else

1 from the applicant present in the room here?

2 MR. CHILSON: Bill Chilson, PG&E
3 National Energy Group.

4 HEARING OFFICER GEFTER: Thank you. On
5 the phone, representing the applicant, would you
6 please introduce yourselves.

7 MR. CARROLL: Michael Carroll, Latham
8 and Watkins on behalf of PG&E National Energy
9 Group.

10 MR. RAY: This is Robert Ray with URS
11 Corporation, also representing PG&E National
12 Energy Group.

13 MR. BEACH: Tom Beach, consultant to
14 PG&E National Energy Group.

15 MR. GAULT: Terrell Gault with URS
16 Corporation, also representing National Energy
17 Group.

18 MR. SMITH: Charles Smith, URS
19 Corporation, representing National Energy Group.

20 MS. BARTSCH: Krista Bartsch, URS,
21 representing PG&E.

22 MR. RAND: Keith Rand, URS, VRW,
23 representing PG&E.

24 MR. SHAPOURI: Ali Shapouri, with
25 Shapouri and Associates, representing PG&E

1 National Energy Group.

2 HEARING OFFICER GEFTER: From the staff,
3 would you introduce yourselves, please.

4 MR. OGATA: Jeff Ogata, Staff Counsel.

5 MS. ALLEN: Eileen Allen, Staff Project
6 Manager for the Otay Mesa Project.

7 HEARING OFFICER GEFTER: Intervenors,
8 starting with Duke Energy.

9 MS. LUCKHARDT: Jane Luckhardt of
10 Downey, Brand, Seymour and Rohwer for Duke Energy
11 North America.

12 MR. WEISMULLER: Bob Weismuller, MOW,
13 also for Duke.

14 HEARING OFFICER GEFTER: And for
15 Cabrillo Power.

16 MR. GOLDMAN: Matt Goldman, Livingston
17 and Mattesich, for Intervenor Cabrillo Power One,
18 LLC.

19 DR. WEATHERWAX: Bob Weatherwax, Sierra
20 Energy, for Cabrillo One, LLC.

21 HEARING OFFICER GEFTER: And for Save
22 Our Bay, Mr. Claycomb, would you introduce
23 yourself.

24 MR. CLAYCOMB: William A. Claycomb,
25 President, Save Our Bay, Inc., Intervenor.

1 HEARING OFFICER GEFTER: Thank you.

2 And, Ms. Duncan.

3 MS. DUNCAN: Holly Duncan, Intervenor,
4 mother of asthmatic.

5 HEARING OFFICER GEFTER: Is there any
6 representative from SDG&E on the line? Is there
7 anyone else on the line that we haven't
8 introduced?

9 MR. SIMMONS: Robert Simmons, Madam
10 Examiner, I'm Executive Director of the
11 Conservative Action Coalition, an interested
12 observer organization in San Diego.

13 HEARING OFFICER GEFTER: Thank you.

14 MR. MOORE: Steven Moore with the San
15 Diego Air Pollution Control District.

16 HEARING OFFICER GEFTER: Thank you, Mr.
17 Moore.

18 MR. LAKE: And Michael Lake with the San
19 Diego Air Pollution Control District.

20 HEARING OFFICER GEFTER: Thank you.

21 MR. SPEER: And Daniel Speer with the
22 San Diego Air Pollution Control District.

23 HEARING OFFICER GEFTER: Thank you.

24 MR. GURALTA: Bob Guralta with the
25 County of San Diego, Department of Public Works.

1 HEARING OFFICER GEFTER: Thank you. Any
2 other agencies?

3 MR. KEMPF: This is John Kempf from
4 Caltrans.

5 HEARING OFFICER GEFTER: Thank you. Any
6 other agencies on the line? All right.

7 I want to note for the record that
8 Commissioner Pernell is now present in the room,
9 and will be participating in this hearing. Also
10 we have a representative from the Public Adviser's
11 Office, Priscilla Ross, who is here and can assist
12 members of the public in participating with us.

13 At the last hearing we asked the parties
14 to present evidence on the history of --

15 MS. DUNCAN: I'm losing you; this is
16 Holly.

17 HEARING OFFICER GEFTER: Yes, Holly.
18 You can't hear us?

19 MS. DUNCAN: No.

20 HEARING OFFICER GEFTER: Okay, we'll --

21 MR. RAY: This is Robert Ray. You're
22 fading in and out.

23 HEARING OFFICER GEFTER: All right.
24 How's this, can you hear me better?

25 MR. CLAYCOMB: Same for Save Our Bay.

1 HEARING OFFICER GEFTER: Is that better?

2 All right.

3 We had asked the parties to present
4 evidence on the history of gas curtailment at the
5 Encina and South Bay Power Plants. Mr. Rubenstein
6 had testified that he was not aware of any
7 curtailments since 1995 until the curtailments in
8 November of this year.

9 SDG&E indicated in its response to the
10 CPUC's OII that curtailments had only occurred
11 twice in the last six years, until the recent
12 curtailment event.

13 And Duke provided the declaration of Mr.
14 Guthrie, who's a Plant Manager for South Bay, who
15 described the recent curtailment events to us.

16 We need to clarify the record on this
17 issue; expect the parties to offer definitive
18 evidence today on the history of the curtailments.

19 In addition, the applicant has submitted
20 rebuttal testimony of Mr. Filippi, and Cabrillo
21 submitted rebuttal testimony of Mr. Weatherwax.
22 We assume that applicant and Cabrillo wish to
23 cross-examine each other's rebuttal witnesses.

24 To keep this exercise in perspective we
25 will ask the parties to present an offer of proof

1 and to explain the relevance of their proposed
2 rebuttal testimony.

3 MR. CLAYCOMB: Ms. Gefter, you're still
4 breaking up for Save Our Bay.

5 HEARING OFFICER GEFTER: Okay, I'm
6 sorry, I'll just talk right into the microphone.

7 Testimony in the record indicates that
8 the applicant will construct two gas
9 interconnection pipelines. Ms. Segner has stated
10 that the applicant will provide a current map of
11 these two routes.

12 We do have map 3.2-1, which was included
13 in the August submittal from the applicant and we
14 identified that as part of exhibit 52, query
15 whether the applicant has a more updated version
16 of this map for us, to check that for us.

17 MR. CLAYCOMB: Ms. Duncan's still
18 breaking up for you.

19 MS. DUNCAN: Yeah, it's really
20 intermittent. Ms. Gefter, are you really close to
21 the microphone?

22 HEARING OFFICER GEFTER: Yes, it's right
23 on my mouth. Perhaps we can -- if other people
24 can turn off their microphones while I'm speaking,
25 and that might help. All right.

1 We also need --

2 MS. DUNCAN: That 's better.

3 MS. SEGNER: The map is the same as
4 what's in our AFC filing.

5 HEARING OFFICER GEFTER: Thank you.

6 MS. SEGNER: There's no change.

7 HEARING OFFICER GEFTER: Okay, thank
8 you. That was Ms. Segner from the applicant.

9 Also from the applicant we need a copy
10 of the will-serve letter from the Otay Mesa Water
11 District, which we will identify in the record as
12 exhibit 43. And we need a copy of that for the
13 record. We discussed that last time.

14 So, with respect to the items that I
15 referred to earlier, we'll ask the parties to
16 identify their witnesses for today and indicate
17 how much time is needed for their direct and/or
18 cross-examination.

19 Also if you have new exhibits, please
20 distribute them now and identify them for the
21 record. The party sponsoring the exhibit is
22 responsible for serving copies to the parties who
23 are on the phone.

24 We'll ask the applicant to begin and
25 identify your witnesses, give us the time needed

1 for your examination.

2 MR. THOMPSON: Thank you, this is Allan
3 Thompson. Let me address the first three issues,
4 traffic and transportation, land use and
5 compliance, and then turn it over to Mr. Hanschen
6 to give you an idea of the time required on the
7 areas of alternatives and the witnesses that
8 applicant would put on the stand and the testimony
9 we'd move into the record.

10 First of all, on traffic and
11 transportation, we have a declaration from Mr.
12 Smith attesting to the veracity of the testimony
13 which is part of exhibit 77 to this proceeding.
14 Mr. Smith is on the line and available to answer
15 questions on that. It was my thought that the
16 declaration would assist in moving that testimony
17 as part of exhibit 77 into the record.

18 We do not have further direct testimony
19 from Mr. Smith, however we recognize that the area
20 of traffic and transportation remains somewhat of
21 an open area, and we would not be averse to a
22 discussion of the issues today.

23 Second of all, --

24 HEARING OFFICER GEFTER: Before you go
25 on, with respect to the supplemental traffic

1 impact study that was filed on November 28th, is
2 Mr. Smith sponsoring that, as well?

3 MR. THOMPSON: Mr. Smith, are you
4 sponsoring that supplemental traffic study?

5 MR. SMITH: I believe so.

6 MR. THOMPSON: Yes.

7 HEARING OFFICER GEFTER: That
8 supplemental traffic study is identified as
9 exhibit 98 for the record, and we'll talk about
10 that when you get into the topic.

11 MR. THOMPSON: Okay, thank you. The
12 second topic listed for today is land use, similar
13 to with Mr. Smith, we have a declaration by Krista
14 Bartsch. We do not believe that there are any
15 outstanding issues here. We would offer up her
16 testimony as a part of exhibit 77, as well.

17 And finally, in the area of compliance
18 we have a declaration from Mr. Terrell Gault, who
19 is also on the line. All three of these witnesses
20 are on the line as we speak.

21 We do not believe that there are
22 outstanding issues, although there may be
23 disagreements to put to the Committee in the area
24 of compliance.

25 MS. DUNCAN: I just lost everybody.

1 This is Holly.

2 MR. CLAYCOMB: Me, too.

3 MR. RAY: Same here. Robert Ray.

4 SPEAKER: Yeah, I don't hear anything.

5 (Laughter.)

6 MR. SHAPOURI: Robert?

7 MR. RAY: Yes.

8 MR. SHAPOURI: Yeah, this is Ali. Do
9 you really think they're going to need me on this
10 thing, huh?

11 MR. RAY: I don't know. If you could
12 just hang on for a little bit longer, Ali --

13 HEARING OFFICER GEFTER: Okay, excuse
14 me, hey, you guys, --

15 MR. SHAPOURI: Sure, no problem. No
16 problem.

17 MR. RAY: Thank you.

18 (Laughter.)

19 HEARING OFFICER GEFTER: Okay, Mr.
20 Hanschen.

21 MR. HANSCHEN: Thank you. My name is
22 Peter Hanschen. Today the applicant will be
23 submitting the rebuttal testimony of Mr. James
24 Filippi. Mr. Filippi's previously testified, but
25 he'll be presenting additional testimony in the

1 form of rebuttal testimony to the testimony that
2 was offered at their last hearing by Mr.
3 Rubenstein and Mr. Weatherwax.

4 Ms. Gefter and Commissioner Laurie and
5 Commissioner Pernell gave leave for us to file
6 additional rebuttal testimony at that time.

7 Mr. Filippi will testify to two
8 instances. One is he will rebut the assumption
9 used by Cabrillo that, in fact, Otay Mesa has the
10 effect of a one-to-one, or nearly one-to-one
11 backing out of imports for the southwest, thus
12 causing additional fuel oil burns.

13 And secondly is he will present
14 testimony that contrary to the testimony offered
15 by Mr. Weatherwax and Mr. Rubenstein, that with
16 Otay Mesa on line, in fact the fuel oil burns are
17 less and the megawatts generated are more, to the
18 benefit of the region in terms of its both energy
19 consumption and air pollution.

20 My examination of Mr. Filippi I would
21 expect to take about five or six minutes. I have
22 a few additional questions to ask him. I do have
23 some cross-examination for the testimony that Dr.
24 Weatherwax submitted, although I have to admit,
25 met a certain amount of confusion on why that

1 testimony was submitted, because I don't believe
2 there was leave to do so. And I would expect that
3 cross-examination to only be a couple minutes.

4 MR. FRASIER: This is -- Clyde Frasier.

5 HEARING OFFICER GEFTER: Who is that?

6 Could you repeat that, the person on the phone?

7 (No audible response.)

8 HEARING OFFICER GEFTER: I don't know.

9 MS. ALLEN: It's the Pacific Ocean.

10 HEARING OFFICER GEFTER: Oh, Pacific
11 Ocean, okay. The gentleman from Pacific Ocean.
12 We'll get it later.

13 COMMISSIONER PERNELL: Is that what we
14 hear in the background?

15 HEARING OFFICER GEFTER: Yes, --

16 (Laughter.)

17 HEARING OFFICER GEFTER: Okay, from
18 Intervenor Cabrillo.

19 MR. RAY: Whoever just came on the line
20 here, your background noise is blocking out the
21 balance of the call.

22 HEARING OFFICER GEFTER: That's better.

23 MR. GOLDMAN: Matt Goldman for Cabrillo.
24 In terms of the agenda for today Cabrillo does not
25 anticipate cross-examination on the items

1 indicated from A through D.

2 We did receive the rebuttal testimony of
3 Mr. Filippi on Friday, December 1, and rather than
4 spar with --

5 MR. CLAYCOMB: Commissioner Laurie, this
6 is breaking up. I think our high technology world
7 is falling down around us.

8 MR. GOLDMAN: Is this better, Mr.
9 Claycomb? Can you hear me better?

10 MR. CLAYCOMB: Well, I'm not able to
11 hear but every so often, the sound just quits.
12 We're just cut off.

13 HEARING OFFICER GEFTER: Okay, just put
14 it right next to your mouth.

15 MR. CLAYCOMB: We lose three or four
16 words.

17 MR. GOLDMAN: Okay. In the interest of
18 making the record as clear as possible, rather
19 than engage in any cross-examination of Mr.
20 Filippi, we asked Mr. Weatherwax to work over the
21 weekend and prepare what we are prepared to offer
22 onto the record today, which is surrebuttal
23 testimony that addresses the specifics of Mr.
24 Filippi's rebuttal testimony.

25 It's our hope and expectation that that

1 would provide a substantive technical response to
2 the points that Mr. Filippi purports to make,
3 rather than basically have an attorney try to
4 score debating points with Mr. Filippi on the
5 technical points that he purports to make.

6 MR. HANSCHEN: Excuse me, Ms. Gefter,
7 that's not what the testimony says. The testimony
8 says it's here to rebut Mr. Caldwell's testimony.

9 MR. HANSCHEN: Oh, I'm sorry. No, I'm
10 referring to something that we have right now. In
11 terms of Mr. Caldwell's testimony we certainly did
12 provide that on December 1st. And Mr. Weatherwax
13 is available to be asked any questions about that.
14 I apologize for any inconvenience --

15 MR. HANSCHEN: Well, can I address that?
16 First of all, the testimony that Mr. Weatherwax
17 submitted on Friday that purports to address Mr.
18 Caldwell's testimony, there's only one question
19 that really addresses Mr. Caldwell's testimony.

20 They simply use it as a convenient
21 launching-off pad into something that they want to
22 testify and talk about Mr. Weatherwax's further
23 reflections on the record, and his closer
24 assessment of the CEC Staff report.

25 All of this could have been done weeks

1 and weeks ago. And now to further supplement it
2 with another piece of testimony that we haven't
3 even seen yet is, I think, really pretty beyond
4 the scope of what this session was called for.

5 And if they wanted leave to file
6 rebuttal testimony they should have asked for it
7 in San Diego. They didn't. They sat back and now
8 they want to come in and essentially sandbag
9 everybody.

10 PRESIDING MEMBER LAURIE: Okay, let's --
11 we're going to take a step back at this point.

12 MS. DUNCAN: Who is this speaking,
13 please?

14 PRESIDING MEMBER LAURIE: This is
15 Commissioner Laurie speaking.

16 MS. DUNCAN: Before you?

17 MR. HANSCHEN: Peter Hanschen for PG&E
18 National Energy Group, the Otay Mesa --

19 MS. DUNCAN: Will speakers be
20 identifying themselves?

21 PRESIDING MEMBER LAURIE: Well, we will
22 do the --

23 MS. DUNCAN: I know I guess I should
24 recognize voices by now, but I'm not always sure.

25 PRESIDING MEMBER LAURIE: We will do the

1 best we can.

2 Ms. Gefter, let's go through the issues
3 one by one, and the attorneys can talk about the
4 evidence that they plan to submit. And we can
5 engage the discussion at this point.

6 I've gotten into this five minutes and I
7 have to admit to being lost. I will attempt to
8 conjure up a little better sense of concentration.

9 This Committee will ultimately determine
10 what's relevant and what isn't relevant. If a
11 party wants to make a relevancy objection, well,
12 that's fine. But it has to be before us, or at
13 least introduced so that we know what the sense of
14 that objection is. And we haven't gotten there
15 yet.

16 So, I don't see any harm in passing out
17 a piece of paper for introductory purposes, and
18 objections can be made at that time. I'd rather
19 do that than spend this time arguing over a piece
20 of paper that we haven't seen yet.

21 So, Ms. Gefter, why don't you start
22 again. We've already heard from the applicant.
23 If you can recite where we are with Mr. Goldman,
24 then let Mr. Goldman start again to indicate what
25 his intentions are. And then when he proceeds,

1 we'll talk about it.

2 HEARING OFFICER GEFTER: Okay.

3 MR. CLAYCOMB: Ms. Duncan, --

4 MS. DUNCAN: I've lost them all again.

5 MS. LUCKHARDT: Hey, you guys, we just
6 stopped talking for a second. This is Jane
7 Luckhardt.

8 If I might ask that you put over this
9 particular discussion because I need to be in the
10 other hearing room for about 15 minutes?

11 If you're going to make decisions on
12 what testimony is going to come in or out, I would
13 like to be here during that. If you're just going
14 to have people introduce what they're going to do,
15 it's probably fine to go on without me physically
16 being here.

17 But, that's the only kind of constraint
18 that I have.

19 PRESIDING MEMBER LAURIE: Well, right
20 now we have asked the parties to indicate what
21 their intentions are.

22 MS. LUCKHARDT: Okay.

23 PRESIDING MEMBER LAURIE: And we're not
24 going to be making any rulings. I can't promise
25 you that at some point we're not going to do that,

1 and so if you asked us to wait x number of
2 minutes, we will consider that, but you have to
3 let us have some idea how long you're going to be
4 taking.

5 MS. LUCKHARDT: It's my understanding
6 that it will only take 15 minutes. I did talk to
7 Hearing Officer Williams about this, and Ms.
8 Gelter about this, just because of the need to
9 move so many projects forward at the same time,
10 and the conflicts we're facing, as well as the
11 Commission.

12 So, it's my understanding that it should
13 take maybe 15 minutes. It should be very very
14 short.

15 PRESIDING MEMBER LAURIE: Okay, well,
16 right now, again, we've just asked the
17 representatives to indicate what their intentions
18 are today. And we will not make any rulings, if
19 we're going to make any, at this point in the next
20 10 or 15 minutes.

21 MS. DUNCAN: Oh, there they go again.

22 MR. SIMMONS: Mr. Simmons, --

23 HEARING OFFICER GELTER: Okay, Mr.
24 Goldman, what we would ask you to do is to
25 indicate what direct testimony you intend to

1 present today, and what rebuttal testimony you
2 intend to present, and what cross-examination you
3 intend to do.

4 MR. GOLDMAN: Thank you. In terms of
5 cross-examination I don't anticipate any cross-
6 examination of witnesses today. Rather to enrich
7 the record in the most efficient manner, and leave
8 it to the Committee to ultimately determine as it
9 prepares the Proposed Decision to determine how to
10 deal with the technical issues.

11 Cabrillo proposes to submit today the
12 rebuttal testimony by Mr. Weatherwax of the
13 supplemental testimony of Mr. Caldwell. That
14 should take just a matter of one minute, putting
15 it on the record. Mr. Weatherwax is here for any
16 cross-examination that anyone may have of him.

17 In addition, rather than have any cross-
18 examination questions of Mr. Filippi, we would
19 request the opportunity to introduce into the
20 record the point-by-point response by Mr.
21 Weatherwax of Mr. Filippi's testimony without any
22 questioning by me.

23 To the extent that any other parties
24 wanted to ask questions of Mr. Weatherwax, we
25 would make him available at anytime that it would

1 be convenient.

2 So, in short, I don't anticipate taking
3 a long time at all, other than introducing two
4 items into the record.

5 HEARING OFFICER GEFTER: We will get to
6 the surrebuttal testimony, as you called it, of
7 Mr. Weatherwax when the topic comes up. And Mr.
8 Hanschen will have an opportunity to object.

9 SPEAKER: -- on the telephone line with
10 the cell phone, you're going to need to get off,
11 because it's absolutely fine but for that
12 interference and the other extraneous comments of
13 those on the telephone.

14 So, if we could just cut out the
15 background noise of those on the phone, I think we
16 would be fine here.

17 MR. CLAYCOMB: Well, the transmission
18 keeps breaking up, too. It's not just background
19 noise, it's the transmission breakup.

20 HEARING OFFICER GEFTER: Mr. Hanschen,
21 do you --

22 SPEAKER: Having absolutely no problem
23 hearing anything except for when others on the
24 telephone are either speaking or providing
25 background noise.

1 HEARING OFFICER GEFTER: The people on
2 the phone, would you please stop talking among
3 yourselves, because you're interfering with the
4 hearing. Please do not talk unless we ask you to.

5 MS. DUNCAN: We cannot hear you.

6 HEARING OFFICER GEFTER: Okay, we're now
7 fixing that.

8 MS. DUNCAN: We're continuing to lose
9 you most of the time.

10 HEARING OFFICER GEFTER: Mr. Hanschen,
11 do you have a comment at this point, or could you
12 wait until we get to the testimony on that topic?

13 MR. HANSCHEN: I'd like to see the
14 additional testimony, I guess, is --

15 PRESIDING MEMBER LAURIE: That's fine,
16 when counsel goes to introduce, if you want to
17 object at that time, Mr. Hanschen, we'll take it
18 under consideration.

19 HEARING OFFICER GEFTER: Duke Energy.

20 MS. LUCKHARDT: Jane Luckhardt for Duke
21 Energy. I intend today just to introduce the
22 declaration of Thomas Guthrie.

