

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for Small Power Plant Exemption) 04-SPPE-01
Riverside Energy Resource Center)

RIVERSIDE CITY HALL
COUNCIL CHAMBERS
3900 MAIN STREET
RIVERSIDE, CALIFORNIA

MONDAY, AUGUST 30, 2004

10:05 A.M.

Reported by:
James A. Ramos
Contract No. 170-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS

Jackalyne Pfannenstiel, Presiding Member

John L. Geesman, Associate Member

HEARING OFFICER and ADVISERS PRESENT

Gary D. Fay, Hearing Officer

Tim Tutt, Adviser

STAFF and CONSULTANTS PRESENT

James W. Reede, Jr., Project Manager

Lisa DeCarlo, Staff Counsel

Tony Mediati

Dal Hunter

PUBLIC ADVISER

Nicholas O. Bartsch

APPLICANT

Allan J. Thompson, Attorney

Robert B. Gill, Principal Electrical Engineer
City of Riverside

Dave Tateosian, Project Manager
Power Engineers, Inc.

INTERVENORS

Marc D. Joseph, Attorney
Suma Peesapati, Attorney
Adams, Broadwell, Joseph & Cardozo
California Unions for Reliable Energy

ALSO PRESENT

Ron Loveridge, Mayor
City of Riverside

Art Gage, Mayor Pro Tem
City Council
City of Riverside

John Fields
representing Board Supervisor Tavaglione
County of Riverside

Dave Barnhart, Board Member
Public Utility Department
City of Riverside

Jeff Kraus, Board of Directors
Greater Riverside Chamber of Commerce

Robert Krieger, Consulting Engineer
Krieger and Stewart
President, Monday Morning Group

Barry Nestande
representing Assemblyman Benoit

Tom Evans, Director
Public Utilities Department
City of Riverside

Steven Badgett, Assistant Director
Public Utilities Department
City of Riverside

Dan McCann, Scheduling and Operations Manager
City of Riverside

Keith Waller
Power Engineers, Inc.

David Clark, Principal
Economic Planning Resources

John Baker, Project Engineer
Power Engineers, Inc.

Jeffrey J. Johnston
LOR Geotechnical Group

ALSO PRESENT

John Baldwin, Senior Geologist
William Lettice and Associates

Dave Wieland, Principal Consultant
Wieland Associates

Phyllis Fox

Petra Pless

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P R O C E E D I N G S

10:05 a.m.

HEARING OFFICER FAY: The hearing will come to order. This is a continuation of the evidentiary hearings on the Riverside Energy Resource Center small power plant exemption proceeding, for an SPPE, as we refer to this type of proceeding.

And I'd like to begin by taking appearances. We'll begin with the applicant, Mr. Thompson.

MR. THOMPSON: Thank you very much; my name is Allan Thompson. To my immediate right is Mr. Dave Tateosian, who is with Power Engineers and represents the environmental engineering expertise, outside expertise, brought to this project.

To his right is Mr. Bob Gill, who is the City of Riverside point person for this project. We have various future witnesses in the audience that we will introduce when appropriate.

HEARING OFFICER FAY: Thank you. Ms. DeCarlo for the staff.

MS. DeCARLO: Thank you. Lisa DeCarlo, Energy Commission Staff Counsel. To my right is

1 Dr. James Reede, Energy Commission Project Manager
2 for this project. In the audience we have Dr. Dal
3 Hunter, our expert witness for geology, and Tony
4 Mediati, our expert witness for hydrology.

5 HEARING OFFICER FAY: Thank you. Mr.
6 Joseph for Intervenor CURE.

7 MR. JOSEPH: Thank you, Mr. Fay. My
8 name is Marc Joseph, on behalf of CURE. To my
9 immediate left is Suma Peesapati, another lawyer
10 for CURE. To my immediate right is John Baldwin,
11 our geologist. To Ms. Peesapati's left is Dr.
12 Phyllis Fox. And to her left is Dr. Petra Pless.
13 Two of our witnesses that you'll hear from later.

14 HEARING OFFICER FAY: Thank you. And my
15 name is Gary Fay; I'm the Hearing Officer for this
16 proceeding. And to my left is the Presiding
17 Member of this Committee, Commissioner Jackie
18 Pfannenstiel. And to my right is Commissioner
19 John Geesman, the Associate Committee Member.

20 The Committee was designated by the
21 five-person Energy Commission to conduct this
22 proceeding. And they will be presenting a
23 proposed decision to the full Commission at the
24 end of the proceeding.

25 A few preliminary matters. First of

1 all, we will take up air quality tomorrow. We
2 would like to begin at 9:00 a.m. The notice said
3 10:00 a.m., and if there's no objection from any
4 party, we would like to begin at 9:00 a.m. so we
5 can finish air quality tomorrow, and not go on to
6 Wednesday, although we do have Wednesday available
7 if necessary.

8 I also want to introduce Nick Bartsch.
9 Nick is standing now in the back, and he is with
10 the Commission's Public Adviser's Office. I think
11 Nick's going to say a few words.

12 MR. BARTSCH: Thank you, Gary. Nick
13 Bartsch representing Margret Kim, the Public
14 Adviser at the Energy Commission. Margret wanted
15 to let the Committee know a little bit about the
16 public outreach efforts that we have undertaken on
17 this particular project.

18 We have identified and notified over 130
19 what we call sensitive receptors. These include
20 schools, hospitals, nursing homes, childcare
21 centers, community centers, etc.

22 We have also distributed over 7000
23 flyers in this City about the project, to notify
24 them about the initial hearings, and we have
25 followed up with over 60 mailings about this

1 particular hearing to interested parties.

2 So, we tried to cover all bases in
3 notifying the public about this particular
4 project. If you have any questions, please let me
5 know.

6 HEARING OFFICER FAY: Thank you. If
7 there are any members of the public who would like
8 to participate in this case, make comment,
9 whatever, I encourage you to talk to Nick and
10 he'll be sure that we hear from you.

11 One other thing I'd like to note is that
12 the Committee intends to apply what we call the
13 fair argument standard in this case. That
14 standard was articulated, I think, quite well by
15 the Energy Commission last February in its Modesto
16 Energy SPPE decision.

17 And basically that standard is different
18 from our typical application for certification
19 decisions, which are more like a lawsuit. That is
20 that the persuasive weight of evidence is what
21 carries the day.

22 The fair argument situation is applied
23 to negative declarations under the California
24 Environmental Quality Act, and really is the best
25 analogy to a small power plant exemption. Under

1 the fair argument standard the question is whether
2 there is a fair argument that a significant impact
3 exists. And that is not the same standard as
4 persuasive weight of the evidence.

5 And I'd just like to take a moment now
6 and ask if any of the parties want to address that
7 matter. Mr. Thompson, I think you had some --

8 MR. THOMPSON: Thank you. We agree with
9 the Committee that this is probably the correct
10 standard to apply in SPPE cases. We have read the
11 cases where the standard has been applied
12 previously.

13 But we believe that this is not that
14 difficult of a wall to climb. The standard says
15 something like must have AFC level of review if
16 there's any substantial evidence in the record
17 which supports a fair argument that the project
18 may have a significant effect on the environment.

19 There are really three parts of that
20 that I would hope that the Committee would take
21 note of. Substantial evidence. I believe that
22 that evidence cannot be based on incorrect or
23 incomplete assumptions.

24 Fair argument cannot be misleading or
25 show bias. And significant effect cannot be

1 insubstantial or inconsequential. And I think if
2 the Committee views the evidence in the record in
3 that light, then I think we will prevail.

4 Thank you.

5 HEARING OFFICER FAY: Ms. DeCarlo, any
6 comments on the standard?

7 MS. DeCARLO: Yes, staff agrees with the
8 applicant's recitation of the appropriate
9 standard. The key point of focus should be on
10 whether evidence is substantial.

11 CEQA and supporting case law is clear in
12 that evidence is not substantial if it is
13 argument, if it is speculation, if it is based on
14 conjecture, if it is unsubstantiated opinion or
15 narrative, if it is clearly inaccurate or
16 erroneous, or if it lacks adequate foundation.

17 Case law is also clear in that evidence
18 that rebuts, contradicts or diminishes the
19 reliability or credibility of evidence can be
20 properly considered.

21 The Committee can use staff's or the
22 applicant's evidence that CURE's testimony does
23 not qualify as substantial evidence to find that
24 the project would result in less than significant
25 impacts, and a mitigated negative declaration

1 would therefore be appropriate.

2 HEARING OFFICER FAY: Does that conclude
3 your remarks?

4 MS. DeCARLO: Yes, it does.

5 HEARING OFFICER FAY: Okay. Mr. Joseph,
6 would you like to comment on this? I'll remind
7 the parties, or tell them for the first time if I
8 haven't said this before, we will have briefs
9 after the record is closed. We can discuss what
10 the proper timing is, but it will be something
11 like two weeks after the transcripts are available
12 for opening briefs; and then reply briefs perhaps
13 ten days later, something like that.

14 Mr. Joseph.

15 MR. JOSEPH: Thank you, Mr. Fay. Given
16 the fact that there will be briefs on this issue,
17 this is essentially a legal point and I don't
18 think we need to dive too deeply into legal
19 argument at this point.

20 There are several statements which both
21 the applicant and staff have made which are not
22 actually correct under the fair argument standard.
23 You are not asked to weigh the competing opinions
24 under the fair argument standard. If there is
25 substantial evidence that there is, that there may

1 be a significant impact, it does not matter under
2 the law that there may also be evidence that
3 contradicts that.

4 The purpose, at this stage, under CEQA,
5 is to determine whether a full analysis should be
6 done so that you can get to the point of weighing
7 and deciding what you are persuaded by. So I
8 think the Committee understands that; and we're
9 happy to proceed under that basis.

10 HEARING OFFICER FAY: Okay, thank you.
11 Are there any other preliminary matters before we
12 get started? We do have a lot of public officials
13 who would like to address the Committee.

14 Okay, I hear no indication, so, Mr.
15 Thompson, why don't we begin hearing from the
16 Riverside officials. They've promised to keep
17 their remarks brief so that we can get down to the
18 evidence. This will be in the form of comment,
19 what they're offering. I understand this is not
20 sworn testimony, but we do want to accommodate
21 their schedule as we always do with public
22 officials.

23 MR. THOMPSON: Thank you. I'm somewhat
24 at a loss as I don't have the list, but I believe
25 that, Mr. Mayor, I believe that the Mayor of

1 Riverside --

2 HEARING OFFICER FAY: Well, Mr. Bartsch
3 has copy of the list.

4 MR. THOMPSON: I don't know the order,
5 and so --

6 HEARING OFFICER FAY: Okay, the order
7 that I was given starts with Mayor Ron Loveridge.
8 Perhaps I'll just call out the people. On deck
9 would be City Council Mayor Pro Tem Art Gage.

10 MAYOR LOVERIDGE: Thank you for the
11 opportunity to testify. It's a tradition to
12 emphasize that the comments should be limited and
13 short, and I understand that. I'm here to offer a
14 kind of context.

15 And I should say it seems quite strange
16 to be sitting here -- standing here as opposed to
17 be sitting where you are.

18 Quick personal profile. I have been in
19 elected office in Riverside some 14 years as a
20 Councilmember and now a little over 11 years as
21 Mayor. And so it's some 25 years of service.

22 My initial involvement with the City of
23 Riverside was as a charter member of what's called
24 in the start of the 1970s the City's Environmental
25 Protection Commission. I currently served over

1 ten years on the South Coast Air Quality
2 Management District Board. And am a recent
3 Governor's appointment representing the board at
4 the California Air Resources Board level.

5 Among other awards received in this
6 business of being Mayor, I have received a Clean
7 Air Leadership Award from the California Lung
8 Association. I should say in my professional life
9 I'm a Professor of Political Science at UCR. In
10 the course of my work I've studied, written about
11 and taught about the politics of air pollution.

