

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification ) Docket No.  
for the Palomar Energy Project ) 01-AFC-24  
by Semptra Energy Resources )  
\_\_\_\_\_ )

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

TUESDAY, APRIL 8, 2003

10:05 a.m.

Reported by:  
Peter Petty  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John L. Geesman, Presiding Member

William J. Keese, Chairman, Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Susan Gefter, Hearing Officer

Rick Buckingham, Advisor to Chairman Keese

STAFF and CONSULTANTS PRESENT

Paul A. Kramer, Jr., Staff Counsel

Bob Eller, Project Manager

Laiping Ng

Eileen Allen

Steve Baker

PUBLIC ADVISER

Roberta Mendonca

Sunita Magin

APPLICANT

Joseph H. Rowley, Vice President

Taylor O. Miller, Attorney,

Yraida Marin, Paralegal

Raymond P. Kelly, Permitting Manager

John J. Barta, Manager

Sempra Energy

Arrie Bachrach, Program Manager, Consultant

ENSR International

INTERVENORS

Cory Briggs, Attorney on behalf of

William Powers

ALSO PRESENT

Scott Blaising, Attorney  
Braun & Associates  
Special Counsel to City of Escondido

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## I N D E X

	Page
Proceedings	1
Opening Remarks	1
Presiding Member Geesman	1
Introductions	1
Public Adviser	5
Overview	6
Motions/Objections	7
Applicant	8,13
Intervenor Powers by Mr. Briggs	9
CEC Staff	11
Topics	25
Project Description; Facility Design; Power Plant Efficiency; Plant Reliability	25
Applicant witness J. Rowley	25
Direct Examination by Mr. Miller	26
Project Description	29
Questions by Committee	32
Facility Design, Power Plant Efficiency, Power Plant Reliability by declaration	34
Exhibits	34/36
CEC Staff witness B. Eller	38
Exhibits	37/39
Questions by Committee	38
Transmission System Engineering and Transmission Line Safety and Nuisance	40
Applicant witness J. Rowley	40
Direct Examination by Mr. Miller	40
Questions by Committee	41
Exhibits	42/44

## I N D E X

	Page
Topics - continued	
Transmission System Engineering and Transmission Line Safety and Nuisance - cont'd.	
CEC Staff witness L. Ng	45
Direct Examination by Mr. Kramer	45
Questions by Committee	47
Exhibits	52/53, 55
Geological/Paleontological Resources	53
Applicant testimony by declaration	53/55
Exhibits	53/55
Exhibits	55/56
CEC Staff witness declarations	56
Exhibits	56/57
Cultural Resources	57
Applicant testimony by declaration	57
Exhibits	57/59
CEC Staff Exhibits	59/59
Hazardous Materials	60
Applicant testimony by declaration	61
Questions by Committee	61
Exhibits	61/67
CEC Staff Exhibits	68/69
Waste Management	69
Applicant testimony by declaration	70
Exhibits	70/71
CEC Staff Exhibits	72/72
Traffic and Transportation	72
Applicant testimony by declaration	73
Exhibits	73/77
Questions by Committee	74

## I N D E X

	Page
Afternoon Session	92
Topics - continued	
Traffic and Transportation - continued	
CEC Staff exhibit 51A	92/96
CEC Staff witness E. Allen	93
Direct Examination by Mr. Kramer	93
Questions by Committee	94
Noise and Vibration	100
Applicant testimony by declaration	101
Exhibits	101/101
CEC Staff Exhibit	101/101,112
Questions by Committee	102
CEC Staff witness S. Baker	108
Direct Examination by Mr. Kramer	109
Questions by Committee	111
Socioeconomics	103
Applicant testimony by declaration	104
Exhibits	104/104
CEC Staff Exhibit	104
Worker Safety and Fire Protection	105
Applicant testimony by declaration	105
Exhibits	105/105
CEC Staff Exhibit	105/105
Compliance and Closure	105
Applicant testimony by declaration	106
Exhibit	106/106
CEC Staff Exhibit	106/107
Questions by Committee	107
Adjournment	114
Reporter's Certificate	115

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

10:05 a.m.

PRESIDING MEMBER GEESMAN: Good morning.

My name is John Geesman; I am a member of the State Energy Commission that has been assigned to be the Presiding Member on the Committee considering the Palomar Energy project sponsored by Sempra Energy.

To my immediate right is Susan Gefter, the Hearing Officer for the proceeding. To her right is Chairman Bill Keese, Chairman of the Energy Commission and the Second Member of this Committee. And to his right is Rick Buckingham, his Advisor.

This is the Committee's formal evidentiary hearing on the project. The hearing is being conducted today in Sacramento as a teleconference so that parties who could not travel to Sacramento could participate via our toll free phone number.

As we go through the introductions we'll identify those individuals who are participating by phone. I should note that we will have additional hearings in Escondido later this month.

And with that I'll turn it over to

1 Hearing Officer Gefter.

2 HEARING OFFICER GEFTER: I do want to  
3 note this is the evidentiary hearing on the  
4 Palomar Energy project that is sponsored by Sempra  
5 Energy. And at this point I'd like the parties to  
6 introduce themselves, starting with the applicant,  
7 Sempra Energy.

8 MR. MILLER: Thank you. I'm Taylor  
9 Miller, counsel to Sempra Energy, Sempra Energy's  
10 Legal Department. And I'll ask my colleague to my  
11 right, Mr. Rowley, to introduce himself.

12 MR. ROWLEY: I'm Joe Rowley with Sempra  
13 Energy Resources. I'm Vice President of Asset  
14 Management, and also the Director of the Palomar  
15 Energy project.

16 MR. MILLER: I'll just note that we have  
17 some additional members of our team present so  
18 you'll know who they are. Directly behind me is  
19 Raymond Kelly who is the Permitting Manager for  
20 the project, with Sempra Energy. Next to him is  
21 Arrie Bachrach, who is one of the principal  
22 members of the consultant team that has been  
23 supporting us from ENSR.

24 And to his right is Mr. Scott Blaising,  
25 who is Special Counsel to the City of Escondido.

1 And perhaps we could discuss their role at some  
2 appropriate point when we talk about some  
3 housekeeping matters that I'd like to raise for  
4 the next round of hearings in Escondido.

5 And behind him is Mr. John Barta, who is  
6 the Project Manager for the project. You may  
7 recall that Mr. Bob Jackson of Sempra was the  
8 Project Manager for most of the middle age of this  
9 project. Bob was called to active duty in the  
10 Navy due to the current situation in the Mideast,  
11 and so John has been taking over duties for the  
12 last several months.

13 And I believe that, if I'm not  
14 mistaken -- paralegal from my office, Yraida Marin  
15 is behind me -- and I believe that includes all of  
16 our team present.

17 HEARING OFFICER GEFTER: Thank you very  
18 much, Mr. Miller. I also wanted to thank Mr.  
19 Blaising because before we went on the record Mr.  
20 Blaising helped set up the room. We appreciate  
21 your help.

22 Staff.

23 MR. KRAMER: I'm Paul Kramer, the Staff  
24 Counsel for the staff in this case. And go ahead  
25 and introduce yourself, Bob.

1 MR. ELLER: Bob Eller, Staff Project  
2 Manager.

3 HEARING OFFICER GEFTER: Are there any  
4 other members of staff who may be participating  
5 today?

6 MR. ELLER: Laiping Ng is with us; she's  
7 our transmission specialist.

8 HEARING OFFICER GEFTER: Could you spell  
9 her name for the reporter?

10 MR. ELLER: Laiping.

11 MS. NG: L-a-i-p-i-n-g, Laiping, Ng,  
12 N-g.

13 HEARING OFFICER GEFTER: On the  
14 transmission system issues. Thank you.

15 MR. KRAMER: We're not expecting her to  
16 testify unless there's a question.

17 HEARING OFFICER GEFTER: Okay. And, Mr.  
18 Briggs.

19 MR. BRIGGS: This is Cory Briggs of  
20 (inaudible) Corporation; I'm the attorney for Bill  
21 Powers.

22 HEARING OFFICER GEFTER: Thank you. And  
23 Mr. Powers will not be participating today, is  
24 that right?

25 MR. BRIGGS: That's correct.

1 HEARING OFFICER GEFTER: And you're  
2 representing him, as he's the intervenor?

3 MR. BRIGGS: That's correct.

4 HEARING OFFICER GEFTER: Thank you. And  
5 is there anyone from CURE or Cabrillo Energy on  
6 the comline? No, all right. Those are the other  
7 two intervenors, and they have not been  
8 participating to date, and we have not -- we don't  
9 expect to see them today.

10 Are there any representatives of public  
11 agencies on the phone from the City of Escondido?  
12 Nobody that we know, okay. Other than Mr.  
13 Blaising is here representing the City. Thank  
14 you.

15 And our Commission's Public Adviser,  
16 Roberta Mendonca. Roberta is here. And are you  
17 aware of any members of the public or other  
18 agencies that will be participating today?

19 MS. MENDONCA: No. I was able to inform  
20 you about Mr. Powers, and that was the extent that  
21 had notified my office.

22 HEARING OFFICER GEFTER: Thank you very  
23 much.

24 MS. MENDONCA: Thank you. If I had an  
25 opportunity to introduce the newest member who is

1 responsible for a lot of the paperwork that's been  
2 presented this morning, is Sunita Magin, who has  
3 joined my staff.

4 HEARING OFFICER GEFTER: And would you  
5 spell her name for the reporter, please?

6 MS. MENDONCA: Spell her name?

7 S-u-n-i-t-a M-a-g-e-a-n.

8 HEARING OFFICER GEFTER: And, Ms. Magin,  
9 thank you very much for --

10 MS. MENDONCA: -- g-i-n.

11 HEARING OFFICER GEFTER: -- g-i-n --  
12 thank you very much for assisting the Public  
13 Adviser and copying voluminous documents that we  
14 received from Intervenor Bill Powers. Thank you  
15 very much.

16 And those documents have been docketed  
17 and they've been served on the applicant and on  
18 staff at this point, correct?

19 MS. MAGIN: That's correct.

20 HEARING OFFICER GEFTER: Thank you. All  
21 right.

22 The AFC review process is a public  
23 proceeding and members of the public may offer  
24 public comment after the presentation of evidence  
25 on all the topics.

1           We expect at our hearings in Escondido  
2           that members of the community, members of the  
3           public will be participating, and we've set aside  
4           time for them to make public comment when we are  
5           in Escondido on April 28th.

6           The purpose of today's hearing is to  
7           receive documentary evidence and sworn testimony  
8           to establish the factual record necessary to reach  
9           a decision on the AFC filed by Sempra.

10           This is a formal evidentiary hearing.  
11           Witnesses will testify under oath or affirmation  
12           and are subject to cross-examination. The  
13           reporter will administer the oath when we get to  
14           that point.

15           The applicant and staff have submitted  
16           sworn witness declarations on topics that are not  
17           in dispute. We discussed those topics at the  
18           prehearing conference on March 13th of this year.  
19           And the parties agreed to waive cross-examination  
20           on uncontested testimony submitted by declaration.

21           The parties may offer any motions or  
22           objections regarding testimony, cross-examination  
23           or other procedural issues at this time. I  
24           understand that there has been some dialogue  
25           between the applicant and the intervenor, Mr.

1 Powers, regarding cross-examination of witnesses.

2 And if you have any issues or concerns  
3 regarding that at this time, we'd want to hear  
4 about it. So we'll ask Mr. Miller to go first,  
5 and then we'll hear from Mr. Briggs.

6 MR. MILLER: Okay, thank you. I believe  
7 we've worked out an arrangement to deal with an  
8 issue that was raised with regard to the  
9 proceeding by declaration with witness Breese,  
10 Jacqueline Breese, who's listed as one of the soil  
11 and water witnesses.

12 It was our expectation --

13 HEARING OFFICER GEFTER: Could you spell  
14 her name for the reporter?

15 MR. MILLER: B, as in boy, -r-e-e-s-e.  
16 And we were expecting to proceed by declaration  
17 for her and viewing witnesses Rowley and Hoagland  
18 as our primary witnesses for the contested portion  
19 of water.

20 Mr. Briggs expressed the interest in  
21 cross-examining Ms. Briggs (sic) on an issue that  
22 we didn't know what that was. So we have  
23 communicated, both by email and on the phone, and  
24 it's my understanding, as of yesterday, that we  
25 haven't -- well, we have an understanding of the

1 topic that Mr. Briggs is interested in asking  
2 about. And we have a possible plan that we're  
3 still going to be working out this week for that  
4 topic to be handled possibly through another  
5 witness.

6 So, right at this point the only  
7 difficulty is since we did assume that she was not  
8 going to be a live witness, it turns out that she  
9 has an unbreakable prior commitment to be in Texas  
10 the week of the 28th. She would be available by  
11 phone, however, in the afternoon on the 28th.

12 So our fallback would be, if it seems  
13 appropriate to proceed by cross on her, is that  
14 she could participate by phone. So the  
15 arrangement we have is that Mr. Briggs is going to  
16 further clarify the issue he's interested in  
17 eliciting from her, and we're going to then see  
18 which of those two paths is agreeable to us.

19 HEARING OFFICER GEFTER: Okay. Mr.  
20 Briggs.

21 MR. BRIGGS: I think Mr. Miller has  
22 effectively captured it. I told him yesterday  
23 that I would get back to him by the end of this  
24 week with what issues I wanted to do cross on.

25 If it turns out that there's a witness

1 better suited for those questions we'll simply  
2 proceed then.

3 HEARING OFFICER GEFTER: All right, so  
4 as I understand, the applicant and the intervenor  
5 will come to some agreement on cross-examination  
6 of a particular witness on the water quality  
7 issues that Mr. Briggs would like to have  
8 information on.

9 And if there's going to be a phone  
10 arrangement the applicant will arrange for that  
11 for the witness to call in.

12 MR. MILLER: Correct. And --

13 HEARING OFFICER GEFTER: And you will  
14 let the Committee know what the resolution of this  
15 issue is?

16 MR. MILLER: Yes, I will.

17 HEARING OFFICER GEFTER: By the end of  
18 the week, which would mean Friday of this week.

19 MR. MILLER: Right.

20 HEARING OFFICER GEFTER: Thank you.

21 MR. MILLER: And we don't, by the way,  
22 need to have the issues spelled out -- I say this  
23 over the phone to Mr. Briggs -- in great detail.  
24 Just the general topics is adequate for us. And I  
25 think we've pretty much covered that already, so

1 it should --

2 HEARING OFFICER GEFTER: Okay, so we'll  
3 move on --

4 MR. MILLER: -- be fine.

5 HEARING OFFICER GEFTER: -- if there  
6 aren't any other questions regarding cross-  
7 examination or any other changes in the witness  
8 schedule at this time.

9 MR. KRAMER: We actually have a --

10 HEARING OFFICER GEFTER: Mr. Kramer.

11 MR. KRAMER: -- couple issues. One  
12 relates to water. Our witness, Joe Crea, is, as I  
13 understand, no longer employed with the consultant  
14 Aspen Group. And unless he is absolutely needed  
15 we would prefer to avoid the expense and  
16 difficulty of bringing him down for the hearing.  
17 We don't need him to offer any rebuttal testimony  
18 or anything of that nature. And Richard Latteri,  
19 our remaining water witness, we believe could  
20 handle all the questions.