23 And I would like to have added to the
24 record, either by our introduction or Committee
25 recognition, the initial response to order

1 instituting investigation of San Diego Gas and
2 Electric, filed at the California Public Utilities
3 Commission on November 22, 2000.

4 I would have only a short potential
5 couple questions for Mr. Filippi. And depending
6 on how much testimony comes in from Mr.
7 Weatherwax, maybe a few questions of Mr.
8 Weatherwax.

9 HEARING OFFICER GEFTER: Ms. Luckhardt,
10 that document has already been identified as
11 exhibit 76.

12 Staff, the witnesses that you intend to
13 cross-examine on what topics --

14 MS. LUCKHARDT: I have one other
15 statement.

16 HEARING OFFICER GEFTER: Yes.

17 MS. LUCKHARDT: We do not have concern
18 or issues with traffic and transportation, land
19 use, compliance and probably not supplemental
20 testimony on alternatives. And I will now go to
21 the other hearing room.

22 HEARING OFFICER GEFTER: Thank you.
23 Staff.

24 MR. OGATA: This is Jeff Ogata, CEC
25 Staff Counsel.

1 With respect to traffic and
2 transportation we have a witness here, Jim Adams,
3 with two previously filed pieces of testimony.

4 With respect to land use, Eric Knight is
5 here with two previously filed pieces of
6 testimony.

7 Compliance, Jeri Scott is here to
8 address any of the compliance issues.

9 Supplemental testimony alternatives, Mr.
10 Matt Layton and Eileen Allen are here. We had
11 some revised testimony on that.

12 With respect to topic number E, staff's
13 recommendation on potential cumulative impacts to
14 regional air quality from burning fuel oil, Mr.
15 Layton is here. We had hoped to have some
16 prepared testimony on Friday. Unfortunately we
17 weren't able to do that.

18 He is trying to finalize his written
19 testimony now. In the absence of that, if you'd
20 like him to just read or discuss his testimony,
21 we'd be happy to do that. And send out this
22 testimony to all the parties this afternoon when
23 this hearing concludes.

24 We have with us what's in the record as
25 exhibit 43, which is the will-serve letter from

1 the Otay Water District. We have a copy of that
2 document with us now that we can pass out. Should
3 be marked exhibit 43.

4 And we don't plan on having any cross-
5 examination questions for any of the witnesses.
6 That concludes our discussion.

7 HEARING OFFICER GEFTER: Thank you, Mr.
8 Ogata.

9 All right, the person who's on the cell
10 phone, would you please turn off your phone
11 because it's causing static.

12 We're going to go on and take testimony
13 on the topic of traffic and transportation. And
14 we'd ask the applicant to begin.

15 MR. THOMPSON: Thank you, Ms. Gefter. I
16 have a single copy of an original declaration by
17 Charles Smith in the area of traffic and
18 transportation.

19 In this declaration Mr. Smith declares
20 under penalty of perjury that the testimony filed
21 under his name that is a part of exhibit 77, which
22 is the testimony that accompanied our prehearing
23 conference statement is true and correct to the
24 best of his knowledge.

25 I would like to give this declaration to

1 the Committee if that is an acceptable procedure.

2 HEARING OFFICER GEFTER: We'll also need
3 copies for the parties. We can get that during a
4 break.

5 MR. THOMPSON: Thank you.

6 Mr. Smith, would you please consider
7 yourself to be sworn?

8 MR. SMITH: Yes.

9 HEARING OFFICER GEFTER: We can ask the
10 reporter to swear him.

11 MR. THOMPSON: Okay, the reporter will
12 swear you in. Would you raise your right hand.
13 We trust that you're doing so.

14 MR. SMITH: Okay.

15 Whereupon,

16 CHARLES SMITH
17 was called as a witness herein and after first
18 being duly sworn, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. THOMPSON:

22 Q Mr. Smith, turning to your prepared
23 testimony which is a part of exhibit 77, was that
24 testimony prepared by you or under your direction?

25 A Can you provide some clarification? I

1 don't know specifically what that is.

2 Q It's your prepared testimony that was
3 submitted along with our prehearing conference
4 statement.

5 A Okay.

6 Q I take it okay means that it was
7 prepared by you or under your direction?

8 A Yes.

9 Q Do you have any corrections, additions
10 or deletions to make to that material?

11 A No, I do not.

12 Q If I were to ask you today those
13 questions would your responses under oath be the
14 same?

15 A Yes, they would.

16 Q And bear with me here. In that
17 testimony you are purporting to sponsor exhibit
18 39, which is the FAA clearance, is that correct?

19 A Yes.

20 Q Could I also ask you to sponsor a
21 document that's been identified as exhibit 56,
22 which is a traffic study --

23 A Is that the supplemental traffic study?

24 Q It is.

25 A Okay, yes.

1 Q And exhibit 98, which is the most recent
2 supplemental traffic study that was submitted
3 November 28th?

4 A Yes.

5 MR. THOMPSON: Mr. Smith is tendered for
6 cross-examination.

7 HEARING OFFICER GEFTER: Does staff have
8 cross-examination?

9 MR. OGATA: Staff has no questions.

10 HEARING OFFICER GEFTER: Thank you.
11 Intervenors Cabrillo and Duke also indicated
12 earlier that they had no cross on this topic.

13 MR. GOLDMAN: That's correct.

14 HEARING OFFICER GEFTER: Okay, Ms.
15 Duncan, do you have any cross-examination on the
16 applicant's testimony on traffic?

17 MS. DUNCAN: I do not.

18 HEARING OFFICER GEFTER: Mr. Claycomb?

19 MR. CLAYCOMB: I do not.

20 HEARING OFFICER GEFTER: Thank you.

21 We'll move on to staff's testimony.

22 MR. THOMPSON: Could I move exhibits 39,
23 56 and 98 into submission?

24 HEARING OFFICER GEFTER: Any objections
25 to those documents being received into the record?

1 MR. GOLDMAN: No objections.

2 HEARING OFFICER GEFTER: Okay, exhibits
3 39, 56 and 98 are now received into the record.
4 Staff.

5 MR. OGATA: Thank you, Ms. Gefter. This
6 is Jeff Ogata. Staff's witness is Jim Adams. I
7 believe he needs to be sworn.

8 HEARING OFFICER GEFTER: Would the
9 reporter please swear the witness.

10 Whereupon,

11 JAMES ADAMS

12 was called as a witness herein and after first
13 being duly sworn, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. OGATA:

17 Q Mr. Adams, do you have before you your
18 testimony in this case which has been previously
19 marked as exhibit 65, FSA part two, and also
20 exhibit 97?

21 A I do.

22 Q And was this testimony prepared by you?

23 A Yes, it was.

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

1 A I do not.

2 Q Would you please briefly summarize your
3 testimony.

4 A Yes. Basically the supplemental
5 testimony that I submitted basically discussed the
6 FAA's air traffic study that was done in terms of
7 how air operations would change if the Brownfield
8 Airport expanded.

9 And basically the report concluded that
10 it would complicate and add to further congestion
11 of air traffic operations in the area if the
12 airport was expanded. And basically that was it,
13 as well.

14 Plus, we did note that the FAA did
15 determine that there would be no significant
16 hazard to air navigation in the area by the
17 operation of the Otay Mesa Power Plant.

18 Q Mr. Adams, could you please describe
19 what your understanding is of the current status
20 of the traffic plan?

21 A Yes, basically the traffic pattern right
22 now is basically most of the traffic comes from
23 the north in what is called a right-turn air
24 pattern, which means it comes from the north and
25 turns right onto final approach. And it would not

1 fly over the Otay Mesa Power Plant.

2 The primary reason for that is because
3 of the mountains that are to the east of the power
4 plant basically prohibits air operations coming
5 from the east to the west.

6 Q Mr. Adams, with respect to the ground
7 traffic, construction traffic, could you tell us
8 what your understanding is of the status of that
9 plan?

10 A Well, the plan is a bit up in the air.
11 Basically at the meetings we had a month or two
12 ago we basically asked the applicant to determine
13 what would be the route that construction workers
14 would take in getting to the power plant, because
15 we do have some -- there are some, the
16 intersections that are currently congested.

17 Therefore, we asked for a supplemental
18 traffic analysis and this was provided to us about
19 a week or so ago, which seemed to indicate an
20 alternate route had been chosen that would use
21 Airway, Sanyo, Otay Mesa and Alta Roads.

22 And, yes, the project manager is
23 referring to a map that was in my testimony that
24 lays out the roads in the project area.

25 However, in my discussions with Eileen

1 this morning, the Project Manager, --

2 HEARING OFFICER GEFTER: Do we -- is
3 this a new map, or is it the same map that appears
4 in the testimony?

5 MR. ADAMS: I believe it's the same map.

6 MS. ALLEN: This is the same map with
7 the addition of shading that indicates the
8 proposed alternate route. And then there's an
9 addition to the legend that is consistent with the
10 shading.

11 HEARING OFFICER GEFTER: Are there
12 copies of the map for the parties?

13 MS. ALLEN: There are a number of copies
14 sitting next to Mr. Adams.

15 MR. ADAMS: Right here.

16 HEARING OFFICER GEFTER: Let's
17 distribute them. And for the parties on the
18 phone, if you look in the traffic and
19 transportation testimony of staff, this map is
20 basically the same map. If you'll explain the
21 differences, thank you.

22 MR. ADAMS: But, as I was saying,
23 essentially I guess there's still not final
24 agreement on whether or not this alternate route
25 is, in fact, what is being advocated by the

1 applicant at this time.

2 And I also understand that there are
3 some objections from some of the traffic
4 representatives from the City of San Diego.

5 So, I'd have to say that the issue is
6 not resolved at this point.

7 BY MR. OGATA:

8 Q Does that conclude your testimony?

9 A Yes, it does.

10 MR. OGATA: Mr. Adams is available for
11 cross-examination.

12 HEARING OFFICER GEFTER: Does the
13 applicant have cross-examination?

14 MR. THOMPSON: We do not.

15 HEARING OFFICER GEFTER: The intervenors
16 had previously indicated they had no cross-
17 examination on this topic.

18 Holly Duncan, do you have cross-
19 examination of the witness?

20 MS. DUNCAN: I do not.

21 HEARING OFFICER GEFTER: Mr. Claycomb?

22 MR. CLAYCOMB: No.

23 HEARING OFFICER GEFTER: Thank you.

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EXAMINATION

BY HEARING OFFICER GEFTER:

Q Mr. Adams, the map, what is your understanding of the dispute about the map?

A Well, apparently going back initially the problem was we have what's called a skewed intersection at the intersection of SR-905 and Old Otay Mesa Road.

For this reason we suggested that an alternate route be found. And this, as you can see, Airway, basically construction traffic would get off of SR-905, get onto Airway Road, proceed west on Airway Road -- excuse me, east, and then north on Sanyo Road, then east again on Otay Mesa, and then north on Alta.

That's why we suggested, you know, that we needed to find an alternate route. But I guess the problem is that, it's my understanding, and perhaps the project manager could address this, the City of San Diego's representative is still concerned that this route is not the appropriate one.

But I'm unclear as to exactly what the objections are.

Q Okay. Is there a concern -- on the map

1 there is a point B. Is that the location where
2 there is a concern about heavy truck traffic?

3 A Yes, that is the skewed intersection
4 that I referred to earlier.

5 Q And what is the potential for either
6 Caltrans or the County or the applicant getting
7 together to straighten that skewed intersection?

8 A Well, that's the effort that we've been
9 undertaking, or encouraging to be undertaken. And
10 that's why the supplemental traffic analysis was
11 done.

12 Unfortunately, we didn't receive it
13 until a week ago, and some of the other parties,
14 such as the City of San Diego and/or Caltrans and
15 the County, have only received the document a few
16 days ago.

17 So perhaps they haven't had enough time
18 to do their analysis. That may be the difficulty.
19 But I don't know specifically what -- I did have a
20 conversation with Mr. Kempf of Caltrans, and he
21 suggested a couple modifications.

22 Q Okay, he is available. We can speak to
23 him about the proposals.

24 A Yes.

25 Q Other than the skewed intersection, are

1 there any other concerns that staff has in terms
2 of impacts to LOS around this route?

3 A There were a couple of intersections, I
4 believe, on Airway Road and Sanyo where there is
5 some congestion, or there would be some expected
6 congestion if construction were to take place in
7 the year 2003.

8 But from my review of the supplemental
9 testimony the mitigation that's proposed seems
10 logical to me, and we just need to get the input
11 from the various agencies to see if there's
12 general agreement on that.

13 Q Okay. You're referring to exhibit 98,
14 the recent supplemental traffic impacts analysis?

15 A That is correct.

16 HEARING OFFICER GEFTER: It would be
17 helpful to hear from the representative from
18 Caltrans, if you're still on the phone?

19 MR. KEMPF: Yes, this is John Kempf from
20 Caltrans.

21 HEARING OFFICER GEFTER: Mr. Kempf,
22 could you explain to us what Caltrans' concerns
23 are with respect to the intersection at point B
24 that appears on Mr. Adams' map?

25 MR. KEMPF: Yes, I believe Jim

1 identified that as the intersection of Old Otay
2 Mesa Road and Interim State Route 905.

3 And this is a congested intersection.
4 We do agree, however, with this new supplemental
5 traffic study dated November 28th of 2000.

6 To avoid that intersection, a detour
7 that was presented in this report is adequate from
8 Caltrans' point of view only, meaning the
9 intersections we're concerned about is old Otay
10 Mesa Road and Interim State Route 905, your point
11 B, and the intersection of Interim State Route 905
12 and Airway Road.

13 The mitigation proposed in this report
14 is adequate. The only comment we have is on
15 figure 9-1 of the exhibit, they left out, it's
16 just a drawing of their proposal, and they left
17 out a southbound left-turn pocket. It would need
18 to be about 400 feet long and 12 feet wide. It's
19 identified in the report, it's just not shown on
20 this diagram, figure 9-1.

21 Figure 9-2, this exhibit is fine except
22 for some details. The storage length for the two
23 right-turn pockets is not adequate as identified
24 here. They would have to extend -- what's shown
25 here is storage of about 100 feet for the two

1 southbound right-turn pockets there, as you can
2 see. They would need to be another 250 feet
3 longer, each one of those.

4 HEARING OFFICER GEFTER: Mr. Kempf, can
5 these details be worked out with the applicant?

6 MR. KEMPF: Yes, I believe they can.

7 HEARING OFFICER GEFTER: With respect to
8 the concern at point B, is there a proposal to
9 place a traffic signal there?

10 MR. KEMPF: There is a traffic signal
11 there now, except that it's not big enough. In
12 other words, there's not enough pavement on the
13 ground.

14 It would have to be rebuilt, and
15 essentially, as they describe in their document,
16 that mitigation is acceptable to Caltrans. It
17 just needs to be displayed as a little bit bigger
18 footprint. They would need more right-of-way,
19 more pavement on the ground than as described in
20 figure 9-2. That's the only detail that we're
21 worried about.

22 HEARING OFFICER GEFTER: With respect to
23 the anticipated development in the area as a
24 result of the East Otay General Plan build out,
25 does Caltrans see -- in terms of State Route 905

1 handling all the traffic including construction
2 traffic to Otay, does Caltrans see there would be
3 any cumulative impacts as a result of the Otay
4 construction activity?

5 MR. KEMPF: Essentially our worst case
6 here is for the year, as it impacts Caltrans, for
7 the year 2003, with the construction traffic.
8 That was what our biggest concern was, is this
9 near-term situation.

10 In the longer term, Caltrans is building
11 a replacement for Interim State Route 905. It
12 will be a freeway that comes up from the border,
13 and takes an alternate path. And this will revert
14 back to a city street, that's Interim 905. It
15 just becomes -- we were going to give that road
16 back to the City of San Diego.

17 HEARING OFFICER GEFTER: All right.

18 MR. KEMPF: So we're not -- the long-
19 term impacts are not critical for us.

20 HEARING OFFICER GEFTER: Thank you.
21 With respect to the pending agreement with the
22 local agencies, does Caltrans or staff have any
23 idea how long it will take to reach an agreement?

24 MR. KEMPF: I don't know what the City's
25 concerns are with this new detour, is my

1 understanding. This was their suggestion. I
2 don't know what their -- I'm looking at 4-1. That
3 was agreed upon between Caltrans and the City of
4 San Diego and the County at our last meeting.

5 But I don't know what their concerns are
6 with this new supplemental study dated November
7 28th of 2000.

8 HEARING OFFICER GEFTER: Thank you. Mr.
9 Adams?

10 MR. ADAMS: Well, it's my understanding,
11 I'm not exactly sure, as I said, what the concerns
12 are of the City. Perhaps Eileen could address
13 that.

14 HEARING OFFICER GEFTER: Ms. Allen.

15 MS. ALLEN: Ms. Gefter, I've heard from
16 Mr. Ali Sabouri from the City of San Diego traffic
17 group at about 3:30 on Friday afternoon.

18 And he said that the City had some
19 technical concerns with the mitigation proposed in
20 the November 28th supplemental study.

21 I asked him to give me some more details
22 on their concerns. He said he was not able to at
23 the time. That --

24 HEARING OFFICER GEFTER: Ms. Allen, let
25 me interrupt. Is Mr. Sabouri on the line?

1 MS. ALLEN: No, he's not. He and I
2 talked about my strong interest in having him
3 participate in this hearing. He said that he
4 would not be able to, nor would he be able to send
5 someone in his place.

6 HEARING OFFICER GEFTER: I thought Mr.
7 Shapouri identified himself earlier. Did he hang
8 up?

9 MS. ALLEN: No. Okay, we're dealing
10 with names that sound very similar, but they have
11 different spellings and they are different people.

12 HEARING OFFICER GEFTER: Thank you.

13 MS. ALLEN: There is a Mr. Ali Sabouri
14 with the City of San Diego, whereas there's a
15 consultant to the applicant named Ali Shapouri.

16 HEARING OFFICER GEFTER: Thank you.

17 MS. ALLEN: And Mr. Sabouri with the
18 City is not with us this afternoon.

19 HEARING OFFICER GEFTER: Thank you.

20 MR. ADAMS: Ms. Gefter, I could add that
21 Mr. Guralta with the County is also, I believe, on
22 the line, and I have not had a conversation with
23 him to know what his impressions are of the
24 supplemental analysis.

25 So perhaps he could give us some

1 feedback if that's appropriate.

2 HEARING OFFICER GEFTER: Thank you.

3 PRESIDING MEMBER LAURIE: Let's go off
4 the record for a moment, please.

5 (Off the record.)

6 HEARING OFFICER GEFTER: Rather than
7 speculating as to how long it will take for the
8 local agencies to respond to the supplemental
9 report, exhibit 98, the record will be left open
10 on the topic of traffic and transportation to
11 receive what we hope will be a stipulated
12 agreement among the agencies, staff and the
13 applicant with respect to the concerns raised
14 today.

15 PRESIDING MEMBER LAURIE: The Committee
16 will issue an order indicating the amount of time
17 that the record will be left open.

18 HEARING OFFICER GEFTER: Does staff have
19 any other witnesses on the topic of traffic?

20 MS. ALLEN: No other witnesses. If
21 desired, I'm available to describe for the
22 Committee the efforts that we have made to bring
23 the agreement together to date.

24 HEARING OFFICER GEFTER: Thank you.
25 We're going to move on.

1 MS. SEGNER: May I just add one thing?

2 I just wanted to add that we're looking forward to
3 working with all the agencies to get this resolved
4 as quickly as possible. The mitigation proposal
5 that we submitted was what we thought would bring
6 it to resolution, but we want to work with the
7 agencies to get it resolved as quickly as
8 possible.

9 PRESIDING MEMBER LAURIE: This is
10 Commissioner Laurie. I would only note that my
11 primary concern in discussing alternatives is that
12 whatever alternative is put on the table, there
13 has to be the appropriate environmental analysis
14 of that. And I think all parties know and
15 understand that, and that's what the Committee
16 would look forward to.

17 HEARING OFFICER GEFTER: The next topic
18 is land use. And included in that is the concept
19 of growth inducement. Does the applicant have a
20 witness on land use?

21 MR. THOMPSON: We do. Ms. Krista
22 Bartsch, are you on the line?

23 MS. BARTSCH: Yes, I am.

24 MR. THOMPSON: Similar to the case with
25 Mr. Smith, I have a declaration, an original

1 signed by Ms. Bartsch referring to her testimony
2 that is contained in exhibit 77.

3 I would ask that Ms. Bartsch be sworn.
4 Whereupon,

5 KRISTA BARTSCH
6 was called as a witness herein and after first
7 being duly sworn, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. THOMPSON:

11 Q Ms. Bartsch, this is Allan Thompson,
12 again. Am I correct that you are here today
13 testifying to your prepared direct testimony which
14 is contained as a part of exhibit 77 to this
15 proceeding?

16 A Yes.

17 Q And was that testimony prepared by you
18 or under your direction?

19 A Yes.

20 Q Do you have any corrections, additions
21 or deletions to make to that material?

22 A No, I do not.

23 Q And I believe that you are testifying to
24 a portion of exhibit 1, which was applicant's AFC
25 in this proceeding, is that correct?

1 A Correct.

2 MR. THOMPSON: I would tender Ms.
3 Bartsch for cross-examination in the area of land
4 use.

5 MR. OGATA: Staff has no questions.

6 HEARING OFFICER GEFTER: And, again, the
7 intervenors have indicated they do not have cross
8 on this topic. Is that also the case for Ms.
9 Duncan and Mr. Claycomb?

10 MR. CLAYCOMB: For land use?

11 HEARING OFFICER GEFTER: Does staff have
12 a witness on land use?

13 MR. OGATA: Yes, we do. First we'd like
14 to call Mr. Eric Knight. He needs to be sworn.
15 Whereupon,

16 ERIC KNIGHT
17 was called as a witness herein and after first
18 being duly sworn, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. OGATA:

22 Q Mr. Knight, do you have before you your
23 testimony which has been marked exhibit 65, the
24 final staff assessment part two, and also exhibit
25 74, which is supplemental testimony before you?

1 A I do.

2 Q And were you the author of this
3 testimony on land use?

4 A Yes, I was.

5 Q Do you have any changes or corrections
6 you'd like to make?

7 A I have a few changes, yes. On page 102
8 of the part two of the FSA, under draft
9 comprehensive land use plan for Brownfield, the
10 second sentence, the third line -- it's the third
11 line, change "about" to "above."