12 I should also say I drive a Prius and am
13 quite delighted to add that.

14 As Mayor and speaking for the residents
15 of Riverside, we care deeply about the quality of
16 our air. The City has adopted a series of
17 strategic actions to make Riverside a model clean
18 air city. We have a Clean Air Advisory Committee.
19 We are the host for something called CAN, Clean
20 Air Now. This is the oldest continuing volunteer
21 citizens air quality group in southern California.

22 At the South Coast District's annual
23 clean air awards luncheon coming up in October the
24 City of Riverside will receive a 2004 clean air
25 award for community achievements.

1 Point number two is I sort of frame this
2 question of what is a green city, one that's
3 committed to environment. And Riverside, in many
4 ways, is a clean city. And I think if you could
5 kind of measure where California cities are, we
6 are near the front of the parade.

7 Let me give some examples of that. In
8 terms of the City's fleet we are primary CNG
9 powered. We expect to have nearly 100 percent of
10 the City's fleet be powered by alternative fuels
11 by 2010, and including some hydrogen vehicles.

12 Second, the National Arbor Day
13 Foundation has declared Riverside to be a Tree
14 City, USA community. We have a City of over
15 140,000 trees. The Riverside Public Utility
16 Department has a really interesting program called
17 the tree power program. They planted an
18 additional 25,000 shade trees near homes and
19 businesses. And these trees, it is estimated,
20 will save 1.8 million kilowatt hours energy
21 annually.

22 If a group which is our signature group
23 called Keep Riverside Clean and Beautiful, last
24 year's numbers, had over 31,000 volunteer hours
25 committed to an estimated cleanup of over 420,000

1 pounds of trash.

2 Four Riverside collects and recycles.

3 We have an interesting program called Clean Up
4 Riverside's Environment, or CURE, to deal with
5 hazardous waste, with household electronic and
6 cell phones, used oil and tires, backyard
7 composting, et cetera.

8 Finally, fifth point for the record, we
9 surpassed state and federal standards for
10 recycling and greenwaste, and regarding wastewater
11 we meet all state and federal requirements.

12 The Riverside Public Utility commitment
13 is at least 10 percent green power by the year
14 2010.

15 What is the point? What are all these
16 kind of specifics doing? I think they emphasize
17 the point of this City's not symbolic. A
18 substantive and real commitment to clean air and a
19 better environment.

20 To protect the environment the Riverside
21 Public Utility will, of course, use the most
22 advanced technology to protect the health and
23 environment of Riverside, otherwise known as BACT,
24 or best available technology.

25 As a member of the South Coast Board, it

1 is interesting to me how, over time, that the
2 control equipment continues to improve and thereby
3 reduce emissions. This particular power plant
4 will be a reclaimed facility and will purchase
5 reclaimed credits to offset all increases in NOx
6 emissions.

7 The power plant will operate on an
8 interim basis during periods of high electrical
9 demand. Electricity demand not to exceed 1330
10 hours per year of operation.

11 From my perspective resulting emissions
12 from our two proposed natural gas turbines are not
13 significant. I will, however, let experts
14 demonstrate this conclusion.

15 Riverside has a consistent record, as
16 I've tried to emphasize, of meeting and exceeding
17 environmental standards. We've done it also for
18 solid waste, for wastewater treatment and air
19 quality when we construct new plants such as the
20 Springs Power Plant in 2002, and the Riverside
21 Energy Resource Center in 2005.

22 For example, we are working with the
23 Department of Energy and the Energy Commission to
24 field test a catalytic combustion system for
25 nonammonia control of gas turbine NOx emissions to

1 achieve even better air quality emissions.

2 Given high demands and uncertain
3 delivery for electrical energy, as Mayor this
4 proposal is timely and important for the City, its
5 residents and businesses. The benefits of the
6 Riverside Energy Resource Center clearly support
7 its construction.

8 And I thank you for the time to present
9 these remarks; they're indicated to get a kind of
10 context in terms of the perspective of the City of
11 Riverside. Thank you.

12 HEARING OFFICER FAY: Thank you, Mayor
13 Loveridge. City Councilperson and Mayor Pro Tem
14 Art Gage.

15 COUNCILPERSON GAGE: Yes, thank you very
16 much. Just to give you a little idea of why I'm
17 standing here, it's not just as a Riverside City
18 Councilman and Mayor Pro Tem, but my wife's family
19 brought the citrus to Riverside. My wife's great
20 great grandmother was Eliza Tibbits. My great
21 great uncle was Matthew Gage. So between the two
22 of us we have about 250 to 260 years of history in
23 Riverside. We don't take what happens to our City
24 lightly.

25 In addition to that I've served on the

1 Human Relations Commission, the Planning
2 Commission and Cultural Heritage Board; and then
3 last, before becoming a Councilmember, on the
4 Public Utility Board.

5 And I can tell you, as a Public Utility
6 Board Member, I took a very close look at this
7 particular facility before it moved forward. And
8 I didn't see anything wrong with it from an
9 environmental standpoint, it made good sense.

10 As a Councilmember I had an opportunity
11 to take a second look at it, and this is well
12 planned by our Public Utility Department.

13 As a volunteer Board Member of the
14 Public Utility, we expected the Public Utility
15 Department to be very thorough from any
16 environmental problems, I mean the environmental
17 impact reports, but not just the casual. We
18 wanted to make sure, as a Board, that whatever
19 came forward to the City of Riverside was good for
20 the citizens.

21 I mean you can do all the studies you
22 want, but the reality of it is if it doesn't do
23 something positive this isn't going to go forward.
24 And this one was positive.

25 We had the Springs Generation Plant that

1 would be a similar type of project. It's worked
2 well; there are no problems; and there were no
3 objections to it.

4 And this project is really no different.
5 I mean the Board went out and took a good look at
6 it. The Council went out and took a good look at
7 it. We have something to judge it by. You know,
8 this is a very positive thing that will help us
9 avoid emergencies, disasters by not having the
10 proper energy.

11 I served as the CEO of Parkview Hospital
12 for awhile in Riverside. And trust me, I really
13 don't want to have blackouts at the hospital. We
14 may be able to switch over to our generator and
15 handle any type of emergency. But there are an
16 awful lot of institutions around and homes around
17 where they couldn't do that. And, you know, to
18 cut off people's power, it makes no sense. And
19 we're looking at that again. I read Public Power
20 Weekly last week and they're looking at 2006 for
21 potential blackouts again. We don't need that in
22 Riverside.

23 This plant will help us avoid that and
24 we won't find a lot of people coming into the
25 hospital with life-threatening situations.

1 On this project we have been
2 particularly sensitive to customers referred to as
3 sensitive receptors. These include schools,
4 hospitals, health care facilities, senior
5 citizens, community centers, convalescent homes,
6 childcare centers and residents with special
7 needs.

8 A public awareness outreach program has
9 provided information on an ongoing basis to these
10 customers. And to the best of my knowledge these
11 are the people who are not complaining.

12 I would be one of those. My daughter
13 happens to be working near that particular site.
14 She is the Activities Director for a convalescent
15 hospital, Alzheimer center. And they are very
16 happy to see additional power in the City of
17 Riverside. And this is important to them. They
18 have no fear, as I have no fear, of any negative
19 problems with this plant.

20 As a municipal utility RPU has no
21 incentive to cut any corners. We're not a profit-
22 making institution. We're environmentally
23 friendly. The City of Riverside has had 19 awards
24 relating to power, power saving, energy saving in
25 the last year and a half. So we don't take this

1 whole issue as just something that's casual.

2 We have the background, we have the
3 awards to show that we're out there leading the
4 way. And if I may mention one thing, and my
5 figures may be a little bit wrong, but I was back
6 in Washington last year. The City of Riverside
7 spend, oh, I don't remember, \$5 million-plus on
8 greenpower. The FERC people were spending about
9 \$3 million nationally. We were trying to get a
10 little bit of money from them, and again, those
11 figures may be slightly off, but Riverside takes
12 its environmental approach to energy very
13 seriously.

14 We don't just judge things. I mean,
15 water, I chair the Water Committee in the City of
16 Riverside. We judge that at the tap. I mean we
17 want to make sure that the quality there is right.
18 We want to make sure that our energy is the right
19 type of energy.

20 While I was on the Public Utility Board
21 we went from basically zero green power to, I
22 think, we're up to 12 percent now, with a goal of
23 20 percent. The 12 percent is probably two to
24 three times what other cities in the State of
25 California have done.

1 So I stand here before you saying from a
2 historical standpoint Riverside has always been in
3 the forefront of the energy and the water
4 treatment, environmental policies. And this will
5 allow us to stay there. So I hope you will
6 consider this as a positive thing for the City and
7 for the state and mostly for the citizens of
8 Riverside. We need to make sure they have the
9 energy necessary to stay safe.

10 Thank you very much for your time.

11 HEARING OFFICER FAY: Thank you,
12 Councilman Gage. John Fields, for Supervisor
13 Tavaglione.

14 MR. FIELDS: Thank you very much for
15 this opportunity. If brevity is the competition
16 here I think I'm going to beat the City.

17 Supervisor Tavaglione sends his regrets
18 he's unable to attend. But he did want you to
19 know that he represents roughly half of the City
20 of Riverside, and he does represent the portion of
21 the City that the County Administrative Center
22 lies within.

23 So this project is very important from a
24 reliable power standpoint to the County of
25 Riverside. The Emergency Operations Center for

1 the County is located in the County facility; and
2 a reliable power source, of course, is very
3 important from that standpoint.

4 From a regional perspective California
5 accounts for a disproportionate share of this
6 nation's economy. By itself California is the
7 fifth or sixth largest economy in the entire
8 world. The Inland Empire is comprised of
9 Riverside and San Bernardino Counties. And
10 Riverside County is the fastest growing county in
11 all of the state. The region of the Inland
12 Empire, those two counties, is the fastest growing
13 region in the State of California.

14 Riverside, the City of Riverside is the
15 11th largest incorporated city in California, and
16 the largest incorporated city within this entire
17 region. That means that this Energy Resource
18 Center will be constructed in the largest city in
19 the fastest growing region of the state, which we
20 feel is also the most dynamic and vital state
21 economy in the United States.

22 And, of course, this facility cannot be
23 built soon enough. It is in the best of all
24 places within the City, and the County of
25 Riverside, and the region and the state.

1 So thank you very much for this
2 opportunity. We hope you support it.

3 HEARING OFFICER FAY: Thank you. Dave
4 Barnhart, Public Utility Board Member.

5 MR. BARNHART: Welcome to Riverside,
6 Commission. I've been with the Board of Public
7 Utilities for approximately two years. And we've
8 wrestled with this problem. And we believe we've
9 done our due diligence, and recommending a project
10 that's not only good for the City, but also meets
11 all the environmental rules and regulations. And
12 is a plus for our community.

13 There are many forces facing Riverside
14 and the surrounding area, both economic and
15 social, that we cannot, nor should we -- society
16 control. But we do take seriously the planning
17 for the future to accommodate this growth in a
18 reasonable and responsible way.

19 I might note that I just retired two
20 years ago as the County's Director of
21 Transportation. And as part of that I was part of
22 a team that developed what we call the blueprint
23 for the future. It was a groundbreaking effort to
24 really do a comprehensive land use plan,
25 transportation plan, and a multi-species

1 conservation plan. Over a half-million additional
2 acres is designated for open space and wildlife
3 preservation.

4 The point I'm making, you've heard the
5 Mayor and you heard the others, we take meeting
6 this challenge of the future seriously. And there
7 is a high value on environmental quality in this
8 area. And not just in the City of Riverside, but
9 the community around it.

