

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:

Presiding Member's Proposed  
Decision on the  
Application for Certification        )  
for the Palomar Energy Project     )  
by Sempra Energy Resources         )  
\_\_\_\_\_                                  )

Docket No.  
01-AFC-24

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

FRIDAY, AUGUST 1, 2003  
2:02 p.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, Associate Member (via telephone)

HEARING OFFICER AND ADVISORS PRESENT

Susan Gifter, Hearing Officer  
Rick Buckingham, Advisor to Chairman Keese

STAFF AND CONSULTANTS PRESENT

Paul A. Kramer, Jr., Staff Counsel  
Bob Eller, Project Manager  
Brewster Birdsall, Aspen Environmental Group  
Stan Valkosky, HAO, for Public Advisor  
Michael Clayton, Visual Consultant

APPLICANT

Taylor O. Miller, Attorney  
Raymond P. Kelly, Permitting Manager  
Joseph H. Rowley, Vice President  
Sara J. Head, ENSR  
Arrie Bachrach, ENSR (via telephone)

INTERVENORS

William Powers, BPPWG  
Cory J. Briggs, Esq. on behalf of William Powers

ALSO PRESENT

Robert Sarvey (via telephone)  
Scott Blaising, City of Escondido

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

2 2:02 p.m.

3 COMMISSIONER GEESMAN: My name is John  
4 Geesman, I'm a member of the state Energy  
5 Commission and the Presiding Commissioner for the  
6 Committee considering the Sempra Corporation's  
7 Palomar Energy Project.

8 Joining us by phone is Bill Keese, the  
9 Chairman of the California Energy Commission and  
10 the Associate member of the Committee considering  
11 the Palomar Project. This a Committee conference  
12 on the Presiding Member's Proposed Decision.  
13 We'll be referring to that probably by an acronym,  
14 PMPD.

15 We're conducting this event today as a  
16 tele-conference for those who could not travel to  
17 Sacramento. We'll ask participants on the phone  
18 to identify themselves shortly, but before doing  
19 that let me introduce Susan Gefter, the Hearing  
20 Officer on the project, Rick Buckingham, Chairman  
21 Keese's Advisor, and then I'll turn the proceeding  
22 over to Ms. Gefter to get other introductions, and  
23 then to conduct the remainder of the process.

24 HEARING OFFICER GEFTER: I'd like to  
25 have the Applicant introduce your representatives?

1 MR. MILLER: Thank you. To my right is  
2 Mr. Joe Rowley.

3 HEARING OFFICER GEFTER: Identify  
4 yourself, too.

5 MR. MILLER: Oh, I'm sorry. I'm Taylor  
6 Miller, counsel for the Applicant, with Sempra  
7 Energy. And to my right is Mr. Joe Rowley. I'll  
8 let him introduce himself.

9 MR. ROWLEY: I'm Joe Rowley, I'm the  
10 Project Developer and Vice-President of Asset  
11 Management for Sempra Energy Resources.

12 MR. MILLER: And behind me I have Sara  
13 Head, who is the chief consultant for the project  
14 with ENSR Consulting. And Raymond Kelly, who's a  
15 Permit Manager for Sempra Energy Resources.

16 HEARING OFFICER GEFTER: Thank you. And  
17 staff?

18 MR. KRAMER: Good afternoon, I'm Paul  
19 Kramer, the staff counsel. With me is Bob Eller,  
20 the Project Manager, and we have Brewster  
21 Birdsall, the air quality analyst also with us.  
22 And we believe Michael Clayton, who did the visual  
23 resources section, will be on the telephone.

24 HEARING OFFICER GEFTER: All right.  
25 Good. Thank you. And Intervenor?

1 MR. POWERS: I'm Bill Powers,  
2 Intervenor, Boarder Power Plant Working Group.

3 MR. BRIGGS: I'm Corey Briggs, attorney  
4 for Intervenor.

5 HEARING OFFICER GEFTER: Thank you.  
6 There are also two other Intervenors in this  
7 proceeding, CURE -- who has not participated in  
8 any of the workshops or the Committee events, and  
9 Cabrillo LLC, which is a subsidiary of Dynergy and  
10 NRG, and that Intervenor also has not participated  
11 at any workshops or Committee events.

12 And then the city of Escondido, Mr.  
13 Blaising, do you want to come forward and  
14 introduce yourself?

15 MR. BLAISING: Scott Blaising, counsel  
16 for the city of Escondido.

17 HEARING OFFICER GEFTER: Thank you. Do  
18 you know if any representatives for the city will  
19 be calling in today?

20 MR. BLAISING: I don't believe so.

21 HEARING OFFICER GEFTER: Okay. Is there  
22 anyone on the phone that you're aware of?

23 CHAIRMAN KEESE: Bill Keese here.

24 HEARING OFFICER GEFTER: And Chairman  
25 Keese is on the phone.

1 CHAIRMAN KEESE: Yes.

2 HEARING OFFICER GEFTER: And we're going  
3 to identify the people calling right now. Okay,  
4 yes, and as staff indicated, Michael Clayton is on  
5 the phone. He's a CEC consultant on Visual.

6 There is Erin Massey, who is I guess a  
7 reporter with the North Valley Times newspaper in  
8 Escondido. And then Arrie Backrach, who is a  
9 consultant for the Applicant, Sempra Energy.

10 And if anyone else calls in you'll let  
11 us know, or our operator will let us know. The  
12 Commission's Public Advisor, Roberta Mendonca, is  
13 unavailable today, and standing in her place is  
14 Stan Valkosky, who's standing in the back if  
15 anyone needs any assistance they can talk to him.

16 If anyone on the phone needs assistance  
17 from the Public Advisor just indicate that and  
18 we'll connect you with Stan.

19 The Committee issued the PMPD on June  
20 27th this year, recommending certification for the  
21 Palomar Energy Project. The comment period on the  
22 PMPD ends today, August 1st. And the full Energy  
23 Commission will consider the PMPD at the business  
24 meeting on August 6th.

25 The purpose of today's committee

1 conference is to review the written comments filed  
2 by the parties. While most of the comments  
3 include minor edits and clarifications, there are  
4 comments on air quality and water resources that  
5 will require additional discussion.

6 To better facilitate this discussion we  
7 have decided that the committee conference will  
8 recess to a workshop for about half an hour, to  
9 try to resolve some of the differences on air  
10 quality and water, and to reach agreement on  
11 language in the conditions that we reference for  
12 review in the PMPD, and were also indicated in the  
13 Notice of Availability that noticed today's  
14 conference.

15 During the workshop the Hearing Officer,  
16 that is me, will conduct the workshop and lead the  
17 parties in the discussion. And during the  
18 workshop we'll be off the record. As I had  
19 indicated previously that we would do this  
20 workshop, I want to know before we go off the  
21 record whether there are any questions from any of  
22 the parties. Mr. Briggs?

23 MR. BRIGGS: I have a question. Will it  
24 be possible when we go back on the record to state  
25 for the record any significant issues that come up

1 while we're off so there's at least some record of  
2 what we discuss?

3 HEARING OFFICER GEFTER: Absolutely.  
4 When we go back on the record we will offer a  
5 report on the workshop discussion, absolutely.  
6 Any other questions? Okay. We will go off the  
7 record.

8 (Off the record.)

9 HEARING OFFICER GEFTER: Back on the  
10 record. We're ready? All right. We conducted a  
11 workshop off the record and discussed the  
12 questions that were issued to the parties and the  
13 Notice of Availability, and it was decided that,  
14 after much discussion, that the PMPD would remain  
15 the same as it was published, and we won't change  
16 any of the conditions regarding CO emissions or  
17 ammonia slip from the HRSG's.