21 So I wanted to just discuss that with  
22 the other parties and make sure that would not  
23 cause any difficulty.

24 HEARING OFFICER GEFTER: Would you  
25 please spell Joe Crea's name, and also Richard's

1 name?

2 MR. KRAMER: Crea is C-r-e-a; and  
3 Richard Latteri, L-a-t-t-e-r-i. They're both on  
4 your outline of witnesses.

5 HEARING OFFICER GEFTER: Yes. So you're  
6 suggesting that Mr. Latteri would be able to  
7 present your direct testimony, --

8 MR. KRAMER: Carry the load.

9 HEARING OFFICER GEFTER: -- your  
10 rebuttal testimony, and could be available for  
11 cross-examination.

12 MR. KRAMER: Right.

13 HEARING OFFICER GEFTER: And that you  
14 don't need the testimony of Mr. Crea.

15 MR. KRAMER: Right.

16 HEARING OFFICER GEFTER: That's fine if  
17 that's your choice.

18 MR. KRAMER: And then along --

19 HEARING OFFICER GEFTER: Now, I wanted  
20 to ask, Mr. Briggs, did you have any cross-  
21 examination question for Mr. Crea?

22 MR. BRIGGS: I don't have any at this  
23 time. I think as long as there's a competent  
24 witness on the issues we don't have a problem with  
25 foregoing Mr. Crea.

1 HEARING OFFICER GEFTER: Okay, thank  
2 you.

3 MR. KRAMER: And then under  
4 alternatives, we noticed -- we had the same  
5 situation with Mr. Crea. Mr. Latteri's on there,  
6 as far as the water aspects of that go. We  
7 noticed, though, that the table did not include  
8 the name of one of the witnesses that we had  
9 listed in our prehearing conference statement.  
10 And that's Jim Schoonmaker. And that's spelled S-  
11 c-h-o-o-n-m-a-k-e-r, I believe. So we just wanted  
12 to make clear that we will have him available for  
13 the alternatives topic on the 28th.

14 HEARING OFFICER GEFTER: And Mr.  
15 Schoonmaker will be present in Escondido?

16 MR. KRAMER: Yes. He lives just up the  
17 road from there, so --

18 HEARING OFFICER GEFTER: Okay.

19 MR. KRAMER: -- it's a short commute for  
20 him.

21 HEARING OFFICER GEFTER: Any other  
22 modifications to the list of witnesses or whether  
23 witnesses will be testifying by declaration or by  
24 live testimony?

25 MR. MILLER: I had a couple of other

1 points to raise on that.

2 First of all, with regard to staff's  
3 witnesses, I had a conversation with Mr. Kramer  
4 earlier and I believe that with regard to air  
5 quality, there would be another witness in  
6 addition to Mr. Eller that would be a live witness  
7 present in Escondido, is that correct?

8 MR. KRAMER: Yes, --

9 MR. MILLER: Mr. Birdsall is listed as  
10 by declaration, and I thought perhaps there was  
11 either he or another witness was going to be  
12 present.

13 MR. KRAMER: We always intended that he  
14 would be a live witness.

15 MR. MILLER: So that's not by  
16 declaration, I guess?

17 MR. KRAMER: No. The same would hold  
18 for Alvin Greenberg under public health; we intend  
19 him to be live, as well.

20 MR. MILLER: And with regard to land use  
21 is Ms. Stennick going to be by declaration  
22 or -- the only issue I'm wondering about there is  
23 the City condition issue that, I believe, Ms.  
24 Gefter is interested in. Maybe Mr. Eller would  
25 address that anyway.

1           MR. KRAMER: Well, our position is that  
2 we, in our final assessment and the addendum we  
3 determined that our conditions were consistent  
4 with the City's conditions. To put it another  
5 way, that the proposed project was consistent with  
6 the LORS, which would include all the City's  
7 conditions on the use permit.

8           So, --

9           MR. MILLER: May not need a witness?

10          MR. KRAMER: Yeah, I think she wouldn't  
11 have much more to say than that, so I'd rather  
12 avoid the --

13          MR. MILLER: Okay.

14          MR. KRAMER: -- cost of the trip if --

15          MR. MILLER: That's fine. I just wasn't  
16 sure about that.

17                 And I guess that would cover that topic  
18 as to the staff's witnesses. We did want to note  
19 that we would have added a witness through our  
20 direct and rebuttal testimony that I believe Ms.  
21 Gefter is aware of, but I'll just say it for the  
22 record. And that's Mr. Don Schilling, who would  
23 be an additional witness in the areas of air  
24 quality and public health.

25                 And in addition, we would like to add

1 Mr. Rowley as an additional witness, more just for  
2 possible questions, in the areas of air quality  
3 and visual resources.

4 HEARING OFFICER GEFTER: Mr. Briggs, do  
5 you have any additional witnesses or intent to  
6 cross-examine any of the applicant's or staff's  
7 witnesses that you haven't already indicated?

8 MR. BRIGGS: I haven't seen, although  
9 perhaps I have it, have not yet reviewed Don  
10 Schilling's prefiled testimony. If it's already  
11 in the documents I have, I'll take a look at it,  
12 and let you know by the end of today if there's a  
13 problem.

14 But from what Mr. Miller told me  
15 yesterday I don't think there will be a problem.  
16 And I don't -- cross-examine.

17 MR. MILLER: I guess I do have one  
18 question --

19 HEARING OFFICER GEFTER: We're having  
20 trouble hearing Mr. Briggs.

21 MR. BRIGGS: Can you hear me now?

22 HEARING OFFICER GEFTER: Yes.

23 MR. BRIGGS: I don't have any other  
24 witnesses to offer up. As far as cross-  
25 examination of Mr. Schilling, I haven't reviewed

1 his testimony yet. And, in fact, I haven't seen  
2 it, although it's possible it is in the documents  
3 that I already have.

4 Is his testimony in the prefiled packet  
5 that already came? Or is this an additional item  
6 of evidence?

7 MR. MILLER: This is in the prefiled  
8 testimony for air quality and public health.

9 HEARING OFFICER GEFTER: Okay.

10 MR. BRIGGS: And I think we won't have a  
11 problem with that.

12 HEARING OFFICER GEFTER: Okay. Mr.  
13 Briggs, I have a question for you regarding the  
14 witnesses that intervenor Bill Powers intends to  
15 sponsor. I understand he will be a witness; and  
16 then he has Dr. --

17 MR. BRIGGS: Condon?

18 HEARING OFFICER GEFTER: Yes. Dr.  
19 Condon. Is Dr. Condon to be at the hearing?

20 MR. BRIGGS: He will be there for live  
21 testimony, yes.

22 HEARING OFFICER GEFTER: All right. And  
23 then Mr. Powers also indicated testimony from Mr.  
24 Morrill and Ms. Shaputic. The only filings I had  
25 from either of those individuals was public

1 comment, and not prefiled testimony. Are you  
2 planning to offer them as expert witnesses, or lay  
3 witnesses or public comment?

4 MR. BRIGGS: I -- Mr. Morrill is going  
5 to offer testimony only as a member of the public.  
6 And the other person, I think she probably is not  
7 testifying, but she has not given us a conclusive  
8 answer and we probably won't have one for a day or  
9 two. But at this point we think she won't be  
10 testifying.

11 HEARING OFFICER GEFTER: Okay. Keep us  
12 posted on that. Thank you.

13 MR. KRAMER: Ms. Gefter.

14 HEARING OFFICER GEFTER: Yes, Mr.  
15 Kramer.

16 MR. KRAMER: We had one other addition  
17 in the nature of Mr. Miller's addition through our  
18 rebuttal testimony, and that's Matt Layton under  
19 air quality. He signed on to the rebuttal  
20 testimony. We provided his r, sum, .

21 HEARING OFFICER GEFTER: Okay. Is Mr.  
22 Layton going to be present in Escondido?

23 MR. KRAMER: Yes. He'll be part of our  
24 panel.

25 HEARING OFFICER GEFTER: All right.

1 MR. BRIGGS: Ms. Gefter, before we go  
2 on, for Don Schilling I think it was said that he  
3 would be testifying under air quality, as well?  
4 Did I hear that correctly?

5 HEARING OFFICER GEFTER: That's what I  
6 understand, yes.

7 MR. BRIGGS: I only have prefiled  
8 testimony for him under public health, nothing  
9 under air quality. Is there something that I'm  
10 missing, or is his public health testimony cover  
11 (inaudible).

12 HEARING OFFICER GEFTER: Okay. Mr.  
13 Miller?

14 MR. MILLER: We believe that the air  
15 quality was the rebuttal testimony. I can check  
16 that, just a second.

17 HEARING OFFICER GEFTER: Okay. We'll  
18 move on and you can let us know on that later.

19 MR. BRIGGS: That's fine, thank you.

20 HEARING OFFICER GEFTER: Okay, Mr.  
21 Briggs? We'll work that out at the end of the  
22 hearing --

23 MR. BRIGGS: Than you.

24 HEARING OFFICER GEFTER: -- unless  
25 you -- okay.

1 MR. MILLER: It was filed. Excuse me,  
2 I --

3 HEARING OFFICER GEFTER: Yeah, Mr.  
4 Miller says it was filed, the rebuttal testimony  
5 from Mr. Schilling was filed.

6 MR. BRIGGS: I just haven't got it yet.  
7 That's not a problem.

8 HEARING OFFICER GEFTER: All right.

9 MR. MILLER: Would this be the  
10 appropriate time to talk about order of topics on  
11 the 28th? We had this one minor suggestion to  
12 make on that.

13 HEARING OFFICER GEFTER: Why don't we  
14 finish the housekeeping now, yes, and then we'll  
15 move on to the hearing.

16 MR. MILLER: We were wondering if it  
17 would be possible to have land use and biological  
18 resources be reordered to take first, so that  
19 those witnesses wouldn't potentially have to wait  
20 an indeterminate amount of time in order to come  
21 up for their part of the proceeding.

22 I believe Mr. Briggs does not have an  
23 objection to that. We talked about it yesterday.

24 HEARING OFFICER GEFTER: I'll consider  
25 that and I'll let you know. I wanted to check

1 with the Commissioners. We'll talk about our  
2 schedule. Because the hearing is scheduled to  
3 continue over to the next morning, if necessary,  
4 on the 29th. And so we'll talk about the schedule  
5 and we'll let the parties know ahead of time.

6 MR. MILLER: That's one reason we did  
7 make the request because our biological witness is  
8 a little tough to get into his schedule, so --

9 HEARING OFFICER GEFTER: On the 29th?

10 MR. MILLER: Yeah, we'd like to be able  
11 to tell him for sure when he would be needed.

12 HEARING OFFICER GEFTER: We'll let you  
13 know by the end of the day.

14 MR. MILLER: Okay, thank you.

15 HEARING OFFICER GEFTER: Okay. All  
16 right, I think we have identified all of our  
17 witnesses, and it's time to move on to the actual  
18 meat of the hearing.

19 We distributed a tentative exhibit list  
20 to the parties based on the exhibit lists that  
21 were submitted by the applicant, staff and the  
22 intervenor. As you can see, it's a draft exhibit  
23 list, and I understand there are some amendments  
24 that the parties already have on the exhibit list.

25 Why don't we go through the amendments

1 right now because we are going to be moving into  
2 receiving some of these exhibits into the record,  
3 and we need to identify them accurately. So,  
4 let's start again with Mr. Taylor on the exhibit  
5 list. Working off the tentative exhibit list that  
6 I distributed earlier.

7 MR. MILLER: Okay. And the tentative  
8 exhibit list includes the additional items we sent  
9 yesterday, I believe. Let me just take a quick  
10 look.

11 HEARING OFFICER GEFTER: The list of  
12 applicant's exhibits goes up to exhibit 56.

13 MR. KRAMER: Fifty is --

14 HEARING OFFICER GEFTER: Oh, I'm sorry,  
15 you're right. Those are staff's.

16 MR. KRAMER: It's 38.

17 MR. MILLER: I believe that's correct.

18 HEARING OFFICER GEFTER: Thirty-eight.

19 MR. MILLER: I have one very minor  
20 change to note, actually two minor changes to  
21 note. That would be on exhibit 7, which states  
22 detailed facility studies -- study and appendices.  
23 The and should be stricken.

24 And then for exhibit 9, which states  
25 detailed facility studies, comma, an and should be

1 inserted there, and the comma deleted.

2 I believe that straightens that out.

3 HEARING OFFICER GEFTER: All right. I  
4 understand that Mr. Kramer had some amendments to  
5 your list of exhibits?

6 MR. KRAMER: I had one question about  
7 that amendment. Seven says A1 through J, which I  
8 would read to include I, already. So how can I  
9 also be in exhibit 9?

10 MR. MILLER: I is a two-inch thick set  
11 of incomprehensible graphs that only the  
12 transmission safety engineering staff understand.  
13 And it's very bulky, and therefore we made an  
14 arrangement with Mr. Eller to file just one copy  
15 of that, and one copy for staff. And so that was  
16 filed separately from the detailed facility study.

17 MR. KRAMER: Okay, so then I'm being  
18 really anal here, I think, but then shouldn't I  
19 say A1 through H, and then J, to exclude I?

20 MR. MILLER: I suppose it should.

21 MR. KRAMER: Okay. I'll never do that  
22 again.

23 MR. MILLER: No, that was --

24 PRESIDING MEMBER GEESMAN: Keep it up,  
25 Mr. Kramer, somebody needs to do it.

1 (Laughter.)

2 MR. KRAMER: Our changes are simply  
3 because I relied on the docket log on our website  
4 to get the dates for when some of our documents  
5 were docketed. And Mr. Eller discovered that I  
6 shouldn't have done that because it was  
7 inaccurate.

8 So, on exhibit 52, the date for the  
9 docketing of that exhibit is December 9th, not the  
10 6th. On exhibit 53 it's March 3rd instead of  
11 February 27th for the docketing. On Exhibit 54  
12 it's March 5th instead of February 27 for the  
13 docketing. And on 55 it's March 4th instead of  
14 February 27th.

15 HEARING OFFICER GEFTER: And those are  
16 your --

17 MR. KRAMER: That's it.

18 HEARING OFFICER GEFTER: All right. And  
19 then, Mr. Briggs, --

20 MR. BRIGGS: Yes.

21 HEARING OFFICER GEFTER: -- we  
22 incorporated the list of exhibits that you had  
23 sent us which were updated and included the  
24 docketed dates. And the testimony that Mr. Powers  
25 filed last week, and the two very thick notebooks,

1 the voluminous testimony, has now been docketed.  
2 So the docket date is April 8th on that. And  
3 those documents have been served on both the  
4 applicant and staff.

5 And we can email you a copy of this  
6 working exhibit list later today.

7 MR. BRIGGS: That would be --

8 HEARING OFFICER GEFTER: Okay. All  
9 right, so now we're going to go on to the topics.  
10 Today we are hearing the uncontested topics,  
11 although we've asked the applicant to present  
12 testimony on project description to set the  
13 context for the Palomar project.

14 And also to allow us to ask questions of  
15 Mr. Rowley as he proceeds. Mr. Rowley, I  
16 understand you are the Project Manager and the  
17 witness on the applicant's presentation of project  
18 description; and we are ready to begin at this  
19 time with that topic.