12 And page 110, this is the reference
13 pages. Sixth reference -- I must have had the
14 Metcalf Energy Center on the brain -- change Jose
15 to Diego.

16 And just a comment I'd like to make.
17 Figures 1 through 3, land use figures 1 through 3
18 show the alternate gas line route as a straight
19 line. And changes that the applicant filed in the
20 August 24th, actually that road is more of a
21 squiggly line; it follows an access road. But it
22 really doesn't change anything substantive in
23 regards to land use.

24 These maps are showing existing land
25 uses and zoning and planned land uses. And

1 they're still in the same district, so nothing
2 really changed. So I didn't change the maps. But
3 the discussion in the existing land uses, or the
4 discussion in the text does reflect the fact that
5 the gas pipeline follows the access road.

6 Q Okay, thank you. Could you summarize
7 your testimony for us very briefly, please.

8 A Sure. There's two purposes of the land
9 use section; one to evaluate the project's
10 consistency with all applicable LORS, and second
11 is determine the project's compatibility with
12 existing and planned land uses.

13 In regards to LORS, the project is
14 consistent with the East Otay Mesa's specific plan
15 land use and zoning designations for the subject
16 parcel. Those are both, it's mixed industrial is
17 the land use and zoning designation.

18 This designation allows for major impact
19 services and utilities. And the County has
20 indicated that this use type includes a power
21 plant.

22 The project would not conform with all
23 applicable LORS. The project would exceed the
24 allowable height limit of 60 feet in the mixed
25 industrial zoning district. However, the County,

1 in the board of supervisors' resolution, indicated
2 that if the County had jurisdiction over this
3 project a height variance would be granted to the
4 project with certain mitigation measures. That's
5 to reduce visual impacts on adjacent properties.

6 Those mitigation measures included the
7 large set-backs that the applicant has proposed.
8 And also mitigation for the color of the project,
9 to reduce its contrast with existing surrounding
10 area.

11 Staff has proposed two conditions of
12 certification in land use to address the board of
13 supervisors' resolution, or their findings in this
14 matter. It's Land-1 and Land-2.

15 Land-1 addresses the set-back issue.
16 And Land-2 addresses the -- it's a limit on the
17 height of the structures that would exceed the 60-
18 foot zoning requirement. So the height shall not
19 be any greater than what was specified by the
20 applicant in the AFC.

21 In regards to the other development
22 standards that are contained in the specific plan,
23 and with staff's conditions of certification Land-
24 1 and -3, the project would be consistent with
25 those requirements.

1 And with conditions of certification
2 Land-4 and -5, as well as conditions that are
3 included in visual resources that the facility
4 design section the project would comply with the
5 East Otay Mesa Site Planning Design, which all the
6 development of East Otay Mesa must comply with.

7 Another issue of LORS compliance is the
8 tentative parcel map that's required for a
9 subdivision like the applicant is proposing for
10 the three parcels that they showed in their March
11 supplement.

12 In the board of supervisors' resolution
13 the County stated that -- they identified all the
14 measures they believed were necessary for the
15 project to comply with all LORS, and they stated,
16 quote, "Before proceeding under any other permit,
17 excluding a grading permit and the state permit,
18 the CEC permit, the applicant shall obtain
19 approval of a tentative parcel map with the
20 Department of Planning and Land Use, and record a
21 parcel map of the three lots shown on the plot
22 plan proposed for this project.

23 And I have before me the applicant's
24 tentative parcel map, so they have filed it with
25 the County. And my understanding is it was

1 approved or not approved, but it was accepted for
2 processing. So apparently it meets their
3 requirements for processing.

4 And staff has included a condition of
5 certification that this occur in Land-7, and this
6 is in the supplemental filing that was staff
7 prepared.

8 In regards to compatibility of existing
9 and planned land uses, staff has found that the
10 project would be compatible with the character of
11 the land use as envisioned for the area, which
12 include wholesale stores and distribution uses,
13 general industrial uses such as industrial plants,
14 manufacturing, compounding, processing,
15 assembling, packaging, treatment or fabrication of
16 materials and products.

17 And with mitigation measures the project
18 would not cause significant adverse -- public
19 health, traffic or visual impacts on nearby land
20 uses.

21 The project will also have a less than
22 significant impact on the County's agricultural
23 resources. And the project would not contribute
24 substantially to any cumulative land use impacts.

25 Q Mr. Knight, just to go back to the

1 subdivision issue then.

2 A Yes.

3 Q Is your conclusion then with the
4 application of the condition that you propose that
5 this project will be in compliance with all LORS?

6 A Yes, it is.

7 Q Okay, thank you.

8 MR. OGATA: I have no --

9 MR. KNIGHT: In regards to land use.

10 MR. OGATA: Yes. Thank you, I have no
11 further questions. He's available for cross-
12 examination.

13 EXAMINATION

14 BY PRESIDING MEMBER LAURIE:

15 Q Mr. Knight -- this is Commissioner
16 Laurie -- how are you doing?

17 A Fine, how are you?

18 Q Terrific, thank you. A couple
19 questions. First of all, you testified that this
20 project is consistent with the land use element of
21 the County general, of the 1995 County general
22 plan, is that correct?

23 A It's consistent with the -- let's see
24 here -- the East Otay Mesa specific plan in 1994,
25 East Otay Mesa specific plan, yes.

1 Q Okay, when the County -- I'm sorry, is
2 that a County or a City document?

3 A That is a County document.

4 Q When the County approved that specific
5 plan, it would have had to comply with CEQA, would
6 it not?

7 A Yes.

8 Q And as part of its CEQA analysis the
9 County would have had to have examined the growth
10 inducing impact of the plan, would it not?

11 A Yes, they would.

12 Q And so do you have either knowledge or
13 anticipation that the general plan, or the
14 specific plan considered the growth inducing
15 impact of a land use designation consistent with
16 this project?

17 A I reviewed the EIR for the specific
18 plan. I know there was a section in there about
19 growth inducement. That particular topic was not
20 covered by me.

21 It was addressed by, I believe, Eileen
22 Allen. There was a section in the FSA that was
23 under authorship.

24 Q Okay, thank you. On the question of the
25 parcel map, the concern that I would have is not

1 that the applicant must complete a parcel map, but
2 rather a parcel map is a discretionary action, is
3 it not?

4 A The tentative parcel map, yes, it is.

5 Q And as a discretionary action it's
6 subject to CEQA, is it not?

7 A Yes, it is.

8 Q Do you know, or have any reason to know
9 what conditions might be put on the project as a
10 result, or as a condition to the tentative parcel
11 map?

12 A Yeah, I spoke with Bill Stocks with the
13 County Planning Department, and he indicated to me
14 that the conditions, any substantive conditions to
15 be placed on that map have already been identified
16 in their board of supervisors' resolution.

17 Q Fine, that's it. Thank you.

18 PRESIDING MEMBER LAURIE: Ms. Gefter.

19 HEARING OFFICER GEFTER: Yes.

20 BY HEARING OFFICER GEFTER:

21 Q Mr. Knight, with respect to the
22 designation of this parcel as farmland of
23 statewide important, CEQA requires compliance with
24 the requirement not to convert.

25 And it wasn't clear from your testimony

1 as to why it is okay to build industrial on this
2 property.

3 A Well, what I did in this case is I
4 looked to the EIR that was prepared for the East
5 Otay Mesa specific plan, and the conclusion in
6 that certified document is that the full build-out
7 of the entire specific plan area, which is quite a
8 few acres, would not result in a significant
9 adverse impact to the County's agricultural
10 resources.

11 So, working from that document, then,
12 was my guideline or criteria for determining
13 significance. I came to the conclusion that this
14 project's conversion of 46 acres would be less
15 than significant.

16 That's consistent with what I think
17 staff has done on different cases where the CEQA
18 checklist doesn't really provide any guidance on
19 what is a significant impact. It just says will
20 the project convert.

21 So, typically our staff has looked to
22 what significance criteria the bulk of
23 jurisdiction has used.

24 BY PRESIDING MEMBER LAURIE:

25 Q The point being, Mr. Knight, the

1 question of conversion would have been addressed
2 in the general plan, would it not?

3 A It was, yeah, the EIR that was prepared
4 for this document, the specific plan, addressed
5 the conversion of the full build-out of the area.
6 And this project is a component of it, a very
7 small component of it.

8 PRESIDING MEMBER LAURIE: That's fine,
9 thank you.

10 HEARING OFFICER GEFTER: Thank you.

11 PRESIDING MEMBER LAURIE: And, Ms.
12 Gefter, is the EIR an exhibit?

13 HEARING OFFICER GEFTER: We don't have
14 that as part of our record. But we can certainly
15 take administrative notice of it.

16 PRESIDING MEMBER LAURIE: That's fine,
17 thank you.

18 HEARING OFFICER GEFTER: Yes.

19 BY HEARING OFFICER GEFTER:

20 Q One more question, Mr. Knight. With
21 respect to the Otay River Valley Regional Park,
22 which is, according to your testimony, about one
23 mile northwest of the site, --

24 A Yes, I think my reference for that was
25 the AFC. It's a proposed park. It hasn't been

1 built.

2 Q And according to the general plan,
3 there's no inconsistent use that was -- was the
4 park included in that general plan?

5 A The park was addressed in the specific
6 plan, and actually my recollection is that there
7 was -- there's several trails that are associated
8 with that park, and the alignment of those trails
9 was relocated to avoid the industrial park area.

10 So it did seem like it was -- it did
11 take into account the park. And I think the park
12 is supposed to be an amenity to this industrial
13 area for daytime usage.

14 HEARING OFFICER GEFTER: Thank you. Is
15 there any redirect?

16 MR. OGATA: No, we have no questions.

17 HEARING OFFICER GEFTER: I skipped over
18 cross-examination since everyone had agreed that
19 they had no cross on this topic.

20 MR. THOMPSON: Applicant has no
21 questions.

22 HEARING OFFICER GEFTER: All right.

23 MS. DUNCAN: Holly Duncan, intervenor.

24 HEARING OFFICER GEFTER: Do you have a
25 question of the witness?

1 MS. DUNCAN: I did indicate cross-
2 examination.

3 HEARING OFFICER GEFTER: Yes, you may
4 cross-examine.

5 CROSS-EXAMINATION

6 BY MS. DUNCAN:

7 Q I just have a question, Mr. Knight,
8 about your assertion that Otay Valley Regional
9 Park has not been built.

10 A Well, maybe portions of it have been
11 built, I don't know, I don't think certainly the
12 entire thing has been built.

13 Q It's in acquisition. It's part of an
14 ongoing project that I believe it has been
15 designated. This is another pet project of
16 Supervisor Cox, the County Board of Supervisors.

17 HEARING OFFICER GEFTER: Do you have a
18 question of the witness?

19 MS. DUNCAN: He asserted that it didn't
20 exist. But I mean it does exist currently and is
21 expanding. So, I'm trying to understand where he
22 got that information that it doesn't exist, or how
23 he arrived at that determination.

24 MR. KNIGHT: I guess I'm confused. You
25 said it's been designated, but does that mean it's

1 been constructed?

2 MS. DUNCAN: It's in use. A large
3 portion of land is already in use at this park at
4 this time, yeah.

5 BY MS. DUNCAN:

6 Q So I'm trying to understand your source
7 of information that it's just a proposed park.
8 How did you determine that?

9 A Hold on one second.

10 HEARING OFFICER GEFTER: Let's go off
11 the record while Mr. Knight looks at his notes.

12 (Off the record.)

13 HEARING OFFICER GEFTER: Yes, Mr.
14 Knight.

15 MR. KNIGHT: According to what I have in
16 my testimony here, the Otay Valley Regional Park
17 is one of the largest regional parks planned for
18 San Diego County. And that was out of the 1994
19 specific plan.

20 So, the document is six years old. So,
21 I guess we can -- portions of it could have been
22 built in the interim. But I didn't -- my
23 understanding is that the entire park has not been
24 done. That they're still looking to acquire land
25 for these trails, or attain easement rights across

1 the properties that are privately owned.

2 BY MS. DUNCAN:

3 Q You're working with 1994 information, is
4 that correct?

5 A That's -- yes. The power plant site is
6 not adjacent to any part of that --

7 Q I can't --

8 A -- park, except for maybe --

9 Q -- I'm losing you --

10 A -- there's a --

11 MS. DUNCAN: I don't know why. We're
12 having a really difficult time here in San Diego
13 hearing this proceeding. So, if you could back up
14 and repeat what you just said, because you keep
15 fading in and out.

16 MR. KNIGHT: I'm sorry, what part did
17 you not hear? The power plant site is not
18 adjacent to this park. My understanding there is
19 a trail that would come within fairly close
20 proximity to it. But the actual physical park is
21 not adjacent to it.

22 The power plant site is surrounded by
23 industrially zoned land, on all sides.

24 BY MS. DUNCAN:

25 Q That's part of the Otay Mesa specific

1 plan?

2 A Yes.

3 MR. RAY: This is Robert Ray. Can I
4 interject here?

5 MR. KNIGHT: Sure.

6 HEARING OFFICER GEFTER: Well, wait a
7 second, Mr. Ray. The applicant can have you as a
8 rebuttal witness, but let Mr. Knight finish his
9 testimony.

10 Okay, Mr. Knight.

11 MR. KNIGHT: That was all I was going to
12 say.

13 HEARING OFFICER GEFTER: Okay. Ms.
14 Duncan, do you have any more questions of Mr.
15 Knight?

16 MS. DUNCAN: I don't think I heard the
17 answer to -- he's relying on -- that last
18 statement that he made, if we can back up, is
19 based on the East Otay Mesa specific plan, that
20 that's the plan for the use of that land at this
21 time, industrial.

22 HEARING OFFICER GEFTER: Mr. Knight.

23 MR. KNIGHT: I didn't hear a question.
24 I mean --

25 MS. DUNCAN: Did you lose me?

1 HEARING OFFICER GEFTER: Ms. Duncan,
2 just state your question and we'll see if Mr.
3 Knight can answer it.

4 BY MS. DUNCAN:

5 Q Prior to the interruption he stated that
6 the power plant is going into an area planned for
7 industrial use. And my question was he's basing
8 that on the East Otay Mesa specific plan, is that
9 correct?

10 A Yes, it is.

11 Q Okay. That's what I was attempting to
12 understand. And then there have been questions
13 surrounding the EIR. I just wish to interject
14 into this proceeding that that EIR was done by the
15 same County people who have done an EIR for Duncan
16 McFettdrige's lawsuit for ranchlands further east
17 of this site.

18 And that EIR was determined by Judge
19 McConnell in San Diego to be inadequate and
20 insufficient.

21 So I have no reason to believe that the
22 EIR for the East Otay Mesa specific plan is in any
23 better shape than that one.

24 All of these plans, East Otay Mesa, are
25 still in process. It's a major overhaul of a

1 master plan for San Diego, to upgrade it's master
2 plan. And there are serious questions about the
3 quality of the EIRs that are being used.

4 And I think they translate into this
5 proceeding. I just want it recorded on the record
6 that I have serious doubts about the quality of
7 those EIRs and therefore, I raise concerns about
8 staff's, that are supposed to be independent,
9 relying on other people's work, when perhaps it's
10 not the best quality to make a very important
11 decision for the citizens of San Diego in siting
12 this power plant here.

13 PRESIDING MEMBER LAURIE: Ms. Duncan,
14 did you have a question at this point? Did you
15 have any more questions at this point?

16 BY MS. DUNCAN:

17 Q Mr. Knight, did you look at that EIR in
18 a critical way that perhaps it might be deficient
19 when you looked at it to make your determinations,
20 or did you simply rely on it?

21 A In regards to what issue?

22 Q The quality of the EIR that you relied
23 on for making your decisions.

24 PRESIDING MEMBER LAURIE: Ms. Duncan,
25 this witness is not in a position to testify as to

1 the overall quality of the environmental impact
2 report.

3 If you want to ask this witness what
4 information in the EIR he relied on, and whether
5 or not he agreed with that information, then go
6 ahead and ask him that. This witness is not in a
7 position to testify as to the quality of the
8 entire environmental impact report.

9 MS. DUNCAN: Okay.

10 BY MS. DUNCAN:

11 Q In your land use analysis you indicate
12 that many aspects of this project are over the
13 height limit, --

14 A Yes.

15 Q -- not just the stacks, but other
16 aspects of this project, as well?

17 A Yes.

18 Q I'm assuming you have worked on other
19 certification projects in the state?

20 A Other power plant projects?

21 Q Yes.

22 A Yes.

23 Q Do you find it a consistent pattern for
24 power plants going into areas like this that they
25 consistently exceed the height limits? Or are

1 there other places in the state, other projects
2 you've worked on, that this has not been as
3 significant a height exceedence as this one?

4 A I'd say probably on the majority of the
5 cases I've worked on, the height has been an
6 issue. But it has been resolved in all those
7 cases --

8 Q Okay.

9 A -- through a variance or some other act
10 of the city or county.

11 MS. DUNCAN: That 's all I have, those
12 are all the questions I have. Thank you.

13 HEARING OFFICER GEFTER: Thank you.
14 Does staff have redirect?

15 MR. OGATA: No, we have no redirect.

16 HEARING OFFICER GEFTER: Does the
17 applicant wish to put on a rebuttal witness?

18 MR. THOMPSON: No, but could I ask one
19 question?

20 HEARING OFFICER GEFTER: Yes.

21 CROSS-EXAMINATION

22 BY MR. THOMPSON:

23 Q If the park that was identified is
24 partially complete since 1994, would that change
25 any of your conclusions?

1 A No, it would not.

2 MR. THOMPSON: Thank you.

3 HEARING OFFICER GEFTER: Thank you, Mr.

4 Knight.

5 MR. KNIGHT: Thank you.

6 HEARING OFFICER GEFTER: Off the record.

7 (Off the record.)

8 HEARING OFFICER GEFTER: Staff has

9 another witness for us on land use.

10 MR. OGATA: Staff has Eileen Allen as

11 its witness on growth inducement. She's been

12 previously sworn.

13 Whereupon,

14 EILEEN ALLEN

15 was recalled as a witness herein and having been

16 previously duly sworn, was examined and testified

17 further as follows:

18 DIRECT EXAMINATION

19 BY MR. OGATA:

20 Q Ms. Allen, you have before you on page

21 369 of FSA part 1, which is exhibit 64, a one-page

22 testimony entitled growth inducement, do you see

23 that?

24 A Yes, I do.

25 Q And you're the author of that testimony?

1 A Yes, I am.

2 Q Do you have any changes or corrections?

3 A I do not.

4 MR. OGATA: We would just tender her for
5 cross-examination at this point in time.

6 HEARING OFFICER GEFTER: Does the
7 applicant have cross-examination?

8 MR. THOMPSON: We have none, thank you.

9 HEARING OFFICER GEFTER: Among the
10 intervenors, Ms. Duncan, do you have cross-
11 examination?

12 MS. DUNCAN: I do not.

13 HEARING OFFICER GEFTER: All right.
14 Thank you.

15 We're going to ask for staff's
16 supplemental testimony on cumulative impacts to
17 air quality and that will be taken out of turn of
18 our agenda, because the witness has to leave
19 early.

20 Staff has distributed a document called
21 potential air quality impacts from the operation
22 of Encina and South Bay, testimony of Matt Layton.
23 And we're going to identify this document as
24 exhibit 103. Staff will make copies available to
25 the parties who are not present today.

1 Staff, are you ready to proceed with
2 your witness?

3 MR. OGATA: Yes, thank you, Ms. Gefter.
4 What's been marked as exhibit 103 is entitled,
5 potential air quality impacts of the operation of
6 the Encina and South Bay Generating Facilities,
7 and is supplemental testimony of Matt Layton.

8 Again, we apologize for having produced
9 it now. We will definitely send it out to all the
10 parties this afternoon. The copies that are
11 before the folks here, if we could just designate
12 that as a draft, because we obviously haven't had
13 time to insure that all the little typos and
14 things are fixed in it.

15 So, what we will file this afternoon
16 will be the official document; and we'll have that
17 marked as exhibit 103.

18 So, Mr. Layton, I believe, has been
19 previously sworn in this proceeding, is that
20 correct, Mr. Layton?

21 MR. LAYTON: That's correct.
22 Whereupon,

23 MATTHEW LAYTON
24 was recalled as a witness herein and having been
25 previously duly sworn, was examined and testified

1 further as follows:

2 DIRECT EXAMINATION

3 BY MR. OGATA:

4 Q First, you passed out a document that,
5 again, we've identified as a draft regarding the
6 potential air quality impacts in the operation of
7 Encina and South Bay Generating Facilities.

8 Could you please briefly summarize what
9 this testimony is about and what you did in your
10 conclusions?

11 A I think the Committee has asked
12 repeatedly that we provide some analysis or some
13 opinion about the air quality impacts of fuel oil
14 use at Encina and South Bay. I think we have been
15 very reluctant to do that because I guess we have
16 not felt there was a specific nexus between Otay,
17 which is the project in front of us now, and the
18 operation of Encina and South Bay.

19 However, based on the instructions of
20 the Committee I talked to the District and had
21 some modeling information that they had -- the
22 District has run some models, air dispersion
23 models, for Encina and South Bay. I believe these
24 models have been run for reasons of SCR retrofit
25 installation. Somewhat of a separate issue,

1 obviously not related at all to Otay. But part of
2 the ongoing regulation of these Encina and South
3 Bay by the District.

4 We also have some emission factor data
5 that we got from the District, again for reasons
6 of rule 69 and ongoing compliance of these two
7 units.

8 Using this information which I believe
9 is really -- should be very carefully considered
10 because the emissions from these units are
11 changing. They are installing low NOx burner;
12 they are install flue gas recirculation; and they
13 are installing SCR on all these units right now.

14 The emission factors will change. The
15 stack parameters will change. Probably slightly,
16 but they will change. I would hate to say that
17 this modeling I've done here, or used here, is
18 final or exact.

19 But, in running through the modeling
20 real quick, you know, very limited amount of
21 analysis, there will not be any impacts say from
22 NOx in switching from natural gas to fuel oil.
23 The NOx numbers impacts are below the standard
24 when you look at some -- an ambient level of NOx
25 added to the impacts, potential impacts from

1 either fuel oil or natural gas, there aren't any
2 impacts.