10 Riverside residents, as you've seen,
11 take this environmental and air quality seriously.
12 I know this next comment does not meet the test of
13 evidence that the lawyers have recited this
14 morning, but I want to remind the Commission that
15 we're building this power plant next to our sewer
16 farm. And it's not going to have a significant
17 effect on a quality there. We think it will be
18 acceptable at that location.

19 Given the environmental constraints
20 we're dealing with, the Board and the City has the
21 responsibility to meet the long-term needs of our
22 residents in terms of growth and economic
23 development.

24 Due to the lessons of the energy crisis
25 a few years ago, the Board of Public Utilities

1 acted to diversify Riverside's power portfolio and
2 develop local sources of power.

3 To meet our obligations, Riverside first
4 built the 40 megawatt Springs Plant, which came
5 online in July of 2002. Its four natural gas-
6 fired turbines operate during times of peak demand
7 and conform to air quality and other environmental
8 requirements.

9 Now we propose a second, 96 megawatt
10 facility, the Riverside Energy Resource Center.
11 Its two natural gas-fired turbines will operate
12 during times of peak power demand and conform to
13 all air quality and other environmental
14 requirements.

15 With news reports that California may
16 encounter a second energy crisis in early 2006,
17 our goal is to have this power plant operational
18 next summer, the summer of 2005. And we look to
19 the Commission to do an expeditious review and
20 approval of this power plant.

21 Thank you very much.

22 HEARING OFFICER FAY: Thank you, Mr.
23 Barnhart. Cindy Roth. Is she here? You're not
24 Cindy.

25 MR. KRAUS: I don't look like Cindy, no.

1 (Laughter.)

2 MR. KRAUS: I'm sorry, Cindy sends her
3 regrets; she's fallen ill. I'm actually the next
4 scheduled speaker, Jeff Kraus. But I will speak
5 to that which she was going to be talking about,
6 as well as what I was going to be discussing.

7 I am on the Board of Directors of the
8 Greater Riverside Chamber of Commerce. We
9 represent over 1700 businesses, and over 73,000
10 employees. I'm also a resident of the almost
11 300,000 residents of Riverside.

12 And as a community member, as a member
13 of the business community, I'm here to
14 wholeheartedly give my support of this project and
15 address a couple of issues.

16 First, like has been said by many of the
17 speakers earlier, it is environmental quality, air
18 quality, pollution is something that is taken very
19 seriously here in the City of Riverside.

20 There have been some discussion about
21 dust generation by the plant, dust generation
22 during the construction of this plant. The amount
23 of dust generation and particulate matter during
24 the construction of this plant, there's about a
25 five-week peak period in which there will be an

1 amount of dust that's generated.

2 However, it's no more dust than would be
3 created in a fairly small housing development.
4 And as a member of the business community, member
5 of the community, that's a trade that we're
6 willing to take, given the need, given the
7 importance of this project.

8 In Riverside we currently have the
9 second largest public works project going on in
10 the state. It's the 16-91-215 interchange. You
11 might have gotten stuck in the traffic on your way
12 over here. It is a \$310 million project, of which
13 \$130 million of that project went to property
14 acquisition, property demolition, property
15 preparation and property grading. So there was a
16 ton of work to do to increase the capacity.

17 In addition there will be four bridges
18 that will be demolished and four bridges that will
19 be reconstructed, as well as a mile-long flyover
20 that's 50 feet high, and a mile-and-a-quarter-long
21 flyover that is 70 feet high. The amount of dust
22 generation from that far exceeds that which the
23 power plant would be generated.

24 However, the community wholeheartedly
25 supported this project because if we did nothing

1 it would only get worse. This is a similar
2 situation. If we do nothing it will only get
3 worse.

4 The demands on the grid, the eventuality
5 of a natural disaster, a terrorist event is
6 something that we definitely need to get moving
7 on. We can't even afford to waste another summer
8 of risking the citizens of Riverside.

9 And that's why I also wanted to address
10 a little further, as a member of the business
11 community, the importance of this. The City of
12 Riverside, like many people have said, is
13 committed to renewable and alternative energies.
14 And it's something the business community supports
15 wholeheartedly.

16 But the business community is also
17 looking for reliable energy. The City is also
18 looking for reliable energy. When businesses come
19 to locate to Riverside the Public Utilities
20 Department is something that is singled out as a
21 major reason why people want to come to Riverside.
22 Their track record is impeccable. Their
23 foresight, their vision is impeccable. It's
24 something that gives Riverside a distinct
25 competitive advantage, and it's something that

1 Riverside is very proud of.

2 When we talk about bringing developments
3 into Riverside we talk about pollution; we talk
4 about jobs that are being created that take jobs
5 off the road going to Riverside. We talk about is
6 truck traffic going to be generated. Dust and
7 that kind of thing is something that's -- in any
8 development is something that is seriously
9 considered here.

10 One more comparison. We have many Santa
11 Ana condition days. The dust generated by that
12 far exceeds what we're talking about. The dust
13 generated by the cars driving on the road far
14 exceeds it. We're talking about a minute drop in
15 the bucket. And the track record of Riverside
16 Public Utilities is just, like I said, impeccable.

17 We are wholeheartedly in support of this
18 project and moving it forward so that we can help
19 be self sufficient, as well as be good neighbors
20 to the rest of the state. A peaker plant here
21 takes demand off the grid when the rest of the
22 state needs it. So, we're both looking out for
23 ourselves and being good neighbors.

24 So, I'd like to encourage the support.

25 Thank you.

1 HEARING OFFICER FAY: Thank you. Bob
2 Krieger.

3 MR. KRIEGER: Good morning. I'm Robert
4 Krieger; I'm a Consulting Engineer with Krieger
5 and Stewart here in Riverside. I am -- as the
6 Mayor, I, too, was a charter member of the
7 Environmental Protection Commission for the City
8 of Riverside. And I'm a past member and chairman
9 of the Board of Directors of the Public Utilities
10 Commission.

11 During the past 15 years or so the City
12 has been attempting to improve its power capacity.
13 And it's made great strides in the last few years.
14 And I think perhaps what brought most of that
15 effort around was the lack of available power and
16 energy a few years back.

17 So the City built the Springs Power
18 Plant. Now it proposes to build a new power
19 plant. A peaking plant that will be available for
20 capacity to meet peak demands, but also in
21 combination with the earlier plant, to meet
22 emergency services in view of a disaster.

23 It's an important plant to the City of
24 Riverside. And I'm here today as President of the
25 Monday Morning Group, which is a civic

1 organization, civic and business leaders of the
2 community. Constitutes about 35 people involved
3 in all endeavors.

4 The Monday Morning Group has an Air
5 Resources Committee, a standing committee, which
6 follows air resources development within the L.A.
7 Sink, and particularly within the City of
8 Riverside. The Monday Morning Group has endorsed
9 the City's efforts and supports the Mayor and his
10 efforts, as well as we have a former member now on
11 the South Coast Air Quality Management District
12 Board, who also is strongly in favor of reducing
13 pollution within the City and maintaining controls
14 on pollution. And you've heard from everyone.

15 I think that personally we endorse this
16 project because it's absolutely necessary. We
17 think it needs to move with all speed because it's
18 been awhile since the City embarked on its efforts
19 to increase power capacity.

20 The negative declaration will reveal or
21 has revealed all of the impacts of the plant. And
22 deciding to conduct an environmental impact or
23 develop an environmental impact report probably
24 will not reveal any further information that has
25 already been prepared in the negative declaration.

1 What it will do is defer the
2 construction of the plant, could be a year or two,
3 and that deferral may create some real problems
4 for the City of Riverside in view of the probable
5 reductions in available energy or potential
6 brownouts or blackouts in a couple of years.

7 We urge the Commission to proceed to
8 approve the project, allow the City to proceed.
9 It has a contract in force. It can have the plant
10 online within a year or perhaps a little longer
11 depending on circumstances. And that will relieve
12 the state of peak loads created by the City of
13 Riverside.

14 And it will also put stability into the
15 system in the City of Riverside. Currently the
16 City depends on its major source of power from the
17 Southern California Edison Company, a single
18 substation, a single line coming from Edison
19 Company. With the exception of the 47 megawatt
20 Springs Power Plant - pardon me, 40 megawatt.

21 So, we're in a very vulnerable position.
22 And the Utilities Department has been making
23 strong efforts to alleviate that particular
24 problem.

25 Again, we urge you to approve the

1 project so that it can proceed. Thank you.

2 HEARING OFFICER FAY: Thank you, Mr.
3 Krieger. Barry Nestande.

4 MR. NESTANDE: Thank you, Commissioners,
5 other parties, for the opportunity to partake in
6 the discussion this morning.

7 Assemblyman Benoit who represents this
8 District sends his greetings and his support for
9 this project. Some of the myriad of bills that
10 appeared on the floor last week in the State
11 Assembly and State Senate dealt with projects such
12 as this, energy, building power plants. And to
13 state the obvious, it's complicated.

14 As recently as last week the Assemblyman
15 penned a letter to Commissioner Pfannenstiel. I
16 have copies for those folks who may not have been
17 able to see the letter as yet. It outlines his
18 support, also some of his concerns about some of
19 the intervening parties in the process.

20 This opportunity represents good public
21 policy from both a statewide and a local
22 perspective. We hear over and over again of the
23 need to build power plants in California. Well,
24 here's an opportunity to do just that in a
25 responsible manner.

1 A few weeks ago the City Council voted
2 unanimously to approve this bid. It is a
3 responsible bid from a responsible company at a
4 fair price. We have an opportunity to be off the
5 state power grid at those times when the grid is
6 the most overburdened. It will aid with rolling
7 blackouts and other problems.

8 This project has strong community
9 support. Jobs will be created. The placement of
10 the plant is in a great location, as we've heard
11 this morning, from an environmental standpoint.

12 To derail this project from the SPPE
13 process would be a shame. We trust the City
14 Municipality and TIG to be aware of any
15 environmental impacts and the ability to mitigate
16 accordingly, and build this plant within those
17 standards.

18 We urge your support for this project
19 and for the SPPE process. We thank you for the
20 opportunity to testify this morning.

21 HEARING OFFICER FAY: Thank you. Tom
22 Evans.

23 MR. EVANS: Good morning and thank you.
24 Again, I'm the Public Utilities Director for the
25 City of Riverside.

1 This plant is a great example of a
2 community embracing a need, as opposed to
3 approaching the situation from "not in my
4 backyard". We've heard already the vast community
5 input. You'll see copies of letters that have
6 been written from a whole variety of entities.

7 When you think about it from the
8 standpoint of back to the Warren Alquist Act from
9 which this process presumably is derived, it
10 talked about the need for electricity in terms of
11 its contribution to maintenance of public health.
12 It obviously was concerned about local plans,
13 which you heard. This is certainly consistent
14 with the City of Riverside's local plans and local
15 growth.

16 It contemplated and recognized the need
17 to build small power plants, and so it created
18 this accelerated process, as opposed to perhaps
19 not ending this which might end up with a
20 proliferation of small plants that did not come
21 before the California Energy Commission.

22 So, just to add one more piece, and that
23 is that we're not a merchant, in the sense that
24 we're not a merchant landing in a community that
25 then extracts value from the standpoint of a

1 profitmaking process. This will be a community
2 asset. It's for the benefit of the community, the
3 customers here, and is part and parcel, as I say,
4 to the objectives of the City.

5 Just to add a little bit to what the
6 Mayor and others have said, we are at 12 percent
7 renewables at this point in time. Our goal is to
8 hit 20 percent by 2015, which is a more aggressive
9 goal than the state currently has. And we have
10 every reason to believe that we'll be there.

11 We set the goal of having 1 megawatt of
12 photovoltaic production in the City. We're at
13 about 40 percent to that goal, which actually puts
14 us, according to the CEC website, number one among
15 small utilities. If you take Edison, PG&E, LA and
16 SMUD out of the picture, from the rest, we have
17 installed more photovoltaic generation than
18 anybody else. And we have a very distinct plan to
19 move us forward to this goal of 1 megawatt.