20 MR. MILLER: Mr. Rowley would need to be  
21 sworn.

22 Whereupon,

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

1 as follows:

2 MR. MILLER: Okay, what I'll do is run  
3 through some of the formalities and then ask Mr.  
4 Rowley to present the project description to you.

5 DIRECT EXAMINATION

6 BY MR. MILLER:

7 Q Could you please state your name and  
8 occupation for the record?

9 A Joseph H. Rowley; I'm the Vice President  
10 of Asset Management for Sempra Energy Resources.

11 Q Thank you. Could you please briefly  
12 summarize your professional background and  
13 qualifications?

14 A I've spent 23 years in the licensing,  
15 design and construction and operation of  
16 generation and transmission facilities. And these  
17 include the El Centro Unit 2 Repowering, for which  
18 the Commission granted a small power plant  
19 exemption in 1991.

20 The 500 megawatt Elk Hills Power  
21 project, on which the Commission rendered a  
22 decision in the year 2000; and is currently in  
23 startup.

24 Also the 1200 megawatt Mesquite project  
25 in Arizona, which is also currently in startup.

1 And the last two years I've also been responsible  
2 for the operation of Sempra Energy's Eldorado  
3 facility, which is a 440 megawatt combined cycle  
4 in Nevada.

5 Q Thank you. Could you please describe  
6 those aspects of your responsibilities that  
7 related more specifically to the Palomar Energy  
8 project?

9 A The Palomar project is really I guess I  
10 kind of consider to be my little baby. It's in my  
11 hometown. It's a project that I've been involved  
12 with since its inception. And I've had the  
13 pleasure to work closely with the community in the  
14 development process, as well as preparing the AFC  
15 and so forth.

16 Q I note that we may have passed by your  
17 educational background and professional  
18 credentials -- that you might want to just touch  
19 on.

20 A I have a bachelor of science degree in  
21 chemical engineering; and licensed by the State of  
22 California as a mechanical engineer.

23 Q And the purpose of this testimony would  
24 be to cover which topics?

25 A We are covering the project description.

1 Q Initially, yes.

2 MR. MILLER: Maybe I could break for a  
3 second and address Ms. Gefter on a point. I'm  
4 sorry, --

5 HEARING OFFICER GEFTER: I'm sorry?

6 MR. MILLER: -- could I address you just  
7 on one point before we continue?

8 HEARING OFFICER GEFTER: Yes.

9 MR. MILLER: We have testimony Mr.  
10 Rowley would be presenting on project description,  
11 facility design, power plant efficiency and plant  
12 reliability.

13 And what I'm wondering, I guess, is  
14 would it be appropriate for him to cover all those  
15 topics in his presentation? Or would you like  
16 to -- we have one declaration that covers all of  
17 those, so.

18 HEARING OFFICER GEFTER: Why don't you,  
19 when you get to a different topic why don't you  
20 indicate that that's the testimony that he's  
21 presenting.

22 MR. MILLER: Okay.

23 HEARING OFFICER GEFTER: And then staff  
24 can either object or agree. We'll just go forward  
25 that way.

1           MR. MILLER: All right, well, then what  
2 he'll do is cover that at this point, just for  
3 ease of discussion.

4           HEARING OFFICER GEFTER: Just indicate  
5 to us when you're moving to a different topic.

6           MR. MILLER: All right, thank you.

7 BY MR. MILLER:

8           Q All right, then, could you please  
9 summarize your testimony then with regard to  
10 project description?

11          A Sure, and I'll be brief. The project  
12 adds over 500 megawatts of generating capability  
13 to an area of the SDG&E transmission grid that has  
14 a generation deficit. That is, there's several  
15 hundred megawatts of load and very little in the  
16 way of generation.

17           The project does so by siting  
18 immediately adjacent to existing transmission  
19 facilities, which avoids the construction of new  
20 transmission lines.

21           The project also is located in the  
22 northern part of the SDG&E gas system which is  
23 near the supply source for the system. And  
24 thereby avoids putting stress on the SDG&E gas  
25 system.

1           The project avoids use of potable water  
2 and makes use of reclaimed water.

3           And from a specific siting perspective,  
4 the project is located in a position that's  
5 surrounded with existing and future industrial  
6 land uses, and affords substantial terrain for  
7 screening purposes.

8           And we've, as I mentioned before, we've  
9 worked closely with the community to design the  
10 project in a manner so that it would be as  
11 unobtrusive as possible.

12           In terms of specific design, it's a 500  
13 megawatt, natural gas fired combined cycle. At  
14 500 megawatts it uses about 7000 Btus of fuel to  
15 make one kilowatt hour of energy. In other words  
16 the heat rate is about 7000.

17           It also has a peak rating of about 550  
18 megawatts. And it achieves the peak rating by  
19 using duct burners. The duct burners burn  
20 additional fuel. It's less efficient, and so we  
21 use that when in periods of time when the market  
22 will support a heat rate that's higher or a cost  
23 of production that's a little bit higher. So it's  
24 in the range of 9000 to 10,000 Btus per kilowatt  
25 hour.

1           The power is generated by two combustion  
2 turbines and one steam turbine. The combustion  
3 turbines exhaust heat. The heat is used to  
4 produce steam in the heat recovery steam  
5 generators. And then that steam is piped into the  
6 steam turbine to produce additional electricity.

7           The cooling for the steam turbine is  
8 achieved with a mechanical draft, plume-abated  
9 cooling tower that uses reclaimed water from the  
10 City of Escondido's Hale Avenue resource recovery  
11 facility.

12           And in terms of linear facilities, the  
13 project, as I mentioned, has no transmission  
14 lines. It has no gas extension line because the  
15 high-pressure gas line is immediately adjacent to  
16 the site. There is, however, about a half-mile  
17 length of debottle-necking that's about a mile  
18 removed from the site, within the SDG&E gas  
19 system, that would need to be done as part of the  
20 project.

21           The other linear facilities are a 1.1  
22 mile reclaimed water supply line extending from a  
23 point of connection with the City's reclaimed  
24 water network. And also a 1.1 mile brine return  
25 pipeline that likewise goes from the plant to a

1 point of connection with the City's brine system.

2 And the site, itself, is located within  
3 the Escondido Research and Technology Center,  
4 which is a future business park that was recently  
5 permitted by the City of Escondido. The decision  
6 on the business park, I think, was rendered in  
7 November of last year.

8 The project site, itself, is a 20-acre  
9 portion of that 186-acre business park. And as I  
10 mentioned, the site is surrounded by either  
11 existing industrial land uses, or future  
12 industrial land uses. And the existing uses  
13 include a 50 megawatt power plant immediately  
14 adjacent to the north boundary of the site.

15 And that concludes my summary.

16 HEARING OFFICER GEFTER: Before you go  
17 on, I have a question. In testimony both from the  
18 staff and from the application there's indication  
19 that there is indication that there is another  
20 small peaker within a half a mile from the  
21 project. Could you identify that one, a 50  
22 megawatt peaker?

23 MR. ROWLEY: There's a 44 megawatt  
24 peaker plant known as the Ramco Facility. And  
25 it's further north, north of the -- a little bit

1 to the northwest.

2 HEARING OFFICER GEFTER: How far is it  
3 from the project site?

4 MR. ROWLEY: A half mile sounds like a  
5 reasonable estimate.

6 HEARING OFFICER GEFTER: Okay. So, my  
7 understanding from the testimony that's been  
8 submitted is that there's the CalPeak project,  
9 which is adjacent, and there is the Ramco project,  
10 which is a half a mile away?

11 MR. ROWLEY: Correct.

12 HEARING OFFICER GEFTER: And were those  
13 two projects considered in all of the public  
14 health and the air quality evaluations?

15 MR. ROWLEY: Yes, they were.

16 HEARING OFFICER GEFTER: All right. I  
17 do have one more question. Regarding site  
18 control, would you explain to us Sempra's  
19 relationship with the particular site, whether you  
20 are leasing it from the ARTC or intend to purchase  
21 it?

22 MR. ROWLEY: We would become the owners  
23 of the site. We have the site in escrow.  
24 Actually, to be technical, we have an option on  
25 the site.

1 HEARING OFFICER GEFTER: And when will  
2 that option be exercised?

3 MR. ROWLEY: We would exercise that  
4 option after the permitting process with the CEC  
5 is complete.

6 HEARING OFFICER GEFTER: And does that  
7 information exist somewhere in your project  
8 description testimony, or anywhere else in the  
9 filings of the applicant?

10 MR. ROWLEY: It's actually not in the  
11 project description, so by virtue of putting it on  
12 the record now, I hope that would suffice.

13 HEARING OFFICER GEFTER: Does staff have  
14 any questions on that particular issue?

15 MR. KRAMER: No, we have no questions.

16 HEARING OFFICER GEFTER: Okay, Mr.  
17 Miller.

18 MR. MILLER: Thank you. I believe that  
19 concludes the project description testimony. We  
20 had listed on the hearing order the other topics  
21 of facility design, power plant reliability, power  
22 plant efficiency as proceeding by declaration.

23 Mr. Rowley's declaration does cover  
24 those topics.

25 Also in that declaration does sponsor

1 some exhibits, so I would like -- should probably  
2 run through that at this point.

3 BY MR. MILLER:

4 Q And I'll ask him to indicate the  
5 portions of the application for certification that  
6 he would be sponsoring, to begin with.

7 A I'm sponsoring in exhibit 1, AFC section  
8 2, which is the project description. Section 4,  
9 which is safety and reliability. And appendices  
10 C, D and K.

11 Also in exhibit 2A data responses 44  
12 through 45. And in exhibit 12 the letter from  
13 Palomar Energy, actually a letter from myself  
14 regarding the reliability of the SDG&E gas system.

15 HEARING OFFICER GEFTER: That's a letter  
16 from yourself or to yourself?

17 MR. ROWLEY: From myself to the San  
18 Diego Air Pollution Control District with a copy  
19 to the CEC.

20 MR. MILLER: And with that I would like  
21 to move Mr. Rowley's declaration and exhibits into  
22 the evidentiary record.

23 HEARING OFFICER GEFTER: And the  
24 declaration is what exhibit?

25 MR. MILLER: The exhibits that he was

1 just listing.

2 HEARING OFFICER GEFTER: But is his  
3 declaration a separate exhibit?

4 MR. MILLER: Oh, I'm sorry, exhibit 35.  
5 And I would note that we did, and I would hope  
6 this was not going to complicate things, the  
7 exhibit 35 is the prefiled testimony for all the  
8 witnesses. So, we did not separate that out with  
9 different exhibit numbers.

10 HEARING OFFICER GEFTER: You can have  
11 that portion of exhibit 35 that contains Mr.  
12 Rowley's declaration moved into evidence at this  
13 time. Okay.

14 Is there any objection to the admission  
15 of the exhibits just listed by Mr. Taylor?

16 MR. KRAMER: No.

17 HEARING OFFICER GEFTER: Okay. Mr.  
18 Briggs?

19 MR. BRIGGS: None from intervenor.

20 HEARING OFFICER GEFTER: No, okay. So  
21 exhibits 1, AFC section 2, section 4, appendices  
22 C, D and K, exhibit 2A, data responses 44 and 45,  
23 exhibit 12, and that portion of exhibit 35 that  
24 contains Mr. Rowley's testimony on project  
25 description are received into the record.

1 MR. MILLER: Thank you. We can proceed,  
2 then, to the next topic?

3 HEARING OFFICER GEFTER: Yes, yes.

4 MR. KRAMER: Should we admit staff's  
5 exhibits?

6 HEARING OFFICER GEFTER: Are you  
7 going -- this was on project description. Are you  
8 moving on now to facility design and reliability?

9 MR. MILLER: Actually, I just did.

10 HEARING OFFICER GEFTER: Okay, so those  
11 were all -- all those exhibits went to project  
12 description, facility design, power plant  
13 reliability and power plant efficiency?

14 MR. MILLER: That's correct.

15 HEARING OFFICER GEFTER: So you're  
16 finished with those topics?

17 MR. MILLER: That's correct.

18 HEARING OFFICER GEFTER: Now we can move  
19 on to staff, Mr. Kramer, on those four topics.

20 MR. KRAMER: Okay, Mr. Eller had nothing  
21 to add regarding project description. So we would  
22 move those four sections, project purpose and  
23 description, facility design, power plant  
24 reliability and power plant efficiency, those  
25 sections of exhibit 50, which is the staff

1 assessment.

2 And to the extent that they are also  
3 covered in exhibit 51, which was the addendum,  
4 we'd move those into evidence on the basis of the  
5 declarations that were filed along with those, the  
6 staff assessment.

7 HEARING OFFICER GEFTER: I wanted to ask  
8 Mr. Eller a question. Can Mr. Eller be sworn,  
9 please. If the reporter could swear Mr. Eller.  
10 Whereupon,

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

15 HEARING OFFICER GEFTER: Mr. Eller, I  
16 have a question, and this is regarding the  
17 Sempra's ownership of other power plants in  
18 California. In the FSA, and I noticed in the air  
19 quality section, but perhaps in other sections, it  
20 indicates that Sempra does not own any other power  
21 plants in California.

22 And Mr. Rowley just testified that, in  
23 fact, he worked on the Elk Hills project. Staff  
24 concedes that there are other projects that Sempra  
25 owns, is that correct?

1 MR. ELLER: Appears we have missing  
2 something in our air quality section. We  
3 certainly know that they own the Elk Hills  
4 project, since we permitted it.

5 HEARING OFFICER GEFTER: Well, in the  
6 air quality -- and we're not taking air quality  
7 today, but that was regarding the, I believe it's  
8 the Title 5 possibilities of violations by the  
9 Sempra parent company. And you might want to look  
10 at your air quality testimony and correct that.

11 MR. ELLER: We will, thank you.

12 HEARING OFFICER GEFTER: Thank you. All  
13 right, is there any objection to staff's exhibit  
14 50, portions relating to project description,  
15 facility design, reliability and efficiency, and  
16 the same for exhibit 51, any objections to those  
17 exhibits being received into the record?

18 MR. MILLER: No objections.

19 HEARING OFFICER GEFTER: Mr. --

20 MR. BRIGGS: No.

21 HEARING OFFICER GEFTER: -- Briggs? No.  
22 All right. Those exhibits are now received into  
23 the record.

24 The next topic is transmission system  
25 engineering. Mr. Taylor -- Mr. Miller.

1           MR. MILLER: On that one we have an  
2 additional combination, the declaration of Mr.  
3 Rowley covers transmission system engineering and  
4 transmission line safety and nuisance.

5           Our plan is to proceed with live  
6 testimony. I believe you had a question that you  
7 wanted to make sure we addressed on transmission  
8 system engineering. So we'll proceed with that  
9 first.

10           Mr. Rowley has already introduced  
11 himself and his qualifications, so I'm going to  
12 first ask that he summarize, if that would be  
13 appropriate for you, the background on  
14 transmission safety engineering, interconnection  
15 reviews that have occurred by SDG&E and Cal-ISO.  
16 And I believe that will at least open the door for  
17 your questions.

18                           DIRECT EXAMINATION

19           MR. ROWLEY: The detailed facility study  
20 was prepared by SDG&E in order to analyze the  
21 interconnection of the project with the SDG&E  
22 transmission grid. And to study power flows and  
23 stability and so forth.