3 However, with sulfur there are some
4 concerns. The sulfur number in the fuel oil is
5 very large. And if you look at a representative
6 ambient level for SO₂, you look at a
7 representative number for fuel oil firing.

8 The modeling suggests that there could
9 be violations of the SO₂ standard. However, again
10 I caution that these numbers are very preliminary
11 and not refined.

12 In looking at the modeling, I only
13 looked at Encina, because Encina was much easier
14 to model in this very limited fashion because it
15 only has a single stack.

16 Therefore, I could put in a single or a
17 unit-less emission rate of say one pound per hour,
18 and then based on different pollutants, whether or
19 NO_x, SO₂ changed the emission rates and changed
20 the impacts therefore.

21 I didn't have to run specific modeling
22 for each pollutant. So I did not run South Bay.
23 But for Encina, again, using the worst case, all
24 five units operating full load with .5 percent
25 sulfur fuel oil, you end up with an impact in this

1 modeling.

2 But in coming to the conclusion, or
3 since the modeling suggested there could be an
4 impact, I went back through 1984 and looked at the
5 sulfur levels for the region. There were not any
6 violations of the SO2 standard.

7 And in those last 15 years they have
8 burned fuel oil down there for testing, economic
9 dispatch, and also for force majeure curtailment.

10 One would imagine, given the modeling
11 here that suggests there was an impact, that those
12 impacts would show up in the ambient level of
13 measured SO2. They did not show up.

14 So, again, I think the modeling here is
15 very conservative and probably over-estimates
16 considerably the impacts of the fuel oil on SO2
17 levels.

18 The PM10 levels, again, similar to Otay
19 Mesa, there's an existing background levels that
20 are above the state standard for PM10. If you
21 switch from natural gas to fuel oil at Encina and
22 South Bay, you do contribute more to the existing
23 violations.

24 But the significance of that, I would
25 hate to draw any conclusions on that until you

1 refine the modeling.

2 Again, I apologize. This is a very
3 limited analysis. I think the Committee wanted
4 some idea of how these numbers look. I would say
5 that if you were going to really investigate fuel
6 fired in Encina and South Bay, you would obviously
7 look at the sulfur numbers more than anything
8 else.

9 But that's about the only conclusion I
10 can draw.

11 MR. OGATA: Thank you, Mr. Layton. I
12 guess we would make him available for cross-
13 examination, but it seems like it's a little
14 unfair seeing as how we just passed it out a few
15 moments ago. But, nevertheless, he's available
16 for cross-examination if the Committee wishes.

17 HEARING OFFICER GEFTER: Are the parties
18 prepared to cross-examine the witness, or would
19 you request more time?

20 MR. GOLDMAN: With all due respect I
21 would request more time, given that it's 2:30 and
22 we just got this --

23 MR. LAYTON: Well, I can stay a few more
24 minutes. I went ahead and called and made
25 arrangements. So, if you've got any questions,

1 Matt, I'm happy to answer them.

2 MS. SEGNER: We would not request more
3 time.

4 MR. LAYTON: Again, I apologize for the
5 lateness of this analysis. I'd be happy to answer
6 questions at a later date, of course, I think the
7 hearings are not going on much longer, but --

8 HEARING OFFICER GEFTER: Would Duke
9 request more time to cross-examine this witness?

10 MS. LUCKHARDT: At this point in time I
11 have one question, or a couple questions I'd like
12 to ask him just based on what he's done so far.
13 And would like to reserve the right to ask further
14 questions as I avail myself of an expert.

15 HEARING OFFICER GEFTER: Let's try,
16 then, and have Mr. Goldman ask some questions, and
17 then if you have more questions subsequent to the
18 conclusion of today's hearing, we'll see what we
19 can do for you. But try and keep it to the
20 testimony that he has presented.

21 MR. GOLDMAN: Ms. Luckhardt indicated
22 she has one. This might give me a few more
23 minutes, at least, to try to figure out some
24 questioning. If you're available to pursue, Ms.
25 Luckhardt, that would be great.

1 HEARING OFFICER GEFTER: Okay, Ms.
2 Luckhardt, you may cross-examine the witness.

3 CROSS-EXAMINATION

4 BY MS. LUCKHARDT:

5 Q Mr. Layton, you state that the other --
6 that you checked -- I'm sorry, let me start this
7 again.

8 In your testimony the paragraph just
9 below your table 1, you talk about the fuel oil
10 burning at Encina and South Bay for testing force
11 majeure or economic dispatch.

12 What information do you have on how much
13 fuel oil was burned during that time period?

14 A I had very little information. I would
15 be happy if Cabrillo and Duke would supply that
16 information as to the amount of fuel oil burned.

17 From what I understand there have been
18 fuel oil burns at these units in the past 15
19 years. I don't know how much. But what was of
20 more interest to me is that there have not been
21 any SO2 violations measured by any of the ambient
22 air quality monitors in the region.

23 If there has been limited fuel oil
24 firing I would be interested in finding that out.
25 But I don't know.

1 Q Okay, so if there was --

2 A I don't know.

3 Q -- if there was very limited fuel oil
4 firing that would impact your analysis on whether
5 it would matter?

6 A Well, it depends on what you mean by
7 limited. The standard here is a 24-hour standard.

8 Q Okay.

9 A Limited could be one day, you would
10 still affect the standard if you put out enough.

11 Q Okay, so it would depend on how long the
12 burn was, if it was, you know, a couple hours or
13 something, that may or may not have an impact. If
14 it was for an entire day, that may have more of an
15 impact? Is that fair?

16 A Again, it would depend on the time of
17 year, and the ambient levels prior to the fuel oil
18 burn, things like that. So it would be very
19 difficult to say that any one burn would cause a
20 violation. But you'd want to look at that more
21 carefully if you were going to analyze these units
22 for impacts during the fuel oil firing.

23 I was just trying to provide the
24 Committee with a rough idea how the impacts --
25 where the impacts might occur, not whether or not

1 they would occur.

2 Q Okay, and so it's my understanding that
3 you don't know, you know, how much fuel oil has
4 been burned, so isn't it true that you don't
5 really know whether that has impacted -- would
6 have impacted any violations of the standard?

7 A I don't know how much fuel oil was
8 burned. But I would again be hesitant to say
9 whether or not fuel oil burning would cause a
10 violation or not.

11 Q I understand that. But you have stated
12 in your testimony that no violations have
13 occurred, and that fuel oil has been burned,
14 implying that fuel oil burns wouldn't
15 necessarily --

16 A I guess I would ask, has fuel oil not
17 been fired. I guess that would be the question.
18 Do you know --

19 Q I don't know.

20 A Okay, and I don't know either, --

21 Q Duke has only operated the plant --

22 A -- therefore, --

23 Q -- for --

24 HEARING OFFICER GEFTER: I'm going to
25 interject because the Committee has asked for that

1 information from the parties, and we expected to
2 receive it today. In terms of when there was
3 curtailment and there was fuel oil burned.

4 So, rather than conjecturing, we would
5 like to have the evidence in the record, and we
6 would ask the intervenors, Cabrillo and Duke, to
7 provide us that information.

8 MS. LUCKHARDT: That's fine. I just
9 wanted to clarify what his statements were based
10 upon.

11 BY MS. LUCKHARDT:

12 Q And then I also noticed that in your
13 modeling you used the background data from Chula
14 Vista, is that correct?

15 A That is correct.

16 Q And you modeled the impact from Encina,
17 is that correct?

18 A That's correct.

19 Q And they are --

20 A They are many miles apart. However, the
21 Chula Vista was as representative of as the other
22 two units, other two ambient air quality
23 monitoring stations. It was a representative
24 worst case number for ambient level over the last
25 15 years.

1 Q That's fine, Matt, I don't know that,
2 so --

3 HEARING OFFICER GEFTER: Do you have
4 additional questions?

5 MS. LUCKHARDT: I don't have any
6 additional questions at this time.

7 HEARING OFFICER GEFTER: Mr. Goldman,
8 are you ready to go forward?

9 MR. GOLDMAN: Well, again, in light of
10 the timing situation I, on behalf of Cabrillo,
11 would respectfully request the ability to ask
12 additional questions to the extent necessary. Our
13 air emissions expert, Mr. Rubenstein, is not here
14 today, but I have a couple that I think can at
15 least clarify a few things.

16 CROSS-EXAMINATION

17 BY MR. GOLDMAN:

18 Q Mr. Layton, if I understood you
19 correctly you said that you did modeling of the
20 Encina plant, because that was a single stack, and
21 so it was easier to do?

22 A I used modeling that the District had
23 done. And because Encina had a single stack it
24 made it easier to do this really rough evaluation
25 of the modeling results.

1 Q Do you know how many stacks the South
2 Bay plant has?

3 A I believe it has four. In the modeling
4 that I saw for South Bay they provided me some --
5 the District provided me some modeling numbers for
6 all units combined, impacts combined, and each
7 unit individually.

8 However, because each unit is a
9 different size, the emission factors vary from
10 unit to unit. On South Bay it would not be easy
11 to go ahead and try to input say a NOx number, the
12 SO2 number or a PM10 number, and then come out
13 with the impacts.

14 Q Is there a way that you would be able to
15 identify the emissions factors and the limited air
16 quality dispersion modeling you received or
17 discussed with the District?

18 A This modeling was done for Cabrillo and
19 Duke. In fact, I talked to Mr. Rubenstein about
20 this modeling. He was familiar with the modeling.
21 Cabrillo had requested that the modeler for the
22 District, Ralph DiSienana, do this modeling, and
23 that's the modeling results I used.

24 Q Do you know what year the modeling was
25 performed?

1 A I believe it was rather recent, it was
2 part of the retrofits going on at Encina and South
3 Bay right now. But I do not know the specific
4 vintage of this modeling data.

5 Q So, am I accurate in surmising that you
6 discussed the air quality dispersion modeling
7 without reviewing the actual document, itself?

8 A Correct. As I said, this is a very
9 limited, and I would not draw too many conclusions
10 from these results. It just perhaps would give
11 guidance as to where you want to refine your
12 modeling.

13 Q Okay. In terms of emissions factors
14 that were discussed, what can you tell us about
15 that?

16 A I used the emission factors that I had
17 calculated and put in my prepared FSA. I looked
18 at the emission factors that Gary Rubenstein had
19 submitted in his testimony. The numbers were very
20 similar.

21 Again, I think these are going for a
22 gross effect here, a small decimal point, or a
23 small change from emission factor to emission
24 factor will not change the gross results.

25 Q What do you mean by refined modeling in

1 terms of the type of modeling that would be
2 required to allow you to draw a more comfortable
3 conclusion?

4 A Well, in talking to the District, they
5 pointed out to me that based on the modifications
6 being made to the various units, the parameters at
7 the stack are changing. That would be the
8 temperature, the exit velocity, the composition of
9 the various pollutants.

10 You would want to get the best numbers
11 available such that you can do the most accurate
12 modeling. You would also then want to make sure
13 you consider all the ambient conditions, the
14 meteorological conditions that could affect that
15 modeling.

16 As you pointed out, I did not see the
17 modeling; I did not see all the input files.
18 Therefore, I'd be reluctant to state that it was
19 the best modeling done. It was just a crude
20 effort to kind of give a rough idea of how these
21 impacts would change with changing from natural
22 gas to fuel oil.

23 Q Okay. Do I understand you correctly
24 then that refined modeling is not necessarily a
25 term of art that you were using, you were just

1 talking about more extensive analysis?

2 A Well, this modeling was the refined
3 modeling results, compared to a screen model. But
4 I would not say this was the best or most complete
5 refined modeling.

6 Q Okay.

7 MS. DUNCAN: This is Holly, I've lost
8 you again.

9 HEARING OFFICER GEFTER: There's a
10 pause. People are just consulting.

11 MR. GOLDMAN: And unfortunately I'm
12 going to need to consult more to ask any further
13 questions, but I thank you for being available for
14 this limited time today.

15 HEARING OFFICER GEFTER: At this point,
16 also we understand there are some representatives
17 from the Air District on the phone. Mr. Moore,
18 are you still there?

19 MR. MOORE: Yeah, we're here.

20 HEARING OFFICER GEFTER: All right.

21 While we're on the topic of air quality, I
22 received today comments of the San Diego County
23 Air Pollution Control District on the OII at the
24 CPUC that was filed on December 4th.

25 Are you familiar with that?

1 MR. MOORE: I think a better person to
2 talk about that would be Mike Lake, who is here
3 right now.

4 HEARING OFFICER GEFTER: Mr. Lake, are
5 you on the phone?

6 MR. LAKE: Yes, I am.

7 HEARING OFFICER GEFTER: All right, I
8 have copies of this for the parties. And perhaps
9 Mr. Lake can tell us what his -- can give us sort
10 of a summary of this document.

11 MR. LAKE: Well, the District has
12 provided some comments to the PUC in the matter of
13 their investigation, and primarily responding to
14 the initial comments of San Diego Gas and Electric
15 and Southern California Gas.

16 And in summary we questioned some of the
17 statements and assertions made by San Diego Gas
18 and Electric in their initial response. And we
19 also are urging the Public Utilities Commission to
20 proceed with their investigation as expeditiously
21 as possible to provide that if there need to be
22 short-term gas curtailments in the immediate
23 future, that the Rosarito Power Plant be curtailed
24 first before the plants in San Diego are
25 curtailed.

1 And also that if the results of the
2 PUC's investigation is that additional gas
3 transmission capacities are needed in San Diego,
4 that the Public Utilities Commission direct San
5 Diego Gas and Electric to move forward as
6 expeditiously as possible.

7 HEARING OFFICER GEFTER: Okay. Mr.
8 Lake, I'm going to sort of sidestep your
9 discussion just for now and ask you whether you
10 actually have information as to when there have
11 been fuel burns at the Encina and South Bay
12 plants, and whether the Air District has actually
13 modeled the impacts from those burns in the last
14 say, ten years.

15 MR. LAKE: We have information, at least
16 a couple of the most recent gas curtailment days
17 that resulted in residual oil burning. That
18 information was provided by the Dynegy in their
19 emergency motions to the PUC.

20 And in regards to the modeling of the
21 impacts while we have been anticipating doing that
22 in the context of our rules -- the only modeling
23 that has been completed so far has been the
24 modeling that Matt Layton has been referring to,
25 and the information that we provided him.

1 HEARING OFFICER GEFTER: All right. Is
2 that information also included in your comments to
3 the PUC?

4 MR. LAKE: Not specifically, no.

5 HEARING OFFICER GEFTER: I'm going to
6 identify for our record the Air District's
7 comments as exhibit 102.

8 With respect to Mr. Layton's testimony,
9 which is identified as exhibit 103, we will leave
10 that open to allow Cabrillo and Duke for further
11 cross-examination. And also to be completed as it
12 is presented to us as a draft right now.

13 MR. CARROLL: Point of clarification.
14 This is Mike Carroll. Will the applicant also be
15 provided an opportunity for additional cross-
16 examination of Mr. Layton?

17 HEARING OFFICER GEFTER: If you have
18 cross-examination, of course you can. Ms. Segner
19 had indicated she had no cross earlier. But we'll
20 give you the opportunity to cross-examine Mr.
21 Layton.

22 Does anyone have questions of the Air
23 District representative while he's on the phone
24 here? Mr. Lake or Mr. Moore.

25 Okay, Mr. Goldman has a question.

1 MR. GOLDMAN: Actually I really have a
2 question of the Hearing Officer. I don't know if
3 this might be an opportune time, but in my email
4 response to your email of Friday I did indicate
5 that we wish to include in the evidentiary record
6 as an exhibit the Air District's November 17
7 comments addressed to the Committee.

8 And I don't know if Mr. Lake is
9 available or the appropriate person to comment on
10 a couple of the issues at the very end. There
11 were two requests that the Air Pollution Control
12 District makes of the Committee. If he is not the
13 proper person then we can just move on. But this
14 just might be the time to introduce this
15 particular item as an exhibit. And I do have
16 copies. I know that the Committee received it.

17 HEARING OFFICER GEFTER: Are you talking
18 about the letter dated November 17th?

19 MR. GOLDMAN: Yes.

20 HEARING OFFICER GEFTER: We have that
21 identified as exhibit 84. In fact, we --

22 MR. GOLDMAN: Oh, is it?

23 HEARING OFFICER GEFTER: -- received it
24 into the record at the last hearing.

25 MR. GOLDMAN: Okay, well, that shows you

1 where I've been. Thank you.

2 If I may, Mr. Lake, are you familiar
3 with the document that we're talking about? He
4 may not have heard me.

5 HEARING OFFICER GEFTER: Mr. Lake, are
6 you on the line? Mr. Moore, are you still there?
7 Is anyone still on the phone?

8 MR. MOORE: Yes, we're here. Some of us
9 are here.

10 HEARING OFFICER GEFTER: Okay, Mr. Lake,
11 are you there?

12 MR. MOORE: Mr. Lake and Mr. Moore are
13 still here. We muted for a second so that we
14 could locate the document.

15 SPEAKER: Robert, are you still on?

16 MR. RAY: I am. Ali, you can get off if
17 you'd like.

18 PRESIDING MEMBER LAURIE: Ms. Gefter,
19 for purposes of the record, we currently have Mr.
20 Layton who is still on the witness stand.

21 HEARING OFFICER GEFTER: Yes.

22 PRESIDING MEMBER LAURIE: Neither one of
23 these two witnesses have been sworn.

24 HEARING OFFICER GEFTER: Actually, they
25 were sworn last week, but -- I was thinking, I'm

1 sorry I didn't explain this. But asking the Air
2 District witnesses and Mr. Layton to serve as a
3 panel on this topic, since their information
4 supplements one another, and staff sponsored Mr.
5 Moore and Mr. Lake last week as witnesses.

6 PRESIDING MEMBER LAURIE: Okay, the
7 record will so reflect, thank you.

8 HEARING OFFICER GEFTER: Thank you.

9 Okay, Mr. Goldman, do you have a
10 question of Mr. Lake?

11 MR. GOLDMAN: Yes, I do. Just one. Mr.
12 Lake, if you have the November 7th letter from Mr.
13 Sommerville to the Committee, the very last
14 paragraph there are two requests that the District
15 makes of the Committee.

16 And actually you'll see the very last
17 sentence of the letter that says: The District
18 also requests that the Commission not take an
19 action that would have the effect of increasing
20 the frequency or amount of fuel oil burning at the
21 Encina and South Bay Power Plants.

22 My question is, would you be in a
23 position on behalf of the Air Pollution Control
24 District to summarize the reasons that the
25 District is making that request?

1 MR. LAKE: Well, the reason is that the
2 burning of fuel oil at the Encina and South Bay
3 Power Plants does increase emissions of PM10
4 precursors, it increases emissions of SOx and it
5 increases emissions of oxides of nitrogen.

6 And those increases do have detrimental
7 public health consequences including contributions
8 to potential ozone nonattainment here in the air
9 basin.

10 And therefore we certainly are concerned
11 if projects result in increased frequency or depth
12 of gas curtailments to the existing power plants.

13 MR. GOLDMAN: And you or Mr. Layton may
14 be able to answer this question, but among the
15 emission factors and limited air quality
16 dispersion modeling that Mr. Layton discussed with
17 District representatives, was PM10 included in any
18 of that analysis, if you know?

19 MR. LAKE: I'm going to ask Mr. Moore to
20 provide that information. He's right here.

21 HEARING OFFICER GEFTER: I'm sorry, what
22 analysis are you referring to, Mr. Goldman?

23 MR. GOLDMAN: The air quality dispersion
24 modeling that Mr. Layton's exhibit 103 refers to.

25 MR. MOORE: I sent up to Mr. Layton some

1 preliminary emission factors we're developing here
2 for PM10 emissions from the power plant. But I do
3 not know what emission factors he actually used in
4 the modeling.

5 We provided a modeling that just
6 basically provided a fractional impact for a given
7 emission rate at a certain point. We didn't
8 actually include any emission factors in our
9 modeling.

10 MR. GOLDMAN: So do I understand that
11 certain materials were either faxed or sent by
12 email to Mr. Layton's office?

13 MR. MOORE: That's correct, email.

14 MR. GOLDMAN: Okay. Would that be
15 available to us?

16 MR. MOORE: Well, they're still draft
17 factors. They're not final emission factors. And
18 they're under development, so I would say it's
19 probably premature to provide them.

20 MR. GOLDMAN: Okay. Well, I guess maybe
21 this question could be addressed more to Mr.
22 Layton. Would it be possible that in the
23 finalized version of exhibit 103 that there be
24 similar to what we've seen at the end of each
25 chapter in the FSA, basically an index of the

1 primary sources that are the foundation of the
2 supplemental testimony?

3 MR. LAYTON: The PM10 emission factor I
4 actually used Mr. Rubenstein's emission factor
5 from his handout. Again, the emission factors
6 that I had developed from using AP-42, emission
7 factors that Steve Moore has referred to, and
8 emission factors that Gary Rubenstein used, really
9 do not differ by that much. There are subtle
10 differences.

11 I find the differences to be
12 insignificant. But obviously we can add some
13 references to this document.

14 MR. GOLDMAN: Thank you.

15 MR. LAYTON: Again, Mr. Moore has
16 indicated that the information he sent me was
17 draft, and I've treated it as such. Therefore, I
18 used Mr. Rubenstein's, which was submitted into
19 the record.

20 MR. GOLDMAN: I don't have any further
21 questions, thank you, at this time.

22 HEARING OFFICER GEFTER: Mr. Thompson.

23 MR. THOMPSON: Thank you. We just have
24 a couple. And I don't know whether these are in
25 the province of Mr. Layton, Mr. Moore or Mr. Lake,

1 and indeed my co-counsels may have more. However,
2 let me ask some of the questions.

3 Mr. Layton, does this analysis assume a
4 sulfur content of fuel oil?

5 MR. LAYTON: Yes, I assumed .5 percent.

6 MR. THOMPSON: And is .5 commonly used
7 in power plants burning fuel oil in California?

8 MR. LAYTON: I believe it is, yes.

9 MR. THOMPSON: Second area. Does this
10 analysis assume that the Encina Power Plant will
11 only be run when called upon by the ISO?