20 But the fact of the matter is we are in
21 a desert. We do have hot summer days as you
22 probably will experience today. We do have a very
23 well defined peak. We peaked at over 517
24 megawatts two weeks ago. So we have to have the
25 ability to meet that peak.

1 And the Energy Resource Center building
2 another 96 megawatts of capability within the City
3 basically brings that power closest to the load.
4 We take the load off the transmission grid. It
5 will give us close to 150 megawatts to generate
6 here in the City when the grid needs that capacity
7 the most.

8 So, from a broad public policy
9 standpoint I guess I could make a fair argument,
10 if I can use that term, that bringing the power
11 close to the load, having it located here is
12 totally in concert with what Warren Alquist
13 originally proposed and which we need to pursue
14 here.

15 In addition, in the event of a major
16 statewide disaster, earthquake or whatever that
17 disrupts the grid, we would then have close to 150
18 megawatts, between the 40 megawatts Springs Plant,
19 96 megawatts Energy Resource Center, to meet
20 critical services within the City: water pumping
21 and other major critical services. But also be
22 able to keep some grocery stores in operation, gas
23 stations, so customers, citizens, could lead a
24 more normal existence during a period of a major
25 disaster.

1 The site that we're talking about, if
2 you kind of start from the big picture of
3 Riverside and come to the center of the site of
4 the specific plant, next to the City's wastewater
5 treatment plant, we specifically focused on that.
6 And from the standpoint of availability of
7 reclaimed water, a site that has already has some
8 preparation in terms of the ground around it, when
9 the wastewater treatment plant went through a
10 modernization several years ago. There's
11 available natural gas fuel close by. And our
12 distribution grid is close from the standpoint of
13 having to minimize our own internal transmission
14 system to connect the plant to our closest
15 substation.

16 So all those go together to say to me,
17 and I've been in this business since 1968, that I
18 can't think of a more perfect location to put a
19 small power plant that's also in an industrial
20 area.

21 So, we think that this plant, as I say,
22 is equal to or better than all the other plants
23 that you have permitted under the SPPE process.
24 It meets a well-defined community need. It's
25 embraced by the community. It's an

1 environmentally superior alternative to anything
2 else that you could find.

3 And that we will look forward to your
4 approval so that we can begin construction in
5 October or November of this year and have the
6 plant running by next June 2005, so that we will,
7 again, be able to contribute locally, as well as
8 on a regional basis, to the power demands in this
9 area.

10 Again, we appreciate the opportunity to
11 address, myself as well as the others that you
12 permitted this morning. Thank you.

13 HEARING OFFICER FAY: Mr. Evans, I have
14 a question. I saw in the docket the resolution
15 from the City that reviewed the alternatives that
16 were before the City when they adopted their bid
17 on this project.

18 And the one they adopted was not
19 supported by CURE, the intervenor.

20 Do you have an estimate of what the cost
21 to the City to meet the requests or demands of
22 CURE for this project?

23 MR. JOSEPH: Mr. Fay, I'm not at all
24 certain about what the relevance of that issue is
25 to the matters that are before the Energy

1 Commission. We have not raised any issue about
2 any labor aspect at all. Moreover, the premise of
3 your question had certain factual inaccuracies in
4 it. And I'm not sure that going down this path is
5 something that's useful or relevant to the
6 Commission.

7 HEARING OFFICER FAY: Is that an
8 objection?

9 MR. JOSEPH: Were we in an actual
10 evidentiary proceeding it would be an objection.

11 HEARING OFFICER FAY: Well, this is
12 public comment. Your concerns are noted, but if
13 Mr. Evans has an impression I'd like to hear his
14 views on this.

15 MR. EVANS: This project was put out to
16 bid on the prevailing wage project under the
17 City's purchasing rules, which then provided an
18 opportunity for any and all contractors who were
19 qualified to bid.

20 We issued what's known as an engineer
21 procure and construct contract. And had a variety
22 of proposers on that basis. We evaluated those
23 projects and the company to whom we proposed the
24 Council award the project to, and that they did,
25 happens to be what they call a merit shop, which

1 means that they don't necessarily use a hundred
2 percent union labor, but they do use some,
3 depending on who the subcontractors are.

4 The difference between that contractor
5 and the next qualified bidder was at least \$5
6 million. So we're talking about a \$25 million
7 project; the next increment was \$5 million higher.

8 There were some discussions from Mr.
9 Joseph early on in the process about the benefits
10 of a project labor agreement on this project.
11 There was a significant amount of discussion of
12 that with the Council. In fact, there were no
13 issues raised at that Council meeting about
14 environmental issues. It was all individuals who
15 were arguing both sides of the question about
16 whether it should be a hundred percent union labor
17 or not.

18 The fact is the benefits of a project
19 labor agreement, which are generally identified
20 for long-term, large construction projects, don't
21 apply in this case. It's a short-term project.
22 It will be done in about two months in terms of
23 the major construction work.

24 You have a minimum of maybe -- or
25 maximum of about 50 employees on the project at

1 any one particular time. You don't have the
2 issues of multiple labor groups, problems with
3 schedule or any of those things.

4 So we didn't see, and the Council didn't
5 see, that requiring a project labor agreement, in
6 and of itself, for the values that they aspire to
7 would have applied in this particular case.

8 So the fact that the difference between
9 the two bidders really related to those
10 contractors and who their subcontracts were. And
11 there was not a provision for a project labor
12 agreement, even in the RFP that we put out.

13 HEARING OFFICER FAY: Thank you.

14 MR. EVANS: Sure, thank you.

15 HEARING OFFICER FAY: All right. That
16 concludes all the comments from the City. So we
17 would like to begin taking evidence. And I've
18 given Mr. Bartsch copies of the hearing agenda.
19 He has them in back if anybody needs to get one.

20 We're going to begin with Steve Badgett,
21 Riverside Energy Resource Center. Mr. Thompson.

22 MR. THOMPSON: I was just trying to
23 indicate that Mr. Badgett has not yet been sworn.

24 HEARING OFFICER FAY: Please swear the
25 witness.

1 Whereupon,

2 STEVE BADGETT

3 was called as a witness herein, and after first
4 having been duly sworn, was examined and testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q Mr. Badgett, would you please give your
9 name and your position with the City for the
10 record.

11 A My name is Steven Badgett; I'm the
12 Assistant Director for Energy Delivery for
13 Riverside Public Utilities.

14 Q And am I correct that you are the same
15 Steve Badgett that has submitted prepared direct
16 testimony in this proceeding?

17 A Yes, I am.

18 Q Do you have any corrections, additions
19 or deletions to make to that material?

20 A No, I do not.

21 Q And if I were to ask you the questions
22 contained therein would your answers today, under
23 oath, be the same?

24 A Yes, they would.

25 Q Would you please very briefly give an

1 overview or summary of your testimony.

2 A If I may, I'm the responsible party to
3 construct the plant. Basically we went through a
4 series of studies to determine how best to replace
5 a resource that was a peaking resource that was
6 going to expire in 2005, 2006.

7 We put together a number of studies and
8 developed some scenarios to what alternatives.
9 That was a management team of our resources and
10 the energy delivery division of Public Utilities.

11 And at the conclusion of that very
12 lengthy process the management team recommended
13 the development of the Riverside Energy Resource
14 Center.

15 We proceeded with meeting with the
16 California Energy Commission Staff prior to
17 determining on how best to proceed. It was then
18 determined that we would make application for
19 small power plant exemption.

20 We submitted that application in April
21 and through the process we got to this point,
22 which is the final initial study. And through
23 that process we feel that the plant is ready and
24 meeting all environmental challenges and
25 requirements, ready to proceed with the

1 certification of the initial study.

2 Q Thank you.

3 MR. THOMPSON: Mr. Badgett is tendered
4 for cross-examination.

5 HEARING OFFICER FAY: Ms. DeCarlo.

6 MS. DeCARLO: No questions of the
7 witness.

8 HEARING OFFICER FAY: Mr. Joseph.

9 MR. JOSEPH: Thank you, Mr. Fay.

10 CROSS-EXAMINATION

11 BY MR. JOSEPH:

12 Q Good morning, Mr. Badgett. My name is
13 Marc Joseph. I represent CURE in this proceeding.

14 In question 5 of your prepared testimony
15 you were asked whether you accept the conditions
16 of certification in the initial study. And you
17 answered that yes, you do, on behalf of the City.

18 Mr. McCann, in his prepared rebuttal
19 testimony, says that the hours utilized for this
20 project will be an eight-hour day from 7:00 a.m.
21 to 4:00 p.m., Monday through Friday.

22 Would the City accept that constraint as
23 a condition of exemption on this project?

24 A I would ask for a clarification. You
25 stated that Mr. McCann's testimony was an eight-

1 hour day. Is that for the operation of the plant,
2 or was that in relationship to the construction of
3 the plant?

4 Q That was just for the construction.

5 MR. THOMPSON: Let me suggest that maybe
6 Mr. McCann is the best one able to respond to
7 this. He will be up next. And I think it would
8 help the record to be clear about what the
9 condition would be.

10 HEARING OFFICER FAY: Okay. Mr.
11 Badgett, are you just not comfortable answering
12 the question? If so, please state --

13 MR. BADGETT: I would -- Mr. Dan McCann
14 is the expert on the construction of the project.
15 And I would have him, because of its relevance to
16 the construction of the project, I would like to
17 defer that question to Mr. Dan McCann.

18 HEARING OFFICER FAY: Okay.

19 MR. JOSEPH: Mr. Fay, that's fine with
20 us, so long as he has the authority to be able to
21 answer my question as to whether the City would
22 accept such a condition or not.

23 HEARING OFFICER FAY: As long as --

24 MR. JOSEPH: He has the authority.

25 HEARING OFFICER FAY: He being Mr.

1 Badgett?

2 MR. JOSEPH: Mr. McCann.

3 HEARING OFFICER FAY: Mr. McCann.

4 MR. JOSEPH: Because as it is now Mr.
5 Badgett is the one who, on behalf of the City,
6 accepts the conditions.

7 HEARING OFFICER FAY: Right.

8 MR. JOSEPH: And it appears that he has
9 the authority to do that. And I want to be sure
10 that Mr. McCann will be able to answer the
11 question.

12 HEARING OFFICER FAY: Mr. Thompson, I
13 think that's a reasonable question. We need not
14 just Mr. McCann's opinion, but we need an
15 expression from the City if that is or is not
16 something that they can accept.

17 MR. BADGETT: If I may, on that
18 particular question and answer I can delegate the
19 authority to Mr. McCann to make that decision on
20 behalf of the City of Riverside.

21 HEARING OFFICER FAY: Okay. Anything
22 further, Mr. Joseph?

23 MR. JOSEPH: That's all, thank you.

24 HEARING OFFICER FAY: Okay. Thank you,
25 Mr. Badgett. Any redirect, Mr. Thompson?

1 MR. THOMPSON: No.

2 HEARING OFFICER FAY: Okay, thank you.

3 Next witness.

4 MR. THOMPSON: Applicant would like to
5 call Mr. McCann.

6 MR. JOSEPH: Mr. Fay, through the Chair,
7 I wonder if I could just ask Mr. Thompson to raise
8 his microphone a little bit. It's not amplifying.

9 HEARING OFFICER FAY: Okay.

10 (Pause.)