24           That detailed facility study was  
25 reviewed by the California ISO and also by the

1 Commission Staff.

2 The conclusion of the study was that  
3 with two, what are termed special protection  
4 schemes, or relay schemes, with those two schemes  
5 the project would not cause any adverse effect on  
6 the transmission grid.

7 And that was studied both with and  
8 without the Valley Rainbow project. And the  
9 conclusion was the same in both cases. The  
10 project caused no adverse effect on the grid.

11 The only difference between the two  
12 cases is that if the Valley Rainbow project is not  
13 built, then only one special protection scheme is  
14 required, rather than two.

15 HEARING OFFICER GEFTER: Let me ask you  
16 a question. Is the special protection scheme  
17 similar or the same as a RAS, remedial action  
18 scheme?

19 MR. ROWLEY: Yeah, special protection  
20 scheme is the new term of art, sort of replaced  
21 RAS.

22 HEARING OFFICER GEFTER: And if the  
23 Valley Rainbow project is not built you just  
24 indicated only one special protection scheme is  
25 necessary. Is that the intent at this point, to

1 operate the project with one special protection  
2 scheme if, since the Valley project has been  
3 suspended?

4 MR. ROWLEY: If it remains in suspension  
5 that would be the case, yes.

6 HEARING OFFICER GEFTER: And is there a  
7 condition that would require the implementation of  
8 the second SP scheme if the Valley Rainbow project  
9 is ultimately built?

10 MR. ROWLEY: The condition of  
11 certification is crafted such that whatever the  
12 requirements are we would have to comply with  
13 those.

14 HEARING OFFICER GEFTER: Okay. We'll  
15 ask staff to explain that to us when we get to  
16 staff's testimony.

17 MR. MILLER: We do have some exhibits  
18 that are associated with Mr. Rowley's testimony in  
19 this area.

20 BY MR. MILLER:

21 Q And I'll ask him if that's appropriate  
22 to indicate those exhibits that he would be  
23 sponsoring at this time. Starting with the  
24 application for certification.

25 A That's, again, AFC section 2, project

1 description and appendix B, which is the system  
2 impact study that was initially done for the  
3 project, but was subsequently replaced by the  
4 detailed facility study.

5 HEARING OFFICER GEFTER: And where is  
6 the detailed facility study?

7 MR. ROWLEY: The detailed facility study  
8 is exhibit 9. And in fact, all of the exhibits  
9 that go together with this include exhibit 2A,  
10 which is data responses 65 through 69; exhibit 4A  
11 and 4B, which are data responses to number 136A  
12 through 146; exhibit 7, which is the detailed  
13 facility study, appendices A1 through J, excluding  
14 appendix I.

15 Exhibit 9, which is the detailed  
16 facility study that I first mentioned in my  
17 testimony. That's the final report that was  
18 issued in March of 2002. And also exhibit 9  
19 includes appendix I.

20 Exhibit 13, which is a letter regarding  
21 the Cal-ISO review of the interconnection; and  
22 exhibit 19, which is a congestion sensitivity  
23 analysis by SDG&E. And exhibit 27, which is a  
24 Cal-ISO report regarding transmission system  
25 reliability.

1 HEARING OFFICER GEFTER: Any objection,  
2 staff, to those exhibits being received into the  
3 record?

4 MR. KRAMER: No objection.

5 HEARING OFFICER GEFTER: Mr. Briggs?

6 MR. BRIGGS: None.

7 HEARING OFFICER GEFTER: Thank you.

8 With respect to transmission system engineering,  
9 do these exhibits also go to transmission line  
10 safety and nuisance?

11 MR. MILLER: Yes, they do.

12 HEARING OFFICER GEFTER: All right.  
13 Exhibit 2A and 2C, data responses 44 through 45  
14 and 65 through 69, exhibit 4A and 4B, data  
15 responses 136A through 146. Exhibit 7; exhibit 9,  
16 exhibit 13, exhibit 27 are admitted into the  
17 record.

18 MR. MILLER: Excuse me, --

19 HEARING OFFICER GEFTER: Did I miss  
20 something?

21 MR. MILLER: -- I believe you might have  
22 omitted 19.

23 HEARING OFFICER GEFTER: And exhibit 19.

24 All right, staff.

25 MR. KRAMER: I gather you have a

1 question of our witness, is that correct?

2 HEARING OFFICER GEFTER: I do. I have a  
3 question regarding --

4 MR. KRAMER: We need to have her sworn  
5 in.

6 HEARING OFFICER GEFTER: Oh, all right,  
7 why don't we have the witness sworn. Thank you.  
8 Whereupon,

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

13 DIRECT EXAMINATION

14 BY MR. KRAMER:

15 Q Would you please state your name for the  
16 record?

17 A Laiping Ng.

18 MR. KRAMER: Previously spelled for the  
19 reporter.

20 BY MR. KRAMER:

21 Q What is your position?

22 A I'm with transmission engineering for  
23 CEC.

24 Q And did you prepare the transmission  
25 system engineering portion of the staff assessment

1 in this case?

2 A Yes, I did.

3 Q Could you briefly describe your  
4 qualifications as an expert in this area?

5 A I graduated with bachelor degree and a  
6 master degree with the electrical engineering from  
7 Sac State.

8 Q And how long have you been employed at  
9 the Commission?

10 A I been working at the Commission since  
11 1991. Been working in the siting division since  
12 1999.

13 Q Do you have any corrections to make to  
14 your testimony in the final staff assessment or  
15 the addendum?

16 A No, I don't.

17 Q And this morning you heard Mr. Rowley's  
18 testimony?

19 A Yes, I did.

20 Q Did you have any disagreement with any  
21 portions of it?

22 A No, I don't. But I'm not sure I heard  
23 that he mentioned one of the transmission project  
24 is going to be implemented or proposed by the  
25 SDG&E that would minimize the normal overloads for

1 one of the 69 kV line.

2 Q Okay, so you're not sure -- are you  
3 asking the question --

4 A I'm not sure he mentioned it.

5 MR. ROWLEY: Actually I could elaborate  
6 on that if it's appropriate.

7 HEARING OFFICER GEFTER: Well, --

8 MR. KRAMER: No.

9 BY MR. KRAMER:

10 Q But I gather you're saying that that's  
11 another important element of the protection?

12 A That's correct.

13 Q And do you find the protection measures  
14 that have been proposed by the applicant and  
15 proposed by the staff to be adequate to protect  
16 the transmission system?

17 A Yes.

18 HEARING OFFICER GEFTER: Okay, my  
19 question was regarding the two special protection  
20 schemes that were mentioned. Mr. Rowley says that  
21 if the Valley Rainbow project is not built only  
22 one scheme is necessary. But if it is built, two  
23 will need to be implemented.

24 Is there anything in the staff's  
25 proposed conditions that would insure that both

1 schemes are implemented if the Valley Rainbow  
2 project is completed?

3 MS. NG: Yes. That's under condition of  
4 certification.

5 HEARING OFFICER GEFTER: Do you know  
6 which one it is?

7 MS. NG: Five.

8 HEARING OFFICER GEFTER: TSE-5. Is  
9 there a particular letter on that? Is that under  
10 the interconnection agreement?

11 MS. NG: Excuse me?

12 HEARING OFFICER GEFTER: Would it be  
13 related to the interconnection agreement?

14 MS. NG: That's correct.

15 HEARING OFFICER GEFTER: And so that  
16 this particular requirement would be incorporated  
17 into the interconnection agreement so that if the  
18 Valley Rainbow project is built the  
19 interconnection agreement would insure that they  
20 use both SP schemes, is that correct?

21 MS. NG: Correct.

22 HEARING OFFICER GEFTER: Okay. And  
23 would you explain what you were just asking Mr.  
24 Rowley, because I didn't follow what you were  
25 suggesting.

1 MS. NG: Okay. There is a normal  
2 overload and emergency overloads. Under normal  
3 overload the Palomar project actually overload one  
4 of the 69 kV lines, so if another additional  
5 transmission project is implemented by SDG&E then  
6 it will solve the overload problems.

7 That is indicated in our testimony. And  
8 also indicated at Mr. Rowley's testimony.

9 HEARING OFFICER GEFTER: And line 6900  
10 is a new line, is that right?

11 MS. NG: No.

12 HEARING OFFICER GEFTER: No.

13 MS. NG: The 69 kV line is existing  
14 line. And they are reconductoring that existing  
15 line. In addition they are adding one new  
16 transmission line.

17 HEARING OFFICER GEFTER: And so with  
18 that new transmission line the overload will be --

19 MS. NG: Solved.

20 HEARING OFFICER GEFTER: -- mitigated?

21 MS. NG: Yes.

22 HEARING OFFICER GEFTER: Is that the  
23 word? Okay. All right, thank you.

24 And when is that new line going to be  
25 completed?

1 MS. NG: The line need to be completed  
2 before the Palomar project is online.

3 HEARING OFFICER GEFTER: Well, do we  
4 know it will be?

5 MS. NG: That is -- they indicated in  
6 the SDG&E transmission plan, but I don't have the  
7 data at this point now.

8 HEARING OFFICER GEFTER: Is that part of  
9 a condition? Is that included in any of the  
10 conditions?

11 MS. NG: Actually the project will be  
12 implemented by SDG&E project. That would be, yes.

13 MR. KRAMER: I'd note that it is  
14 mentioned in one of the conclusions on page 5.5-9  
15 of the staff assessment.

16 HEARING OFFICER GEFTER: What does it  
17 say?

18 MR. KRAMER: To accommodate the full PEP  
19 output SDG&E transmission project 00151 or project  
20 02161 would need to be implemented before PEP is  
21 in operation. Either of these projects would  
22 mitigate the overloads on the 69 kV transmission  
23 lines mentioned above.

24 HEARING OFFICER GEFTER: And that's what  
25 Ms. Ng has said, but I'm not sure whether there's

1 something built into the condition that requires -  
2 - that would prevent Palomar from going on line  
3 prior to the SDG&E building that new transmission  
4 line.

5 MR. KRAMER: Maybe I can ask a question  
6 in that regard.

7 BY MR. KRAMER:

8 Q Would you expect -- please look at  
9 condition TSE-5, subparagraph (f). That requires  
10 a final -- or detailed facility study, correct?

11 A Correct.

12 Q And are these the -- this issue the type  
13 of thing you expect to be worked out as a part of  
14 that study?

15 A Not part of the -- yes, that's actually  
16 correct. Yes.

17 Q So if the lay of the transmission line  
18 system were to change between now and then, and  
19 some additional measures were required, would you  
20 expect that those would be created and required to  
21 be implemented before they could start up the  
22 power plant?

23 A Correct, yes.

24 HEARING OFFICER GEFTER: Thank you.

25 That's what I needed to hear. Are there any other

1 questions for the witness? Mr. Miller?

2 MR. MILLER: No questions, thank you.

3 HEARING OFFICER GEFTER: Okay. Mr.  
4 Briggs?

5 MR. BRIGGS: None.

6 HEARING OFFICER GEFTER: Thank you.

7 MS. NG: Thank you.

8 HEARING OFFICER GEFTER: Mr. Kramer, do  
9 you have any other testimony that you would like  
10 to offer?

11 MR. KRAMER: No. The other testimony  
12 would be submitted on declarations of -- basically  
13 we're talking about the co-authors with regard to  
14 transmission system engineering. And then purely  
15 on a declaration regarding transmission line  
16 safety and nuisance.

17 HEARING OFFICER GEFTER: And what  
18 exhibits are you offering on those topics?

19 MR. KRAMER: That would be number 50,  
20 again, those two portions. And I can't recall if  
21 we discussed them at all in 51, but if we did, the  
22 relevant portions of that, the addendums.

23 HEARING OFFICER GEFTER: All right. Any  
24 objection, Mr. Miller? Mr. Miller, any objection  
25 to staff's exhibits?

1 MR. MILLER: Oh, sorry. No objection.

2 HEARING OFFICER GEFTER: And Mr. Briggs?

3 MR. BRIGGS: None.

4 HEARING OFFICER GEFTER: Exhibits 50 and  
5 51, staff's assessment related to transmission  
6 system engineering and TLSN are received into the  
7 record.

8 Okay, Mr. Miller, we can move on.

9 MR. MILLER: The next topic is  
10 geological/paleontological resources. Proceeding  
11 by declaration on those topics. I would identify  
12 the signed declaration and testimony of two  
13 witnesses, Sally Bilodeau, B, as in boy,  
14 i-l-o-d-e-a-u, and that's for geology.

15 And for paleontological resources, Mr.  
16 Thomas A. Demere, D-e-m-e-r-e.

17 Maybe I should move these separately to  
18 make it less confusing for the exhibit references.  
19 So just with regard to geological resources,  
20 identified the signed declaration and testimony of  
21 Ms. Bilodeau. Within that testimony she sponsors  
22 certain portions of the application for  
23 certification and other exhibits. These would be  
24 exhibit 1, AFC section 5.5, which is geological  
25 resources; and appendices C and D, which are a

1 geotechnical study and facility design appendices.

2 She also is sponsoring exhibit 2A, data  
3 response number 60; exhibit 3A, data response  
4 number 133; and exhibit 10, which is a U. S.  
5 Geological Survey report concerning the  
6 hydrogeological features of the area.

7 I would propose that the testimony and  
8 sponsored exhibits be admitted by declaration and  
9 move them into the record.

10 HEARING OFFICER GEFTER: Okay. Any  
11 objection from staff?

12 MR. KRAMER: None.

13 HEARING OFFICER GEFTER: Any objection,  
14 Mr. Briggs?

15 MR. BRIGGS: No.

16 HEARING OFFICER GEFTER: Okay. Those  
17 exhibits just indicated by Mr. Miller are received  
18 into the record, including -- you didn't mention  
19 exhibit 35, which is her testimony. And you also  
20 failed to mention that on the TSE and TLSN. Do  
21 you want to move that --

22 MR. MILLER: I apologize.

23 HEARING OFFICER GEFTER: -- into the  
24 record, as well?

25 MR. MILLER: Yes.

1 HEARING OFFICER GEFTER: So those  
2 portions of exhibit 35 relating to TSE, TLSN and  
3 geological resources are now received into the  
4 record.

5 MR. MILLER: Thank you. Moving on to  
6 paleontological resources; the main challenge is  
7 pronouncing it. We have the declaration I've  
8 identified previously, signed declaration  
9 testimony of Thomas A. Demere regarding  
10 paleontological resources, which is part of  
11 exhibit 35.

12 Within that testimony Mr. Demere  
13 sponsors as part of -- oh, it's Demere, is that  
14 how it's pronounced?

15 UNIDENTIFIED SPEAKER: Yes.

16 MR. MILLER: I've been unkind to Mr.  
17 Demere, mispronouncing his name. Then his  
18 testimony, he also sponsors AFC section, it's part  
19 of exhibit 1, AFC section 5.17, which is  
20 paleontological resources, and appendix J, the  
21 paleontological resources technical report. And  
22 those are the only exhibits he will sponsor.

23 So I would propose that his testimony be  
24 part of exhibit 35, and those sponsored exhibits  
25 I've mentioned, exhibit 1, be admitted into the

1 record.