18 Therefore we're going to move on to the  
19 comments of the parties at this point. And the  
20 parties all filed comments. It isn't necessary to  
21 reiterate the edits of the minor clarifications  
22 that were contained in the parties' comments,  
23 we'll take care of those edits as we go along.

24 The time will be better spent if we  
25 focus on issues related to finding some

1 conclusions or conditions, and before we even go  
2 further Mr. Blaising of the city of Escondido has  
3 to leave, and he filed a couple of comments  
4 regarding the role of the Rincon Del Diablo  
5 municipal water district, beginning at page 232 of  
6 the PMPD.

7 And the Committee has no problem with  
8 his corrections, and I didn't know if any party  
9 had anything additional to say?

10 MR. BRIGGS: We don't.

11 HEARING OFFICER GEFTER: And nobody else  
12 has anything else -- so we will accept your  
13 comments and incorporate them into the PMPD.  
14 Thank you, and you don't need to stay unless you  
15 want to at this point.

16 And I'm just going to go real quickly  
17 through comments that I have questions about,  
18 because most of the comments that staff filed as  
19 well were edits and just corrections. And the one  
20 question I have is, at page 100 staff filed a  
21 comment, and I don't quite understand what the  
22 comment means.

23 So if we could just turn to page 100,  
24 and what you are changing, where it says "the  
25 issue of concern was rather whether the PEP would

1 cause any new exceedance of the current PM-10 and  
2 PM-2.5 standards."

3 And the staff is adding some other  
4 language, I just don't know what the language  
5 means. It says "in effect at the time of their  
6 action." I don't know if that means the  
7 district's action or the adoption of the new regs.  
8 So if you could just tell us what you mean we can  
9 fix it.

10 MR. BIRDSALL: Sure. This is Brewster  
11 Birdsall, I'm the preparer of the air quality  
12 section here for staff. And the comment on page  
13 100 is to just sort of clarify how the district  
14 reviews the project.

15 And of course when the district was  
16 finishing their work the PM-10 and PM-2.5  
17 standards in effect in the state of California had  
18 not been recently revised. So this is related to  
19 the recent revisions of the state standards that  
20 occurred officially in July of this year, and how  
21 the district had no opportunity to analyze the  
22 project according to the new standards.

23 With that being said, I don't think that  
24 anything would change in the district's analysis  
25 which the new standards as it happened with the

1 old standards.

2 HEARING OFFICER GEFTER: All right. But  
3 I still don't understand the actual wording.

4 MR. BIRDSALL: Okay.

5 HEARING OFFICER GEFTER: Okay.

6 MR. BIRDSALL: So the PM-10 and PM-2.5  
7 standards in effect at the time of their action,  
8 in effect at the time of the district's action.

9 HEARING OFFICER GEFTER: That was my  
10 question.

11 MR. BIRDSALL: Exactly.

12 HEARING OFFICER GEFTER: So your  
13 proposal would be, instead of "their action" just  
14 say "the district's action" and then we understand  
15 what it means. I just didn't know what "their"  
16 was referring to.

17 MR. BIRDSALL: Yes, that's it.

18 HEARING OFFICER GEFTER: Very simple,  
19 thank you. And while we have you there, Mr.  
20 Birdsall, on the comment regarding table 16 -- I  
21 see the corrections, and that's fine and no one  
22 has any concerns about that -- and then you have a  
23 paragraph below the table that starts with "the  
24 PM-10 liability of 107.7 TPY" -- it's just a  
25 little paragraph you put in underneath.

1           What is that paragraph refer to, why is  
2 it there?

3           MR. BIRDSALL: Why did I put it there?

4           HEARING OFFICER GEFTER: Yes.

5           MR. BIRDSALL: I put it there because --  
6 well, let me just take a look again at the Notice  
7 of Availability put forth by the Committee, and  
8 the bullet that this is under is the bullet that  
9 asks staff to look at air quality table 16.

10          HEARING OFFICER GEFTER: Yes.

11          MR. BIRDSALL: And the last sentence of  
12 that bullet is "we also direct staff to clarify  
13 the basis for determining that the project's  
14 unmitigated liability for PM-10 is 108 tons per  
15 year.

16          HEARING OFFICER GEFTER: Yes.

17          MR. BIRDSALL: And the paragraph I've  
18 added is just a simple confirmation that the  
19 overall project liability for PM-10 is 107.7 tons  
20 per year, and that's based on the 14 pound per  
21 hour hourly emission limit, plus the cooling tower  
22 at 5.7 tons per year.

23                 Because staff had a separate calculation  
24 for cooling tower emissions from the district and  
25 from the Applicant, I have a parenthetical that

1 clarifies the 5.7.

2           The reason why the overall liability is  
3 108 is because the district does not require any  
4 offsets for PM-10, so we added up all of the  
5 potential emissions.

6           HEARING OFFICER GEFTER: Okay, so you're  
7 saying 107.7 plus 5. -- where's the 107.7, is that  
8 the same as 108?

9           MR. BIRDSALL: No, no. That is the 108,  
10 excuse me. Right.

11           HEARING OFFICER GEFTER: Okay. So you  
12 would propose that this little paragraph be added  
13 below table 16 to explain it?

14           MR. BIRDSALL: No, this is not a change  
15 to the PMPD, this is just a response to directly  
16 your sentence in the bullet.

17           HEARING OFFICER GEFTER: All right.  
18 Thank you. That was my question there. All  
19 right. Those were the only comments that I needed  
20 clarification on. Since this is an informal  
21 conference I wanted to know if any of the other  
22 parties had comments on other parties comments?

23           In terms of edits, clarifications  
24 anything like that?

25           MR. BRIGGS: I don't think so. We don't

1 have any comments on the editing proposals that  
2 the staff and Applicants have now, and we don't  
3 intend to get into a debate about Mr. Powers  
4 comment letter, or the one with the Borders Power  
5 Group and the other entities that were on the  
6 letterhead that was filed last week.

7 We believe that those matters were  
8 pretty much dealt with at the hearing, so I don't  
9 think we have anything further, beyond our own  
10 filing.

11 HEARING OFFICER GEFTER: Staff, do you  
12 have any other comments on anyone else's comments?

13 MR. KRAMER: No.

14 HEARING OFFICER GEFTER: All right. And  
15 then, Mr. Powers, we received your comments as  
16 well, and I didn't see in your comments any  
17 reference to specific text or page numbers where  
18 you were proposing a specific change to the PMPD?

19 MR. POWERS: No. That letter wasn't  
20 directed at a line by line, you know, word change  
21 approach.

22 HEARING OFFICER GEFTER: All right. And  
23 with respect to the comments you filed this  
24 morning-- since they were not filed by July 24th,  
25 which was the deadline for parties to file

1 comments, we'll accept your comments that were  
2 filed this morning, August 1st, as public comment.

3 And actually, we have received quite a  
4 bit of public comment, which we will get to in  
5 awhile. I know that Mr. Sarvey is on the phone,  
6 and filed a public comments. So we'll get to that  
7 in awhile.

8 But in the meantime I wanted to ask Mr.  
9 Powers if you would like to summarize your  
10 comments to us?

11 MR. POWERS: I didn't hear that last --?

12 HEARING OFFICER GEFTER: If you could  
13 summarize your comments to us regarding the PMPD?

14 MR. POWERS: Yes. I'll just go ahead  
15 and refer to the letter and just very briefly  
16 summarize. The PMPD does correctly point out the  
17 whole point of the intervention was the issue of  
18 water resources in California and the need to  
19 conserve those water resources.