11 HEARING OFFICER FAY: Does this witness
12 need to be sworn? I believe so.

13 MR. THOMPSON: Yes.

14 HEARING OFFICER FAY: Please swear the
15 witness.

16 Whereupon,

17 DAN McCANN

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

21 DIRECT EXAMINATION

22 BY MR. THOMPSON:

23 Q Would you please state your name and
24 position for the record?

25 A Dan McCann; I'm the Scheduling and

1 Operations Manager for the City of Riverside.

2 Q And have you previously submitted
3 prepared direct and prepared rebuttal testimony in
4 this proceeding?

5 A Yes, I have.

6 Q And if I were to ask you -- do you have
7 any corrections, additions or deletions to make to
8 that material?

9 A No.

10 Q If I were to ask you the questions
11 today, under oath, would your responses be the
12 same?

13 A Yes.

14 Q Would you please give a brief summary of
15 your testimony.

16 A I was involved in evaluating the sites
17 for the generating plant, all the alternatives
18 considered, the different power alternatives for
19 the plant. And the evaluation of the operation,
20 how the plant will be operated. The number of
21 workers at the plant.

22 I will be responsible for the operation
23 and maintenance of the plant once it is built.

24 Q Mr. McCann, were you present when Mr.
25 Badgett testified earlier this morning?

1 A Yes.

2 Q And did you hear him hand off to you the
3 authority of the City to accept a condition of
4 certification regarding work hours?

5 A Yes.

6 Q Do you have any clarification or comment
7 on the question that was asked by the
8 representative of CURE?

9 A Yes. The eight-hour workday would be
10 for mass earthmoving time period. We are
11 committed to an eight-hour day.

12 Q Thank you very much. Does that complete
13 your additional testimony?

14 A Yes.

15 MR. THOMPSON: Mr. McCann is tendered
16 for cross-examination.

17 HEARING OFFICER FAY: Ms. DeCarlo?

18 MS. DeCARLO: No questions of the
19 witness.

20 HEARING OFFICER FAY: Mr. Joseph. Do
21 you have any cross-examination, Mr. Joseph?

22 MR. JOSEPH: Yes, thank you.

23 CROSS-EXAMINATION

24 BY MR. JOSEPH:

25 Q Just to be sure the record is absolutely

1 clear. So, is it correct that you're testifying
2 that the City would accept a condition of
3 exemption limiting the hours of construction
4 during the earthmoving phase to an eight-hour day,
5 Monday through Friday?

6 A That's correct.

7 MR. JOSEPH: Thank you. Oh, excuse me.

8 BY MR. JOSEPH:

9 Q And those were the hours that you laid
10 out in your testimony?

11 A That's correct.

12 MR. JOSEPH: Thank you.

13 HEARING OFFICER FAY: Any further
14 questions, Mr. Joseph?

15 MR. JOSEPH: No.

16 HEARING OFFICER FAY: All right. Any
17 redirect, Mr. Thompson?

18 MR. THOMPSON: No.

19 HEARING OFFICER FAY: All right. Thank
20 you, Mr. McCann, you're excused.

21 We're now going to take evidence on the
22 topic of hydrology and water resources. Mr.
23 Thompson. Do you have a witness that you're
24 presenting?

25 MR. THOMPSON: Yes. Applicant would

1 like to call Mr. Waller.

2 HEARING OFFICER FAY: Please swear the
3 witness.

4 Whereupon,

5 KEITH WALLER

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

9 HEARING OFFICER FAY: Proceed, Mr.
10 Thompson.

11 MR. THOMPSON: Thank you.

12 DIRECT EXAMINATION

13 BY MR. THOMPSON:

14 Q Would you please identify yourself and
15 your position of employment for the record.

16 A My name is Keith Waller; I am a Civil
17 Engineer for Power Engineers.

18 Q And are you the same Keith Waller that
19 has supplied prepared direct testimony previously
20 in this proceeding?

21 A Yes.

22 Q Do you have any corrections, additions
23 or deletions to make to that material?

24 A No, I do not.

25 Q If I were to ask you the same questions

1 today would your responses under oath be the same?

2 A Yes, they would.

3 Q Would you please give us a brief summary
4 of your testimony?

5 A My role in this project has been to
6 develop preliminary design concepts in the areas
7 of grading and drainage for the site; site
8 surfacing; layout and roadways; underground
9 utilities including sanitary, storm sewer, process
10 drains.

11 Q Thank you. Does that complete your
12 summary?

13 A Yes, it does.

14 MR. THOMPSON: Mr. Waller is tendered
15 for cross-examination.

16 HEARING OFFICER FAY: Ms. DeCarlo, any
17 questions?

18 MS. DeCARLO: No questions for the
19 witness.

20 HEARING OFFICER FAY: Mr. Joseph.

21 MR. JOSEPH: No questions.

22 HEARING OFFICER FAY: All right, thank
23 you, Mr. Waller.

24 MR. THOMPSON: Superb piece of
25 testimony.

1 HEARING OFFICER FAY: Yes.

2 MR. THOMPSON: Mr. Fay, can I ask for a
3 five-minute recess. We would like to confer with
4 some witnesses that arriving from out of town
5 before the next block.

6 HEARING OFFICER FAY: What I would like
7 to do is first take Mr. Mediati.

8 MR. THOMPSON: Oh, okay.

9 HEARING OFFICER FAY: He has some time
10 constraints, and I'd like to get him on as soon as
11 possible. So, if you can wait until the staff
12 witness has testified --

13 MR. THOMPSON: Absolutely.

14 MS. DeCARLO: Staff would like to call
15 Tony Mediati, our expert witness in the area of
16 hydrology and water quality.

17 HEARING OFFICER FAY: Please swear the
18 witness.

19 Whereupon,

20 TONY MEDIATI
21 was called as a witness herein, and after first
22 having been duly sworn, was examined and testified
23 as follows:

24 HEARING OFFICER FAY: Proceed.

25 //

1 DIRECT EXAMINATION

2 BY MS. DeCARLO:

3 Q. Can you please state your name for the
4 record.

5 A My name is Tony Mediati.

6 Q Can you please describe your duties and
7 responsibilities with regard to reviewing the
8 Riverside Energy Resource Center application for
9 small power plant exemption.

10 A I was reviewing the small power plant
11 exemption to identify and propose and evaluate
12 mitigations for any significant impacts to
13 hydrology and water quality.

14 Q Can you please briefly state your
15 education and experience as it pertains to the
16 analysis of hydrology and water quality?

17 A I have a degree in forestry from
18 Humboldt State University. I have 15 years of
19 experience in field forestry, including hydrology
20 and water quality issues. And three years of
21 experience at the Energy Commission with the water
22 and soils unit, evaluating hydrology and water
23 quality issues with the licensing of power plants.

24 Q Did you prepare the testimony entitled,
25 hydrology and water quality, in the final initial

1 study, exhibit 12?

2 A Yes, I did.

3 Q Was a statement of your qualifications
4 attached to this testimony?

5 A Yes, it was.

6 Q And do the opinions contained in your
7 testimony represent your best professional
8 judgment?

9 A Yes, they do.

10 Q What is your conclusion regarding the
11 project's potential for significant adverse
12 impacts in the area of hydrology and water
13 quality?

14 A After doing the analysis, concluded that
15 there wasn't a significant potential for
16 significant adverse impacts from this project.

17 Q Can you please discuss your analysis
18 regarding the project's stormwater runoff
19 retention capacity?

20 A The stormwater detention basin is
21 designed to detain the difference in the peak load
22 from a 50-year one-hour storm event. That's due
23 to the pavement, the impervious surfaces, the
24 building rooftops, things of that nature, instead
25 of the initial rains being absorbed into the

1 ground from those impervious surfaces, they're
2 going to run off. So the runoff would be
3 increased as a result of the project.

4 The detention basin is designed to
5 mitigate for the increase in that peak load before
6 the water is discharged to the wastewater
7 treatment plant.

8 Q Has CURE submitted any evidence to call
9 into question your conclusion regarding the
10 potential for impact?

11 A CURE has submitted some statements. I
12 didn't think any of it -- I asked if they had any
13 documentation or studies that they knew of, and I
14 did not receive any.

15 Q Does this conclude your testimony?

16 A Yes, it does.

17 MS. DeCARLO: The witness is available
18 for questions or cross-examination.

19 HEARING OFFICER FAY: Thank you. Mr.
20 Thompson, any questions?

21 MR. THOMPSON: No questions, thank you.

22 HEARING OFFICER FAY: Mr. Joseph.

23 MR. JOSEPH: Thank you, Mr. Fay.

24 //

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CROSS-EXAMINATION

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BY MR. JOSEPH:

Q Good morning, Mr. Mediati.

A Good morning.

Q In the testimony you just gave you used the phrase detention basin. Were you referring to the infiltration basin that's proposed as part of this project?

A It's a detention infiltration basin, yes.

Q And for the benefit of the Committee can you briefly describe what the function of the infiltration basin is? How does it work?

A The infiltration portion of the basin, it's just because it's an unlined pond, some of the water is going to infiltrate down into the soil.

Q Is this an open pond or is this an area where the water goes and then goes underground?

A This is an underground pond that doesn't have a lined bottom.

Q Can you look at page 10-15 of the final initial study, please.

A Okay.

Q Near the top of the page you provide the

1 staff response to what you term CURE-3. And
2 you're responding to the -- reporting that
3 responding to a statement that says: Infiltrations
4 basins, such as that proposed by the applicant,
5 have a failure rate of 50 percent after five
6 years.

7 And your response in the second sentence
8 says: Staff has not seen the data used to
9 determine a 50 percent failure rate.

10 My question is did you do any
11 independent investigation after this issue was
12 raised to determine whether there is a substantial
13 risk of failure from this infiltration basin?

14 A Failure of the basin, from the
15 infiltration standpoint, isn't relevant. Because
16 infiltration isn't the mitigation. The detention
17 basin, itself, is the mitigation.

18 Q Let me try my question again. Did you
19 do any independent investigation to determine the
20 failure rate of infiltration basins?

21 A Depends on what you mean by failure
22 rate.

23 Q Is there any meaning of failure rate
24 that you investigated independently?

25 A Yes. We did an evaluation of the

1 detention basin. But, what normally would be a
2 failure of a detention basin would be a collapse
3 or an overflow. This basin is designed to
4 overflow, so I would not consider that to be a
5 failure.

6 Q Would you agree that this basin is
7 designed to absorb and retain the incremental
8 runoff from the project site?

9 A It is designed to mitigate for the
10 increase in peak flow.

11 Q By retaining and absorbing that
12 increased peak flow, is that right?

13 A By withholding the amount of water that
14 would be the -- that the peak flow would be
15 increased by.

16 Q And what happens to that water that's
17 withheld?

18 A It's withheld during a storm event and
19 then will either -- it will either infiltrate or
20 it will be discharged after the peak flows have
21 subsided.

22 Q So one of the functions of this basin is
23 to allow the water to infiltrate into the ground,
24 is that right?

25 A The infiltration will occur because the

1 pond is unlined. That is not the mitigation for
2 the peak flow, though.

3 Q In your investigation did you, by any
4 chance, consult the Riverside County Stormwater
5 Quality Best Management Practice Design Handbook?

6 A I don't recall. I reviewed several best
7 management practices handbooks.

8 Q But you don't recall if you reviewed the
9 Riverside County handbook?

10 A Not right offhand, no.

11 Q Did you review the Riverside County
12 Drainage Area Management Plan attachment entitled,
13 Selection and Design of Stormwater Quality
14 Controls?

15 A I believe I did look at that.

16 MR. JOSEPH: Mr. Fay, I'd like to see if
17 I can show the witness what he says he looked at
18 and see if I can refresh his recollection about
19 what it said.

20 HEARING OFFICER FAY: Certainly. Please
21 show counsel the document first.

22 MR. JOSEPH: On my way.

23 (Pause.)

24 BY MR. JOSEPH:

25 Q Mr. Mediati, would you read aloud the

1 last two sentences of the text on page 22 that
2 I've handed you?

3 A Read the portion --

4 Q I'm sorry, I'm sorry. The first page
5 after the cover page is a table; the second line
6 of that table is headed, Infiltration Basins.