2 HEARING OFFICER GEFTER: Any objection?

3 MR. KRAMER: None.

4 HEARING OFFICER GEFTER: Mr. Briggs?

5 MR. BRIGGS: None from us.

6 HEARING OFFICER GEFTER: Thank you.

7 Okay, the exhibits just listed by Mr. Miller are  
8 received into the record related to  
9 paleontological resources, including that portion  
10 of 35 that relates to that topic.

11 MR. MILLER: Thank you.

12 HEARING OFFICER GEFTER: All right, next  
13 is cultural resources.

14 MR. MILLER: Do we need staff's?

15 HEARING OFFICER GEFTER: Oh, staff.

16 MR. KRAMER: Staff would --

17 HEARING OFFICER GEFTER: Staff on  
18 geological and paleontological resources.

19 MR. KRAMER: We would move those  
20 portions of exhibit 50 into evidence, along with  
21 the relevant declarations.

22 HEARING OFFICER GEFTER: Any objections?  
23 Mr. Miller, any objection?

24 MR. MILLER: No objection. Sorry.

25 HEARING OFFICER GEFTER: Mr. Briggs?

1 MR. BRIGGS: None from us.

2 HEARING OFFICER GEFTER: Okay. You  
3 know, rather than going through this exercise on  
4 all of these uncontested topics, let us assume  
5 that the parties have no objection unless they do  
6 object, so we can move along more quickly. Is  
7 that agreeable to all the parties?

8 MR. MILLER: It's agreeable.

9 MR. BRIGGS: That's fine with us.

10 MR. KRAMER: Yes.

11 HEARING OFFICER GEFTER: Thank you.  
12 Okay. So staff's exhibit 50 with respect to  
13 geological and paleontological is received into  
14 the record.

15 We're now moving to cultural.

16 MR. MILLER: Cultural resources.  
17 Proceeding by declaration testimony, part of  
18 exhibit 35; the declaration testimony of Dr. James  
19 Cleland, that's C-l-e-l-a-n-d. Within that  
20 testimony Dr. Cleland sponsors a portion of  
21 exhibit 1, which would be AFC section 5.16, and  
22 appendix I concerning cultural resources.

23 He would also be sponsoring exhibits 2A,  
24 data responses 25 to 39; 2B, data responses 29 to  
25 35; 2E, data response 25. Exhibits 3A, data

1 responses 120 to 129; 3B data response 120 through  
2 122. Exhibit 6, a cultural resources report,  
3 exhibit 8, historical archeological study.

4 Exhibit 25, a letter regarding Native  
5 American monitors. And exhibit 32, the revised  
6 cultural resources report.

7 I would propose that the declaration  
8 testimony and sponsored exhibits, including his  
9 portion of exhibit 35, be admitted by declaration  
10 and move them into the evidentiary record.

11 HEARING OFFICER GEFTER: Okay. Mr.  
12 Miller, I have a question for you before we  
13 receive those exhibits. And that is with respect  
14 to applicant's filing on February 13th regarding  
15 proposed changes to conditions, there were some  
16 proposed changes applicant had indicated regarding  
17 condition cultural-6 and cultural-7. Do you still  
18 seek those amendments, or has everything been  
19 resolved?

20 MR. MILLER: I believe that the  
21 amendments that we proposed are included as they  
22 may have been revised in staff's addendum  
23 conditions, set of conditions. So those are  
24 agreeable to us.

25 HEARING OFFICER GEFTER: Okay. The

1 exhibits that Mr. Miller has just listed are  
2 received into the record, including that portion  
3 of 35 that relates to cultural resources.

4 Staff, do you have your -- I guess  
5 that's in your addendum where you had revised the  
6 conditions for those of cultural, proposals to  
7 revised cultural-6 and -7 included in that list of  
8 revisions to the proposed conditions of  
9 certification?

10 MR. KRAMER: Yes. And that exhibit is  
11 51.

12 HEARING OFFICER GEFTER: And any other  
13 exhibits on cultural?

14 MR. KRAMER: We'd move 50 and 51 into  
15 evidence.

16 HEARING OFFICER GEFTER: With respect to  
17 the portions of exhibit 50 and 51 related to  
18 cultural resources, those exhibits are received  
19 into the record.

20 MR. MILLER: Thank you.

21 HEARING OFFICER GEFTER: Take a little  
22 aside here and ask staff with respect to exhibit  
23 51 where you have indicated revisions to your  
24 proposed conditions, did you incorporate most or  
25 all of the proposals that applicant had submitted

1 in its February 13th filing? Or are there places  
2 where you changed the conditions? And could you  
3 indicate that when we get to particular topics?

4 MR. KRAMER: Not off the top of our  
5 heads, I don't think.

6 HEARING OFFICER GEFTER: Okay, because  
7 I'm not sure how to deal with that filing from the  
8 applicant from February 13th.

9 MR. KRAMER: I'm sorry?

10 HEARING OFFICER GEFTER: The filing from  
11 the applicant where it proposed revisions to  
12 conditions of certification, the February 13th  
13 filing. And I'm not sure whether we should just  
14 disregard that and just use exhibit 51? Is that  
15 what you would propose?

16 MR. KRAMER: That would be easier for us  
17 if the applicant agrees.

18 MR. MILLER: We would be agreeable to  
19 that, thank you.

20 HEARING OFFICER GEFTER: All right.  
21 Then I'm just going to put that aside and use 51.  
22 Thank you.

23 Okay, let's move on then to hazardous  
24 materials.

25 MR. MILLER: For hazardous materials

1 I'll identify the signed declaration of testimony  
2 of witness Howard Balentine, again as part of  
3 exhibit 35. Within that testimony Mr. Balentine  
4 sponsors portions of the AFC, exhibit 1, which  
5 would be AFC section 5.12 concerning hazardous  
6 materials.

7 In addition he'd be sponsoring exhibit  
8 2A, data response number 40.

9 I would propose that the testimony of  
10 Mr. Balentine and sponsored exhibits be admitted  
11 by declaration and move them into the evidentiary  
12 record.

13 HEARING OFFICER GEFTER: Okay. Mr.  
14 Miller, in the applicant's hazardous materials  
15 testimony there was an offsite analysis for,  
16 offsite impact analysis that was done. Did that  
17 include the two peakers that are nearby, the  
18 adjacent CalPeak and the Ramco Peaker which is a  
19 half a mile away? Was that all included in terms  
20 of hazards, hazards impact?

21 MR. MILLER: I'm in deep water on this  
22 one. Going to have to ask for some help for a  
23 second.

24 MR. ROWLEY: The hazardous materials  
25 analysis, as far as offsite consequences, has to

1 do with the consequences of a spill that occurs in  
2 the Palomar Energy site. And so, by definition,  
3 would not include the effects of other projects,  
4 as opposed to say public health where there is a  
5 cumulative effect. And those would be assessed in  
6 a cumulative manner.

7 HEARING OFFICER GEFTER: Well, okay. My  
8 concern is, and again I need some guidance on  
9 this, the two peakers that are nearby, do they  
10 have SCR installed, and are they using aqueous  
11 ammonia, as well? Or do you know? Because I was  
12 concerned about aqueous ammonia deliveries that  
13 are going to be in same vicinity as the Palomar  
14 project.

15 MR. ROWLEY: Both of those projects have  
16 SCR to my knowledge. I believe --

17 HEARING OFFICER GEFTER: So they would  
18 be receiving --

19 MR. ROWLEY: -- they both use aqueous  
20 ammonia.

21 HEARING OFFICER GEFTER: So they would  
22 receive aqueous ammonia deliveries. And so my  
23 question is, and this may go to the traffic and  
24 transportation topic, were their deliveries also  
25 considered in terms of potential impacts and

1 cumulative impacts?

2 MR. ROWLEY: They were not, because  
3 they're peaking facilities, and run fairly seldom.  
4 That means deliveries are very seldom and  
5 therefore was judged not to be a significant  
6 overlap.

7 HEARING OFFICER GEFTER: Okay. And with  
8 respect to the ammonia storage tank at the Palomar  
9 project, I read in the staff assessment that you  
10 intend to have a 20,000 gallon ammonia storage  
11 tank?

12 MR. ROWLEY: That's correct.

13 HEARING OFFICER GEFTER: And I'm  
14 wondering if that is, you know, unusually small or  
15 is that an average size, because some of the other  
16 projects which also are 500 megawatt projects the  
17 same as Palomar had larger storage tanks, or had  
18 two tanks. I'm wondering whether your tank is,  
19 you know, particularly small, or whether that is a  
20 normal size, or whether you would have more  
21 deliveries as a result of having that size tank.

22 MR. ROWLEY: I'd say it's a typical size  
23 tank from our experience. Part of the reason why  
24 it may be a little smaller than the others is  
25 because since we're starting with 2 parts per

1 million NOx, our NOx level to begin with coming  
2 out of the -- well, I'm sorry -- we're starting  
3 with 9 ppm NOx coming out of the gas turbine. It  
4 could be that some of the other projects are using  
5 Westinghouse gas turbines that start with 22 parts  
6 per million NOx.

7 So we're starting at a fairly low NOx  
8 level to begin with. And as a result of that, the  
9 tank would be smaller.

10 HEARING OFFICER GEFTER: Is that because  
11 your --

12 MR. ROWLEY: But the tank is sized for  
13 one month. So, that's a normal sizing criteria  
14 for us.

15 HEARING OFFICER GEFTER: Explain that  
16 again. Why, if you have a lower NOx emissions,  
17 that you're going to have less ammonia. Is that  
18 related to the SCR process?

19 MR. ROWLEY: Right. Because there's  
20 less NOx coming out of the gas turbine. In other  
21 words, the NOx going into the SCR is at 9 parts  
22 per million; coming out of the SCR it's at 2 parts  
23 per million. So that the drop is 7 parts per  
24 million.

25 That means that we need ammonia that's

1 commensurate with a reduction of 7 parts per  
2 million in order to engage in that chemical  
3 reaction that turns the NOx into nitrogen. And so  
4 the smaller that delta is, the less ammonia that's  
5 required.

6 So, a project that's using gas turbines  
7 at 9 parts per million will use quite a bit less  
8 ammonia than, for example, our project in Nevada;  
9 the Eldorado facility uses Westinghouse gas  
10 turbines, and those machines produce about 22  
11 parts per million NOx.

12 That doesn't mean you can't get to the  
13 same emission coming out of the stack. It just  
14 takes a lot more ammonia to do that.

15 HEARING OFFICER GEFTER: Okay, thank you  
16 for that. So, the other question I had on  
17 hazardous materials is the route for the ammonia  
18 delivery trucks.

19 And I didn't see a routing proposed in  
20 the hazardous materials testimony. And so, again,  
21 maybe in the traffic and transportation topic if  
22 there is a routing, you could talk about that,  
23 because it's not specific from what I see in the  
24 testimony. And there's no condition on that.

25 So, again, if the routing for delivery

1 is discussed in traffic and transportation we'll  
2 deal with it in that topic. But in the staff  
3 assessment there was discussion about the concern  
4 about deliveries of ammonia. And there is a  
5 condition, I believe again in traffic and  
6 transportation, that requires the use of a  
7 particular kind of tanker and following Department  
8 of Transportation rules and regulations.

9 But I didn't see anything regarding the  
10 routing and I would like to see that in a  
11 condition either in hazmat or under traffic and  
12 transportation.

13 MR. MILLER: I don't think we have an  
14 objection to that. That would be appropriate to  
15 add.

16 HEARING OFFICER GEFTER: All right.

17 MR. MILLER: It seemed that there was  
18 discussion of it at some point in history, though,  
19 with regard to transportation. I may be thinking  
20 of the City process, I'm not sure.

21 Apparently it may be in the AFC.  
22 Perhaps we could comment on that again when we get  
23 to transportation.

24 HEARING OFFICER GEFTER: Okay. Then  
25 just to summarize, I understand from Mr. Rowley's

1 testimony that in terms of dealing with deliveries  
2 of ammonia, from a cumulative impact standpoint  
3 you did not look at the peakers as part of that  
4 cumulative impact because you said that the  
5 peakers receive ammonia on a very sporadic basis?

6 MR. ROWLEY: That's correct.

7 HEARING OFFICER GEFTER: Okay. And,  
8 again, let's talk about that under traffic.

9 Okay, anything else on hazardous  
10 materials?

11 MR. MILLER: No, not from us.

12 HEARING OFFICER GEFTER: Okay. The list  
13 of hazardous materials that the applicant is  
14 permitted to use onsite, has that been updated at  
15 all so that it is now incorporated into the  
16 proposed conditions? Has that been updated since  
17 the original AFC was filed, or is it the same  
18 list?

19 MR. MILLER: No changes in that regard.

20 HEARING OFFICER GEFTER: All right,  
21 thank you. The exhibits that Mr. Miller has  
22 indicated related to hazardous materials,  
23 including exhibit 35, which includes the  
24 declaration on hazardous materials, are now  
25 received into the record. Thank you.

1 Staff.

2 MR. KRAMER: To answer an earlier  
3 question about cumulative impacts of the other  
4 projects, reading in the hazardous materials  
5 section of exhibit 50 there's a discussion on page  
6 4.4-13 that indicates that the other projects were  
7 considered and no cumulative impact was found.

8 I thought I'd refer you to that  
9 discussion unless you'd like to have the  
10 individual here to -- but we had been planning  
11 this just in declaration, so I'm not sure we can  
12 have the witness for you today.

13 HEARING OFFICER GEFTER: No, that's  
14 fine.

15 MR. KRAMER: Otherwise, we would submit  
16 exhibits 50 and 55, which is a letter we received  
17 from Department of Toxic Substances Control  
18 subsequent to the publication of the FSA and I  
19 believe the addendum, as well, for the record.

20 HEARING OFFICER GEFTER: That's exhibit  
21 55?

22 MR. KRAMER: Correct, 55.

23 HEARING OFFICER GEFTER: Okay. Before  
24 we move on, Mr. Kramer, do you remember whether  
25 there was discussion of the routing for deliveries

1 of aqueous ammonia?

2 MR. KRAMER: Sure.

3 HEARING OFFICER GEFTER: I do -- I think  
4 I remember seeing this --

5 MR. KRAMER: We did find that, yes.

6 HEARING OFFICER GEFTER: -- in this  
7 section, but I can't track it down.

8 MR. KRAMER: It's in traffic and  
9 transportation, page 4.10-16. We looked at the  
10 condition that it refers to and it doesn't specify  
11 a specific route. But it does describe the route  
12 that they apparently are proposing to use. And we  
13 would have no objection to a specific condition  
14 about route if that's the Committee's preference.

15 HEARING OFFICER GEFTER: Okay, and that  
16 would be under traffic and transportation rather  
17 than hazardous materials, correct?

18 MR. KRAMER: Correct.

19 HEARING OFFICER GEFTER: With respect to  
20 hazardous materials, exhibit 50, the portion  
21 dealing with hazardous materials, and exhibit 55,  
22 response by staff, are received into the record.

23 Let's move on to waste management, and  
24 then we'll go to traffic.

25 MR. MILLER: For waste management I'd

1 like to identify the signed declaration and  
2 testimony of Jacqueline Breese, B, as in boy,  
3 r-e-e-s-e, as part of exhibit 35.