20 And the comment letter begins just  
21 detailing -- I participated in a workshop, a draft  
22 environmental performance report here in this room  
23 three weeks ago that I participated in -- and  
24 these paragraphs are lifted from that or taken  
25 from that draft report.

1           And the point of including these  
2 comments in this letter is simply to connote that  
3 the CEC draft report really stated more eloquently  
4 than I probably could why dry cooling is an  
5 appropriate, the appropriate alternative for  
6 cooling at this particular project.

7           And also to reiterate something that I  
8 brought up during that hearing but also brought up  
9 during these proceedings is that Governor Davis  
10 did sign a Board of Governor's Declaration a year  
11 ago -- meaning the four U.S. Board of Governor's  
12 and the six Mexican Board of Governors -- that is  
13 short and to the point.

14           Promote the development of environmental  
15 strategy for new electrical generation plants in  
16 the border region with the goal of protecting air  
17 quality and where possible conserving water  
18 resources in the region.

19           The reason for putting that in this  
20 letter is, throughout these proceedings over the  
21 last year and a half we've concentrated primarily  
22 on the state Water Resources Control Board  
23 Resolution 7558 as the only guidance of any kind,  
24 and the water code as well, as to what our options  
25 are for power plant cooling systems.

1           And I think that the point here is that  
2 the Governor himself has made it official in a  
3 declaration that this is a priority for the state  
4 of California.

5           The ammonia in the cooling towers -- I'm  
6 not going to spend any time about whether it's 37  
7 and a half tons or 40 tons or 80 tons. What I'd  
8 like to concentrate here in this comment is that  
9 the system as proposed will not work.

10           Palomar Energy Project will not inject  
11 the amount of sodium hypochlorite that they show  
12 as being stored on a 30-day basis to maintain a  
13 free corner residual, they cannot do it. So the  
14 question is how is it going to be done?

15           Just by way of background, I think it's  
16 pointed out in this letter, at the Sempra facility  
17 in Mexicali they are installing a nitrification  
18 plant to remove the ammonia upstream of the plant.

19           I had the opportunity today as I was  
20 coming up on the plane to look at the Tesla FSA.  
21 And the Tesla also indicates that the city of  
22 Tracy will remove the ammonia with a nitrification  
23 plan.

24           And so the question isn't will the  
25 system work as proposed, it will not. The

1 question is who is building the nitrification  
2 plant. Is Palomar Energy building it, or is the  
3 city of Escondido building it?

4 Now the reason that's important is, if  
5 it's Palomar Energy, well, when we look at the  
6 cost assessment of what does it cost to go wet or  
7 dry, that would be a component of that.

8 But if the city of Escondido was going  
9 to be doing it, I don't think that the City  
10 Council of the city of Escondido knows that  
11 they've got a five million dollar expenditure on  
12 the horizon. And I think if they did it might  
13 change how they approach this system.

14 But to limit it to the CEC, it is  
15 appropriate for the California Energy Commission  
16 to approve a project that works. And I think that  
17 I would like to hear from the Applicant, how is  
18 this going to work, during the course of these  
19 comments, if that's appropriate.

20 Or at least I think that the Presiding  
21 Commissioner should hear how the system will work  
22 as proposed. The next issue raised is the  
23 cumulative impact of using the reclaimed water for  
24 this project. If I can just review this for a  
25 moment.

1           The point of this discussion is to again  
2 look at the alternative uses and to point out that  
3 the PMPD is relying exclusively on the testimony  
4 of the city of Escondido to assess the validity of  
5 other uses. The city of Escondido has a very big  
6 stake in seeing this water used in this power  
7 plant at this point.

8           The state is not gaining economical  
9 benefit from the sale of the water. It's the  
10 research park, that's the carrot. And the  
11 discussion in the PMPD that dismisses agricultural  
12 irrigation, that dismisses the aqua recharge  
13 project, all of the resource used to dismiss this  
14 is coming from the entity that has a large  
15 financial stake in seeing the proposed plan work  
16 as proposed.

17           And as a result I think there is a major  
18 deficiency in the water issue. Really, the first  
19 two paragraphs of this letter deal with the state  
20 impacts and the regional impacts. I know that it  
21 has been mentioned on several occasions that he  
22 CEC looks at these projects from a case-by-case  
23 basis, but that is also covered in this letter.

24           Where I think that it's fine to look at  
25 these on a case-by-case basis, but it's got to be

1 in a context of the state of California, not  
2 isolating within the city limits of the city of  
3 Escondido and making a determination for the state  
4 of California based on that tiny piece of the  
5 state.

6           And that, kind of a related comment to  
7 this, that the backup that I presented -- it's  
8 presented here and I won't review that again --  
9 about why these other optional uses for reclaimed  
10 water are superior, and that they are considered  
11 quite viable by entities other than the city of  
12 Escondido, especially depending on issues of  
13 pricing that, again, I won't go into that right  
14 now, of -- but I think, and I made this comment at  
15 the hearing, and I don't think anyone else was  
16 here at the hearing, but I think this is really a  
17 fundamental issue, and that is that the case-by-  
18 case nature of these analogies definitely works  
19 much in the favor of the Applicant, but I think  
20 that the tradition of the Commission to push the  
21 applicant to the point of what they'll voluntary  
22 do and not require them to go beyond that is one  
23 of the reasons where we end up in a situation  
24 where we are not seriously considering an option  
25 like dry cooling.

1           Not only in this particular case, but in  
2 other cases around the state. I'd like to focus  
3 on a specific. Before I hit that specific let me  
4 talk about Otay Mesa.

5           The PMPD does point out that I had an  
6 opportunity not only to criticize but to provide  
7 an alternative, and I point out in this letter --  
8 when I say I, I mean Bill Powers as Chair of the  
9 board of the Power Plant Working Group, and the 13  
10 other organizations in the state that are also  
11 supporting this approach -- is that I have been  
12 pushing the use of Otay Mesa as the model for the  
13 comparison of dry cooling since the initial  
14 kickoff meeting in Escondido in March of 2002, and  
15 list in the letter a number of errors in the PMPD  
16 where the comment is made -- this again was at the  
17 evidentiary hearing -- made by the CEC consultant  
18 that developed the dry cooling analysis that Otay  
19 Mesa is somehow completely different from Palomar  
20 site.

21           I think the elevation of Otay Mesa is  
22 within ten feet of the elevation of Palomar  
23 Energy, somewhere between 740 and 760 feet above  
24 mean sea level, it's almost the exact same  
25 distance from the coast. It's temperature profile

1 is nearly identical to the Palomar site.

2           The citizens of the area, including  
3 myself, are quite familiar with the Otay Mesa  
4 design. It was highly publicized in San Diego  
5 County as a model of environmental sustainability.  
6 And as a result we do have a concept in the San  
7 Diego county area of what an environmentally  
8 sustainable project is.

9           It may be a different perspective for  
10 staff here in Sacramento who don't live there, but  
11 for those of us who do live there that model is  
12 well-defined.

13           And whether that model is employed here  
14 or not is obviously in contention, but the fact  
15 that that model wasn't considered as a scale of  
16 measure for this project is very much I think a  
17 deficiency.