7 A Yes, it is. Infiltration Basins.

8 Q And under the column longevity, what
9 does that say?

10 A It says: 60 to 100 percent failure
11 within five years.

12 Q And then on the next page of this
13 document, which is page number 25, could you read
14 the last sentence of the first paragraph?
15 Beginning with the word "Experience".

16 A "Experience to date has indicated that
17 infiltration basins have one of the higher failure
18 rates of any VMT."

19 Q And then would you read the last
20 sentence of the next paragraph, please?

21 A "Disadvantages of infiltration basins
22 include a very high rate of failure due to
23 unsuitable soils and the need for frequent
24 maintenance; possible nuisances, odor, mosquitos,
25 soggy ground, some practical design problems."

1 Q Did you review this document before you
2 prepared your testimony?

3 A No, this doesn't look familiar. I
4 haven't seen this table before.

5 Q Okay.

6 MR. JOSEPH: Mr. Fay, I'd like to try to
7 jog his memory with one more document.

8 HEARING OFFICER FAY: Certainly.

9 (Pause.)

10 BY MR. JOSEPH:

11 Q Mr. Mediati, this is an excerpt from the
12 Riverside County Stormwater Quality Best
13 Management Practices Design Handbook dated July 6,
14 2004.

15 Would you read the last two sentences of
16 text before the table on page 22, please.

17 A Yes. "In addition some studies have
18 shown that relatively high failure rates compared
19 with other management practices. Finally,
20 infiltration basins are difficult to restore
21 infiltration once a basin has become clogged."

22 Q Did you review this document before you
23 prepared your testimony?

24 A Yes, I did.

25 MR. JOSEPH: That's all the questions I

1 have, Mr. Fay.

2 HEARING OFFICER FAY: All right, thank
3 you. Ms. DeCarlo, redirect?

4 MS. DeCARLO: Yes, a couple questions.

5 REDIRECT EXAMINATION

6 BY MS. DeCARLO:

7 Q Mr. Mediati, will there be any
8 monitoring of the efficacy of the detention
9 infiltration basin?

10 A Yeah, once the project goes through to -
11 - if it gets an exemption, they'll still have to
12 comply with all the local and state and federal
13 regulations.

14 This is going to require grading
15 drainage permits from the City; stormwater
16 pollution prevention in association with the
17 National Discharge Eliminations Systems Permit
18 from the Regional Water Quality Control Board.

19 So there will be monitoring and
20 maintenance required for this project.

21 Q And will the Water Quality Control Board
22 oversee the monitoring and insure that the basin
23 remains effective?

24 A It will be part of their permit and they
25 always include monitoring.

1 Q And in your experience with these
2 basins, have you ever found that ultimately they
3 do fail?

4 A If it's built strictly for infiltration
5 basin, then, yeah, when they silt up the
6 infiltration decreases, as the report states, and
7 the soil gets clogged with sediments.

8 So if failure of an infiltration basin
9 is a decrease in the water infiltrates, then,
10 yeah, that would happen.

11 But as I stated earlier, that's not the
12 mitigation for this project.

13 Q And if there's a significant decrease in
14 the effectiveness of the infiltration basin would
15 there be some sort of remedy to that?

16 A If they want to maintain the
17 infiltration rate, then the basin would have to be
18 cleaned out of those sediments to increase the
19 infiltration rates again to what -- well, they
20 never get it back to what it is now, but to
21 increase that.

22 Q And that would be something that the
23 Water District would oversee as part of the
24 permit, is that correct?

25 A It probably -- since infiltration isn't

1 required, this is -- from the mitigation
2 standpoint this is strictly a detention basin. It
3 will hold back the amount of the water that the
4 peak flow would be increased by.

5 The infiltration doesn't have anything
6 to do with it.

7 Q So even with the supposed failure rate
8 identified by CURE you feel that the project will
9 result in less than significant impacts in this
10 area?

11 A That is correct.

12 MS. DeCARLO: No further questions of
13 the witness.

14 HEARING OFFICER FAY: Any recross, Mr.
15 Thompson?

16 MR. THOMPSON: Just one or two quick
17 questions. Sorry to keep you.

18 CROSS-EXAMINATION

19 BY MR. THOMPSON:

20 Q You just mentioned that this was really
21 a detention basin instead of an infiltration
22 basin, is that correct?

23 A That's correct.

24 Q And would I be correct in assuming that
25 in a detention basin one of the ways that the

1 water would escape or leave would be through
2 infiltration; another could be through
3 evaporation?

4 A Could be, yes.

5 MR. THOMPSON: Thank you very much.

6 HEARING OFFICER FAY: Mr. Joseph, any
7 recross?

8 RECCROSS-EXAMINATION

9 BY MR. JOSEPH:

10 Q Mr. Mediati, is it correct that the
11 detention basin that you referred to is
12 underground?

13 A Yes.

14 Q And the only surface connection is
15 basically a long, narrow drain at the surface?

16 A I don't know if that's the only one or
17 not.

18 Q Do you know of any other?

19 A I do not.

20 MR. JOSEPH: Thank you, that's all the
21 questions I have.

22 HEARING OFFICER FAY: All right.

23 Anything further, Ms. DeCarlo?

24 MS. DeCARLO: Nothing from staff.

25 HEARING OFFICER FAY: Mr. Mediati, you

1 stated that the infiltration is not the
2 mitigation. I just want to get that very clear.

3 Let's assume for a moment that the
4 infiltration function is a total failure from day
5 one. In other words, assume a paved bottom to
6 this, not an unpaved bottom.

7 If it were installed that way would this
8 design still avoid any significant impacts in your
9 opinion?

10 MR. MEDIATI: Yes, it would still
11 mitigate for the increase in peak flow.

12 HEARING OFFICER FAY: And why is that?

13 MR. MEDIATI: Because a detention basin
14 is designed to hold back 10,000 cubic feet of
15 water, which is more than the increase in the peak
16 flow.

17 HEARING OFFICER FAY: So does that mean
18 that due to the development of the site, paving of
19 it, it increases the peak flow that would not be
20 absorbed in the soil. This basin would
21 temporarily hold that amount for the 50-year storm
22 design?

23 MR. MEDIATI: That is correct. It's
24 designed to hold back that amount of water.

25 HEARING OFFICER FAY: Okay. And then it

1 releases it where?

2 MR. MEDIATI: The basin's designed to
3 release water which will go to the same as
4 currently, which is it will be drained to the
5 wastewater treatment plant.

6 HEARING OFFICER FAY: Okay, thank you.
7 We appreciate your testimony and we hope we've
8 accommodated your schedule. Wish you a safe
9 return.

10 MR. MEDIATI: Thank you, better than I'd
11 hoped.

12 HEARING OFFICER FAY: Okay, great.

13 DR. REEDE: Excuse me, Hearing Officer
14 Fay. Tomorrow is Tony's last day with the Energy
15 Commission. And he's served us very well over the
16 years. And I think he deserves a round of
17 applause.

18 HEARING OFFICER FAY: Sure.

19 (Applause.)

20 HEARING OFFICER FAY: We appreciate you
21 coming down and helping us out. Good luck in your
22 future endeavors.

23 Mr. Thompson has requested a brief
24 recess.

25 MR. THOMPSON: Let me modify the

1 request, if I may. If I could kind of get a read
2 on how much cross CURE has for Mr. Clark. He's
3 down from Seattle. I'm not aware that this is a
4 big hot issue, but if we could put him on and let
5 him return home before lunch, we can do our
6 conferring over lunch if that would be an
7 acceptable way to go about this.

8 HEARING OFFICER FAY: Okay. Mr. Joseph?

9 MR. JOSEPH: That's fine, we have no
10 cross for Mr. Clark.

11 HEARING OFFICER FAY: Oh, great. All
12 right, does anybody object to moving environmental
13 justice up as the next topic? All right, let's do
14 that then.

15 Go ahead, Mr. Thompson.
16 Whereupon,

17 DAVID CLARK
18 was called as a witness herein, and after first
19 having been duly sworn, was examined and testified
20 as follows:

21 DIRECT EXAMINATION

22 BY MR. THOMPSON:

23 Q Would you please state your name and
24 employment for the record, please?

25 A My name is David Clark and I'm Principal

1 of Economic Planning Resources.

2 Q And are you the same David Clark that
3 previously submitted prepared testimony in this
4 proceeding?

5 A I am.

6 Q And do you have any corrections,
7 additions or deletions to make to that material?

8 A No, I do not.

9 Q If I were to ask you the questions
10 contained in that testimony today would your
11 answers, under oath, be the same?

12 A Yes, they would.

13 Q Would you please give us a very brief
14 summary of your testimony?

15 A Economic Planning Resources was retained
16 by Power Engineers to perform socioeconomic
17 studies related to the proposed project.

18 Q That was nice and succinct. Thank you
19 very much.

20 MR. THOMPSON: Mr. Clark is tendered for
21 cross-examination.

22 HEARING OFFICER FAY: Ms. DeCarlo, do
23 you have any questions?

24 MS. DeCARLO: No questions for this
25 witness.

1 HEARING OFFICER FAY: And, Mr. Joseph,
2 did you change your mind?

3 MR. JOSEPH: No.

4 HEARING OFFICER FAY: Still no
5 questions. Okay. Thank you, Mr. Clark, have a
6 safe journey home.

7 All right, Mr. Thompson, would it help
8 if Mr. Baker were taken next in any way? I have a
9 feeling that might be more efficient than going
10 into geology next.

11 MR. THOMPSON: That's fine, he's here.

12 HEARING OFFICER FAY: Any objection by
13 any parties?

14 MR. THOMPSON: And I love surprising
15 him. John.

16 HEARING OFFICER FAY: Okay, --

17 MR. THOMPSON: If that's acceptable to
18 the parties.

19 HEARING OFFICER FAY: Let's get his
20 testimony into the record.

21 MR. THOMPSON: I'm sorry?

22 HEARING OFFICER FAY: We'll take Mr.
23 Baker now. Please swear the witness.
24 Whereupon,

25 JOHN BAKER

1 was called as a witness herein, and after first
2 having been duly sworn, was examined and testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. THOMPSON:

6 Q Would you please state your name and
7 position for the record.

8 A My name is John Baker; I'm with Power
9 Engineers. And I'm the Project Engineer on this
10 job.

11 Q And are you the same John Baker that has
12 submitted prepared direct testimony in this
13 proceeding?

14 A Yes, I am.

15 Q Do you have any corrections, additions
16 or deletions to make to that material?

17 A No.

18 Q If I were to ask you the questions
19 contained therein would your responses today,
20 under oath, be the same?

21 A Yes.

22 Q Would you please give a brief summary of
23 your testimony for the record.

24 A I was asked to comment on the zero
25 liquid discharge system. We're planning to have a

1 combined zero liquid or ZLD system, combined with
2 the demineralized water facility. This has a
3 major benefit to the cooling tower emissions by
4 providing lower TDS water to the cooling tower.

5 I was also asked to provide some
6 commentary on the retention infiltration basin
7 that we just discussed. Most of which we've
8 already talked about.

9 And that's the summary.

10 Q Thank you very much.

11 MR. THOMPSON: Mr. Baker is tendered for
12 cross-examination.

13 HEARING OFFICER FAY: All right. Ms.
14 DeCarlo, any questions?

15 MS. DeCARLO: No questions for this
16 witness.

17 HEARING OFFICER FAY: Mr. Joseph, any
18 questions?

19 MR. JOSEPH: No questions, Mr. Fay.

20 HEARING OFFICER FAY: All right. We
21 have no questions. Thank you, Mr. Baker, you're
22 excused.

23 MR. BAKER: Thank you.

24 HEARING OFFICER FAY: Mr. Thompson, are
25 you ready to move forward on geology? Present

1 your witness?

2 MR. THOMPSON: Could we have two
3 minutes?

4 HEARING OFFICER FAY: Certainly, let's
5 take a five-minute break.

6 (Brief recess.)