4 Within that testimony Ms. Breese  
5 sponsors portions of exhibit 1, the AFC, section  
6 5.13, and appendix H, the phase one environmental  
7 site assessment.

8 In addition she is sponsoring exhibit  
9 2A, data responses 115 to 116; exhibit 11,  
10 technical workplan shallow subsurface assessment;  
11 exhibit 14, preliminary assessment shall  
12 subsurface 6-acre portion.

13 I would propose that Ms. Breese's  
14 declaration and sponsored exhibits be admitted by  
15 declaration, and move them into the evidentiary  
16 record.

17 HEARING OFFICER GEFTER: Okay. And with  
18 respect to waste management, the phase one ESA  
19 found that there were no hazardous materials that  
20 you would, you know, uncover during excavation.  
21 But there was some concern about perhaps there  
22 might be some metals or something in the soil.

23 Is there some explanation for that? Or  
24 is there a condition that will cover that if, you  
25 know, something is uncovered that was not found,

1 in the phase one ESA?

2 MR. MILLER: There issue you raise was  
3 raised in discovery. And that was addressed in  
4 the two exhibits I listed as part of her  
5 sponsoring.

6 HEARING OFFICER GEFTER: Okay.

7 MR. MILLER: That a separate study was  
8 done of a particular area to insure that it was  
9 not a problem. And that was raised by Dr.  
10 Greenberg for staff. So that was addressed, and  
11 that is in the record. And it was concluded not  
12 to be a problem.

13 HEARING OFFICER GEFTER: Your consultant  
14 from ENSR seems to have something to say.

15 MR. MILLER: I'm sorry, you're  
16 looking --

17 HEARING OFFICER GEFTER: If he would  
18 like to be sworn.

19 MR. MILLER: -- you're seeing things I'm  
20 not seeing.

21 MR. ROWLEY: He's just elaborating that  
22 the reason why there was a question was because  
23 part of the site had been used as an orchard. And  
24 sometimes pesticides and so forth are used in  
25 orchards. And so there was a question as to

1       whether any of that was still existent in the soil  
2       that had ever been used at all.

3               And so some tests were conducted of the  
4       soil, and they came out negative.

5               HEARING OFFICER GEFTER:  The exhibits  
6       listed by Mr. Miller are received into the record,  
7       including that portion of exhibit 35 dealing with  
8       waste management.

9               Mr. Kramer.

10              MR. KRAMER:  Yeah, we would move the  
11      relevant portion of exhibit 50 and exhibit 55 also  
12      touches on this topic.  So we would move that in,  
13      as well.

14              And note that proposed condition Waste-  
15      2, which I believe is our standard condition,  
16      provides a protocol for dealing with any  
17      unexpected contaminated soil that's encountered  
18      during excavation.

19              HEARING OFFICER GEFTER:  Thank you for  
20      that.  Exhibits 50, and that portion dealing with  
21      waste management, and exhibit 55 are received into  
22      the record.

23              The next topic is traffic and  
24      transportation.

25              MR. MILLER:  For traffic and

1 transportation I would identify the signed  
2 declaration and testimony of Scott Barker,  
3 B, as in boy, a-r-k-e-r, as part of exhibit 35.  
4 And within that testimony Mr. Barker sponsors  
5 exhibit 1, AFC section 5.11 concerning traffic and  
6 transportation. And exhibit 2A, data responses 61  
7 through 64.

8 I would propose that the testimony and  
9 sponsored exhibits be admitted by declaration and  
10 move them into the evidentiary record, including  
11 his testimony as part of exhibit 35.

12 HEARING OFFICER GEFTER: Okay.

13 MR. MILLER: And incidentally, we think  
14 we found the answer to the routing question if you  
15 want to --

16 HEARING OFFICER GEFTER: What is that?

17 MR. MILLER: -- receive that. Seems to  
18 be dealt with, and I guess this is really staff's  
19 point, but in the FSA hazardous condition 7  
20 indicates that the project owner shall direct all  
21 vendors delivering any hazardous material to the  
22 site to use only the route approved by the CPM.  
23 And then in parentheses highway 78, Nordall Road  
24 to Citracado Parkway and then to the facility.  
25 The project owner shall --

1 HEARING OFFICER GEFTER: And that --

2 MR. MILLER: -- obtain approval of the  
3 CPM if an alternate route is desired.

4 So I believe that might have been  
5 covered in hazardous materials actually.

6 HEARING OFFICER GEFTER: And that is  
7 condition hazardous --

8 MR. MILLER: Haz-7.

9 HEARING OFFICER GEFTER: -- haz-7?  
10 Okay. Well, I know I had seen it somewhere and  
11 it's actually in a condition --

12 MR. MILLER: Me, too, that's why I --

13 HEARING OFFICER GEFTER: So, all right.  
14 So, again relating to transportation of aqueous  
15 ammonia or any hazardous material to the site,  
16 this route is the route that will be followed.  
17 And that takes care of the concern that we had  
18 discussed earlier. Very good, okay. Thank you.

19 MR. MILLER: It took five people to find  
20 it.

21 HEARING OFFICER GEFTER: All right. On  
22 traffic and transportation I actually have quite a  
23 few questions.

24 Regarding the mitigation that is planned  
25 during construction period, I'm not sure I'm

1 following the proposal very well. And I pulled  
2 the figure 1 out of the staff assessment, which is  
3 traffic and transportation figure 1 which shows  
4 the regional setting.

5 And I think everyone -- you have a copy  
6 of the staff assessment. Look at figure 1 and  
7 kind of walk me through this, and let's talk about  
8 the mitigation plan here.

9 What I kind of understand here is that  
10 there's going to be, the applicant, Palomar, is  
11 going to install one traffic signal at the  
12 intersection of Country Club and Citracado, is  
13 that correct? And then a stop sign at Vineyard  
14 and Citracado? And if you could explain what the  
15 plan is here, because there's a lot of confusing  
16 discussion in the staff assessment. I wanted to  
17 find out what was the plan here.

18 MR. MILLER: Thank you. We did propose  
19 some changes in that regard because it was a  
20 little confusing for us, too. The exhibit 51 does  
21 include some revised transportation conditions.  
22 And the -- let me see if I can point you to those.

23 MR. KRAMER: Page 12 and 13, in there.

24 MR. MILLER: And it may be that I'm  
25 speaking out of turn, and really this should be

1 staff's, but --

2 MR. KRAMER: Go ahead.

3 MR. MILLER: -- the basic concern that  
4 we have, I'll just speak for ourselves, was that  
5 there were two conditions relating to  
6 signalization that were directly imposed upon  
7 Palomar Energy which we felt were part of the  
8 larger and rather rigorous transportation planning  
9 that had been going on as part of the ERTC review.

10 And so what we did was essentially  
11 propose that as to the two intersections in  
12 question that for dividing our direct  
13 responsibility from essentially participating and  
14 following the City's mandates as part of the ERTC  
15 mitigations.

16 So, with regard to -- and I'll have to  
17 be interrupted if I make a mistake on this -- but  
18 Citracado and Vineyard, I believe our obligation,  
19 as proposed in the revised conditions that are  
20 part of the addendum, was to install a stop sign  
21 control during construction.

22 And then participate, longer term, in  
23 whatever the plan is the City imposes for that  
24 intersection.

25 Then with regard to the signalization at

1 Citracado and Country Club, we would demonstrate  
2 that we paid our fair share into that as part of  
3 the ERTC.

4 So, --

5 HEARING OFFICER GEFTER: And not put a  
6 traffic signal there during construction?

7 MR. MILLER: Correct. Not put one there  
8 during construction. If anyone behind me  
9 disagrees with what I've been saying I will stand  
10 corrected.

11 And I don't know if that's precisely  
12 addressing your question, but that's just the  
13 background from our perspective.

14 HEARING OFFICER GEFTER: So the  
15 conditions have been revised in exhibit 51?

16 MR. MILLER: Correct.

17 HEARING OFFICER GEFTER: And those are  
18 conditions that both parties agree to?

19 MR. MILLER: Yes. Trans-6 and trans-8.

20 HEARING OFFICER GEFTER: Those are the  
21 conditions that I was concerned about, too. Okay.

22 All right, at this point we'll move  
23 applicant's exhibits into the record, as indicated  
24 by Mr. Miller, regarding traffic and  
25 transportation, including that portion of exhibit

1 35 that relates to traffic and transportation.

2 And go on to -- I have another question  
3 for applicant before I move to staff.

4 There is a discussion about putting in a  
5 rough-graded road on -- and rough-graded road for  
6 Citracado, which would then eventually connect to  
7 the extension of the Citracado Parkway. And the  
8 rough-graded road goes through the entire ERTC  
9 site. That's my understanding from looking at  
10 figure 1 from the FSA, traffic and transportation  
11 figure 1.

12 Is that what is referred to when you  
13 talk about the rough-graded road?

14 MR. ROWLEY: Really all of this goes to  
15 the sequencing between Palomar Energy versus the  
16 ERTC. And since the grading of the overall ERTC  
17 must precede the Palomar Energy project, and that  
18 grading includes grading of the alignment of  
19 Citracado Parkway, that means that that rough-  
20 graded -- it was really a question of whether the  
21 road will be paved or not prior to start of  
22 construction of Palomar Energy.

23 Actually the same concept goes to the  
24 other two intersections that were discussed  
25 earlier. Both of those intersections are part of

1 the ERTC's obligation.

2 And for example, the intersection at  
3 Citracado and Vineyard, if it's already signalized  
4 before we start construction then it's a moot  
5 issue. If it's not, then we need to put a stop  
6 sign in there until the signalization happens as  
7 part of the ERTC.

8 And the same concept applies to  
9 Citracado Parkway, itself. It'll be at least  
10 rough graded because that is part of the grading  
11 of the ERTC. So we know that will be in place.  
12 And if it's not paved yet, then that alignment  
13 would be used for construction access for Palomar.

14 HEARING OFFICER GEFTER: Okay, and what  
15 about Country Club and Citracado? If Palomar's  
16 not putting a traffic signal there, what is going  
17 to be used in mitigation for all the construction  
18 traffic during the period that the Palomar project  
19 is being built?

20 MR. MILLER: Wrong condition; that was  
21 Vineyard I was just showing --

22 HEARING OFFICER GEFTER: Yeah, I'm  
23 looking at Citracado and Country Club, that  
24 intersection. Apparently that has an LOS of F,  
25 which means that any additional cumulative impacts

1 would be considered significant. And that needs  
2 to be mitigated according to what the staff  
3 assessment indicates.

4 MR. ROWLEY: Yeah, there are a number of  
5 traffic issues that surround the ERTC. And this  
6 intersection is one of those. And the obligation  
7 to the ERTC is to contribute towards the ultimate  
8 signalization of that intersection.

9 But as far as construction of Palomar  
10 our obligation is actually just to show that the  
11 contribution has been made, and there's no  
12 specific mitigation measure other than that.

13 HEARING OFFICER GEFTER: No stop signs  
14 or no traffic signal people to direct traffic when  
15 heavy equipment is being, you know, hauled through  
16 that intersection?

17 MR. ROWLEY: Well, heavy equipment is  
18 really a separate issue. I mean that's something  
19 that has its own set of procedures. If, you know,  
20 large, slow-moving equipment is moving through  
21 there, that has to be dealt with on a case-by-case  
22 basis with the appropriate personnel and  
23 procedures.

24 HEARING OFFICER GEFTER: What about all  
25 the commuters that are coming in through that

1 particular intersection?

2 MR. ROWLEY: There's no specific  
3 mitigation measure for that.

4 HEARING OFFICER GEFTER: And prior to  
5 that there -- I mean prior to exhibit 51 and the  
6 agreement on the new conditions, there were  
7 mitigation measures to deal with that. And they  
8 included traffic signalization and other measures  
9 at that intersection to deal with the impacts.

10 And while you're looking for that  
11 information, is the Palomar project the first  
12 project in the ERTC that will be constructed if  
13 the project is certified? Or will other projects  
14 be constructed during the same period of time?

15 MR. ROWLEY: That's uncertain.

16 HEARING OFFICER GEFTER: So there might  
17 be cumulative impacts of other construction  
18 projects going through that same intersection?  
19 Does either staff or applicant have any response  
20 to that? Cumulative impacts from construction of  
21 other projects in the ERTC in addition to Palomar  
22 at the same time. It would be cumulative impacts  
23 on traffic at that point.

24 MR. ROWLEY: I'm sorry, in addition, if  
25 Palomar --

1 HEARING OFFICER GEFTER: If other  
2 projects at the ERTC are being constructed at the  
3 same time as the Palomar project, you would have a  
4 lot more traffic at these intersections. So there  
5 would be cumulative impacts, as well as direct  
6 impacts, from each project.

7 MR. ROWLEY: That's a possibility.

8 HEARING OFFICER GEFTER: Yeah. And so  
9 what kind of mitigation will Palomar participate  
10 in at that point?

11 MR. ROWLEY: The traffic analysis showed  
12 that the ultimately build-out of the ERTC and the  
13 normal operating traffic associated with the  
14 permitted employees going to and from work, that  
15 that was actually a worst case scenario. In other  
16 words, it was a more severe test of the traffic  
17 system than construction was.

18 HEARING OFFICER GEFTER: The permanent  
19 employees and the -- I don't follow that, because  
20 you have a lot fewer permanent employees than you  
21 do construction employees.

22 MR. ROWLEY: Well, the ERTC is built in  
23 phases.

24 HEARING OFFICER GEFTER: Um-hum.

25 MR. ROWLEY: In other words, it's a

1 large business park. It won't all get built at  
2 once. And so as buildings get built and as  
3 buildings get occupied, then there's, I think the  
4 ultimate occupancy, the overall ERTC is something  
5 over 3000 workers. So that exceeds the  
6 construction workforce for any given building.

7 HEARING OFFICER GEFTER: Okay, I see.  
8 But that's in the future, and I'm talking about  
9 potential cumulative impacts from construction  
10 traffic, because that's, you know, we're talking  
11 about in the near future. How is Palomar going to  
12 mitigate its construction impacts at these  
13 intersections if you have no particular mitigation  
14 plan.

15 I mean that was my understanding, what  
16 you just said, at Citracado and Country Club.

17 MR. ROWLEY: The obligation is to insure  
18 that the ERTC makes its fair share contribution,  
19 but there is no planned physical mitigation  
20 measure for normal construction traffic. And so  
21 the answer to your question is none.

22 MR. MILLER: I guess our anticipation  
23 also is that the City, in the normal course, if  
24 there was a traffic problem relating specifically  
25 to construction, would require a flagman or

1 something like that.

2 The issue that was raised in the  
3 original version of Trans-8 was that we, and we  
4 alone, would pay for the traffic light, which  
5 struck us as being disproportionate. And so  
6 that's why we proposed making sure that the  
7 contributions had been made as required under the  
8 ERTC.

9 This original condition actually didn't  
10 deal with anything else. So, I'm sure we would  
11 have no problem with doing what we expect to do  
12 anyway, which would be cooperate with the City  
13 traffic department and Public Works Department to  
14 insure that during construction there is  
15 appropriate measures taken, if the signal wasn't  
16 already there. Much as we did on Vineyard.