18           And there are other issues related here  
19 to Palomar Energy presuming temperatures such as  
20 110 degrees for design at a site that has  
21 experienced a temperature over 100 degrees once in  
22 three years, and that was 101 degrees.

23           A final comment I'd like to make before  
24 talking about the visual resources is during this  
25 meeting we had here three weeks ago, in that draft

1 2003 Environmental Performance Report, there is a  
2 table that shows the projects that have been  
3 permitted by the CEC over the last few years.

4           And the table indicates that in the  
5 Central Valley, which at least naturally is one of  
6 the drier parts of the state, virtually all of the  
7 projects have been permitted in Central Valley  
8 using fresh water, either state water project  
9 canal water, potable groundwater, surface water.

10           And the, I think the reason for that is  
11 this site-by-site or case-by-case approach. It's  
12 impacting us the same way here at Palomar Energy,  
13 that cumulatively this is a major loss of fresh  
14 water to the state.

15           But if you look at it on a case-by-case  
16 basis and don't bring in that regional and state  
17 viewpoint then you end up with this situation,  
18 which I think reflects very poorly on the state of  
19 California.

20           The CEC has acknowledged we have a  
21 problem. We are water resource short. It is  
22 getting worse. While there are numerous reports  
23 that have come out of the CEC that say this very  
24 eloquently, and yet going from identifying the  
25 problem to actually building projects that

1 maximize water conservation is not happening.

2           And the reasons for that are laid out  
3 here, but I think that that is -- it's hard for  
4 the state of California to be credible if we keep  
5 complaining about our need for water, but we can't  
6 for example, get from the point of identifying.

7 We've got water conservation issues we have to  
8 deal with and we are not doing it on the ground.

9           The next issues identified here, and  
10 there are only two more, are very specific. And  
11 that's the issue of visual resources and the issue  
12 of Palomar Energy presenting diagrams knowing that  
13 the community is very concerned about the visual  
14 resource issue.

15           Putting diagrams in the AFC, putting  
16 diagrams in the AFC that are distorted. That do  
17 not show the appropriate size of large objects in  
18 the picture, and then going through the  
19 evidentiary process and having the CEC decide when  
20 on an issue that the Applicant, aware that the  
21 community is concerned about this, presents  
22 drawings that are too good to be true, and there's  
23 no feedback from the CEC about that being an  
24 appropriate activity in an evidentiary hearing  
25 when we had an obligation, not only as

1 professional engineers, but as people giving  
2 evidence in a hearing under oath to one, present  
3 evidence that is accurate.

4 And if by mistake we are wrong, then we  
5 make a clear statement that we are wrong, not that  
6 this diagram is correct, even when we're looking  
7 at a diagram that can't possibly be correct.

8 Now, what compounds that in this case is  
9 the Applicant has submitted that information. The  
10 CEC copies that information into the FSA. The one  
11 diagram that shows this project up close is an  
12 exact copy of what was submitted in the AFC, with  
13 the same deficiency.

14 And the statement is then made that,  
15 based on our photo simulations, based on the  
16 evidence before us, we do not see this to be a  
17 significant issue. And I think that needs to be  
18 resolved.

19 And then finally, the -- that may in  
20 fact be the final issue. Just a final comment on  
21 the visuals, and that is the PMPD -- and this is a  
22 concern definitely of mine, that so much of the  
23 PMPD on the issue of the cooling system quotes  
24 directly from the Applicant.

25 But according to the Applicant a dry

1 cooling system would be considerably taller and  
2 more massive than the plume evaded wet cooling  
3 tower and not responsive to community concerns  
4 regarding visual impact.

5           And the PMPD also noted that I  
6 criticized but did not offer an alternative. I  
7 did offer an alternative which was entered into  
8 evidence as Exhibit 112, which shows both  
9 elevation and planned use for an optimized air  
10 cooled condenser, which is nearly -- if you choose  
11 the lowest version, 70 feet -- the same height as  
12 the proposed 65 foot plume evaded tower.

13           And even though the CEC staff determined  
14 that the plumes that will be produced by the wet  
15 tower are not significant based on their criteria  
16 of assessment, it's important to note that a 70  
17 foot high air cooled condenser, compared to a 65  
18 foot high tower that does have plumes on occasion,  
19 it would be very difficult to make the argument  
20 that there is a distinct visual disadvantage to  
21 the air-cooled condenser.

22           And just to summarize, the four  
23 substantive issues that are raised in the letter  
24 are one, the huge discrepancy between the proposed  
25 amount of biocide injection into the tower and

1 what will be needed to maintain the free chlorine  
2 residual, which is actually the target of public  
3 health condition number one.

4 The local, regional and state impact of  
5 diverting 3.6 million gallons a day of reclaimed  
6 water.

7 And a final point I'd like to make about  
8 the hearing we had three weeks ago her is that  
9 Dick Anderson, who is the section head of the  
10 water resources group -- I think in response,  
11 Commissioner, to your question -- did indicate  
12 that he did see that a blanket endorsement of  
13 reclaimed water across the state --as I understood  
14 his comment -- that he would see it as a case-  
15 specific situation, where it wasn't necessarily  
16 the best option in all cases within the state.

17 It is appropriate, and we do need, a  
18 fair assessment by the CEC staff of an optimized  
19 air cooled condenser at the site.

20 The attachment to the submittal is the  
21 summary of the data that was presented at the  
22 evidentiary hearing on cost and optimized cost  
23 versus what the Applicant has proposed and what  
24 the CEC staff has proposed, which again shows that  
25 the net present value of the wet tower option

1 proposed by the Applicant and the dry option are  
2 so close as to be, there's no difference in the  
3 net present value cost.

4           It's important for the CEC to  
5 understand, though, that the reason that an  
6 Applicant would be resistant to dry cooling is the  
7 upfront capital cost is significantly higher. And  
8 if you're financing a project as a merchant  
9 project in the open market up front cost is all  
10 that matters when you're going to the market.

11           If you're operating the project over 20  
12 or 30 years and it's your project at operation,  
13 then net present value cost is probably the cost  
14 that would dominate the analysis.

15           Finally, we have not seen accurate  
16 schematics or photo simulations of the project.  
17 We have not seen them from the Applicant, we have  
18 not seen them from the CEC.

19           And I think we really do need to see  
20 accurate depictions of what that neighborhood is  
21 going to get before a decision is made that there  
22 is no significant impact. Thank you.

23           HEARING OFFICER GEFTER: Thank you, Mr.  
24 Powers.

25           COMMISSIONER GEESMAN: Let me follow up.

1 As you mentioned, I was at that workshop several  
2 weeks ago on the environmental performance report.  
3 And I don't believe you participated in the  
4 dialogue about the desirability of a more clearly  
5 articulated state policy on cooling water at power  
6 plants in California.

7 And I wonder if you have any thoughts on  
8 that that you'd want to share with us now as to  
9 whether A, there is a need for such a policy, B,  
10 whether this agency or the state water resources  
11 control board or perhaps the regional boards, are  
12 the best source of such a policy, and C, over what  
13 time frame that effort ought to be carried out?

14 MR. BRIGGS: I'm not so sure that  
15 Mr. Powers is in a position to offer an informed  
16 opinion on some of those broader policy questions.  
17 I would add, however, that the Energy Commission  
18 does have a responsibility under CEQA to take a  
19 look at the broader impacts, the outside Escondido  
20 impacts, that consume water, a resource like water  
21 would have.

22 Escondido is not the only city that's  
23 affected by water. It imports most of its water,  
24 as we all know, and there are potential future  
25 uses that have not been considered.