7 HEARING OFFICER FAY: Okay, we're back
8 on the record. And we'll continue with the
9 applicant's witness on geology. Mr. Thompson.

10 MR. THOMPSON: Mr. Jeff Johnson has not
11 been previously sworn.

12 HEARING OFFICER FAY: Please swear the
13 witness.

14 Whereupon,

15 JEFFREY J. JOHNSTON
16 was called as a witness herein, and after first
17 having been duly sworn, was examined and testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. THOMPSON:

21 Q Would you please state your name and
22 position for the record.

23 A My name is Jeffrey J. Johnston, and I'm
24 the Chief Engineering Geologist for LOR
25 Geotechnical Group.

1 Q Are you the same Jeffrey Johnston who
2 has submitted prepared testimony previously in
3 this proceeding?

4 A Yes.

5 Q Do you have any corrections, additions
6 or deletions to make to that material?

7 A No.

8 Q If I were to ask you the questions
9 contained in that prepared testimony would your
10 answers today, under oath, be the same?

11 A Yes.

12 Q Would you please summarize your
13 testimony and give the current view of the
14 applicant in the area of geology.

15 A Yes. My name is Jeffrey J. Johnston.
16 I'm the Chief Engineering Geologist for LORG
17 Technical Group in Riverside, California. I am
18 registered geologist and engineering geologist in
19 the State of California. And I have worked in
20 this industry since 1985.

21 For the last 12 years of these I have
22 worked for LOR Geotechnical, which was established
23 in 1988 in Riverside. LOR Group was retained back
24 in December of 2003 by Power Engineers to provide
25 the required soils engineering and engineering

1 geologic studies for the small energy plant
2 proposed by the City.

3 In general, the scope of our studies
4 included the collection of data regarding the
5 nature, distribution, strength of the existing
6 soils at the site, as well as a description of the
7 geology of the site to prepare recommendations for
8 grading procedures and design criteria for
9 corrective measures, if any.

10 And also to provide an opinion on the
11 suitability of the site for the intended use as
12 affected by these factors.

13 Our original work at the site was
14 summarized in our report entitled, Preliminary
15 Geotechnical Investigation, -- Generation Project,
16 dated January 25, 2004.

17 This study included the drilling of 29
18 borings at the site to collect samples for
19 laboratory testing and concluded that the site was
20 generally underlined by a very thin veneer of
21 loose materials, about a foot thick, overlying
22 igneous bedrock material, granodiorite
23 composition.

24 The first study included within the
25 laboratory test the direct measurement of the

1 fines content using the ASTM method 24-87 on
2 several of the auger returns in the upper
3 portions. These are summarized on enclosure C-1
4 within appendix C of our report, showing results
5 ranging from 12 to 15 percent when ground up.

6 The term fine is defined by the ASTM
7 manual as all soil particles with a maximum
8 diameter of less than 75 microns. These were
9 calculated to help with the determination of
10 several design values predominately associated
11 with the proposed paved areas of the site or
12 preparation of a road section.

13 The silt values of fines -- I'm sorry,
14 the fine values were measured only on the samples
15 collected from the materials on the outside of
16 augers of the returns, as these are the ones which
17 become mechanically ground up by the action of the
18 augers and represent a conservative value of the
19 fine content which would represent the worst case
20 in regards to grinding up the materials of the
21 site during grading.

22 Our report included a statement that in
23 our opinion the site was suitable for the intended
24 use as long as the upper layer, thin layer of fill
25 units at the site were not utilized for the

1 support of structures, which was not considered,
2 in our opinion, a significant factor. And also in
3 our geophysical studies concluded that they
4 indicated that the underlying bedrock materials
5 were rippable with standard earthmoving equipment.

6 By rippable we mean that the rock
7 underlying the site is not hard enough to require
8 specialized handling methods such as blasting.

9 However in October of 2003, Power
10 Engineers, to address the concerns of the UPAC --
11 bidders, that they may encounter a significant
12 amount of what is generally called in the industry
13 core stone floaters within the bedrock matrix,
14 which are difficult to notice utilizing the
15 geophysical methods, asked for additional studies.

16 These floaters are defined as localized
17 areas within the igneous rock mass which may be
18 harder and are commonly found in such terrains or
19 can be found in such terrains and slow down the
20 grading process.

21 Therefore, to analyze the site in
22 regards to the potential of core stone floaters we
23 conducted an additional analysis of the site by
24 the excavation of an additional 32 exploration
25 pits at the site conducted to the depth of the

1 anticipated excavations with a small tractor-
2 mounted backhoe.

3 The results of the study were reported
4 in our letter of report dated May 21, 2004.

5 The second study, the logging of the
6 trenches, was conducted by myself, and included a
7 description of the materials noted in the
8 trenches. These logs included a classification of
9 the soil units in general accordance with the
10 standards set forth in ASTM 24.88, which is an
11 individual estimate of the various grain sizes, an
12 estimation of fine contents by tactile means, such
13 as molding the materials into balls with varying
14 moisture contents to see, for example, if they
15 roll together like putty or if they'll crack.

16 Using these methods the log noted the
17 presence of a thin layer of fill and topsoil
18 overlying the bedrock units with a fines estimates
19 ranging from about 8 to 35 percent.

20 In August of 2004, this month, Power
21 Engineers noted to us that SCEC had utilized our
22 silt values from these various reports in their
23 calculations of the particulate emission studies,
24 or the PM10 calculations, to determine the
25 anticipated amount of PM10 particulate that would

1 be generated during grading.

2 And they asked us if, in our opinion,
3 these values appeared appropriate. We noted to
4 Power Engineers that the laboratory individual
5 silt valuations determined and conducted by our
6 firm for the site were for the purposes noted
7 earlier in the studies.

8 Furthermore, we pointed out that while
9 the formulas utilized for these calculations have
10 input value for what is called the silt content,
11 these are sometimes taken from tabled values, and
12 sometimes from more accurate studies where they
13 are actually measured.

14 However, the overall intent is to
15 determine the amount of particulate matter which
16 may become airborne that has a health hazard which
17 has been defined as those particles with a maximum
18 diameter of 10 microns or less, or PM10.

19 However we utilize in our reports the
20 standards of silt content calculation set forth by
21 the ASTM, which lists a silt particle as that
22 which has a diameter ranging from 2 to up to 75
23 microns in size, not 10, up to 75 microns.

24 To further demonstrate this we re-
25 sampled the site at four spots recently located

1 directly adjacent to our trenches T5 through T8 in
2 that secondary core stone report. We then sampled
3 only the fill materials and ran a complete
4 analysis.

5 These noted that my visual estimates of
6 the silt values were consistently high as the
7 measured values that we just did in the lab using
8 24-87, was 10 to 13 percent of fines content. My
9 values, again, as I say, were 15 to 35 percent, so
10 I was consistently high on estimating silt
11 content.

12 In addition, using the hydrometer
13 analysis of ASTM again, we extrapolated the PM
14 content of these ranging on the order of about 5
15 percent.

16 Therefore, in summary it is our opinion
17 that if SCEC utilized the silt content values from
18 our geotechnical studies and their calculations
19 for airborne particulate matter, the findings may
20 be higher than actual values.

21 That concludes my summary.

22 Q Mr. Johnson, you mentioned SCEC. Is
23 this the organization that Mr. Karl Lany --

24 A Yes.

25 Q -- is part of? Thank you. And Karl

1 Lany is our air quality expert.

2 Does that complete your testimony?

3 A Yes, it does.

4 Q Thank you.

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

7 HEARING OFFICER FAY: Thank you. Ms.
8 DeCarlo, cross?

9 MS. DeCARLO: No questions for this
10 witness.

11 HEARING OFFICER FAY: Mr. Joseph.

12 MR. JOSEPH: One moment, please, Mr.
13 Fay.

14 HEARING OFFICER FAY: Certainly.

15 (Pause.)

16 MR. JOSEPH: Mr. Fay.

17 HEARING OFFICER FAY: Yes.

18 MR. JOSEPH: We have no questions. We
19 actually want to take the opportunity to
20 compliment Mr. Johnston on the quality of his
21 trenching work and analysis. We think it was
22 quite reliable and we're happy to rely on it.
23 Thank you.

24 HEARING OFFICER FAY: Okay. I just want
25 to clarify for myself, Mr. Johnston, your

1 testimony is that the concern apparently arose
2 because CURE's testimony was critical of the
3 percentage of silt assumed.

4 But you're saying that higher percentage
5 was really not reflecting PM10, it was reflecting
6 a wider range of particulate sizes?

7 MR. JOHNSTON: Exactly.

8 HEARING OFFICER FAY: And that when you
9 reduced that down to PM10 and below that is
10 consistent with the percentage of silt assumption
11 that was used for the air quality analysis?

12 MR. JOHNSTON: The values that we used
13 would be high. It would actually be, you would be
14 calculating a higher percentage of particulate
15 matter going up into the air than actually exists
16 because he's using values that, by definition on
17 the formula, should not be a health hazard if they
18 go airborne.

19 Because he's calculating everything from
20 10 to 75 instead of 10 below -- everything of 75
21 down instead of 10, and not taking out the 10
22 microns to 75 microns.

23 HEARING OFFICER FAY: Thank you.
24 Anything further, Mr. Thompson, for this witness?

25 MR. THOMPSON: No.

1 MR. JOSEPH: Mr. Fay.

2 HEARING OFFICER FAY: Yes.

3 MR. JOSEPH: I would just note that the
4 experience of this witness and the expertise of
5 this witness is in geology, not in air quality.
6 And we will be addressing this 10 versus 75 issue
7 with air quality experts.

8 HEARING OFFICER FAY: Fair enough.

9 MR. THOMPSON: Mr. Fay, let me ask one
10 more question of the witness so we don't have to
11 go through an exercise of trying to call him back
12 if these questions are asked of the air witness,
13 if I might.

14 DIRECT EXAMINATION - Resumed

15 BY MR. THOMPSON:

16 Q Would you please describe the test that
17 you recently ran that led to your conclusions of
18 the sift -- when you utilized the sift test, and
19 your conclusion regarding PM75 below and PM10 and
20 below?

21 A Oh, sure. The original test that we did
22 for what we call fines content just simply runs
23 through a series of sieve analysis. And when you
24 get down to a certain sieve size, everything that
25 drops through that sieve, 75 microns and down,

1 that's the end of the curve. And everything's
2 classified based on that.

3 We then look at the different qualities
4 of it for our engineering analysis for clay
5 content and stuff like that. We ignore anything
6 below that.

7 But then the one that you're asking
8 about there is called the hydrometer analysis,
9 where it looks at that portion of the fines that
10 go through what's called a number 200 sieve and
11 below are 75 microns all the way down.

12 And it's an analysis where you put the
13 materials into liquid, shake them up for a given
14 amount of time, and then time the amount of time
15 it takes for certain materials to fall to certain
16 levels on a graduated scale, or beaker. And that
17 will give you, because the gravity and density of
18 the specific gravity of these particles will fall
19 at a certain rate.

20 And then they plot these on a curve.
21 And then you extrapolate the different diameters
22 off these curves. And then you just plot, pick
23 your PM10 right off those curves.

24 Q Thank you.

25 HEARING OFFICER FAY: Nothing further,

1 Mr. Thompson?

2 MR. THOMPSON: Not from me, thank you.

3 HEARING OFFICER FAY: Does that raise --
4 I'll offer the opportunity for cross-examination
5 based on that additional testimony. Ms. DeCarlo?

6 MS. DeCARLO: No questions.

7 HEARING OFFICER FAY: Mr. Joseph?

8 MR. JOSEPH: No.

9 HEARING OFFICER FAY: Okay. Thank you,
10 Mr. Johnston, you're excused.

11 Is the staff prepared to present its
12 witness?

13 MS. DeCARLO: Yes, we are. Staff would
14 like to call Dr. Dal Hunter, our expert witness in
15 geology.

16 HEARING OFFICER FAY: This witness will
17 have to be sworn.

18 Whereupon,

19 ROBERT DALTON HUNTER
20 was called as a witness herein, and after first
21 having been duly sworn, was examined and testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MS. DeCARLO:

25 Q Can you please state your name for the

1 record?