17 HEARING OFFICER GEFTER: It's  
18 anticipated that the signal may be in place before  
19 construction begins?

20 MR. MILLER: You know, I don't have  
21 personal knowledge of that --

22 MR. ROWLEY: I don't know, it's a  
23 possibility. The other possibility is that it's  
24 not. In which case, if, during the coming to work  
25 time in the morning and going home time at night

1 during those windows when there's a large influx  
2 or outflux of construction workers that it may be  
3 something that the City wants us to do is to put a  
4 flagman at that intersection to run the traffic  
5 through there quickly.

6 HEARING OFFICER GEFTER: Okay. Mr.  
7 Kramer.

8 MR. ROWLEY: So I think that's something  
9 that we'll have to deal with based on  
10 circumstances as they unfold.

11 HEARING OFFICER GEFTER: Thank you. Mr.  
12 Kramer.

13 MR. KRAMER: While admitting my lack of  
14 expertise, I can point to condition Trans-5 which  
15 requires a construction traffic control plan to  
16 be -- which review would be coordinated with the  
17 City Public Works Department.

18 And it talks about timing of deliveries;  
19 possible use of a flag person; traffic control  
20 device; other things. So there's something in  
21 there to deal with that already.

22 And I'm pretty sure that the existing  
23 intersection of Country Club Drive and Citracado  
24 does already have a stop sign, at least for the  
25 Country Club Drive folks coming to that T

1 intersection.

2 And I think the reason we agreed to the  
3 removal, or the change of Trans-8 from an absolute  
4 requirement that they install the signal at their  
5 own cost was a notion that they really just need,  
6 it's appropriate to just have them pay for their  
7 fair share of the cost.

8 And once this thing is built and  
9 operating, its traffic will be a relatively small  
10 proportion of the traffic coming from the business  
11 park. Because it, you know, takes up a lot of  
12 land without any offices or cubicles, unlike the  
13 other buildings there.

14 HEARING OFFICER GEFTER: I don't think  
15 there's a problem with the fair share, you know,  
16 issue. But I think that the construction traffic  
17 control plan may need to be more specific, and you  
18 might need to identify the intersections where  
19 some of these measures should be implemented.

20 So I would propose that -- I would  
21 request that the parties get together and come up  
22 with more specific language on this plan. Because  
23 I think originally when staff was requiring the  
24 installation of a traffic signal that would have  
25 solved a lot of the concern about, you know, peak

1 hours, commuter traffic during peak hours.

2 And since we're not sure if there's  
3 going to be a traffic signal before construction  
4 begins, you need to have more specific control in  
5 place at these intersections where you have an LOS  
6 F. Because according to staff's assessment, the  
7 City finds that it's a significant impact if it's  
8 already an LOS F intersection, and delay is going  
9 to be more than two seconds, which is -- clearly  
10 it was found that it would be a significant  
11 impact, particularly at Citracado and Country  
12 Club.

13 So, I want to see more specific language  
14 that addresses that concern in Trans-5 or a  
15 different condition.

16 And, you know, it's getting kind of  
17 close to lunch, so perhaps what we could do is we  
18 could break now. You guys could get together,  
19 come up with some language, and we could actually  
20 get that taken care of at this point, if possible.

21 MR. MILLER: Okay.

22 HEARING OFFICER GEFTER: And at the same  
23 time I have a question, and this may be I'm just  
24 looking at the map incorrectly, figure 1, again.

25 It says Trans-6 -- oh, I see. Okay,

1 Trans-6 talks about 150 feet of left-turn storage  
2 for westbound traffic on Vineyard Avenue. And  
3 does that mean that coming from the east, going  
4 west to Vineyard, where you would be turning into  
5 the site you're going to put a left-turn pocket?

6 MR. ROWLEY: I'm almost certain that's  
7 correct.

8 HEARING OFFICER GEFTER: Is that what  
9 we're talking about there?

10 MR. ROWLEY: Sounds reasonable to me.

11 HEARING OFFICER GEFTER: Okay, that's  
12 what I was assuming what it meant there. I hope  
13 everyone knows what it means.

14 Okay. Are you following that?

15 MR. MILLER: Yes, but at the risk of  
16 further confusing things, --

17 HEARING OFFICER GEFTER: Yes.

18 MR. MILLER: -- that condition was  
19 actually changed in the --

20 HEARING OFFICER GEFTER: Okay.

21 MR. MILLER: -- agreed-upon conditions  
22 in Trans-6.

23 HEARING OFFICER GEFTER: Okay.

24 MR. MILLER: The left turn. Because we  
25 felt that the City needed to be at the table to

1       decide did they want that particular configuration  
2       for a left turn, or is it 150, 175, what is it. Or  
3       should it even be there.

4               So, we've included that to just be  
5       wrapped up, our thought is that will just be  
6       wrapped up in the plan with the City, rather than  
7       specifying design requirements in the CEC's  
8       condition that the City may or may not agree with  
9       as being the best approach.

10              HEARING OFFICER GEFTER:   Okay.

11              MR. MILLER:   So we're doing the traffic  
12       engineering at our level rather than at the City  
13       level, which we though was inappropriate.

14              HEARING OFFICER GEFTER:   And certainly  
15       the City should be involved, but I think that it  
16       should be specific with respect to where you want  
17       these left-turn pockets to be.   And, you know,  
18       because these conditions are in there to mitigate  
19       certain impacts that are identified as significant  
20       impacts.

21              And so I want to see more specific  
22       language in these conditions.   It may not be  
23       necessary to actually design the left-turn pocket  
24       in terms of how long it needs to be and that sort  
25       of thing in the condition.   But there needs to be

1 something in the condition that specifies where  
2 the pocket should be and what other measures, what  
3 other specific measures should be implemented.

4 MR. MILLER: We will take that under  
5 advisement.

6 HEARING OFFICER GEFTER: Yeah.

7 MR. MILLER: We frankly may not agree  
8 with that.

9 HEARING OFFICER GEFTER: That's fine, I  
10 would --

11 MR. MILLER: Because of the specificity  
12 of it --

13 HEARING OFFICER GEFTER: -- hope the  
14 applicant --

15 MR. MILLER: -- we'd be concerned that  
16 we'd be putting in place maybe a little too early  
17 exactly what that should be without the  
18 opportunity to have the City's traffic experts  
19 participate.

20 HEARING OFFICER GEFTER: I can  
21 understand your concern, and we --

22 MR. MILLER: So that's just a concern.

23 HEARING OFFICER GEFTER: -- certainly  
24 don't want to, you know, tell the City engineers,  
25 you know, how to do their job. But I think we

1 need to be specific because we need to -- specific  
2 to the extent that we reflect what the findings  
3 are in the staff assessment with respect to  
4 impacts.

5 MR. MILLER: I understand you need to  
6 make sure that you do have a mitigation. So we'll  
7 try to work something through.

8 HEARING OFFICER GEFTER: Okay. I think  
9 we will take a break right now and return at 1:30.  
10 And hopefully by then you'll have some new  
11 language for us and we can move on.

12 MR. MILLER: Okay, thank you.

13 HEARING OFFICER GEFTER: Thank you very  
14 much. We're in recess.

15 (Whereupon, at 11:50 a.m., the hearing  
16 was adjourned, to reconvene at 1:30  
17 p.m., this same day.)

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1 AFTERNOON SESSION

2 1:38 p.m.

3 PRESIDING MEMBER GEESMAN: On the record

4 HEARING OFFICER GEFTER: All right,

5 during the break we understand that the parties  
6 got together and have proposed some amendments to  
7 conditions of certification in the traffic and  
8 transportation section.

9 And we'd ask the staff to introduce  
10 those amendments to us, and tell us whether you  
11 agree with them.

12 MR. KRAMER: Okay, I propose to number  
13 this document 51A, will that work?

14 HEARING OFFICER GEFTER: Okay. This  
15 would be exhibit 51A. Okay, this is a new exhibit  
16 that staff is proposing. We had talked about it  
17 being exhibit 51A, however on the exhibit list --

18 MR. KRAMER: My thought was just to keep  
19 it close to 51 --

20 HEARING OFFICER GEFTER: Yeah.

21 MR. KRAMER: -- for convenience.

22 HEARING OFFICER GEFTER: All right,  
23 that'd be fine. We'll just add it in there.

24 Do you want to tell us about it.

25 MR. KRAMER: I'd leave that to the

1 applicant or either Eileen Allen who's on the  
2 traffic testimony to explain it. And if she's  
3 going to do it, I suppose she should be sworn.

4 HEARING OFFICER GEFTER: Would you  
5 please swear Ms. Allen.

6 Whereupon,

7 EILEEN ALLEN

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

11 MR. KRAMER: Can we stipulate that she's  
12 an expert, or do we need to review her  
13 qualifications?

14 MR. MILLER: I think we can stipulate  
15 that.

16 HEARING OFFICER GEFTER: That's fine.

17 DIRECT EXAMINATION

18 BY MR. KRAMER:

19 Q Ms. Allen, could you explain the  
20 rationale behind the modifications that are shown  
21 on exhibit 51A to conditions Trans-6 and -8?

22 A The intent of the additions that are  
23 underlined in exhibit 51A are to clarify exactly  
24 what would be occurring before construction of the  
25 power plant project. And related to the ERTC

1 specific plan, traffic mitigation. There will be  
2 left- and right-turning lanes on Vineyard Avenue,  
3 plus adequate tapering length to mitigate  
4 construction-related impacts at the intersection.

5 A key item is that the improvements that  
6 I just summarized must be installed prior to the  
7 initiation of any construction activity for the  
8 Palomar project.

9 HEARING OFFICER GEFTER: Okay, is that  
10 included in the verification?

11 MS. ALLEN: That was always in the  
12 verification so the --

13 HEARING OFFICER GEFTER: Well, it says  
14 60 days prior to start of construction. Does that  
15 include excavation and all the other site  
16 preparation?

17 MS. ALLEN: I think rough-grading would  
18 precede that, but certainly before the influx of  
19 major earthmoving equipment and certainly before  
20 the bulk of the construction workforce began to  
21 flow in.

22 HEARING OFFICER GEFTER: So you're  
23 satisfied that it should say the start of  
24 construction, rather than start of excavation or  
25 start of any earthmoving --

1 MS. ALLEN: Yes, I --

2 HEARING OFFICER GEFTER: -- activities?

3 MS. ALLEN: -- I'm satisfied.

4 HEARING OFFICER GEFTER: Okay.

5 MS. ALLEN: Trans-8, we added the  
6 wording regarding working with the City Engineer,  
7 the City of Escondido, regarding the comprehensive  
8 traffic mitigation plans that they've developed  
9 related to the ERTC.

10 And then that refers back to Trans-6.

11 HEARING OFFICER GEFTER: Okay, that's  
12 fine. And the verification on Trans-8 says at  
13 least 90 days prior to site mobilization. So, how  
14 do you coordinate these two conditions? Trans-8  
15 has to be implemented before Trans-6, is that the  
16 intent here?

17 MS. ALLEN: Yes, because of the need for  
18 working with the City Engineer.

19 HEARING OFFICER GEFTER: Okay, and is  
20 this a realistic timeline?

21 MS. ALLEN: Yes. Staff is prepared to  
22 begin monitoring that.

23 HEARING OFFICER GEFTER: Does the  
24 applicant agree with the proposed amendments?

25 MR. MILLER: Yes, we do.

1 HEARING OFFICER GEFTER: So, we'll take  
2 that into the record. And are you moving exhibit  
3 51A into the record?

4 MR. KRAMER: Yes.

5 HEARING OFFICER GEFTER: Okay, so with  
6 respect to exhibit 51A sponsored by staff  
7 regarding modifications to conditions Trans-6 and  
8 Trans-8, is now received into the record. Thank  
9 you.

10 Do you have anything else, Ms. Allen,  
11 regarding this topic?

12 MS. ALLEN: Regarding the overall  
13 congestion, which is -- it's a difficult  
14 congestion level, considered the maximum in  
15 traffic engineering terms, right now, I'd like to  
16 call your attention to one of the nuances in  
17 Trans-5 which hasn't changed, which is a  
18 requirement that the construction workforce arrive  
19 and depart after the peak traffic times.

20 HEARING OFFICER GEFTER: It's in Trans-5  
21 as one of the bullets?

22 MS. ALLEN: Yes, it's one of the  
23 bullets. Partway down.

24 HEARING OFFICER GEFTER: It says,  
25 establishment of construction work hours and

1 arrival/departure times outside of peak traffic.

2 MS. ALLEN: Yes.

3 HEARING OFFICER GEFTER: Okay, and --

4 MS. ALLEN: So, in addition to these  
5 traffic impact mitigation measures, that  
6 construction practice would diminish the impact of  
7 the project at these congested intersections.

8 HEARING OFFICER GEFTER: Thank you. And  
9 while you're here, we had a discussion earlier  
10 today about the mitigation for the intersection of  
11 Country Club Drive and Citracado where the  
12 original condition required the applicant to  
13 install a traffic signal.

14 And that was amended so that now they  
15 would just put in their fair share to the cost of  
16 the traffic signal. However, you know, the staff  
17 assessment, of which you're an author of the  
18 traffic section, indicates that there is  
19 significant impact at that -- there will be  
20 significant impact at that intersection because it  
21 already is an LOS F. And that the addition of  
22 these construction workers commuting to and from  
23 the project site will add to that congestion. And  
24 that it needed mitigation.

25 And so, without the traffic signal

1       there, do you have any other, other than what  
2       we've talked about today, changing the timing on  
3       when the construction workers arrive and leave,  
4       and then this amendment contained in 51A for  
5       Trans-6, is there any other additional mitigation  
6       for that intersection?

7               MS. ALLEN:  No.

8               HEARING OFFICER GEFTER:  Okay.

9               MR. MILLER:  Pardon me.  The amendment  
10       includes Trans-8 as well.

11              HEARING OFFICER GEFTER:  And Trans-8,  
12       right.  And Trans-8 is the --

13              MR. MILLER:  And that deals with what  
14       you've been talking about.

15              HEARING OFFICER GEFTER:  -- plan, right.  
16       So, how is staff going to monitor whether or not  
17       those significant impacts are going to be  
18       mitigated?

19              MS. ALLEN:  I'd envision talking with  
20       the City Engineer about how they saw the progress  
21       of the overall ERTC project unfolding, and --

22              HEARING OFFICER GEFTER:  Okay, is --  
23       there was some discussion earlier about the  
24       possibility of the ERTC developer installing that  
25       traffic signal prior to construction.  Does staff

1 have any information on that?

2 MS. ALLEN: I don't at this time. That  
3 would be something I would think to talk about --

4 HEARING OFFICER GEFTER: Okay.

5 MS. ALLEN: When we were sure that  
6 construction was imminent on the ERTC, to begin  
7 talking with the traffic engineer at that point.

8 HEARING OFFICER GEFTER: It seems a  
9 little vague. We will, perhaps when we get down  
10 to the hearings in Escondido and we have  
11 representatives from the City there on the land  
12 use topic, perhaps we can get a more specific  
13 answer on this.

14 MS. ALLEN: If the City is prepared to  
15 tell us when they expect ERTC construction to  
16 start, that would help in a number of areas. At  
17 this point we haven't heard that from them.