12 MR. LAYTON: This analysis draws no
13 conclusions along those lines.

14 MR. THOMPSON: Would, if you were to try
15 and do that, would you conclude that it would be
16 -- I see you laughing -- too speculative to come
17 to any conclusions?

18 MR. LAYTON: I believe in my testimony I
19 did discuss that I believed some of the scenarios
20 that have been discussed over the last few weeks
21 are really speculative.

22 Again, my analysis was only to look at,
23 based on requests of the Committee, what were the
24 air quality impacts of the switch from natural gas
25 to fuel oil in Encina and South Bay.

1 Again, I draw no conclusions as to
2 whether or not the Otay project would cause or
3 contribute to those fuel oil uses.

4 MR. THOMPSON: Thank you.

5 HEARING OFFICER GEFTER: Are there any
6 questions from any other party at this point of
7 any of the witnesses on air quality?

8 MR. GOLDMAN: I just have one of the Air
9 Control District representatives.

10 Gentlemen, I'm looking at exhibit 102,
11 which is the Air Pollution Control District's
12 comments dated December 4 to the PUC.

13 And I see on page 5, and forgive me,
14 I've not been able to read the whole document, but
15 there's a reference in the first full paragraph,
16 quote, "SDG&E further stated in its September 14,
17 2000 data response to APCD, and then it discusses
18 gas supplies to Rosarito.

19 What data response are we talking about,
20 in which proceeding? Was that in the OII?

21 MR. MOORE: That was in conjunction with
22 an advice letter, 1210G, which San Diego Gas and
23 Electric/Sempra filed with the Public Utilities
24 Commission I believe in August, or perhaps July of
25 this year.

1 MR. GOLDMAN: Do you know if that is
2 within the CPUC docket in its OII regarding SDG&E?

3 MR. MOORE: I think some of the
4 information that was developed in conjunction with
5 that, and some of the investigation that the PUC
6 Staff understood with regards to that advice
7 letter, is being considered in the OII.

8 But specifically SDG&E withdrew their
9 advice letter after the CPUC Staff proposed a
10 draft Commission resolution. And so that
11 proceeding is no longer proceeding.

12 HEARING OFFICER GEFTER: Okay. We
13 already knew this, Mr. Goldman. This was
14 discussed previously in the record as to that
15 advice letter.

16 MR. GOLDMAN: Oh, I knew that the advice
17 letter was withdrawn, but my understanding is
18 after that the OII was commenced.

19 And if you know, I just wanted to know
20 if the PUC had incorporated those materials in the
21 OII record. I could find out from the CPUC, but I
22 just wanted to know if you knew that.

23 HEARING OFFICER GEFTER: It's not
24 relevant whether he knows it or not. You can find
25 out for yourself.

1 MS. DUNCAN: This is Holly.

2 HEARING OFFICER GEFTER: Yes, Holly.

3 MS. DUNCAN: I believe that they are
4 part of that OII.

5 HEARING OFFICER GEFTER: Thank you, Ms.
6 Duncan.

7 What we will do with respect to the
8 parties that wish to cross-examine Mr. Layton
9 further on his testimony that's contained in
10 exhibit 103, the Committee will let you know when
11 we can set some time aside for that cross-
12 examination.

13 MS. DUNCAN: This is Holly again.

14 HEARING OFFICER GEFTER: Yes, Ms.
15 Duncan.

16 MS. DUNCAN: I have a procedural
17 question. I just want to make sure I heard, I
18 think I heard Jeff Ogata say that this is going to
19 be sent out to us today, is that correct? Because
20 I don't have these documents. I just wanted to
21 clarify if that's what I heard.

22 MR. OGATA: This is Jeff Ogata. Yes,
23 Ms. Duncan, we're going to try to get a final
24 draft out today. Mr. Layton has been trying to
25 get out of here, so whether we'll actually have a

1 final draft today I'm not certain, but we'll do
2 it, you know, hopefully first thing tomorrow
3 morning, anyway, but we'll definitely get a final
4 draft out of here within the next day.

5 MS. DUNCAN: You can't just send it as a
6 draft?

7 MR. OGATA: Yes, if you'd like to see
8 what we passed out here, we can certainly fax it
9 to you.

10 MS. DUNCAN: Yeah, I'd appreciate seeing
11 something, I don't care what form it's in. If
12 it's draft, that's fine. I just would like to
13 have something --

14 HEARING OFFICER GEFTER: Okay.

15 MR. OGATA: Yes, I believe we have a fax
16 number for you, Ms. Duncan, so we'll fax it to
17 you.

18 MS. DUNCAN: Thank you.

19 HEARING OFFICER GEFTER: Okay, we're
20 going to move on. Mr. Layton has to leave. Thank
21 you very much for your time, Mr. Layton.

22 MR. LAYTON: You're welcome.

23 HEARING OFFICER GEFTER: We're going to
24 go back to our scheduled agenda, and next on the
25 agenda --

1 MS. DUNCAN: This is Holly again. I
2 have one more procedural question, I guess.

3 HEARING OFFICER GEFTER: Yes.

4 MS. DUNCAN: As I noted in some of my
5 documents previously submitted, which are part of
6 exhibits now, Commissioner Laurie requested the
7 applicant to do a detailed study on this August
8 2nd.

9 And I guess my question, the only
10 question I would have is that is that why Matt is
11 doing this, because the applicant has not?

12 HEARING OFFICER GEFTER: Ms. Duncan,
13 could you state that again at little louder? We
14 couldn't hear you.

15 MS. DUNCAN: August 2nd Commissioner
16 Laurie tasked the applicant with doing a detailed
17 analysis of what would happen to the air quality
18 in the region here as a result of curtailment.

19 And I have, to date, never seen --

20 HEARING OFFICER GEFTER: Ms. Duncan, --

21 MS. DUNCAN: -- a report on --

22 HEARING OFFICER GEFTER: -- the
23 applicant was not asked that. It was specifically
24 directed to staff.

25 We're going to take a recess now for

1 about ten minutes. So if you don't hear anything
2 on the phone it's because we're in recess.

3 MS. DUNCAN: Okay, thank you.

4 (Brief recess.)

5 HEARING OFFICER GEFTER: Counsel are all
6 present here. We are going to move on and follow
7 our agenda. The next topic that we were looking
8 at is the topic of compliance. I'll start with
9 the applicant.

10 MR. THOMPSON: Thank you. Applicant has
11 an original declaration of Mr. Terrell Gault. Mr.
12 Gault, are you still on the line?

13 (No audible response.)

14 MR. THOMPSON: Counsel's worst fear.

15 (Laughter.)

16 MS. ALLEN: Your witness vanished.

17 MR. THOMPSON: If the parties would
18 agree, and if it is permissible procedure by the
19 Committee, I would like to put Mr. Gault's
20 testimony in by moving of counsel, and let me have
21 20 seconds of explanation before I do this.

22 Mr. Gault raised a number of compliance
23 type issues that triggered -- in his prepared
24 testimony which is a part of exhibit 77. That
25 testimony triggered conversations with staff and

1 others in at least two workshops.

2 The issues raised in Mr. Gault's
3 testimony have all been resolved to the
4 satisfaction of applicant, and any changes in the
5 changes that were agreed to are reflected in
6 staff's conditions of certification and
7 verification.

8 Applicant would like to offer Mr.
9 Gault's testimony for the purposes of the
10 foundation for the issues, and as it was a part of
11 our exhibit 77.

12 HEARING OFFICER GEFTER: If there's no
13 objection to the applicant moving a portion of
14 exhibit 77 related to compliance then we can move
15 on. Is there any objection?

16 MR. OGATA: Staff has no objections.

17 MR. THOMPSON: Thank you.

18 HEARING OFFICER GEFTER: Cabrillo or
19 Duke, had indicated earlier that you have no
20 cross-examination or questions on this topic on
21 compliance.

22 Ms. Duncan, are you still on the phone?

23 MS. DUNCAN: Yes, I am. I have no
24 objection.

25 HEARING OFFICER GEFTER: Thank you.

1 Mr. Claycomb?

2 MR. CLAYCOMB: Save Our Bay has no
3 objection.

4 HEARING OFFICER GEFTER: All right, we
5 will accept applicant's testimony on compliance.

6 I do have a question, though, with
7 respect to your comment earlier that all issues
8 are resolved, and that the conditions reflect all
9 the changes.

10 Have the conditions been modified to
11 reflect any changes that you're aware of?

12 MR. THOMPSON: I believe -- I'll have to
13 let staff answer this because -- but I do believe
14 that there have been certain modifications to some
15 of the conditions.

16 HEARING OFFICER GEFTER: Staff, do you
17 want to proceed with your direct testimony?

18 MR. OGATA: Thank you, Ms. Gefter. Call
19 Jeri Scott as our witness. Ms. Scott needs to be
20 sworn.

21 Whereupon,

22 JERI SCOTT
23 was called as a witness herein and after first
24 being duly sworn, was examined and testified as
25 follows:

1 MR. OGATA: Okay, thank you.

2 DIRECT EXAMINATION

3 BY MR. OGATA:

4 Q Ms. Scott, you have before you exhibit
5 64, which is the final staff assessment number
6 one, which contains compliance testimony, and also
7 exhibit 74, which was staff's additional testimony
8 and errata, is that correct?

9 A If by 64 you mean the compliance
10 monitoring plan?

11 Q Yes.

12 A Yes. That is correct.

13 Q And do you have any changes or
14 corrections to any of that testimony?

15 A No, I do not.

16 Q Okay. Let me direct your attention now
17 to exhibit 74, which was staff's additional
18 testimony and errata. And in that, beginning on
19 page 10, there are several pages that discuss
20 changes that were proposed by the applicant in a
21 letter dated November 6, 2000, which was the basis
22 of a workshop that we had.

23 And under staff's testimony here there
24 are a number of changes to the project description
25 as well as to several conditions. Are you

1 familiar with those proposed changes?

2 A I am familiar with those changes.

3 Q And as far as you know, staff's filing
4 that accepts these conditions is true, is that
5 right?

6 A Yes, it is.

7 Q Okay.

8 MR. OGATA: I have no further questions
9 for Ms. Scott.

10 HEARING OFFICER GEFTER: Is there any
11 cross-examination of the witness?

12 MR. THOMPSON: We have none, thank you.

13 HEARING OFFICER GEFTER: Okay. And the
14 other parties had indicated they had no cross on
15 compliance. So, thank you very much, Ms. Scott,
16 you may be excused.

17 The next topic was on supplemental
18 testimony on alternatives that we had requested
19 from staff. And staff had submitted additional
20 testimony. We have identified that testimony in
21 the record, and that is exhibit 97.

22 Staff, would you like to go forward with
23 your witness?

24 MR. OGATA: Thank you, Ms. Gefter. With
25 respect to exhibit 97, we have two submittals. I

1 just wanted to be clear whether or not we're
2 labeling them both 97. We have staff's
3 supplemental testimony which was filed on November
4 20th. And then we had basically a replacement for
5 the alternatives testimony which is dated November
6 27th.

7 And I believe that the two alternative
8 testimonies are identical except for just minor
9 changes. And the addition of Matt Layton as
10 coauthor with Eileen Allen.

11 So I don't know if you want to label
12 them both exhibit 97 or how you want to handle
13 that.

14 HEARING OFFICER GEFTER: As I identified
15 them in the record I had the one filed on November
16 27th as an amendment to the earlier filing of
17 November 20th. So we'll keep them as a package.

18 MR. OGATA: That's fine, thank you.
19 Again, the primary sponsor of this particular
20 piece of testimony will be Eileen Allen. She's
21 been previously sworn.
22 Whereupon,

23 EILEEN ALLEN
24 was recalled as a witness herein and having been
25 previously duly sworn, was examined and testified

1 further as follows:

2 DIRECT EXAMINATION

3 BY MR. OGATA:

4 Q Ms. Allen, you have before you the
5 alternatives testimony dated November 27, 2000,
6 which has been identified as exhibit 97, is that
7 correct?

8 A Yes, that is correct.

9 Q Do you have any more changes or
10 corrections to make to this testimony?

11 A No, I do not.

12 Q Would you like to briefly summarize this
13 testimony for us, please?

14 A At the request of the Committee, Mr.
15 Layton and I looked at four size alternatives:

16 A 250 megawatt natural gas fired project
17 which could be used for baseload or peaking
18 purposes; a less than 50 megawatt gas fired
19 project which would likely be used for peaking
20 purposes.

21 The most common project in this size
22 range is somewhere between 40 and 49 megawatts. A
23 five megawatt gas fired distributed generation
24 project which could be used for peaking or
25 baseload purposes. And finally, distributed

1 generation gas fired microturbines with size
2 ranging from about 20 to 300 kilowatts, which
3 could be used for baking -- excuse me, no baking
4 involved -- peaking or baseload purposes.

5 That concludes my summary.

6 Q Could you please tell us what your
7 conclusions were with respect to these
8 alternatives?

9 A Mr. Layton and I concluded that the 250
10 megawatt alternative is nominally superior when
11 its reduced air emissions are compared to the
12 unmitigated proposed project.

13 However, we believe that if the proposed
14 project's air quality offset conditions are
15 considered and adopted, the 250 megawatt
16 alternative is not superior.

17 Furthermore, it does not meet the
18 proposed project's objectives as providing 500
19 megawatts to the San Diego region.

20 As far as the remaining alternatives
21 which are the less than 50 megawatt peaking
22 project, the 5 megawatt distributed generation
23 units, and the distributed generation
24 microturbines, we concluded that they are not
25 superior to the proposed project due to

1 significantly higher emission factors and higher
2 heat rates, which would lead to greater fuel and
3 efficiency.

4 Q Thank you.

5 MR. OGATA: Ms. Allen is available for
6 cross-examination.

7 HEARING OFFICER GEFTER: Does the
8 applicant have cross-examination?

9 MR. THOMPSON: We do not, thank you.

10 HEARING OFFICER GEFTER: Does Cabrillo?
11 No. Duke Energy, do you have cross-examination on
12 this?

13 MS. LUCKHARDT: No.

14 HEARING OFFICER GEFTER: Ms. Duncan?

15 MS. DUNCAN: Yes, I do.

16 HEARING OFFICER GEFTER: Please speak up
17 so we can hear you.

18 MS. DUNCAN: Can you hear me now?

19 HEARING OFFICER GEFTER: Better.

20 MS. ALLEN: Yes, I can hear you.

21 CROSS-EXAMINATION

22 BY MS. DUNCAN:

23 Q Eileen, in terms of your significantly
24 higher emissions, you relied on a report from the
25 Energy Commission put out in June of 2000, is that

1 correct?

2 A Yes, that was one of the references that
3 we relied on. The June 2000 report is noted as
4 Ianucchi et al 2000 in the reference list.

5 Q I guess the Energy Commission at this
6 point has confused this intervenor, because the
7 basis for the claim for this project being called
8 the cleanest power plant in the world was a
9 project that's already in existence using SCONOX
10 in Los Angeles, the Vernon project, which the
11 applicant identified in their AFC.

12 So I guess I'm confused as to why staff
13 chose to ignore SOCNOx and Xonon technologies
14 which are out there and being used on small
15 distributed generation turbines.

16 Can you explain to me why that was not
17 part of your report?

18 A We're not aware of SCONOX and Xonon
19 technologies being used on a proven commercial
20 basis for the 5 megawatt level units, or the
21 microturbines.

22 We are not aware of vendors being
23 willing to make any guarantees for use of SCONOX
24 or Xonon having NOx emissions that are lower or
25 equal to that of the proposed project.

1 Q Well, I guess you're confusing me
2 further, because I didn't know that we had a
3 guarantee that SCONOX was going to scale up on
4 this project. Do we have that guarantee now?

5 A I would defer that question to the
6 applicant.

7 Q So you're not aware of a guarantee that
8 SCONOX is going to work on this project, is that
9 your answer?

10 HEARING OFFICER GEFTER: Ms. Duncan,
11 that question is actually beyond the scope of the
12 witness' testimony. She doesn't have to answer
13 the question on that. You can refer the question
14 to the applicant, as she proposed.

15 BY MS. DUNCAN:

16 Q In terms of the efficiency issues that
17 you raised in your report, I believe that at the
18 last meeting on the 21st when procedurally the
19 Committee said they wanted you to do another
20 report, they suggested some of the suggestions
21 that I had made be looked at.

22 My suggestions specifically included
23 combined heat and power options, which do increase
24 the efficiency. And I don't see any of that in
25 your report.

1 Again, I guess I'm confused as to why
2 that was not included in your report.

3 A I'm unclear as to what is meant by
4 combined heat and power options.

5 Q Where the waste heat is used for heating
6 or cooling on site in distributed generation.

7 A You're correct, we did not look at
8 options like that.

9 Q The question was, I guess, why, why was
10 that overlooked since it was in my testimony?

11 HEARING OFFICER GEFTER: Again, Ms.
12 Duncan, the Committee directed staff to do an
13 alternatives analysis based on not particularly
14 your testimony, but on need for supplemental
15 testimony with respect to smaller alternative
16 projects. And it doesn't assist us in the record
17 as to why staff chose or didn't choose to look at
18 a proposal that you had made.

19 MS. DUNCAN: Well, I believe it's still
20 an inadequate analysis, and I would hope that this
21 Committee would move forward on the basis of an
22 exhaustive analysis of alternatives.

23 MS. ALLEN: The last technology option
24 that you mentioned, I believe is commonly referred
25 to as cogeneration. So, the Otay Mesa project

1 that we analyzed alternatives for is not a
2 cogeneration arrangement. So we did not look at
3 cogeneration alternatives in part because a
4 cogeneration project would result in a different
5 contribution to the San Diego electricity demand.

6 Ms. Duncan.

7 MS. DUNCAN: Yes.

8 MS. ALLEN: The SCONOx demonstration
9 that we are aware of is in the City of Vernon.
10 It's a demonstration of SCONOx at about 20
11 megawatts. And that's been running for about five
12 years.

13 BY MS. DUNCAN:

14 Q The AFC says it's 27 megawatts?

15 A I could see that being within the range
16 of engineering estimates of capacity.

17 Q That is in my testimony, UCSD's project,
18 27 megawatts of cogeneration?

19 A I am aware of your testimony and where
20 you cited the UC San Diego cogeneration project.
21 And are you saying that that project uses SCONOx?

22 Q Yes.

23 A And that is an up and running
24 demonstration of SCONOx at the 27 megawatt level?

25 Q It will be on line March of 2001.

1 A It will be?

2 Q Yes. I'm assuming this is
3 commercialization.

4 HEARING OFFICER GEFTER: Ms. Duncan, do
5 you have another question of Ms. Allen? Ms.
6 Duncan?

7 MS. DUNCAN: I'm not sure.

8 HEARING OFFICER GEFTER: Are you there?

9 MS. DUNCAN: I'm thinking.

10 BY MS. DUNCAN:

11 Q Your report indicates it would be very
12 difficult to find a number of sites to do
13 distributed generation. If UCSD is doing a power
14 park and is commercially using SCONOX for 27
15 megawatts, do you believe it would be difficult
16 with the number of federal, military, schools,
17 county and city facilities to find the equivalent
18 of this project in distributed generation?

19 A In order to be able to respond to that
20 in detail I'd have to do far more work looking at
21 available space and siting options throughout the
22 County.

23 So the best answer I can give you at
24 this point is I'm not sure.

25 Q So the Energy Commission, being a major

1 sponsor of distributed generation, does not share
2 that information with you? Is that what I'm
3 hearing?

4 A I'm not aware -- I'm aware of the Energy
5 Commission's work, as far as wanting to develop
6 distributed generation to the greatest extent
7 possible. Assuming that the distributed
8 generation units do not lead to a degradation of
9 local environmental conditions.

10 However, I'm not aware of any San Diego
11 area information regarding a number of sites
12 available.

13 Q Your alternative proposal is for San
14 Diego area, correct?

15 A The alternatives analysis, yes.

16 Q Is for San Diego? How did you do that
17 analysis if you didn't determine what sites might
18 be available?

19 A Mr. Layton and I attempted to respond to
20 the directions of the Committee to do an
21 alternatives analysis looking at smaller sized
22 projects.

23 One of the things that needs more work
24 when you prepare an alternatives analysis is
25 taking a look at where different sized projects

1 could go.

2 We did analyze the smaller sized
3 alternatives, but it's a whole other avenue of
4 research to be able to look at new alternative
5 sites.

6 So we felt like that was beyond the
7 scope of what the Committee was asking.

8 Q Is that beyond the scope of an
9 alternatives analysis? Part of the alternatives
10 analysis is to analyze alternative sites, isn't
11 it?

12 A And in the original alternatives
13 analysis we did look at alternative sites in the
14 East Otay Mesa area.

15 Q So you're saying you would analyze
16 different sites for a 510 megawatt, but not for
17 something smaller? Is that your answer?

18 A Given the sheer number of sites that
19 would be required for microturbines or 5 megawatt
20 array, no, we did not look at alternative site
21 options for those extremely small units.

22 We left the alternative location
23 analysis at that contained in the original FSA
24 part one.

25 Q Based on your analysis the supplemental

1 analysis I have here would your analysis of UCSD's
2 27 megawatt plant, would you consider that a
3 peaker plant?

4 A I did not analyze the UCSD 27 megawatt
5 project.

6 Q You did a generic statement here that
7 anything under 50 megawatts would be a peaker
8 plant. And not baseload. Do you see the less
9 than 50 megawatt project? You didn't number the
10 pages in this, so I can't direct you to a page.

11 A I see the bullet that you're referring
12 to. The specific category of project that I
13 looked at, which is projects that are generally
14 between 40 and 49 megawatts, are generally used
15 for peaking purposes.

16 It's conceivable that a 40 to 49
17 megawatt project could also be used for baseload,
18 but I think it's uncommon. I understand that the
19 5 megawatt ATS units and distributed generation
20 microturbines can be used for peaking or baseload.
21 But I did not analyze that UCSD project
22 specifically.

23 My knowledge of it is limited to the
24 information that you have testified to.

25 Q In terms of the Vernon project, is that

1 a peaker or a baseload project? Are you aware of
2 which it is?

3 A I believe that it's baseload.

4 Q Okay, do you know if it is a
5 cogeneration or strictly electricity generation?
6 Do you have any knowledge in that area?