1           Part of Intervenor's difficulty in this  
2 process is that a tremendous burden has been put  
3 on him to come forward with information that  
4 persuades everybody else how things ought to be.  
5 That's an unreasonable burden to put on  
6 Intervenor, notwithstanding the regulation that  
7 the CEC has adopted regarding additional  
8 modifications, etc. etc.

9           The agency and the Applicant are in the  
10 best position to evaluate what's going on with  
11 regard to consumption of water resources. At the  
12 very least, they're in a better position to do  
13 that sort of evaluation than Intervenor is.

14           So I think the answer, without trying to  
15 sound evasive, is simply that we're not entirely  
16 sure how those questions should be answered,  
17 Commissioner.

18           What we are sure of is that the analysis  
19 has to be done, that the analysis has not been  
20 done in this case, and we're especially troubled  
21 by the fact it hasn't been done, given your  
22 comments at the end of the evidentiary hearings  
23 acknowledging the problem with the state, given  
24 the current state of affairs with regard to a lack  
25 of an agreement regarding water in the San Diego

1 region and the Imperial Valley, regarding the  
2 statewide concerns that we all hear on the news  
3 all the time about the availability of water over  
4 the next 20 years.

5 This is a 30 year project. My client  
6 does not have the resources to do the sort of  
7 analysis that CEQA requires and that the Applicant  
8 and the Commission are in a position to do.

9 COMMISSIONER GEESMAN: Well, I'm not in  
10 any way suggesting that we have not performed our  
11 responsibilities under CEQA, and I'm not  
12 suggesting that that burden should be shifted to  
13 your client, but I do think your answer is pretty  
14 evasive.

15 Mr. Powers appears in a large number of  
16 our cases, and uses them -- including this one --  
17 as a forum to share his particular views on what  
18 policy should be.

19 He participated, as did I, in a workshop  
20 several weeks ago, which he's mentioned in his  
21 comments here, where the specific question was  
22 raised. And I don't recall him responding to it  
23 then, and I asked him now if he did have a  
24 response, and apparently from your answer he does  
25 not. I'll let it rest at that, but I --

1           MR. BRIGGS: I think I misunderstood all  
2 of your question, then. So, I apologize.

3           MR. POWERS: Commissioner, I do want to  
4 respond. I just couldn't understand my attorney,  
5 and said you should probably speak because I don't  
6 understand what you're telling me.

7           MR. BRIGGS: Go ahead.

8           MR. POWERS: I think, to be perfectly  
9 blunt, I think this is an issue of leadership.  
10 You have the resources to make the call that dry  
11 cooling needs to be done at this site and at all  
12 those sites in the Central Valley.

13           And I think it would be wonderful if we  
14 had before us right now a definitive piece of  
15 legislation that said California is in a perpetual  
16 water crisis. One of the steps we will take is  
17 that at no time will we allow the use of water for  
18 any industrial operation that has a viable option.

19           When the water code was written -- the  
20 recycled water code in the early 1990's -- dry  
21 cooling really wasn't on the radar screen, and  
22 I'll admit to that. It's been the last ten years  
23 that dry cooling has come on to the scene for  
24 large utility combined cycle plants.

25           And I happened to be reading the Tesla

1 FSA coming up on the plane today, and it in one  
2 paragraph summarizes what's out there as far as  
3 legislative hooks for the Commission to make a  
4 decision. Policy 7558.

5           Yet they raise an issue that we haven't  
6 talked about, which is "only warranted when the  
7 use of other water supplies or other methods of  
8 cooling would be environmentally undesirable or  
9 economically unsound."

10           Well, that component of 7558 at least  
11 allows us to say each of these projects should  
12 undergo an economic assessment of the options.  
13 That what I fought for for six months, which was a  
14 dry cooling option included in this document,  
15 based on a reasonable read of 7558, should have  
16 been in there to begin with.

17           That we would have done the evaluation  
18 and looked at the economics. We eventually did  
19 that. Section 13550 of the water code considers  
20 use of potable domestic water for an industrial  
21 purpose to be wasteful, and then goes on to say  
22 use reclaimed water for that purpose.

23           Well, again, that predates the dry  
24 cooling option. This is somewhat of an oddball  
25 option. We're talking about something that

1 doesn't need water if we choose not to use it.

2 And so my feeling is that this is not strong, but  
3 it's strong enough if you want to take that  
4 position.

5           The reason the Border Power Plant  
6 Working Group worked so hard to get Governor Davis  
7 and those other governors, on both sides of the  
8 border, to sign off on that very simple commitment  
9 to water conservation and power plants, is  
10 precisely to give state agencies on both sides of  
11 the border another tool to use if they chose to  
12 take that step.

13           Now, my feeling is, based on my  
14 participation in all these hearings, is you have  
15 the authority to call for dry cooling at all of  
16 these sites. The problem is that historically,  
17 unless it's absolutely explicit in legislation,  
18 it's a voluntary agreement.

19           Whatever the Applicant is willing to go  
20 for up to a point, then that is something we can  
21 work with. If the Applicant explicitly says -- as  
22 the Applicant's say to me all the time, by the way  
23 -- we will not go there, we will not use dry  
24 cooling, my feeling is you are the ultimate  
25 authority, this is not a meeting of equals where

1 the Applicant tells you how far they will go and  
2 then you say fine, we won't go beyond that.

3           What's at stake here is not the  
4 Applicant's -- his pocketbook to some degree --  
5 but what's at stake here is the future of the  
6 state of California, and they say politics is  
7 always local, on a local-by-local basis, on a  
8 case-by-case basis, but it's a state issue.

9           We're desperately short of water, the  
10 Applicant has the tools to make a persuasive case  
11 in every instance that water is the way to go.  
12 The CEC pointed that out in their recommendation D  
13 of the water supply report two years ago, that  
14 whenever you do a straight economic comparison dry  
15 cooling will always come up short.

16           Therefore we recommend that we don't do  
17 it that way. Because ultimately all we'll do is  
18 nickel and dime our water resources in the state  
19 to the point where, ultimately, the horse is  
20 completely out of the barn.

21           And in fact, Commissioner, my final  
22 comment would be in response to you. How much  
23 time do we have? We have until next Tuesday,  
24 which is August 6, when the full Commission meets.

25           Because no legislative action, no policy

1 action that hasn't already been initiated and that  
2 will not be signed by the Governor imminently will  
3 do us any good.

4 On Palomar, on Tesla, on East Altamount,  
5 on the coastal projects. That for better or for  
6 worse, it is on the shoulders of the California  
7 Energy Commission Commissioners. And my feeling,  
8 and the reason that I have put so much energy into  
9 this, is that I feel you have that authority.

10 We do not need more tools, but we do  
11 need a change of culture. That, just because the  
12 Applicant isn't willing to do it voluntarily  
13 doesn't mean that we cannot require it.

14 And if the Applicant walks, the  
15 Applicant walks. If the market is there in the  
16 state for power plants, then another company will  
17 come forward and say "we're interested in the  
18 California market. We can do this with dry  
19 cooling."

20 And to point out that I think it's a  
21 mistake to get tied up in a particular company,  
22 Otay Mesa was developed by PG&E NEG, it was then  
23 sold at Calpine. A project I worked on, the CAL  
24 Peaker Projects, those were sold immediately to  
25 United Technologies. The projects that I noted in

1 Massachusetts, they were developed by Sikhe  
2 Energies, they're now owned by Exelon.

3           This all happened in two years' time.  
4 it's probably unlikely that a year and a half from  
5 now this project will even be associated with  
6 Sempra Energy or Palomar Energy. And so I just  
7 don't think that listening to a particular company  
8 say "I'm not going to cross that line" should in  
9 any way influence the California Energy  
10 Commission's decision.