18 And I suspect it's uncertainties about  
19 lining up their financing.

20 HEARING OFFICER GEFTER: All right.

21 Anything else, Mr. Miller?

22 MR. MILLER: Do you want to add  
23 anything?

24 MR. ROWLEY: Yes, I just wanted to make  
25 sure that it was clear that the modification of

1 Trans-8 it does state that with regard to the  
2 Country Club Drive/Citracado Parkway intersection  
3 that specific measures to mitigate construction-  
4 related impacts at this intersection shall be  
5 included in the Trans-6 plan, which requires  
6 approval by the City Engineer of the City of  
7 Escondido.

8 HEARING OFFICER GEFTER: Okay. So  
9 you're suggesting this question may be covered by  
10 that language?

11 MR. ROWLEY: Yes.

12 HEARING OFFICER GEFTER: Okay. Well,  
13 let's see what happens in the next couple weeks.  
14 Okay, thank you. Anything else on this topic, Mr.  
15 Miller?

16 MR. MILLER: Nothing else on  
17 transportation.

18 HEARING OFFICER GEFTER: Thank you. The  
19 next topic is noise, noise and vibration.

20 Ms. Allen is dismissed. Thank you very  
21 much.

22 Mr. Miller, noise and vibration.

23 MR. MILLER: Bear with me for a second  
24 while we change the guard here.

25 For noise we'd proceed by declaration.

1 The witness is Hans Giroux, spelled G-i-r-o-u-x.  
2 First name Hans, H-a-n-s.

3 I would identify the signed declaration  
4 of testimony of Mr. Giroux within exhibit 35; and  
5 within that testimony Mr. Giroux sponsors exhibit  
6 1, the AFC section 5.9; and also exhibit 2A, data  
7 responses 41 through 43; exhibit 3A, data  
8 responses 130 through 132.

9 And I would propose that his testimony  
10 and sponsored exhibits be admitted by declaration  
11 and move them into the evidentiary record. And  
12 that would include that portion of exhibit 35  
13 which is Mr. Giroux's testimony.

14 HEARING OFFICER GEFTER: I have a  
15 question on noise but it goes to staff's  
16 assessment, so at this point we will admit into  
17 the record the exhibits that Mr. Miller just  
18 referenced, as well as exhibit 35, which contains  
19 the declaration regarding noise.

20 MR. MILLER: Thank you.

21 HEARING OFFICER GEFTER: And, Mr.  
22 Kramer.

23 MR. KRAMER: For this topic we just have  
24 exhibit 50.

25 HEARING OFFICER GEFTER: Exhibit 50 with

1       respect to noise and vibration is received into  
2       the record.

3               I have a question noise and I hope that  
4       Mr. Eller can answer this.  And it's a  
5       clarification.  In the section on noise, which is  
6       page 4.6-13 of the staff assessment, there is  
7       noise table 5, which is entitled summary of  
8       predicted operational noise levels.

9               And it also says that this particular  
10       table includes the mitigation measures that the  
11       applicant has proposed.  And it says that the  
12       changes, an increase of two decibels at receptor  
13       site one, and three and four decibels at receptor  
14       sites two and three; and 20 decibels at receptor  
15       site four.

16              Okay, so that the next table, table 6,  
17       shows that the increase in ambient noise levels is  
18       five decibels, which is the maximum under CEQA  
19       that's allowed before you find a significant  
20       impact.

21              So what I'm not sure here is what the  
22       differences why in table 6 you're going up to an  
23       increase in five decibels, whereas the table that  
24       actually shows predicted noise levels, the  
25       changes, is less, except for receptor site four.

1           Can you explain that, or can someone on  
2           applicant's side explain it? Or if you can't  
3           explain at this point, could you have your witness  
4           add some addenda to their declaration to explain  
5           it?

6           MR. KRAMER: It might take us a moment.  
7           Could we have a moment?

8           HEARING OFFICER GEFTER: Sure, we'll go  
9           off the record for a moment.

10          (Off the record.)

11          HEARING OFFICER GEFTER: Staff has asked  
12          that its witness on noise be present. He will be  
13          here in a few minutes. In the meantime we're  
14          going to leave noise momentarily and take exhibits  
15          on the remaining topics, and then we'll go back to  
16          the noise question.

17          If Mr. Miller can proceed on  
18          socioeconomics. I also want to point out that  
19          staff has not, I don't believe we received the FSA  
20          on noise yet, so on the completion of your  
21          witness' testimony on noise we will receive that  
22          section of the FSA, as well.

23          And let's go on to socioeconomics from  
24          the applicant.

25          MR. MILLER: For socioeconomics I would

1 identify the signed declaration of testimony of  
2 Arrie Bachrach -- I believe you have his card --  
3 as part of our exhibit 35. Within the testimony  
4 of Mr. Bachrach he sponsors exhibit 1, AFC section  
5 5.8, socioeconomics. And that's, I guess, the  
6 only exhibit for socioeconomics.

7 I would propose the testimony and  
8 sponsored exhibit be admitted by declaration and  
9 move them into the evidentiary record.

10 HEARING OFFICER GEFTER: Also in Mr  
11 Bachrach's testimony he indicates that he made a  
12 revision on page 2 of his testimony that the  
13 annual property tax revenues are estimated at 3-  
14 to 3.5 million per year rather than 2.3 million?

15 MR. MILLER: That's correct. Thank you.

16 HEARING OFFICER GEFTER: The exhibits  
17 referred to by Mr. Miller regarding socioeconomics  
18 are admitted into the record, as well as that  
19 portion of exhibit 35 that deals with  
20 socioeconomics.

21 Staff. On socioeconomics.

22 MR. KRAMER: We just have exhibit 50.

23 HEARING OFFICER GEFTER: Okay. That  
24 portion of exhibit 50 that deals with  
25 socioeconomics is now received into the record.

1           And let's move on to the next topic  
2           which is worker safety.

3           MR. MILLER: For worker safety I would  
4           identify the signed declaration and testimony of  
5           Allen Bennett, B-e-n-n-e-t-t. And it's Allen,  
6           A-l-l-e-n, as part of exhibit 35. Mr. Bennett  
7           sponsors exhibit 1, AFC section 5.14, and also  
8           exhibit 2A, data response number 117.

9           I propose the testimony and sponsored  
10          exhibits, including that portion of exhibit 35  
11          that composes his testimony, be admitted and move  
12          them into the evidentiary record.

13          HEARING OFFICER GEFTER: The exhibits  
14          referred to by Mr. Miller regarding worker safety  
15          and fire protection are now received into the  
16          record.

17          Staff.

18          MR. KRAMER: Exhibit 50 from the staff  
19          we offer.

20          HEARING OFFICER GEFTER: Exhibit 50  
21          regarding the topic of worker safety and fire  
22          protection are received into the record. Thank  
23          you.

24          And now the last topic is compliance.  
25          And if applicant has anything on compliance, come

1 forward.

2 MR. MILLER: Compliance and closure.  
3 For the compliance topic I would identify the  
4 signed declaration and testimony of Mr. Joseph  
5 Rowley without exhibit 35. Within that testimony  
6 Mr. Rowley sponsors exhibit 1, AFC section 2,  
7 project description, that portion that deals with  
8 compliance and closure.

9 I would propose the testimony and  
10 sponsored exhibit be admitted by declaration and  
11 move them into the evidentiary record.

12 HEARING OFFICER GEFTER: And the  
13 applicant will follow the conditions set forth in  
14 the compliance section of the final decision on  
15 this case?

16 MR. MILLER: Yes. Would you like Mr.  
17 Rowley to attest to that?

18 HEARING OFFICER GEFTER: Yes.

19 MR. MILLER: That would be fine.

20 MR. ROWLEY: Yes.

21 HEARING OFFICER GEFTER: Okay. The  
22 exhibit and testimony referred to by Mr. Miller  
23 regarding compliance and closure is now received  
24 into the record.

25 Mr. Kramer, on compliance?

1           MR. KRAMER: We just have again exhibit  
2 50. I'd just note that the section is labeled  
3 general conditions and compliance monitoring plan.

4           HEARING OFFICER GEFTER: Okay, general  
5 conditions and compliance monitoring plan portion  
6 of exhibit 50 is now received into the record.

7           I have a question regarding site  
8 security which I believe is included in the  
9 compliance and closure plan. Mr. Eller may be  
10 able to give us the reference to that section.

11          MR. ELLER: Staff, in their general  
12 conditions of compliance, have included security  
13 planning for the project. I would point at page  
14 7-8 of the general conditions. Requires the  
15 development of a construction operation security  
16 plan. That's under compliance 8 condition.

17          And it lists the items that they must  
18 address for both construction and operation in  
19 that plan.

20          HEARING OFFICER GEFTER: Thank you. Is  
21 this a new provision that staff has begun to add  
22 to the compliance section?

23          MR. ELLER: Yes, it is.

24          HEARING OFFICER GEFTER: Okay, thank  
25 you. And the applicant agrees to this section, as

1 well?

2 MR. ROWLEY: Yes, we do.

3 HEARING OFFICER GEFTER: Thank you. All  
4 right, thank you, Mr. Eller.

5 And we understand that staff now has  
6 their witness on noise and vibration. Would you  
7 like to offer testimony of your witness at this  
8 point?

9 MR. ELLER: Staff witness is quickly  
10 reviewing the section since he did not prepare it.  
11 If we could have one moment?

12 HEARING OFFICER GEFTER: Okay, we'll  
13 take a moment and go off the record.

14 (Off the record.)

15 HEARING OFFICER GEFTER: Would the  
16 reporter please swear Mr. Baker as a witness.  
17 Whereupon,

18 STEVE BAKER  
19 was called as a witness herein, and after first  
20 having been duly sworn, was examined and testified  
21 as follows:

22 MR. KRAMER: Can we have a stipulation  
23 as to Mr. Baker's expertise in the noise topic  
24 area?

25 MR. MILLER: Yes.

1 DIRECT EXAMINATION

2 BY MR. KRAMER:

3 Q Okay, Mr. Baker, you're not listed as  
4 the preparer of the noise testimony for this  
5 project, but did you supervise its preparation?

6 A Yes, I did.

7 Q And did you review it during the course  
8 of its preparation?

9 A Yes.

10 Q And you've had a chance to review it  
11 this afternoon, again?

12 A Briefly, yes.

13 Q So you're familiar with its contents?

14 A Yes.

15 Q The question for you, if you could turn  
16 to table 5, that shows projected cumulative noise  
17 levels at the first three sites, the only ones  
18 we're interested in, from 36 to 44 decibels.

19 Then table 6 shows those same sites  
20 somewhat higher cumulative noise levels. And the  
21 question is can you explain why those two tables  
22 have different levels?

23 A Yes, I'll try. Table 5 shows projected  
24 noise impacts due to the project as described in  
25 the application. As we all know, when you

1 actually go about building something it may be  
2 different in one way or another from what was  
3 intended in the application.

4 If, you know, the project were built  
5 exactly as the application predicts, then the  
6 noise levels in table 5 would be expected at the  
7 receptors.

8 As you can see from the final column in  
9 table 5, this would result in increases in ambient  
10 noise at those receptors as little as two  
11 decibels, which is absolutely unnoticeable.

12 In table 6 what Mr. Buntin has attempted  
13 to do is allow the applicant some leeway, a little  
14 room for error in case they build the project and  
15 it turns out to be a couple decibels noisier than  
16 predicted. It wouldn't be until it exceeded the  
17 values in table 6 that it would be likely to annoy  
18 anyone.

19 The five-decibel increase shown in the  
20 last column of table 6 is typically accepted in  
21 the noise business, and has typically been  
22 accepted by staff here for many years as being the  
23 level at which people are not likely to be annoyed  
24 at the noise.

25 So, in table 6 Mr. Buntin has offered

1 the applicant a little bit of extra elbow room  
2 when they built the project if it is, in fact, a  
3 couple decibels noisier than in the application it  
4 would still not cause a problem, as long as it  
5 meets the levels in the center column of noise  
6 table 6.

7 And the numbers from table 6 are the  
8 ones that are then incorporated in our proposed  
9 condition of certification Noise-6.

10 HEARING OFFICER GEFTER: Okay. So I  
11 understand, what you're suggesting is that staff  
12 is giving the applicant some leeway if, in fact,  
13 the project is producing more noise than  
14 originally modeled.

15 But still this five decibel increase  
16 would still meet both LORS and CEQA analysis, and  
17 not cause a significant impact?

18 MR. BAKER: That's correct. If we were  
19 to hold them to the numbers in the application we  
20 believe that would be unnecessarily harsh.

21 HEARING OFFICER GEFTER: Do you think  
22 that it's do-able?

23 MR. BAKER: Well, actually, if you spend  
24 enough money any level of noise is possible. The  
25 object in industry is not to spend more money on

1 noise attenuation than is necessary.

2 In table 6 Mr. Buntin has set the  
3 minimum limit of attenuation.

4 HEARING OFFICER GEFTER: And this  
5 includes the mitigation measures that the  
6 applicant will be implementing?

7 MR. BAKER: Yes.

8 HEARING OFFICER GEFTER: And that  
9 includes the berms and all the other mitigation  
10 measures that the staff has indicated?

11 MR. BAKER: Yes.

12 HEARING OFFICER GEFTER: Okay. Any  
13 cross-examination of Mr. Baker?

14 MR. MILLER: No.

15 HEARING OFFICER GEFTER: Thank you, Mr.  
16 Baker.

17 MR. BAKER: Thank you.

18 HEARING OFFICER GEFTER: All right. At  
19 this point exhibit 50, with respect to noise and  
20 vibration, is received into the record.

21 Are there any other issues that we need  
22 to discuss before we close for today?

23 MR. MILLER: I would just request that  
24 the record be closed on these items, other than I  
25 guess we're interested in maybe considering

1 further the traffic mitigation issue.

2 HEARING OFFICER GEFTER: That's correct.

3 MR. MILLER: So other than that I would  
4 request the record be closed.

5 HEARING OFFICER GEFTER: Mr. Kramer,  
6 what is your view on that?

7 MR. KRAMER: That's fine with us.

8 HEARING OFFICER GEFTER: Okay. Mr.  
9 Briggs? Mr. Briggs, do you have any objection to  
10 closing the record on all the topics we heard  
11 today except for traffic and transportation?

12 MR. BRIGGS: No, that's --

13 HEARING OFFICER GEFTER: I'm sorry,  
14 would you say that again?

15 MR. BRIGGS: That's okay with me.

16 HEARING OFFICER GEFTER: Thank you very  
17 much. I'll --

18 MR. BRIGGS: (inaudible) --

19 HEARING OFFICER GEFTER: We can't hear  
20 you very well. Now, we can. Okay, you'll have to  
21 speak up. Mr. Briggs, do you have any  
22 housekeeping issues or any other matters that you  
23 want to bring to our attention before we close  
24 today?

25 MR. BRIGGS: Nothing other than what

1 we've already covered.

2 HEARING OFFICER GEFTER: Thank you. All  
3 right. All the topics that we heard today except  
4 for traffic and transportation will be closed.  
5 The record is closed on those topics.

6 And the hearing is adjourned.

7 (Whereupon, at 2:18 p.m., the hearing  
8 was adjourned, to reconvene Monday,  
9 April 28, 2003, in the City of  
10 Escondido, California.)

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## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of April, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345