7 A Not today.

8 Q Okay. Since you now understand that
9 UCSD's project is a cogeneration project, would
10 you call that baseload?

11 HEARING OFFICER GEFTER: Ms. Duncan, we
12 don't -- I don't believe the witness has testified
13 that she has any information about that project,
14 other than what you have indicated. It doesn't
15 help to just continue to ask about that project.
16 Do you have any other questions?

17 MS. DUNCAN: Are you saying that my
18 proposal for UCSD is hearsay, or speculative?
19 Point of clarification.

20 HEARING OFFICER GEFTER: The witness
21 indicated that the only information she has is the
22 information that you provided.

23 MS. ALLEN: In order to respond about
24 the UCSD's project characteristics, I need to do
25 some more research. I haven't done that to date.

1 MS. DUNCAN: I would agree. I believe
2 that this is still a very incomplete alternatives
3 analysis.

4 HEARING OFFICER GEFTER: Do you have any
5 further questions, Ms. Duncan?

6 BY MS. DUNCAN:

7 Q Does Ms. Allen have any idea of who or
8 where the main source of energy needs is in San
9 Diego? Who the main users are here?

10 HEARING OFFICER GEFTER: I believe
11 that's beyond the scope of her testimony.

12 MS. DUNCAN: Okay.

13 BY MS. DUNCAN:

14 Q One more question. Under the 5 megawatt
15 distributed generation project, next to the last
16 paragraph, the first sentence. It says: If the
17 proposed project objective is to provide 500
18 megawatts of power to the San Diego region were to
19 be retained, I'm trying to understand the basis of
20 that statement. Because this is a merchant plant?
21 I'm going to raise that again. How do we know
22 that this power is going to stay in the San Diego
23 region? What was the basis of that statement in
24 this addendum?

25 A When the staff prepares alternatives

1 analyses, one of the things that we have to take
2 into account is whether the alternatives being
3 examined conform with the objectives of the
4 project proponent.

5 So, my statement related to how, if you
6 were dealing with the objective of providing 500
7 megawatts of power as stated in the AFC, then you
8 would need to have approximately 100 five megawatt
9 units. So that's why I put that in there.

10 Getting back to the applicant's stated
11 objective, which is something that we're required
12 to do for CEQA analysis.

13 Q I guess my concern is that I have, on
14 many occasions, asked the applicant to demonstrate
15 that this power will indeed stay in the San Diego
16 region, and I have not been able to get a
17 confirmation of that.

18 I have repeatedly been told that this
19 plant will sell to the PX, and that they have no
20 control over where that power goes.

21 So, I think this is somewhat of a
22 misleading statement here? I mean the distributed
23 power will stay in San Diego, so that covers that
24 base. But I'm trying to understand the basis of
25 saying just because the applicant has said that in

1 their AFC, it does not mean that that's what
2 occurs. At least not on the basis of how I
3 understand a merchant plant to operate, and where
4 their power goes?

5 You, yourself, said in growth inducement
6 that this power can go anywhere on the western
7 grid. So, I'm confused. I continue to be
8 confused by that statement.

9 A I've noted your point --

10 PRESIDING MEMBER LAURIE: Ms. Duncan,
11 that question has now been asked and answered,
12 that is this witness does not have any evidence
13 sufficient to respond to your question.

14 MS. DUNCAN: So your statement is simply
15 you simply say that this is the intent as stated
16 in the AFC, and that's how you arrived at that
17 decision?

18 MS. ALLEN: That's why I did the
19 multiplication, the concept of how you would need
20 approximately five 100 megawatt units in the
21 region. Yes.

22 MS. DUNCAN: Okay, I have no more
23 questions, thank you.

24 HEARING OFFICER GEFTER: Thank you.
25 Does staff have redirect?

1 MR. OGATA: No, we have no questions.

2 MR. CLAYCOMB: Save Our Bay has a couple
3 of questions.

4 HEARING OFFICER GEFTER: Mr. Claycomb.

5 CROSS-EXAMINATION

6 BY MR. CLAYCOMB:

7 Q Since Mr. Swensky's testimony has any
8 further work been done on determining the
9 alternative of other than combined cycle gas fired
10 generating plant?

11 A No.

12 Q Well, then --

13 A We have not expanded our alternatives
14 testimony beyond that which is in FSA part one
15 under the discussion of renewables.

16 Q And your supplemental testimony?

17 A And Mr. Swensky's testimony, yes.

18 Q Okay. Well, then I have a question.
19 Nowhere in his -- I think it was about two and a
20 half pages of his testimony did he mention,
21 compare the cost of fuel looking into the future?
22 Fuel for photovoltaics and the fuel for a gas
23 fired power plant. Why didn't he make that
24 analysis?

25 HEARING OFFICER GEFTER: Mr. Claycomb,

1 that question is beyond the scope of this witness'
2 testimony. That is a question you could have
3 asked Mr. Swensky.

4 MR. CLAYCOMB: Well, I think at the end
5 of the last meeting, Ms. Gefter, I said that Save
6 Our Bay, Inc. wasn't satisfied with the
7 alternative section. So somebody should answer
8 that question.

9 HEARING OFFICER GEFTER: Okay, Ms.
10 Allen, do you have a comment?

11 MS. ALLEN: It is beyond the scope of
12 the supplemental testimony that Mr. Layton and I
13 prepared on the alternative sized projects.

14 Please let Ms. Gefter know if you would
15 like to recall Mr. Swensky.

16 MR. CLAYCOMB: Yes, I would like to do
17 that.

18 HEARING OFFICER GEFTER: Mr. Claycomb,
19 at this point Mr. Swensky had completed his
20 testimony. You can send us, when you have the
21 opportunity to brief your concerns regarding
22 alternatives you may send us your views on that
23 topic.

24 MR. CLAYCOMB: Well, I'll put it in the
25 brief. But there's another item, too. Nobody has

1 considered the fact that the price of
2 photovoltaics is likely to come down.

3 HEARING OFFICER GEFTER: Also you may
4 put that in your brief, as well.

5 MR. CLAYCOMB: In my brief, okay. Well,
6 then there was one other remaining issue which we
7 mentioned at the end of our last evidentiary
8 hearing on the 21st.

9 And that was the definition of an air
10 contaminant pollutant.

11 HEARING OFFICER GEFTER: That's with
12 respect to the topic of public health and we're
13 not on that right now, we're on alternatives.

14 At this point do you have any questions
15 with respect to Ms. Allen's testimony today?

16 MR. CLAYCOMB: No, not with respect to
17 Ms. Allen.

18 HEARING OFFICER GEFTER: Thank you. The
19 witness may be excused.

20 The next topic is with respect to the
21 rebuttal testimony filed by Mr. Filippi and the
22 rebuttal testimony of Mr. Weatherwax in response
23 to Mr. Caldwell's testimony.

24 We're going to go off the record here to
25 talk about how we're going to proceed. Off the

1 record.

2 (Off the record.)

3 MR. HANSCHEN: Peter Hanschen for Otay
4 Mesa. The relevance of this testimony I tried to
5 describe when I made my presentation at the
6 beginning of the hearing, is it's rebuttal
7 testimony that specifically addresses two major
8 points.

9 The first point is that the effect of
10 Otay Mesa will have the effect of blocking access
11 to imports and displacing energy available from
12 the east through the southwest power link on
13 approximately a one-to-one basis once you get past
14 a threshold amount.

15 Mr. Filippi demonstrates that. In fact,
16 that is about the case.

17 Secondly is the second major point, and
18 there are some subcategories that fall within that
19 basic rubric that are specifically addressed to
20 the testimony that was offered by Mr. Weatherwax
21 and Mr. Rubenstein on the 19th and 20th of
22 November.

23 The second basic major point is that the
24 witnesses for Cabrillo had testified that Otay
25 Mesa will make it more likely that Encina and

1 South Bay will have to burn fuel oil is Mr.
2 Filippi, in his rebuttal testimony, takes issue
3 with that, and demonstrates that is not the case.

4 The fuel oil burns will, in fact, be
5 less. That the megawatts generated will, in fact,
6 be greater, redounding to the benefit of both air
7 quality concerns and to the consuming public.

8 HEARING OFFICER GEFTER: With limiting
9 Mr. Filippi's testimony to those items, you may
10 proceed with direct testimony.

11 MR. GOLDMAN: Just to clarify the
12 procedure, are we to understand that Mr. Filippi
13 will submit his rebuttal testimony, and that there
14 will then be the opportunity for Cabrillo to
15 discuss the relevancy of the surrebuttal testimony
16 by Mr. Weatherwax? Because it directly --

17 HEARING OFFICER GEFTER: You will --

18 MR. GOLDMAN: -- goes to what --

19 HEARING OFFICER GEFTER: -- you will
20 first have the opportunity to cross-examine Mr.
21 Filippi if you desire to. And you can also tell
22 us about the surrebuttal testimony at that time.

23 MR. GOLDMAN: Okay, I'll do the latter,
24 because I have no cross-examination.

25 MR. HANSCHEN: Applicant would like to

1 call Mr. James Filippi, please.

2 HEARING OFFICER GEFTER: Mr. Filippi was
3 sworn previously and remains under oath.
4 Whereupon,

5 JAMES FILIPPI
6 was recalled as a witness herein and having been
7 previously duly sworn, was examined and testified
8 further as follows:

9 DIRECT EXAMINATION

10 BY MR. HANSCHEN:

11 Q Would you state your name for the
12 record, please?

13 A James Filippi.

14 MR. HANSCHEN: Ms. Gefter, may I have
15 marked as the applicant's next exhibit in order
16 the rebuttal testimony of James Filippi.

17 HEARING OFFICER GEFTER: That testimony
18 has been marked as exhibit 99, actually, on the
19 exhibit list that was circulated earlier.

20 MR. HANSCHEN: Thank you. Might I say
21 just for the record, Ms. Gefter, is that it's my
22 understanding from Mr. Thompson is that the last
23 page of the rebuttal testimony of Mr. James
24 Filippi may not have been received by some of the
25 parties. And that fax copies were presented to

1 them prior to this hearing. And we apologize for
2 any inconvenience that may have caused.

3 HEARING OFFICER GEFTER: And I actually
4 need a copy of that.

5 MS. LUCKHARDT: Could you please clarify
6 what the last page is, so that I know whether I
7 have a complete copy?

8 MR. HANSCHEN: It's the page with the
9 question-and-answer 8 on it.

10 MS. DUNCAN: This is intervenor Holly, I
11 did not receive it completed. I only received
12 three pages. I didn't get the whole thing.

13 HEARING OFFICER GEFTER: The applicant
14 will send you a complete copy.

15 MS. DUNCAN: Thank you.

16 BY MR. HANSCHEN:

17 Q Mr. Filippi, do you have exhibit 99
18 before you?

19 A Yes, I do.

20 Q Do you have any corrections or additions
21 to exhibit 99?

22 A Yes, I have a few. Question 5, the
23 first line. The word "included" should be
24 stricken.

25 In the answer to question 7, the third

1 line from the bottom of the page there, it says:

2 Label 2000 case one. Should be labeled, e-d.

3 On the next page, the second line, where
4 it says: Generators at 80 percent should be
5 generators to 80 percent.

6 And on the fifth line change "output
7 increase" to "output increased".

8 Q Mr. Filippi, with those corrections, --

9 MR. GOLDMAN: If I may clarify, what was
10 the very first correction? I didn't get that.

11 MR. FILIPPI: It was question 5, first
12 line, strike the word "included."

13 BY MR. HANSCHEN:

14 Q Mr. Filippi, with those corrections do
15 you adopt exhibit 99 as your sworn testimony in
16 this proceeding?

17 A I do.

18 MR. HANSCHEN: Mr. Filippi is available
19 for cross-examination.

20 HEARING OFFICER GEFTER: Does staff have
21 cross-examination?

22 MR. OGATA: Staff has no questions.

23 HEARING OFFICER GEFTER: Cabrillo, do
24 you have any cross-examination?

25 MR. GOLDMAN: I have no cross-

1 examination of Mr. Filippi, but given the fact
2 that the last page was just made available today,
3 that incorporates about half of the answer to
4 question number 7. And so, Cabrillo would request
5 the opportunity to, at a later time, perhaps when
6 Mr. Layton is made available on this issue, to ask
7 either submit -- incorporate surrebuttal
8 testimony, assuming that Mr. Weatherwax's
9 surrebuttal testimony is admitted today.

10 Or alternatively, to ask Mr. Filippi
11 questions regarding the chart that is referenced
12 evidently in the answer to question number 7.

13 MR. HANSCHEN: Well, Ms. Gefter, we
14 would really like to wrap up the gas supply
15 portion of this issue.

16 If it -- first of all, this material
17 was -- we apologize for it not being sent in
18 Friday. It was, in fact, provided over the
19 weekend by fax to the parties in this case.

20 And it's relatively short. It should
21 have been apparent, in fact, because there was a
22 hanging sentence on the third page, that there was
23 something missing here.

24 The chart, in fact, explains most of the
25 material here. And so if that would be the case,

1 I'd really like is perhaps Mr. Filippi just to
2 read, if necessarily, this into the record, or to
3 give the parties five minutes to look at it and
4 cross-examine on it.

5 But, --

6 PRESIDING MEMBER LAURIE: Mr. Hanschen,
7 we'll do the latter. If Mr. Goldman wants five
8 minutes to read it, he can have five minutes to
9 read it. Meanwhile, let's move on to the other
10 parties and see if they have any other questions.
11 We'll come back to you, Mr. Goldman.

12 MR. GOLDMAN: Thank you.

13 HEARING OFFICER GEFTER: Ms. Luckhardt,
14 do you have any questions of Mr. Filippi?

15 MS. LUCKHARDT: Just a couple.

16 CROSS-EXAMINATION

17 BY MS. LUCKHARDT:

18 Q Mr. Filippi, in your response to
19 question 2, you indicate that Otay Mesa could sell
20 its power outside of San Diego, is that correct?

21 A That's correct.

22 Q And then --

23 A Same as any resource.

24 Q And then that power then would move
25 east, as opposed to west into San Diego, is that

1 the way that would go?

2 A Power flows will change as a result of
3 the plant operating. Power flows as it will
4 according to the laws of physics. So it has
5 opportunities to flow north and east.

6 Q Okay, so in your response to question 2,
7 are you talking about contract amounts or actual
8 power flows?

9 A I'm talking about contract, mainly about
10 the contract amounts, that I think the key issue
11 here is that entities that want to buy power from
12 outside San Diego that have preferred sources
13 outside San Diego, there is nothing in the
14 operation relating to Otay Mesa that would prevent
15 them in the future from purchasing from those same
16 sources in the amounts that they do today.

17 Q And isn't it true that there's a
18 constraint coming west from Miguel into San Diego?
19 There's a transmission constraint there?

20 A There are -- all transmission lines
21 represent constraints, so, yes, there is a
22 constraint there. There are constraints lots of
23 other places in San Diego.

24 Q So then isn't it true that there is a
25 limitation on the amount of power that can come

1 across that line?

2 A The same as any line, there is a
3 limitation.

4 Q And so isn't it true that if Otay Mesa's
5 power is coming into San Diego, that that would
6 limit the amount of power that could come from the
7 east across that same line?

8 A I don't see what the relevance of that
9 is. Otay Mesa will sell its power to loads, and
10 the power will flow as it does. It's not going to
11 schedule power or send power over the line to
12 Miguel. The power flows on the line to Miguel are
13 related to what the loads are in San Diego. How
14 the loads are distributed. What the dispatch of
15 all the generators is in San Diego. And to some
16 extent, outside San Diego, as well.

17 So, it's not an individual action that
18 Otay Mesa would do, would be to send power over
19 the Miguel line.

20 Q Okay, so then -- I'm sorry, I'm not
21 understanding. Are you talking about -- you're
22 talking about a contract flow now, not an actual
23 flow, right?

24 A I'm talking about actual flows, as well.
25 Otay Mesa, when it generates, it just turns up the

1 megawatts. It doesn't do anything to send power
2 over the lines out of Miguel to the west.

3 Q Okay, so all it does is send out
4 electrons, and you have stated that there's a
5 limit on the amount of electrons or however you
6 correctly talk about power coming across that
7 line, from Miguel into San Diego.

8 So, isn't it true that with Otay Mesa
9 there, that either power generated by Otay Mesa
10 comes into San Diego by the electron flow, or the
11 power from say Palo Verde comes in that way?

12 MR. HANSCHEN: I'll object to the
13 premise of the question. He stated any
14 transmission line has a constraint. He never
15 stated specifically on that line.

16 MS. LUCKHARDT: I believe he has said
17 that that line has a constraint.

18 MR. HANSCHEN: I'll let the record
19 speak; and I'll let my objection stand.

20 HEARING OFFICER GEFTER: The applicant's
21 objection is so noted.

22 BY MS. LUCKHARDT:

23 Q So where do the electrons flow from Otay
24 Mesa?

25 HEARING OFFICER GEFTER: I'm sorry,

1 that's a very vague question. Could you be more
2 specific, please?

3 MS. LUCKHARDT: Well, what I'm trying to
4 get at is that if there is a -- he's trying to
5 say --

6 BY MS. LUCKHARDT:

7 Q I believe it's your statement that there
8 isn't a one-for-one trade between Otay Mesa and
9 say power coming from the east, is that correct?

10 A That is correct; there is no one-for-one
11 trade.

12 Q There is no one-for-one trade because
13 Otay Mesa can send power elsewhere, is that
14 correct? Is that the basis for that conclusion?

15 A No, that's not the basis for that
16 conclusion. The basis for the conclusion is that
17 the facility studies have shown that Otay Mesa can
18 generate at full power and San Diego can
19 simultaneously receive full imports.

20 Q Now, --

21 A That has been demonstrated by the
22 facility study, so that is another basis for
23 saying that Otay Mesa will not displace imports
24 from the east.

25 Q Okay, but you're using that based upon

1 the special facilities study. Can you show me
2 where in the special facilities study that the
3 line from Palo Verde is not reduced when Otay Mesa
4 is at full output?

5 HEARING OFFICER GEFTER: I have a
6 question, Ms. Luckhardt. Isn't -- what you're
7 asking the witness is beyond his rebuttal
8 testimony. I believe he may have testified to
9 this in his direct, --

10 MS. LUCKHARDT: Well, he's --

11 HEARING OFFICER GEFTER: -- but it seems
12 to be --

13 MS. LUCKHARDT: -- he has --

14 HEARING OFFICER GEFTER: -- beyond the
15 purpose of this rebuttal testimony, and doesn't
16 add anything additional to our record.

17 MS. LUCKHARDT: He has indicated that
18 there's no one-for-one trade for power coming in
19 from Otay Mesa and from power sources to the east.

20 It is my understanding that that is
21 based upon power flows going a different
22 direction. I just want to clarify what that's
23 based upon.

24 HEARING OFFICER GEFTER: If you can
25 answer -- if you understand the question, you can

1 answer it.

2 MR. FILIPPI: Could you repeat the
3 question?

4 BY MS. LUCKHARDT:

5 Q My question was in looking at the
6 special facility study conducted on which you
7 based your past answer, where does it show that
8 the imports from the east, from Palo Verde, are
9 not reduced when Otay Mesa is at maximum capacity?

10 HEARING OFFICER GEFTER: Are you asking
11 the witness what page he looked at?

12 MS. LUCKHARDT: Yes, he says it's based
13 upon that, and I can't find it in there. And so
14 I'm asking him where that is.

15 HEARING OFFICER GEFTER: Perhaps you
16 could do this off the record. Do you want to look
17 at it -- is this --

18 MR. FILIPPI: Imports are not reduced
19 when Otay Mesa is at full power, yes. I can go to
20 that. Matter of fact, it was included in my
21 testimony.

22 BY MS. LUCKHARDT:

23 Q I was saying are imports from the east,
24 from that line, reduced when Otay Mesa is on full
25 capacity. Not imports, generally. Imports on

1 that line, where is that shown?

2 A Well, it's imports -- yes, I can show
3 you where it shows that imports are at the full
4 limit that San Diego assumed for this study.

5 And so I would say that if imports are
6 at the full limit, they are likely at the full
7 limit for that line, as well as for San Diego in
8 general.

9 San Diego's import capability, as
10 assumed by San Diego in this study, was 2850
11 megawatts. And clearly on page 6, 5 and 6 of the
12 study, it treats how 2850 can be delivered into
13 San Diego at the same time that Otay Mesa is
14 generating maximum power.

15 You can look at the figure 2 in the
16 study and it shows there are a number of ways
17 where you can have full output at Otay Mesa and
18 full imports from the southeast -- southwest,
19 excuse me.

20 Q Okay, I'm looking at the data response
21 from San Diego Gas and Electric that was filed in
22 this proceeding, and I believe attached to the
23 testimony of either Mr. Montoya or I can't
24 remember which one testified on the electric
25 system.

1 And I'm curious if you could take a look
2 at that and tell me how those southwest imports
3 would not be reduced. I'm looking at appendix
4 A --

5 A I believe that --

6 Q -- the nomogram.

7 A Yes. I really believe that that
8 appendix is irrelevant. It is not going to be
9 consistent with the circumstances which will exist
10 at the time Otay Mesa is interconnected.

11 In the facility study San Diego
12 investigated some problems on their transmission,
13 purported problems on their transmission west of
14 Miguel. They proposed three solutions to deal
15 with those problems, options A, option B and
16 option F.

17 Of those option F is a very simple
18 solution mitigation measure. It would include a
19 remedial action scheme, what's called a remedial
20 action scheme.

21 And it would, for a very rare double --
22 simultaneous double line outage out of Miguel, it
23 would trip the generation at Otay Mesa.

24 So that is just I think the minimal
25 things that would be done to deal with those

1 problems in San Diego.

2 San Diego Gas and Electric, the ISO and
3 the stakeholders are also in San Diego's annual
4 transmission planning procedure, investigating,
5 deliberating on which of those options would be
6 installed to treat these problems in San Diego.

7 The problem with this diagram is that it
8 assumes that nothing will be done to address those
9 problems, not even the remedial action scheme
10 option F. So that's why I disagree with
11 consideration of this appendix at all, that is
12 relevant to the situation.

13 Q And doesn't the remedial action scheme
14 then require that Otay Mesa turn down its
15 generation? Isn't that how that works?