11           And now I'll get off my soapbox, but I  
12 feel that we have the authority and most of the  
13 projects that are going to happen have already  
14 been permitted. There are a few trailers.  
15 Palomar is one, Tesla, East Altamount, there are a  
16 couple of more.

17           But they will be essentially permitted  
18 this year, and so there are no more tools that  
19 will be on the table during that process, in my  
20 opinion.

21           COMMISSIONER GEESMAN: Thank you, Mr.  
22 Powers, that's very helpful.

23           MR. BRIGGS: Commissioner, if I could  
24 just add. I think that the outcome that's likely  
25 here, namely that we're going to have wet-cooled

1 condenser, was really preordained, if you look at  
2 the statement of project objectives in the PMPD.

3 The second objective is location near an  
4 electrical substation and key infrastructure for  
5 natural gas and non-potable water supply. The  
6 most basic input of this process has been that  
7 this has to be a water-cooled condenser.

8 But the objective is to build a power  
9 plant. The objective is not to have wet-cooled  
10 used instead of dry-cooled. That might be  
11 desirable, but it's stated right up front as an  
12 objective.

13 Well, if that's the objective it  
14 confines the universe of possibilities. It's  
15 perfectly understandable that the analysis and the  
16 decision here in the PMPD follow from the inputs  
17 of this process.

18 What my client is arguing is that the  
19 process was flawed from the very beginning, when  
20 the Applicant said we have to use water cooling,  
21 and that there was no other option available.  
22 When my client pushed for air cooling, the  
23 alternative that was considered is a caricature of  
24 what's possible, of what was done just 20 miles  
25 away, also in San Diego County.

1           So the reason we're taking the position  
2 that we're taking is because this just hasn't been  
3 a very good CEQA process. The information hasn't  
4 been fully developed because the process was pre-  
5 ordained from the very beginning. The public  
6 doesn't have enough information, based on what's  
7 been put into this record, to know whether in fact  
8 recycled water is the best use of that resource.

9           One of the ways you see this problem  
10 coming out is in the cumulative impact section,  
11 and I'll just mention this and stop, because this  
12 is really repeating a lot of what we've already  
13 said.

14           The cumulative impacts analysis section  
15 on 245, it has one paragraph regarding the use of  
16 reclaimed water, and it says "compared with Harps  
17 (sp) capacity, produced nine million gallons of  
18 recycled water. The demand for 3.6 mgp by PEP  
19 would not result in cumulative impacts to the  
20 city's recycled water supply."

21           And then it moves on to talk about waste  
22 water. We're not just talking about a city  
23 resource. Water is a statewide resource, and the  
24 way this project was set up and presented from the  
25 very beginning has meant that the Commission has

1 not done a full, adequate analysis of all the  
2 reasonable alternatives.

3 The Commission is just not in a position  
4 to make an informed decision. The CEQA process  
5 hasn't played out the way it's supposed to play  
6 out. That's all.

7 COMMISSIONER GEESMAN: Thank you, Mr.  
8 Briggs.

9 MR. MILLER: Ms. Gefter, I can't resist  
10 a request to respond to some of those points, but  
11 I don't want to take a lot of time from the  
12 process.

13 HEARING OFFICER GEFTER: Yes, I think  
14 we've spent a lot of time.

15 COMMISSIONER GEESMAN: I'd encourage all  
16 the parties to remember that we're going to go  
17 through all this next week as well, so you may  
18 want to save your best shots until you're in front  
19 of the full Commission.

20 This Commissioner has heard all of it,  
21 has researched the record extensively, sharply  
22 disagrees with some of the characterizations that  
23 were just made by Mr. Briggs, and by Mr. Powers,  
24 and I believe that the record will support the  
25 decision which this Committee is recommending to

1 the full Commission.

2 MR. MILLER: Thank you.

3 HEARING OFFICER GEFTER: Also, the  
4 purpose of the conference is to also allow the  
5 public to make comment, in addition to the  
6 parties. And we do have some comments that were  
7 filed by members of the public, and I'd like to  
8 address those at this time. And I had actually  
9 indicated to the parties what those questions  
10 were.

11 And why don't we just try to go through  
12 those very quickly. Members of the public were  
13 concerned about the status of the vulcan materials  
14 asphalt batch plant, which is located apparently  
15 in the Escondido area, and they were concerned  
16 about the cumulative impact analysis for air  
17 quality relative to that proposal, and would like  
18 the Applicant to address that now.

19 MR. MILLER: Okay. We have a e-mail  
20 from the air district on that project that was  
21 docketed that responds to Mr. Rodriguez's question  
22 that serves as a pretty good outline of what's  
23 going on with that and its relevance.

24 This of course was raised well after the  
25 PMPD came out, this project. It is -- you asked

1 where it was. It's about one mile east. The air  
2 district's response on the question indicates that  
3 this project was denied by the Planning Commission  
4 in Escondido within the last month.

5           There has been no air permit application  
6 filed for the project with the air district. The  
7 cumulative impact of the Palomar Project and two  
8 other nearby plants does not produce an impact  
9 significantly different from the power plant  
10 alone.           The emissions from the Vulcan  
11 Project are relatively small, about ten tons per  
12 year. There was a reference to 1,900 tons in Mr.  
13 Rodriquez's e-mail. That's carbon dioxide, I  
14 think, was what the district indicated was  
15 included there, so its grossly underestimated.

16           The Commission, in their analysis,  
17 concluded that -- and this is repeating of the  
18 district statements -- that the PM-10 mitigation  
19 being required of the Palomar Energy Project is  
20 sufficient to mitigate the project's contributions  
21 to cumulative PM-10 impacts.

22           So we believe that the cumulative  
23 impacts analysis that was undertaken, which did  
24 rely on the inclusion of other projects in APCD  
25 applications, is an entirely reasonable way of

1 carrying out a complete analysis of the cumulative  
2 impacts.

3           There has to be some limit in some point  
4 of time on the universe of projects which can be  
5 added. If we didn't have that we'd never complete  
6 the process. So we think some finality is  
7 necessary in any event, but that in conclusion the  
8 Vulcan Project, we don't believe, is within the  
9 reasonable scope of probable future projects  
10 required to be addressed by the Commission.

11           That the PMPD analysis is supported by a  
12 reasonable process of determining what projects  
13 are relevant to it, and that even if the Vulcan  
14 Project were included it's unlikely to result in a  
15 significant change of the assessment of cumulative  
16 impacts or the mitigation required, since the  
17 Palomar Project's contribution to cumulative  
18 impacts has already been mitigated to  
19 insignificance. So that's our response to that  
20 issue.

21           HEARING OFFICER GEFTER: Okay. And for  
22 the record, the e-mail from the air district that  
23 you referred to has been docketed as of July 16th?

24           MR. MILLER: That's correct.

25           HEARING OFFICER GEFTER: And I don't

1 know if it was served on all the parties.

2 MR. BRIGGS: It was not.

3 HEARING OFFICER GEFTER: So you haven't  
4 seen it. Staff is handing a copy to Mr. Powers.  
5 Okay, thank you. And then the other question we  
6 had from the public is regarding Palomar's  
7 project. The visual impacts that were discussed  
8 by Mr. Powers and also by other public comment.

9 And I had asked the parties to clarify  
10 distinctions between hypothetical project views  
11 and actual views that appear in the record. And  
12 I'll again ask the Applicant to address those  
13 questions.

14 MR. MILLER: Okay. I would like to read  
15 into the record some references to answer your  
16 question, and then I'd like to call Mr. Rowley to  
17 further elaborate the issue. And I guess I would  
18 offer to Mr. Powers an opportunity to withdraw his  
19 comments about distortion and any unethical  
20 activities on the part of this Applicant, because  
21 we resent it strongly, and we don't agree with it,  
22 and we feel that it's completely inappropriate for  
23 this proceeding.

24 So with that, I'll indicate that the  
25 visual images in the record that accurately

1 reflect renderings of the project include the  
2 visual simulations in the Application for  
3 Certification Exhibit One, figures 5.10-2A to  
4 5.10-8C, the visual simulations in the data  
5 responses Exhibit 2D, data responses 83-85, 102,  
6 and 107.

7           And the depiction of the relative  
8 disability of the proposed wet cooling tower and  
9 dry cooling facilities in Exhibit 40. The correct  
10 stack heights, excuse me, the correct heights of  
11 the stack, 110 feet, at elevation 860. The HRSG  
12 platform at 85 feet, elevation 835. And the wet  
13 cooling tower at 65 feet elevation 815, are listed  
14 in figure 2.1-1 and in the visual resource section  
15 of the AFC.

16           Exhibit 40 was based upon figure 2.1-2  
17 of the AFC. That figure was clearly labeled not  
18 to scale, and was never represented to be used for  
19 visual analysis. As Mr. Rowley testified, since  
20 the drawing was being used for a new purpose at  
21 the hearings, the scale of the stacks in the  
22 cooling towers was corrected in Exhibit 401 and  
23 the major structures upon which the visual  
24 findings that were made by the Commission and  
25 staff that were included in the PMPD are accurate.

1           I would refer you to record of  
2 transcript 42903, page 169, 173. I think with  
3 that I would like to get Mr. Rowley's comments on  
4 that, and I think there is a fundamental  
5 misunderstanding that Mr. Powers may well have as  
6 to the relationship between the elevation figure  
7 and figure 2.1-2 of the AFC, and how the visual  
8 analysis was done for the visual simulations.

9           MR. ROWLEY: Really, Taylor pretty much  
10 covered it, but just to add -- and I think I  
11 pointed this out at my testimony during the  
12 hearings -- the only thing that was not properly  
13 drawn was in figure 2.4-2, and that was the inlet  
14 air structure to the gas turbine, which was drawn  
15 too small.

16           But that figure is clearly noted as not  
17 to scale. When I used that figure to create  
18 Exhibit 40, which -- and the purpose, remember, of  
19 Exhibit 40 was to show the relative size of an  
20 air-cooled condenser and the wet cooling tower,  
21 and show that in proportion to the height of the  
22 stack.

23           It had nothing to do with the inlet air  
24 structure on the combustion turbine. The inlet  
25 air structure was just not relevant to the purpose

1 of that Exhibit at all, and in any case that  
2 Exhibit was not used for visual impact analysis of  
3 the project, but just to show the relative size of  
4 the air-cooled condenser and the wet cooling  
5 tower.

6 So we've made a diligent effort to have  
7 the photo simulations be accurate, accurately  
8 represent the visual impacts of the project. And  
9 we feel good about that. They are not a  
10 misrepresentation. I just don't know what more  
11 to say.

12 I guess I'm concerned about the  
13 representations that have been made by Mr. Powers  
14 and how people might give those any credence.  
15 It's simply not the case.

16 HEARING OFFICER GEFTER: I was going to  
17 ask staff -- you have Michael Clayton available on  
18 the phone. Do you think that you will need his  
19 comments on this?

20 MR. KRAMER: We can ask him if he has  
21 anything to add.

22 HEARING OFFICER GEFTER: Okay. Could  
23 you ask Michael Clayton to be put through? Is Mr.  
24 Clayton on the phone?

25 MS. CLAYTON: I am here.

1 HEARING OFFICER GEFTER: Okay. Do you  
2 have any additional comment on the question of  
3 whether the visual simulations are accurate?

4 MS. CLAYTON: Not really. By my use of  
5 the simulations, and my conclusions about the  
6 simulations is that they were reasonably accurate.  
7 I found no major flaws with them.

8 We did, early on in the process, request  
9 that the images be presented at life-size scale to  
10 more accurately reflect the actual viewing  
11 experience that you would experience at each of  
12 the viewpoints, but aside from that the structural  
13 relationships appear to be accurate. So I have no  
14 further comment about that.

15 HEARING OFFICER GEFTER: All right.  
16 Thank you. We're moving on beyond visual to  
17 another comment that we received from the public  
18 regarding an article in the North County Times, I  
19 believe a paper in Escondido -- yes?

20 MR. BRIGGS: Mr. Powers just wanted to  
21 add one last thing on the visual.

22 HEARING OFFICER GEFTER: All right.  
23 Very short.

24 MR. POWERS: Yes, well, I've been asked  
25 to retract. This is a very serious issue. I'm a

1 professional engineer, Mr. Rowley is a  
2 professional engineer. Those drawings are  
3 inaccurate. Exhibit 40 is patently inaccurate.  
4 The photo simulations are inaccurate.

5 Mr. Clayton is on the line. Mr.  
6 Clayton, you can take the scale to the KOP3 you  
7 use in the FSA. You're showing a HRSG that's  
8 about 80 feet high. On their diagram they  
9 indicate it's 102 feet high.

10 MR. MILLER: No, it's 85 feet high. We  
11 never indicated it was 102 feet high. You're  
12 making assumptions of inaccuracies and then  
13 arguing that we are falsifying submittals, and  
14 we --

15 HEARING OFFICER GEFTER: Okay. We're  
16 off the record.

17 (Off the record.)

18 HEARING OFFICER GEFTER: We're back on  
19 the record. We are talking about a public comment  
20 regarding an article in the North County Times  
21 that directs residents to conserve water due to an  
22 insufficient number of water treatment plants in  
23 the area.

24 And again, I'd ask the Applicant to  
25 respond to that comment.

1           MR. MILLER: Thank you. I was just  
2 informed that Mr. Blaising had to leave, but  
3 states that what I'm about to say is correct. The  
4 news articles that have appeared in the North  
5 County Times note a problem relating to the  
6 treatment capacity of potable water treatment  
7 plants, not sewage treatment plant capacity.

8           Thus, there is no shortage of recycled  
9 water as noted in the water testimony that we have  
10 submitted, that the city has submitted, and that  
11 the staff has submitted and that is now adopted in  
12 the PMPD. So the use of recycled water will not  
13 impact the demand for potable water in the area.

14           HEARING OFFICER GEFTER: It also seemed  
15 that that particular article was referring to a  
16 town of Hemet.

17           MR. MILLER: Yes, it was referenced I  
18 believe.

19           HEARING OFFICER GEFTER: And how far  
20 away is Hemet from Escondido?

21           MR. MILLER: Honestly, I don't know.

22           MR. KRAMER: It's right next to the --  
23 well, it's about five miles from the Inland  
24 Project, so that'd be another, 55, 60.

25           MR. MILLER: I think it's basically

1 apples and oranges and a misunderstanding.