16 HEARING OFFICER GEFTER: Ms. Luckhardt,
17 it sounds like you are trying to rewrite the
18 facility study, and we already had testimony from
19 the Cal-ISO representative on their recommendation
20 to the Commission.

21 Are you asking us to second guess Cal-
22 ISO?

23 MS. LUCKHARDT: Oh, no, absolutely not.
24 I have no complaint with what the Cal-ISO has
25 filed. I simply want to make sure that I

1 understand the full basis for Mr. Filippi's claim
2 that there's not a one-to-one tradeoff, because it
3 is my understanding that the way that system
4 works, that that may not be the case.

5 HEARING OFFICER GEFTER: You're welcome
6 to disagree with the witness, but I think we need
7 to move on. You've already asked him that
8 question several times.

9 Do you have additional questions?

10 BY MS. LUCKHARDT:

11 Q Mr. Filippi, in your testimony you talk
12 about cases A, B and F. Isn't it true that cases
13 A and B require transmission line upgrades?

14 A Options A and B?

15 Q Options A and B, I'm sorry.

16 A Yes, they do.

17 Q And have any of those been approved at
18 this point?

19 A They are all -- well, they are under
20 consideration in San Diego's ongoing annual
21 transmission assessment process, so there have
22 been no decisions reached on what will be
23 implemented.

24 At one time, actually in the last report
25 that San Diego issued for this option, the key

1 element of option B was included in the plan.
2 That is the line, new transmission line from
3 Miguel to Mission 230 kV line.

4 There is some discussion ongoing, I have
5 to admit, whether that would -- San Diego will or
6 will not do that. But, it is under consideration.

7 Q And at this point it's my understanding
8 that Otay Mesa is not paying more, including for
9 any of those -- or any additional upgrades in its
10 project definition, is that correct?

11 A That's correct. Those reinforcements
12 are to deal with previous conditions that are not
13 related to Otay Mesa.

14 Q In your analysis you indicate that there
15 are minimum generation levels required at Encina
16 and South Bay, is that correct? Under
17 different --

18 A According --

19 MR. HANSCHEN: Can you refer him to --

20 BY MS. LUCKHARDT:

21 Q Okay, it's the answer to question 5 on
22 unnumbered page 3. Is --

23 A Yes.

24 Q -- that correct? Were Otay Mesa to
25 operate at a relatively high level at night, would

1 that require supporting generation within the
2 basin from Encina and South Bay?

3 A Generation -- I guess I have to disagree
4 with the whole premise of the question. The
5 generation, Encina and South Bay do not support
6 Otay Mesa. They do provide support to the
7 transmission system in the San Diego area, as they
8 do today.

9 So whether Otay Mesa operates or not,
10 there are times where generation has to operate at
11 Encina and South Bay.

12 Q Okay, could you look at page 6 of the
13 special facility study that has the indication of
14 South Bay minimum dispatch levels. And I'm
15 curious how your response coincides with what
16 seems to be an increase in generation of South Bay
17 as the generation at Otay Mesa increases?

18 A My response is that the critical factor
19 is what are the dispatch requirements at South Bay
20 today under these conditions. The critical, and I
21 think the telling thing to do is to look at this
22 2000 megawatt import line.

23 These are more the levels of what South
24 Bay would have to run at without Otay Mesa.
25 They're very high.

1 Q Okay, then I guess I'm not understanding
2 why then the numbers go up as the Otay Mesa
3 generation goes up?

4 A They don't always go up. There's some
5 of those lines where they go down.

6 Q And in your response to question 6,
7 isn't it true that your curtailment scenarios
8 include curtailing cogen resources?

9 A Yes, they assume that all resources
10 would be curtailed pro rata.

11 Q And is that consistent with rule 14?

12 A I do not know rule 14.

13 Q Okay, so you don't know whether or not
14 that's consistent?

15 A No.

16 Q Are you familiar with Public Utilities
17 Code section 454.7?

18 A Not by number, no.

19 Q Okay, thank you.

20 MS. LUCKHARDT: No further questions.

21 MS. DUNCAN: This is Holly and we lost
22 all of that down here.

23 HEARING OFFICER GEFTER: You didn't hear
24 the questioning?

25 MS. DUNCAN: No. Didn't hear the

1 question, didn't hear the answer.

2 SPEAKER: I believe we did. It's just
3 that sometimes nobody's saying anything and
4 therefore you don't hear anything.

5 HEARING OFFICER GEFTER: That's --

6 MS. DUNCAN: No, it was slipping in and
7 out and Jane was talking --

8 PRESIDING MEMBER LAURIE: Okay, we'll --

9 HEARING OFFICER GEFTER: We'll ask
10 everyone to speak right into the microphone. Ms.
11 Luckhardt, could you turn off your mike, please.

12 Does Cabrillo now have questions of Mr.
13 Filippi?

14 MR. GOLDMAN: No, I have no cross-
15 examination questions, per se, other than I would
16 like to address the issue of admitting Mr.
17 Weatherwax's surrebuttal testimony into the
18 record.

19 PRESIDING MEMBER LAURIE: Not at this
20 point, Mr. Goldman, let's finish with Mr. Filippi
21 right now.

22 MR. GOLDMAN: I understand. But I just
23 wanted to make it clear that that's what this was.

24 MR. HANSCHEN: I have one question on
25 redirect.

1 HEARING OFFICER GEFTER: Okay, and I
2 understand that staff has no questions of this
3 witness. Go ahead.

4 REDIRECT EXAMINATION

5 BY MR. HANSCHEN:

6 Q Mr. Filippi, when you were talking about
7 the remedial action you indicated that it would
8 cover very rare instances of a double line outage,
9 is that correct?

10 A That's correct.

11 Q Give us a sense of magnitude when you
12 say very rare, what type of frequency is that?

13 A I think it would be something probably
14 on the order of once every ten years or more, very
15 ballpark. A single line outage would be probably
16 on the order of something like once every year or
17 two or three.

18 To have both circuits go out at the same
19 time would -- could be very rare, even less than
20 once every ten years.

21 Q Thank you.

22 MR. HANSCHEN: That's all the questions
23 I have.

24 HEARING OFFICER GEFTER: Okay, the
25 witness may be excused, as there is no additional

1 cross-examination. Thank you.

2 MR. HANSCHEN: At this time the
3 applicant would move into evidence exhibit 99.

4 HEARING OFFICER GEFTER: Is there any
5 objection from any party on admitting exhibit 99
6 into the record?

7 MR. GOLDMAN: Well, Cabrillo would
8 object to the extent that there's no resolution on
9 the issue of whether or not the surrebuttal
10 testimony is admitted. Because to the extent that
11 the surrebuttal testimony is not admitted, which
12 we believe is the most efficient way to get on the
13 record Cabrillo's response to Mr. Filippi's
14 rebuttal testimony, I suppose I would ask that he
15 be recalled and I could ask him in question form
16 the surrebuttal testimony of Mr. Weatherwax, and
17 ask Mr. Filippi if he agrees or disagrees with
18 that.

19 MR. HANSCHEN: Well, may I address this?
20 Counsel has to make these decisions all the time
21 on whether he's going to cross-examine or do it
22 through written testimony.

23 And counsel has chosen a path. I would
24 move the admission of this exhibit.

25 MR. GOLDMAN: I think in the interests

1 of making the record --

2 HEARING OFFICER GEFTER: Mr. Goldman,
3 you made a choice not to cross-examine the
4 witness. We're going to admit exhibit 99 into the
5 record. And you may have an opportunity to offer
6 your surrebuttal testimony.

7 There is no other objection to exhibit
8 99, it is now received into the record.

9 Next, Mr. Goldman had requested to offer
10 surrebuttal testimony which he had not presented
11 to us until today. And we had requested
12 everything be submitted as of December 1st.

13 Mr. Goldman.

14 MR. GOLDMAN: Thank you. And by way of
15 clarification, you are correct, we did submit it
16 today, Monday, December 3 (sic), because we
17 received the rebuttal testimony of Mr. Filippi on
18 Friday, December 1, so we submitted it as soon as
19 we could.

20 There is no dispute between the
21 applicant and Cabrillo as to the substance and
22 purpose for Mr. Filippi's rebuttal testimony, both
23 of which deal with regional air quality issues
24 which this Committee's November 28th order on its
25 evidentiary ruling expressly states that the issue

1 of natural gas by the proposed project, to the
2 extent that it could result in gas curtailment to
3 existing plants, which could, in fact, have an
4 impact on regional air quality is relevant to this
5 proceeding.

6 The second issue that the applicant
7 expressly stated was that Mr. Filippi's rebuttal
8 testimony states that, ironically from Cabrillo's
9 perspective, the operation of the proposed project
10 would make it more likely that -- I'm sorry, less
11 likely that gas curtailments would occur with the
12 happy result that, in fact, Encina and South Bay
13 would actually have to burn less fuel oil than
14 otherwise, without the existence of the Otay Mesa
15 project.

16 That's either true or it's not true.
17 That would be a salutary result if it were true,
18 we all agree with that.

19 Our --

20 PRESIDING MEMBER LAURIE: Mr. Goldman,
21 let me stop you, let me stop you right there. Let
22 me ask Mr. Hanschen, Mr. Hanschen have you had an
23 opportunity to read the proposed testimony by Mr.
24 Weatherwax?

25 MR. HANSCHEN: Yes. The surrebuttal

1 testimony, yes; and the rebuttal testimony.

2 PRESIDING MEMBER LAURIE: That's
3 correct. Understanding that this surrebuttal
4 testimony represents additional disagreement among
5 experts, do you have anything specific in what
6 you've read that you feel a necessity to cross-
7 examine on?

8 MR. HANSCHEN: No. But I would simply
9 ask the experts to address it, and I'd ask Mr.
10 Filippi to give his opinion of this surrebuttal
11 testimony.

12 PRESIDING MEMBER LAURIE: Well, this
13 surrebuttal testimony is in response to Mr.
14 Filippi's testimony, is it not?

15 MR. HANSCHEN: Correct.

16 PRESIDING MEMBER LAURIE: And we have to
17 call an end to it.

18 MR. HANSCHEN: I think applicant has the
19 right to open and close, though, and I'd ask the
20 right to close.

21 MR. GOLDMAN: If I may respond to that,
22 Commissioner Laurie, you've got it right on the
23 nail, it's additional disagreement between
24 experts. That's why, rather than have me spar
25 with Mr. Filippi, it's, I think, better on the

1 record to have Mr. Weatherwax respond directly.

2 In terms of when will this end, that's a
3 legitimate question. Under title 20, section
4 1748(f), as the intervenor, Cabrillo has the
5 burden of making a reasonable showing to support
6 the need for the conditions that it would like to
7 have imposed on the project.

8 So we should close because we have the
9 burden here, not the applicant.

10 HEARING OFFICER GEFTER: We're going to
11 identify the surrebuttal testimony as exhibit 104.
12 And we're going to receive it into the record,
13 noting Mr. Hanschen's concern again. We are going
14 to end the discussion of this topic. We've heard
15 from everybody's witness at least twice on this
16 subject. And we're going to move on. So, exhibit
17 104 is now received into the record.

18 We have one final rebuttal testimony
19 that was submitted by Cabrillo, Mr. Weatherwax's
20 rebuttal to Mr. Caldwell. And that is marked as
21 exhibit 100. Has everyone received a copy of
22 that? Okay.

23 Rather than having Mr. Weatherwax
24 testify, what I would ask Mr. Hanschen, since he
25 sponsored Mr. Caldwell, whether you have any

1 cross-examination based on your reading of this
2 testimony?

3 MR. HANSCHEN: I think it goes beyond
4 Mr. Caldwell's testimony and uses this as an
5 opportunity to jump off and, quote, give general
6 impressions of the witness as the need for fuel
7 oil will not be significantly increased.

8 If it was true rebuttal of Mr.
9 Caldwell's testimony, it probably would have only
10 been the first two questions.

11 MR. GOLDMAN: If I may respond to that,
12 the rebuttal testimony responds not only to the
13 preprepared testimony that Mr. Caldwell initially
14 offered, but also his testimony on the record on
15 November 21 where he discussed at greater length
16 certain issues.

17 PRESIDING MEMBER LAURIE: Gentlemen, the
18 Committee will give due weight to the relevancy
19 contained in the responses.

20 HEARING OFFICER GEFTER: Is there any
21 cross-examination from Ms. Luckhardt on this, or
22 from staff?

23 MR. OGATA: Staff has no cross.

24 HEARING OFFICER GEFTER: Okay, we're
25 going to admit exhibit 100 into the record at this

1 time.

2 We're going to go off the record for a
3 moment.

4 (Off the record.)

5 HEARING OFFICER GEFTER: Mr. Goldman.

6 MR. GOLDMAN: It might be helpful, Mr.
7 Weatherwax tells me that he spoke with the
8 representative of Encina, who told him what the
9 oil burning was --

10 HEARING OFFICER GEFTER: Well, that
11 would be hearsay, --

12 MR. GOLDMAN: Yeah, well, --

13 HEARING OFFICER GEFTER: -- too, so it
14 wouldn't be very -- I'd rather hear directly from
15 the Encina --

16 MR. GOLDMAN: All right.

17 HEARING OFFICER GEFTER: --
18 representative, and he submitted a declaration.

19 MR. HANSCHEN: Actually, as counsel can
20 clarify something in the declaration, or
21 supplemental declaration, whether it was for all
22 of the megawatts generated during that time, also.

23 MS. LUCKHARDT: Well, that's a really
24 interesting question, because RMR calls are in
25 addition to what's previously scheduled. And so

1 the RMR only covers the additional amount that the
2 ISO needs to stabilize the system.

3 So, you can't say that we were only
4 called for 200 and we were generating at 400.
5 That's an inaccurate statement of what the RMR
6 calls.

7 MR. HANSCHEN: I understand that, but
8 perhaps you can tell us which amount you were
9 called for RMR and what was your total oil burn in
10 terms of megawatts. I mean that's what the
11 critical issue is, were you burning --

12 MS. LUCKHARDT: But that still doesn't
13 answer the whole question because if we had
14 scheduled 400 on and they needed 600, so they
15 would call for RMR another 200. So the full 600
16 is really what's required to stabilize the system.

17 MR. HANSCHEN: Yes, but if you were
18 burning oil for 200 to begin with, and got called
19 for another 200, and you're burning the equivalent
20 of 400 megawatts of oil to generate 400 megawatts,
21 then we would know, in fact, that you were
22 generating for commercial purposes with oil.

23 MS. LUCKHARDT: But see, that's where
24 you're missing the way the RMR calls are done, and
25 the way the RMR scheduling is done. Because they

1 only call what they need in addition to what we're
2 already generating.

3 MR. HANSCHEN: I understand that, and
4 all I want to know is whether --

5 MS. LUCKHARDT: And so what you're
6 saying, you want to split it and say that whatever
7 we scheduled is not considered RMR, and that's
8 incorrect. If we hadn't scheduled that 200, we
9 would have been called for 400.

10 DR. WEATHERWAX: That could be supported
11 by the generation that was being experienced by
12 the CTs for Cabrillo. All of the CTs were on line
13 for a total of about 270 hours that first day.
14 And they would never ever have been on line except
15 that the boilers were asked to be on line to the
16 full extent of their possibility. The economics
17 are so bad for the CTs that that would never
18 happen. So that establishes the need for an RMR
19 call for anything beyond that which was already
20 bid into the market.

21 PRESIDING MEMBER LAURIE: Okay, ladies
22 and gentlemen, what we're going to do is this
23 information was requested by the Committee. Part
24 of the information requested by the Committee
25 appears to be available.

1 To the extent that additional
2 information is sought by the Committee, the
3 Committee will specifically ask --

4 HEARING OFFICER GEFTER: On the record.

5 PRESIDING MEMBER LAURIE: -- information
6 sought by -- and can be submitted by declaration.
7 We haven't determined what those additional
8 questions are at this point.

9 HEARING OFFICER GEFTER: We're going to
10 move on and discuss the exhibit list, and the
11 documents that we're going to receive into the
12 record.

13 Start with staff, ask you to identify
14 the exhibits that you wish to move into the
15 record.

16 MR. OGATA: Ms. Gefter, we have passed
17 out exhibit 43, which is the Otay Mesa Water
18 District's will-serve letter. We did that today.
19 If there's no objection to that we should have
20 that moved into the record.

21 And we also have exhibit 64 and exhibit
22 65 which is staff's final assessment part one,
23 which is 64, and staff's final assessment part
24 two, which is exhibit 65.

25 Exhibit 74, which is staff's additional

1 testimony and errata filed on November 9th. And
2 exhibit 97, which is staff's supplemental
3 testimony on alternatives and traffic filed
4 November 20th.

5 So we would move all those exhibits into
6 the record.

7 We have Mr. Layton's exhibit 103, which
8 we will probably still need to circulate. So we
9 can move that into the record at the time that the
10 proceedings are closed on that particular piece of
11 testimony.

12 HEARING OFFICER GEFTER: Okay. Are
13 there any objections to exhibits 43, 64, 65, 74
14 and 97 being received into the record?

15 Hearing no objection, those documents
16 are now received into the record.

17 We'll hold on exhibit 103 until Mr.
18 Layton has completed his testimony.

19 I believe the applicant also has a
20 number of exhibits that you wish to move into the
21 record.

22 MR. THOMPSON: We do. We actually have
23 two more witnesses that will take about a minute
24 each, as far as cleanup.

25 HEARING OFFICER GEFTER: With respect to

1 what item?

2 MR. THOMPSON: One of the witnesses is
3 Bill Chilson. There is a portion of his testimony
4 that has not been entered yet, and the other is I
5 was going to put on Sharon Segner to adopt the
6 conditions of certification.

7 HEARING OFFICER GEFTER: That's fine.

8 MR. THOMPSON: May I do that?

9 HEARING OFFICER GEFTER: Yes.

10 MR. THOMPSON: Applicant would like to
11 call Mr. Bill Chilson.

12 Mr. Chilson, you have been previously
13 sworn?

14 MR. CHILSON: Yes.

15 Whereupon,

16 WILLIAM CHILSON

17 was recalled as a witness herein and having been
18 previously duly sworn, was examined and testified
19 further as follows:

20 DIRECT EXAMINATION

21 BY MR. THOMPSON:

22 Q Am I correct that you submitted a
23 response to issues raised by Ms. Holly Duncan, and
24 those responses are contained in exhibit 75 to
25 this proceeding?

1 A I believe that's correct.

2 Q And second of all, at our last set of
3 hearings the question was asked and a discussion
4 ensued regarding the availability of reclaimed
5 water to the site.

6 Have you had occasion to have any
7 further conversations on that issue? And if so,
8 would you put that information into the record.

9 A Yes, I've had a conversation with the
10 Otay Water District, with a gentleman named
11 Charlie Cassins, who has been participating in
12 this proceedings.

13 He informed me that reclaimed water is
14 not currently available at the site. There's no
15 pipelines out to Otay Mesa with it. He said that
16 those pipelines are planned, and that they would
17 be available in five to ten years.

18 Q Thank you, Mr. Chilson. Finally, am I
19 correct that you are lead environmental for the
20 applicant?

21 A This is correct.

22 Q And in that capacity you had an
23 oversight role for the biology section. And the
24 reason for this question, sir, is I ask that you
25 sponsor exhibit 96 which is the recent section 404

1 filing, and exhibit 87 which is the avoidance of
2 biology habitat. Is that correct, that you had
3 that role?

4 A That's correct, those were prepared
5 under my direction.

6 Q Thank you.

7 MR. THOMPSON: Applicant would like to
8 move in exhibits 87, the avoidance of biology
9 habitat; and 96, the section 404 application.

10 HEARING OFFICER GEFTER: Is there any
11 objection to exhibit 87 and 96 being received into
12 the record?

13 Hearing no objection, those documents
14 are now made part of the record.

15 MR. THOMPSON: Thank you. Would it
16 please the Committee to put Ms. Segner on now?

17 HEARING OFFICER GEFTER: Yes.

18 MR. THOMPSON: Thank you very much.
19 Applicant would like to call Sharon Segner. Ms.
20 Segner has been previously sworn.
21 Whereupon,

22 SHARON SEGNER
23 was recalled as a witness herein and having been
24 previously duly sworn, was examined and testified
25 further as follows:

1 DIRECT EXAMINATION

2 BY MR. THOMPSON:

3 Q Ms. Segner, what is your role with
4 regard to the Otay Mesa project?

5 A I'm responsible for developing the
6 project and bringing it to financial closing.

7 Q And in that capacity have you, and also
8 engineering and environmental expertise under your
9 direction, reviewed the conditions of
10 certification and verification thereto advanced by
11 staff in various documents in this proceeding?

12 A Yes, I have.

13 Q And on behalf of the applicant do you
14 accept those conditions and verifications on
15 behalf of the Otay Mesa project?

16 A Yes, we accept the conditions.

17 Q Thank you very much.

18 MR. THOMPSON: I don't know if there are
19 any questions for Ms. Segner.

20 HEARING OFFICER GEFTER: Are there
21 questions for Ms. Segner? The witness may be
22 excused.

23 MR. THOMPSON: Thank you. With that,
24 applicant would like to move exhibit 1, the AFC;
25 exhibit 75, except we would not include in that

1 the document prepared by Mr. Carroll, and the
2 testimony of Mr. Caldwell; exhibit 66, and I think
3 that does it, into the record.

4 HEARING OFFICER GEFTER: Exhibit 66?

5 MR. THOMPSON: I think 66 was a set of
6 factual corrections to the -- I'm sorry, that's
7 not mine.

8 (Laughter.)

9 MR. THOMPSON: I'll move it anyway,
10 Jeff, if you'd like.

11 (Laughter.)

12 MR. THOMPSON: Well, with that I would
13 like to move exhibit 1, 75 with the deletions as
14 mentioned, and 77.

15 MS. LUCKHARDT: I just have one
16 question. Could you identify what Mr. Carroll's
17 document is so I know when I look at that.

18 MR. THOMPSON: It's a --

19 MS. DUNCAN: It's exhibit 70, it's Holly
20 Duncan's exhibit.

21 HEARING OFFICER GEFTER: Which number?

22 MS. DUNCAN: 70.

23 MR. THOMPSON: That is your exhibit. I
24 did not mention that.

25 MS. DUNCAN: Yes, you did, you said 70

1 and 77.