2 HEARING OFFICER GEFTER: All right.

3 Thanks. And then there was another comment  
4 regarding the implementation of local air quality  
5 mitigation measures. I think what this comment is  
6 referring to is some of the mitigation plans deal  
7 with North County area mitigation, and perhaps you  
8 could refer to the record and explain on the  
9 record where that mitigation will occur?

10 MR. MILLER: Certainly. This topic is  
11 addressed in a number of documents in the record.  
12 The PMPD, most particularly in PMPD condition  
13 AQSC10, which requires preference to be given to  
14 local mitigation projects. That condition was the  
15 outcome of a number of workshops and  
16 interchanges -- data requests - that evolved into  
17 what became the final CEQA mitigation condition  
18 for PM-10.

19 The references there are, excuse me a  
20 second, I'm sorry -- a record of transcript 42803,  
21 pages 242, 275 to 276, which is testimony of the  
22 air pollution control district staff, where they  
23 recognized that condition and indicated that they  
24 would give preference to local projects.

25 Exhibit 17, which was the PM-10

1 mitigation plan, pages 5-1 to 5-10, list a number  
2 of potential local projects that we did consider,  
3 and that was a part of the overall evaluation  
4 process that the staff went through.

5           And then in the Exhibit 50, the FSA,  
6 page 4.1-40, paragraph two, notes a preference for  
7 local diesel engine replacements, rather than  
8 regional projects. So I believe that those  
9 references would address your question.

10           HEARING OFFICER GEFTER: Thank you. And  
11 then we did have a comment from Mr. Bob Sarvey,  
12 and I think he is on the phone. If you want to  
13 put him through he can give us his comments? Mr.  
14 Sarvey, are you on the phone?

15           MR. SARVEY: Yes, I am.

16           HEARING OFFICER GEFTER: Okay. Do you  
17 want to summarize your comments very quickly for  
18 us?

19           MR. SARVEY: Certainly. And I  
20 appreciate the opportunity to comment on the  
21 decision. I'd like to provide some comments based  
22 upon my limited review of the PMPD. And my first  
23 comments relate to power plant efficiency and the  
24 current reliance on natural gas generation in the  
25 state of California.

1           The PMPD states that, under normal  
2 operating conditions, the Palomar Energy Project  
3 will burn natural gas at the rate of 88 million  
4 BTU's per day. According to staff this is a  
5 substantial rate of energy consumption that could  
6 impact energy supplies or resources.

7           As we are all aware, recent developments  
8 in the consumption of natural gas have evolved,  
9 and a predicted shortage of natural gas supplies  
10 has been advanced by many noted business leaders  
11 and even recognized in recent reports.

12           PMPD states that -- on page 74 -- that  
13 new gas turbine designs are available, such as G-  
14 class and H-class machines that claim higher fuel  
15 efficiency. However, the lack of a proven  
16 performance record for these prototypes led staff  
17 to conclude that Sempra's selection of the well-  
18 known F-class machine is the more reasonable  
19 choice.

20           Well, this analysis is old and outdated.  
21 New technology has now proven, and has been  
22 utilized in other energy projects, and has  
23 established new standards of efficiency which  
24 should be utilized because the new emphasis on  
25 natural gas as the fuel for electricity

1 production, and the acknowledged shortage of  
2 natural gas supply infrastructure in the project  
3 area.

4 Existing Calpeak and Ramco peaker  
5 projects will also evaporate the natural gas  
6 constraints in the project area, which could force  
7 other generating units to use alternative fuels  
8 which have accompanying air quality impacts.

9 CEQA requires that resources be utilized  
10 in an efficient and productive manner. This  
11 project should be required to utilize more  
12 efficient turbines to comply with the tenets of  
13 CEQA.

14 Background annual geometric mean for the  
15 project area is 29.1 micrograms per cubic meter,  
16 recorded in 2001 at the Escondido East Valley  
17 Parkway monitoring --

18 HEARING OFFICER GEFTER: Mr. Sarvey, may  
19 I interrupt please? We have your written  
20 comments. If you're going to read them we might  
21 as well, you know, we can read them ourselves  
22 rather than taking up all afternoon with your  
23 reading the comments. Do you want to just  
24 summarize what your points are real quickly?

25 MR. SARVEY: Well, certainly. My first

1 point is the obvious -- we have a natural gas  
2 shortage and other turbines should be selected.  
3 And this is the continuing analysis that is old  
4 and outdated and it keeps being advanced and even  
5 the Hearing Officer has acknowledged that. So I  
6 think we need to answer that question.

7           And in terms of air quality, I see that  
8 the annual geometric mean is 29.1 and the  
9 predicted impact from the cumulative project is  
10 going to be .9, which is going to give us a new  
11 violation of air quality standards, so I think  
12 that needs to be addressed.

13           Also, the project's cumulative impacts  
14 should have included the emissions, mobile and  
15 stationary, from the Escondido regional technology  
16 park, which they were not. And I questioned why  
17 that was not done, since the projects were  
18 supposed to have environmental review together.  
19 So that to me is a failure in the analysis.

20           And the analysis, also, doesn't provide  
21 any CEQA mitigation for VOC emissions, SO2  
22 emissions, and it fails to provide mitigation for  
23 ammonia emissions that will form secondary PM-2.5,  
24 and obviously the project area is ammonia limited,  
25 which has come out of the testimony. And no

1 offsets were provided for the ammonia.

2 Also, I appreciate staff's additional  
3 mitigation to offset the 18 tons per year CEQA  
4 impact, but the mitigation strategy lacks  
5 quantification of the achievement that's required.  
6 So, under CEQA you have to somehow categorize and  
7 somehow report how these emissions are going to be  
8 achieved, and I don't see that in your decision.

9 And then in the area of water I just  
10 want to say that water and natural gas are finite  
11 resources, and it's illogical to use two finite  
12 resources to produce one finite resource,  
13 electricity. Thank you.

14 HEARING OFFICER GEFTER: Well, thank you  
15 very much. I think that we've covered all public  
16 comments that have been filed at this point, so we  
17 can wind up this session.

18 The next step is that the Committee will  
19 issue a list of errata, based on the written  
20 comments filed by the parties. And we will submit  
21 that errata to the full Commission for  
22 consideration and incorporation into the final  
23 decision. And that errata will be available to  
24 the parties hopefully by early next week.

25 MR. BRIGGS: Ms. Gefter, my client had a

1 comment on the newspaper article referred to  
2 earlier, but it didn't get around to us. Can we  
3 add that before we close?

4 HEARING OFFICER GEFTER: Yes. You can  
5 do that, but very quickly.

6 MR. POWERS: The Applicant mentioned  
7 that there is no link between building new potable  
8 water supply system near Escondido and reclaimed  
9 water, and I would disagree. If the reclaimed  
10 water is going to a process that displaces potable  
11 water imports we can either reduce the size of  
12 that new plant or potentially delay having to  
13 build it.

14 So there is a direct link between the  
15 two, and I think that the citizen who wrote that  
16 note picked up on that. She's being asked to  
17 voluntarily curtail her water use because of  
18 shortages of potable water. So I just wanted to  
19 make that point, that there is a direct link.

20 HEARING OFFICER GEFTER: Okay. Thank  
21 you. At this point, unless there are any other  
22 further comments, we're going to adjourn.  
23 Anything?

24 MR. MILLER: We have no further  
25 comments. Thank you.

1           HEARING OFFICER GEFTER:  Okay, we're  
2 adjourned.  
3       (Whereupon, at 4:14 p.m., the conference was  
4 adjourned.)

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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 prehearing conference, nor in any way interested in outcome of said prehearing conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of August, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345