2 MR. THOMPSON: Okay, so I did. I made a
3 mistake. The material from Mike Carroll is that
4 material that's contained on his letterhead and
5 attached to that letterhead.

6 HEARING OFFICER GEFTER: Thank you. Is
7 there objection to exhibit 1, 75 and 77 being
8 received into the record?

9 Hearing no objection those documents are
10 now part of the record. Thank you.

11 Cabrillo, you had offered several
12 documents during the course of hearings. Do you
13 want to move those into the record at this point?

14 MR. GOLDMAN: Yes, and as indicated by
15 the listing, Cabrillo requests -- bear with me
16 while I just check those documents that have
17 already been admitted versus those that have not.

18 And it seems that there's only one for
19 Cabrillo, which is exhibit 92, a letter from Cal-
20 ISO to the CPUC, dated August 7.

21 HEARING OFFICER GEFTER: Is there any
22 objection to exhibit 92 being received? Hearing
23 no objection, exhibit 92 is now part of the
24 record.

25 Also for the record, exhibit 102, which

1 is the comments of San Diego County Air Pollution
2 Control District -- is there somebody on the phone
3 from the Air District any more? I don't believe
4 they are.

5 We're going to accept that into the
6 record, and if they aren't sponsoring it, the
7 Committee will sponsor it. So that will be 102.

8 There are also a few documents that
9 SDG&E was sponsoring. And they're not here to
10 move it, so we'll be in touch with them, and
11 expect to accept their documents into the record.

12 MR. THOMPSON: Ms. Gefter, we, if it is
13 permissible to the Committee, I would propose that
14 we can stipulate by counsel the admission of the
15 SDG&E documents. We've discussed them in hearings
16 and all.

17 HEARING OFFICER GEFTER: That's correct,
18 that's fine. Is there any objection to any of the
19 SDG&E filings? I'll have to go through here and
20 pull the numbers, and I'll state them for the
21 record in a moment.

22 MR. OGATA: Staff has no objections.

23 HEARING OFFICER GEFTER: Thank you. I
24 believe 76 is SDG&E's response to the OII, dated
25 November 22nd. Is there any objection to that

1 being received? Hearing no objection, exhibit 76
2 is now part of the record.

3 I believe there was one, in fact, that
4 you mentioned earlier, Mr. Thompson, number 66,
5 which is -- I believe that SDG&E presented a
6 witness on this. And those corrections were
7 accepted. So is there any objection to exhibit 66
8 being received? Hearing no objection, exhibit 66
9 is part of the record.

10 That's all I can -- I'll ask the parties
11 to look through the exhibit list and identify any
12 exhibits that haven't been received.

13 Was exhibit 98, Mr. Thompson, the
14 supplemental traffic study? I know we talked
15 about it, but I don't remember if it was moved or
16 not.

17 MR. THOMPSON: Yes, I believe it was
18 moved by Mr. Smith.

19 HEARING OFFICER GEFTER: All right, Mr.
20 Smith was testifying?

21 MR. THOMPSON: Yes.

22 HEARING OFFICER GEFTER: All right. For
23 the record exhibit 98 is part of the record. Just
24 to be sure.

25 And then we accepted 99 and 100.

1 And then, Ms. Luckhardt, if you want to
2 talk about 101?

3 MS. LUCKHARDT: We'd like to move 101
4 into the record. It is a declaration that I
5 assumed was in response to the Committee's
6 question regarding the number of times that the
7 South Bay Power Plant has been curtailed.

8 We unfortunately are only able to
9 provide declarations since Duke has started
10 operating the plant on April 23, 1999.

11 And because of the records and the
12 central control of San Diego Gas and Electric we
13 do not have plant records that would have been
14 kept by San Diego past that operating date.

15 HEARING OFFICER GEFTER: All right. Is
16 there --

17 MS. LUCKHARDT: Or prior to --

18 HEARING OFFICER GEFTER: -- objection to
19 exhibit 101? Hearing no objection, that is
20 received into the record.

21 Also, Ms. Luckhardt, the information we
22 discussed previously with respect to curtailment
23 at South Bay, we wanted information as to whether
24 it was due to RMR contract -- we talked about that
25 earlier. We would like to have additional

1 information on that by declaration, which would be
2 served on all the parties.

3 And the same goes for Encina.

4 Are there any other exhibits that we've
5 missed on the list that we're using right now, or
6 any exhibits anyone wants to propose at this time?
7 Mr. Thompson.

8 MR. THOMPSON: The only one that I know
9 of is an intentional miss. I would point out that
10 exhibit 85 is the testimony of Mr. Caldwell, and
11 we agreed in the San Diego hearings that we would
12 not put that forward. So that will remain a blank
13 spot.

14 HEARING OFFICER GEFTER: All right.

15 Thank you, Mr. Ogata. I'm reminded that
16 exhibit 41 has not been moved into evidence, and
17 is sponsored by us. These are comments to the
18 preliminary staff assessment. I would move
19 exhibit 41 at this time.

20 HEARING OFFICER GEFTER: Is there any
21 objection to exhibit 41 being received? Hearing
22 no objection, exhibit 41 is made part of the
23 record.

24 We're going to move on. We have some
25 other items for today. One is the schedule for

1 the rest of this proceeding.

2 We had indicated that Cabrillo would
3 have an opportunity to cross-examine Mr. Layton on
4 his supplemental testimony.

5 Is there going to be any other cross-
6 examination? Ms. Luckhardt, would you have cross-
7 examination of Mr. Layton based on his testimony
8 that you crossed him today?

9 MS. LUCKHARDT: At this time I don't
10 have any further questions. I would like to take
11 another read on that, but I don't anticipate it
12 would be extensive, if I would.

13 HEARING OFFICER GEFTER: Okay.

14 PRESIDING MEMBER LAURIE: Ms. Gefter,
15 let me ask you, I would not anticipate extensive
16 cross-examination of Mr. Layton by any party. Can
17 this be done through some mechanism other than a
18 continued hearing?

19 HEARING OFFICER GEFTER: That would
20 certainly be -- by stipulation of counsel, it
21 would certainly expedite the process.

22 MR. THOMPSON: We would agree to such a
23 procedure. We think the issues are very confined.
24 We think this is the only remaining air quality
25 item, and we would encourage an abbreviated

1 procedure like that.

2 HEARING OFFICER GEFTER: Mr. Goldman.

3 MR. GOLDMAN: Well, we certainly will
4 look forward to working to expedite any cross-
5 examination there might be of Mr. Layton. I would
6 agree, I don't anticipate extensive cross-
7 examination. But in connection with the issue of
8 air quality we do disagree that this is the only
9 outstanding issue, as we indicated in a letter to
10 the Committee, and copied to all parties here, we
11 are requesting as part of our opportunity to
12 present the offer of proof that Mr. Varanini
13 issued last week in response to the Committee's
14 questions --

15 PRESIDING MEMBER LAURIE: What's your
16 response to the proposal that questions be
17 propounded to Mr. Layton within a given period of
18 time and response in writing?

19 MR. GOLDMAN: We would agree with that.

20 PRESIDING MEMBER LAURIE: Ms. Gefter,
21 will you be able to administer that appropriately
22 through an order?

23 HEARING OFFICER GEFTER: We will do
24 that. We will include that in an order just as we
25 were going to set some sort of timeframe for the

1 City of San Diego to agree on the traffic
2 mitigation.

3 And what we would anticipate is that you
4 would submit a set of questions for Mr. Layton to
5 answer, and that the answers would be submitted
6 within a certain time. And that would be the end
7 of that exercise.

8 Those were the only two items that we
9 have remaining in this proceeding. And we also
10 had indicated in our schedule that we would accept
11 opening briefs. And our original date was
12 December 11th, which is one week from today.

13 We also have items that we would like to
14 see briefed, and we will indicate those to you.
15 And we'll talk about the December 11th is one week
16 from today, whether that would give the parties
17 enough time to submit their briefs.

18 Mr. Thompson.

19 MR. THOMPSON: Plenty of time.

20 HEARING OFFICER GEFTER: Okay.

21 MR. GOLDMAN: We can't do it a week from
22 today.

23 MS. LUCKHARDT: I think from Duke's
24 perspective, while we don't want to hold up the
25 hearing process, it's nice, especially when you're

1 giving us oral comments on additional things you'd
2 like, to be able to read the transcript prior to
3 responding.

4 HEARING OFFICER GEFTER: Well, the
5 transcript is on expedite, so hopefully we will
6 have it to the parties. But we can't promise
7 when. Usually goes on line as soon as we get it.

8 I'm going to read to you the areas that
9 we would like to see briefed, and also have copies
10 for everyone, so you don't have to write it down.
11 Also we'll be sending this to the parties who are
12 listening on the phone. There may not be enough
13 for everybody, Jeff, so give them to counsel.
14 Thank you.

15 All right, the areas that we would like
16 to see briefed are the following:

17 Considering the evidence in the record,
18 discuss the scope of the Commission's legal
19 authority to determine electric grid reliability
20 issues.

21 Number two, based on the evidence of
22 record discuss whether, and if so how often, Otay
23 Mesa's requirements for natural gas will result in
24 a curtailment of gas to Encina and South Bay, and
25 result in concurrent force majeure fuel burns.

1 Number three, potential cumulative
2 impacts to regional air quality resulting from
3 Encina and South Bay force majeure fuel burns
4 caused by Otay Mesa's demand for natural gas.

5 Four, possible conditions of
6 certification to prevent potential impacts to
7 regional air quality in the event of force majeure
8 fuel oil burns by Encina and South Bay.

9 Five, assuming the speculative nature of
10 predicting force majeure fuel oil burns, discuss
11 the applicability of CEQA and the CEQA guidelines
12 to this exercise.

13 And finally, the applicability of Public
14 Resources Code section 25525 to the issues
15 delineated above.

16 And those are the issues that we are
17 looking for.

18 PRESIDING MEMBER LAURIE: Ms. Gefter,
19 let me ask you for a clarification of what our
20 intention is regarding the briefing. You may
21 comment to the evidence in the record.

22 When I look at these questions I'm
23 interested in the legal issues surrounding them.

24 Are you looking for a closing factual
25 argument, that is picking out pieces of evidence

1 in the record and making the argument? Or are you
2 looking for a legal argument surrounding the
3 issues?

4 I have a sense of what I'm looking for.
5 Let me ask you to make sure we're on the same
6 page.

7 HEARING OFFICER GEFTER: Yes, I would,
8 of course, agree with Commissioner Laurie,
9 particularly that the briefing be limited to the
10 evidence of record, with references to either the
11 transcript or to exhibits, and the portions of
12 exhibits that you are relying on. We don't want
13 to go outside the evidence of record.

14 We also are looking for legal argument
15 based on the record.

16 PRESIDING MEMBER LAURIE: Let me ask for
17 additional clarification. We're not looking for
18 an appellate brief with recitation to specific
19 page numbers and verbatim testimonial comments.
20 Or are we? What are you looking for?

21 Because I'm not inclined to get a 300-
22 page brief. That's not what I'm looking for. And
23 I --

24 HEARING OFFICER GEFTER: I don't think
25 any of us want to see that.

1 PRESIDING MEMBER LAURIE: -- I don't
2 want the parties to get the idea they have to read
3 every page of the written record at this point in
4 order to file their closing legal briefs.

5 HEARING OFFICER GEFTER: What I would
6 like to see is references to the record if factual
7 statements are made. And that would be very
8 helpful, not only to this Committee in reviewing
9 the record, looking at the legal argument, but
10 also it would be helpful to all the parties.

11 But, as Commissioner Laurie has said, we
12 don't want a 300-page brief by any means. Let's
13 stick to the evidence in the record, and try to be
14 as concise as possible.

15 In terms of the date for this brief, --

16 MR. GOLDMAN: May I seek clarification
17 based on the discussion? Cabrillo very much
18 appreciates these items, and we think that they're
19 entirely relevant and instructive for this
20 proceeding.

21 Particularly though, item number 2 and
22 number 3 do indicate that the discussion on
23 curtailment of gas to existing plants and the
24 impact on regional air quality would be based on
25 evidence of record.

1 And that leads back to the issue that
2 Cabrillo has raised most recently in its December
3 1 letter to the Committee in terms of our request
4 that the evidentiary record be kept open as to the
5 discrete issues to be raised by Cabrillo's offer
6 of proof based on the two questions that were
7 raised at the evidentiary hearing by the Committee
8 Members.

9 Because otherwise the problem is there
10 is, we think, a spotty evidentiary record, given
11 that we are currently undertaking modeling, Mr.
12 Weatherwax is, that is, in terms of the types of
13 more specific data that would give some very
14 concrete, we hope, answers to these issues.

15 HEARING OFFICER GEFTER: We're not going
16 to open the record for more evidence. Mr.
17 Weatherwax had an opportunity to present his
18 testimony.

19 And the only testimony that we will hold
20 the record open for is any cross-examination that
21 Cabrillo may have of Mr. Layton. And that will be
22 done by submitting questions to Mr. Layton, and he
23 will respond.

24 And we need to schedule a date for the
25 briefing.

1 MR. GOLDMAN: So for clarification
2 purposes, the Committee has rejected the request
3 of Cabrillo, as expressed in its December 1, 2000
4 letter?

5 HEARING OFFICER GEFTER: Yes.

6 MR. GOLDMAN: Thank you.

7 HEARING OFFICER GEFTER: I understand
8 the need to look at the transcript. We have
9 transcripts for every hearing except for today's.
10 And hopefully we'll be able to get that in a few
11 days.

12 We could give you a few more days past
13 Monday, December 11th, on this brief.

14 MR. CLAYCOMB: How about a week?

15 HEARING OFFICER GEFTER: Who's speaking?

16 MR. CLAYCOMB: Save our Bay.

17 HEARING OFFICER GEFTER: Who is that?

18 Who?

19 MR. CLAYCOMB: Save our Bay.

20 HEARING OFFICER GEFTER: Oh, Mr.
21 Claycomb. Thank you. Would the attorneys be able
22 to get the briefs to us by Friday of that week,
23 which is, I believe, the 15th? Is that the 15th
24 or the 16th?

25 MS. ALLEN: Friday is the 15th.

1 PRESIDING MEMBER LAURIE: The 15th.

2 HEARING OFFICER GEFTER: By December
3 15th, close of business.

4 MR. GOLDMAN: While no one enjoys
5 ruining one's weekend, logistically it might be a
6 lot easier for us to be able to just submit it the
7 following Monday.

8 HEARING OFFICER GEFTER: At 9:00 a.m.

9 MR. GOLDMAN: -- be 10:00 or noon?

10 (Laughter.)

11 HEARING OFFICER GEFTER: All right,
12 we'll give you till December 18th, Monday,
13 December 18th at 9:00 a.m., we're open for
14 business here. And also served on all the
15 parties.

16 MS. ALLEN: Ms. Gefter.

17 HEARING OFFICER GEFTER: Yes.

18 MS. ALLEN: I think it would be helpful
19 if you would let me know of a date that I can pass
20 on to the City of San Diego. At this point they
21 owe us comments on the supplemental traffic study.

22 In my last conversation with the City
23 Staff I said that we needed the comments during
24 the week of December 11th. But if I could tell
25 them that you are waiting for them no later than a

1 certain date, that would help us.

2 HEARING OFFICER GEFTER: I don't believe
3 anyone's planning to brief the issue on traffic,
4 right?

5 MS. ALLEN: That's right.

6 HEARING OFFICER GEFTER: All right.
7 What date would you prefer?

8 MS. ALLEN: Well, I would say the end of
9 the week that I told him.

10 HEARING OFFICER GEFTER: Okay, we need
11 it by December 15th.

12 MS. ALLEN: Yes.

13 HEARING OFFICER GEFTER: Thank you. And
14 that's on the record for the City of San Diego
15 traffic study group.

16 Are there any other items before we
17 close?

18 MR. GOLDMAN: I would just like
19 clarification. The briefing that's due on the
20 18th is the comments to the record. Does that
21 include the six items that were --

22 HEARING OFFICER GEFTER: Yes.

23 MR. GOLDMAN: -- submitted for
24 additional briefing?

25 HEARING OFFICER GEFTER: Yes. In fact,

1 that's the reason that we gave you the six items
2 is because that would be the focus of your
3 briefing.

4 And December 15th we need the comments
5 back from the City of San Diego on traffic.

6 We also need the declarations from both
7 Encina and South Bay on the most recent
8 curtailment events. And if you have information
9 on any previous curtailment events that have
10 occurred in the last ten years, if you can get
11 that information for us.

12 We also need to know whether those
13 curtailments were due to RMR contract, calls by
14 the Cal-ISO.

15 PRESIDING MEMBER LAURIE: Let's provide
16 specific time deadlines for those, Ms. Gefter.

17 HEARING OFFICER GEFTER: We need -- I
18 was, yes. We need those by December 15th, also.

19 And with respect to the timing on
20 questioning Mr. Layton, we're going to have that
21 as a very expedited process. If Cabrillo can
22 submit your cross-examination to Mr. Layton by the
23 end of tomorrow.

24 MR. GOLDMAN: Well, could we receive the
25 finalized --

1 MS. DUNCAN: Procedural question. This
2 is Holly.

3 HEARING OFFICER GEFTER: Yes.

4 MS. DUNCAN: I mean I thought we were
5 talking about --

6 MS. DUNCAN: Okay, could you -- Ms.
7 Duncan, could you hold a minute?

8 MS. DUNCAN: -- a draft report, not --

9 HEARING OFFICER GEFTER: Ms. Duncan.

10 MS. DUNCAN: Yes.

11 HEARING OFFICER GEFTER: Please hold a
12 minute. Mr. Goldman had a question, and then
13 we'll go to you.

14 MR. GOLDMAN: I was anticipating that
15 one side receive the final version of exhibit 103.
16 I would very quickly turn around any cross-
17 examination questions that Cabrillo might have for
18 Mr. Layton.

19 HEARING OFFICER GEFTER: Mr. Layton
20 indicated he would have it completed by tomorrow,
21 is that correct?

22 MR. OGATA: That's correct.

23 HEARING OFFICER GEFTER: Okay. As soon
24 as it's completed he will submit it to you the
25 quickest way possible, probably email. And then

1 you can turn around and file your questions. And
2 let's have all of that done by the end of this
3 week, which would be again the -- the end of this
4 week is, what's the last day, Friday -- 8th,
5 December 8th. The responses from Mr. Layton will
6 be back -- it will be done and circulated to the
7 parties, and then docketed.

8 MS. ALLEN: Those would be the parties'
9 questions to Mr. Layton.

10 HEARING OFFICER GEFTER: Mr. Layton's
11 responses.

12 MS. ALLEN: Mr. Layton's responses would
13 be due --

14 HEARING OFFICER GEFTER: And Mr. Goldman
15 then would provide his questions, if any, close of
16 tomorrow, after you receive the document?

17 MR. GOLDMAN: Assuming that we get the
18 document sometime in the A.M.

19 MS. ALLEN: Yes. Well, --

20 HEARING OFFICER GEFTER: This can be
21 worked out between you. But we want the answers
22 by December 8th.

23 MS. ALLEN: Yes.

24 HEARING OFFICER GEFTER: Thank you.

25 Okay, Ms. Duncan.

1 MS. DUNCAN: I guess you've answered all
2 the questions. I just -- it was my understanding
3 this was all preliminary modeling based on what
4 Mr. Layton said today. And it's unclear to me,
5 I'm getting a copy of a draft. I don't know when
6 the final document --

7 HEARING OFFICER GEFTER: He indicated it
8 would be ready tomorrow.

9 MS. DUNCAN: -- deadline based on the
10 draft, it sounds like, rather than his finished
11 document.

12 MS. ALLEN: Holly, Matt Layton --

13 MS. DUNCAN: I'm confused.

14 MS. ALLEN: Holly, this is Eileen Allen.
15 Matt Layton has said that he plans to finish the
16 draft that he distributed today tomorrow. We'll
17 be pressing him to finish it in the morning. So
18 then it can go out to you via fax, and
19 electronically to the other parties.

20 Mr. Claycomb, do you want to receive Mr.
21 Layton's final supplement?

22 MR. CLAYCOMB: I'd like to see it, yes.

23 MS. ALLEN: I'll have to --

24 MR. CLAYCOMB: Put it in the mail.

25 MS. ALLEN: I'll have to work it out

1 with you about how to get it to you.

2 HEARING OFFICER GEFTER: Okay, we can
3 take care of that off the record.

4 Are there any other questions from any
5 of the parties at this point?

6 Okay, the record will be closed now
7 except for the items on the traffic mitigation --

8 MS. DUNCAN: I have one more question on
9 the briefs. This is Holly.

10 HEARING OFFICER GEFTER: Okay, let me
11 just finish. And the answers of Mr. Layton to
12 Cabrillo's interrogatories. And that would be it.

13 Okay, Mr. Thompson, and then Ms. Duncan.

14 MR. THOMPSON: Will the questions and
15 responses be served on all parties?

16 HEARING OFFICER GEFTER: Yes, they
17 should be.

18 MR. THOMPSON: Thank you.

19 HEARING OFFICER GEFTER: Ms. Duncan.

20 MS. DUNCAN: Your brief is restricted to
21 issues of rule 69?

22 HEARING OFFICER GEFTER: I don't know
23 where you got that idea. The items that we had
24 stated, we would like to see the briefs focused on
25 those items. You may brief anything you wish.

1 But those six items would be a focus for the
2 parties.

3 MS. ALLEN: Holly, we'll have to
4 assemble a package for you that will include the
5 Committee's briefing items that was just
6 distributed this afternoon here. So, we'll gather
7 up everything that we've received here and fax it
8 out to you. That will be tomorrow.

9 MS. DUNCAN: How many pages is it?

10 HEARING OFFICER GEFTER: Okay, we can do
11 this off the record, Holly. You can speak to
12 Eileen as soon as we close.

13 MS. DUNCAN: Okay.

14 HEARING OFFICER GEFTER: All right. The
15 record is now closed except for the items I
16 mentioned earlier. And the hearing is adjourned.
17 Off the record.

18 (Whereupon, at 5:06 p.m., the hearing
19 was adjourned.)

20 --o0o--

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Hearing, nor in any way interested in the outcome of said Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of December, 2000.