2 A It's Robert Dalton Hunter. Most of the
3 legal documents, personal and business are
4 actually signed Dal Hunter for personal reasons.

5 Q What are your duties and
6 responsibilities with regard to reviewing the
7 Riverside Energy Resource Center application for a
8 small power plant exemption?

9 A Yes, I represent a private consulting
10 company that's under subcontract with the
11 California Energy Commission. In this case we
12 reviewed the geology, paleontology, mineral
13 resources section of the application document.

14 We provide independent analysis to
15 verify that essentially nothing's been missed and
16 that the document is in accordance with required
17 federal, state and local regulations.

18 MS. DeCARLO: At this point, Mr. Fay,
19 would it be appropriate to mark staff's
20 supplemental geology testimony? Or do you want to
21 do that at the end?

22 HEARING OFFICER FAY: Let's mark that
23 for identification. Could you just describe it
24 and we'll mark it as exhibit 15.

25 MS. DeCARLO: Sure. It's the Energy

1 Commission Staff's supplemental air quality and
2 geology testimony, filed on August 23, 2004.

3 And that was exhibit 15, Mr. Fay?

4 HEARING OFFICER FAY: Yes.

5 MS. DeCARLO: Thank you.

6 BY MS. DeCARLO:

7 Q Mr. Hunter, did you prepare the
8 testimony entitled, geology and mineral resources
9 and paleontology in the final initial study,
10 exhibit 12, and supplemental geology and mineral
11 resources and paleontology testimony, exhibit 15?

12 A Yes, I did.

13 Q Was a statement of your qualification
14 attached to exhibit 12?

15 A Yes, it was.

16 Q And do the opinions contained in your
17 testimony represent your best professional
18 judgment?

19 A Yes, they did, at that time.

20 Q And does the testimony you're to give
21 today represent your best professional judgment?

22 A Yes.

23 Q Have you reviewed the data submitted by
24 the applicant with regard to the silt content of
25 the soil on the proposed site?

1 A Yes, I have.

2 Q Have you personally visited the site to
3 view the soil?

4 A Yes, I have.

5 Q In your expert opinion what percent silt
6 value is most likely to represent the project
7 site?

8 A Based on two things, one, my field
9 observations; and two, recent test results that I
10 received on August 27th -- actually I guess I'd
11 say three things, the original test results in the
12 two geotechnical reports, 12 percent is actually a
13 very very good number of percent passing the
14 number 200 sieve, or the 75 micron size.

15 Q Have you reviewed Dr. Baldwin's
16 testimony on silt content submitted by CURE?

17 A Yes, I have.

18 Q On what data does he appear to base his
19 opinion that the silt content on the site averages
20 28 percent?

21 A Primarily based on field logs of the
22 initial geotechnical investigation of January
23 2004, the boring logs. And also the supplementary
24 investigation of May 2004, which was 32, I think,
25 test -- logs. And these are actual field

1 descriptions done by the engineering geologist in
2 the field as he's examining the soils in test pits
3 or borings.

4 Q And were these logs made specifically
5 for the purpose of determining silt content of the
6 site soil?

7 A Not in the upper few feet. The logs
8 were primarily for geotechnical purposes, which is
9 to evaluate foundation potential, foundation
10 conditions. They use the material for engineering
11 purposes which would be grading, for use of
12 structural fill, and also to determine ripability,
13 whether or not we have to blast the site, or
14 whether we're going to have a large amount of
15 over-sized particle that's going to have to be
16 hauled off to a site.

17 Q In your opinion then are these logs very
18 reliable for the purposes that are used here for
19 air quality?

20 A Based on the information available,
21 again in the original test results I didn't think
22 that they were particularly reliable in the upper
23 12 inches or 36 inches of fill material.

24 Based on what we know now I don't think
25 they're particularly reliable for those purposes.

1 We've had some additional testing run. The test
2 results are available.

3 Q What field experience do you have
4 logging soils?

5 A Twenty-eight years of experience as
6 engineering geologist, geological engineer. Over
7 the course of that time I've logged thousands of
8 test pits and borings.

9 My position now is such that I send
10 people out to log test pits and borings and I
11 review their work. But I've gone to lots and lots
12 of sites and field work.

13 Q Does that conclude your testimony?

14 A Yes.

15 MS. DeCARLO: The witness is available
16 for questions on cross-examination.

17 HEARING OFFICER FAY: All right, thank
18 you. Mr. Thompson, any questions?

19 MR. THOMPSON: We have no questions,
20 thank you.

21 HEARING OFFICER FAY: Mr. Joseph.

22 MR. JOSEPH: We have no questions.

23 HEARING OFFICER FAY: Okay. Thank you,
24 Dr. Hunter.

25 DR. HUNTER: Thank you.

1 HEARING OFFICER FAY: We appreciate your
2 testimony and you're excused.

3 DR. HUNTER: Thank you.

4 HEARING OFFICER FAY: We'll now move to
5 CURE's witness.

6 MR. JOSEPH: Thank you, Mr. Fay. CURE
7 calls John Baldwin.

8 HEARING OFFICER FAY: Please swear the
9 witness.

10 Whereupon,

11 JOHN BALDWIN

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

15 MR. JOSEPH: Mr. Fay, before we begin
16 perhaps we should mark Mr. Baldwin's testimony and
17 his r, sum,, a three-page document.

18 HEARING OFFICER FAY: That will be
19 marked as exhibit 15 -- or 16, rather. Would you
20 just recite what's on the cover of that.

21 MR. JOSEPH: Yes, exhibit 16 is, the
22 first page is on the letterhead of William Lettice
23 (phonetic) and Associates. It says at the top,
24 testimony of John Baldwin, Senior Geologist, and
25 it's signed by Mr. Baldwin at the bottom.

1 There are two pages attached to it which
2 are Mr. Baldwin's r, sum, .

3 HEARING OFFICER FAY: Thank you. Go
4 ahead.

5 DIRECT EXAMINATION

6 BY MR. JOSEPH:

7 Q Mr. Baldwin, would you state your name
8 for the record, please?

9 A My name is John Baldwin.

10 Q Mr. Baldwin, did you prepare what has
11 now been marked as exhibit 16?

12 A Yes, I did.

13 Q And do you adopt it as your sworn
14 testimony today?

15 A Yes, I do.

16 Q Mr. Baldwin, I'd first like to ask you a
17 few questions regarding your qualifications. Can
18 you describe for us your education and your
19 professional certifications?

20 A Yes. I'm a Senior Geologist with
21 William Lettice and Associates. I'm a certified
22 engineering geologist in California. I hold a
23 masters degree in earth science from San Jose
24 State University.

25 And at William Lettice and Associates

1 for the last nine years I have been working as an
2 engineering geologist and quaternary geologist.
3 What that entails is the evaluation of sites for
4 strictly -- or primarily seismic hazards,
5 evaluating strong ground motions, liquefaction and
6 the site for potential earthquake faults.

7 But in that work I have reviewed and
8 directly logged hundreds of trenches, test pits,
9 as well as borings. And in the preparation of
10 those logs I have both visually characterized the
11 soils and the stratigraphy, as well as the bedrock
12 deposits that might be encountered in those
13 trenches and bore holes. As well as collected
14 soil samples from both bore holes and trenches for
15 the characterization of that material for
16 laboratory analysis such as we're talking about
17 here with sieve analysis.

18 I have evaluated soils in both
19 determining whether or not they are from a
20 particular geologic environment, that's what we
21 call quaternary geology, trying to evaluate
22 whether or not a particular site is composed
23 predominately of bedrock or whether there might be
24 variability amongst that site.

25 For instance, we'll learn that this site

1 that we're talking about today has some
2 variability to it. It's not all just bedrock.

3 Q Mr. Baldwin, can you tell us the
4 documents that you have reviewed to prepare your
5 testimony?

6 A I have reviewed the LOR Phase I, I
7 believe it's the environmental assessment that was
8 performed May 21, 2004, as well as the
9 supplemental geotechnical report that includes the
10 borings. And the January - the date escapes me,
11 28th, 2004, I believe -- the bore hole program
12 that we've heard discussed today. As well as the
13 expert testimonies by both gentlemen just
14 preceding me on this.

15 Q Have you also reviewed the testimony of
16 Karl Lany?

17 A Yes, I have.

18 Q And to clarify, and you have also
19 reviewed the most recent, I believe it was August
20 27th, sieve analysis that the applicant presented?

21 A Yes, I have reviewed those.

22 Q Mr. Baldwin, can you give us an overview
23 of the geology of the site?

24 A My overview of the geology of the site
25 is based on the three documents we just mentioned

1 that were prepared by LOR, as well as the
2 supplemental sieve analysis that we received late
3 last week, as well as a site visit.

4 My site visit was limited to looking
5 through the fence. I wasn't able to walk on it,
6 but I did view it from outside of the fenced area.

7 And what I have concluded, based on the
8 review of the existing data, as well as the site
9 visit, is that this particular site consists of
10 three particular units.

11 One unit is a relatively young topsoil
12 that we've heard discussed today that exists
13 between about zero and a foot, just directly above
14 bedrock, which has been described as granodiorite.

15 And the bedrock is in various stages of
16 weathering, as we've heard. There are hard places
17 called cornerstones.

18 The large part of the site, the central
19 and the northern part of the site is composed of
20 this weathered bedrock with a veneer of one-foot
21 thick topsoil, primarily decomposed granite, as
22 well as material that has been blown in, and
23 previous filling operations have occurred out
24 there.

25 The third unit that's out there is

1 artificial fill. Based on the study done by the
2 LOR Geotechnical, their phase I environmental site
3 assessment and review of topographic maps, and in
4 their photos there used to be what we call a paleo
5 drainage that flowed through the southwest part of
6 the site, and flowed down past through the
7 existing water treatment plant, down to the Santa
8 Ana River.

9 So there was a topographic flow in there
10 amongst some of this bedrock. That, in the past,
11 according to LOR, that was filled with perhaps as
12 much as 20 feet of artificial fill. It's also
13 been mapped by some geologists, a map that's
14 actually, I think it's provided in the January
15 report that shows that there are quaternary
16 deposits that underlie this site.

17 And the borings and the test pits that
18 have been collected in that southern part of the
19 site indicate that there may be -- that there is,
20 in some cases, as much as eight feet of artificial
21 fill that underlies this topsoil that's been
22 described.

23 So, the geologic setting of the site is
24 such that it consists of three units: the
25 topsoil, we've talked about, zero to one feet;

1 bedrock; and then in the southern part of the site
2 artificial fill; and perhaps even below that some
3 quaternary deposits.

4 Q Mr. Baldwin, is a visual inspection of
5 soil an accepted and common practice among
6 certified geologists to determine soil silt
7 content?

8 A Yes, it is. As a visual observation we
9 often will describe, in as much detail as we can,
10 the components of both the sand and the fines
11 content, which was performed very well by LOR
12 Geotechnical. It's clear that they spent some
13 time evaluating the bore hole information. You
14 can have accurate depths, sometimes down to the
15 tenth of a foot. Suggesting that there was some
16 time there spent describing that topsoil.

17 And then in the test pits there's
18 clearly even more evaluation of the silt deposits,
19 both based on the visual observations.

20 Now, it's a common practice to get a
21 first cut of what the deposits might be, you do
22 the visual interpretation. And depending on what
23 the project might be and the significance of what
24 might be built there, and for different
25 engineering geotechnical purposes oftentimes sieve

1 analyses are collected from various units and
2 deposits to more clearly define what that silt
3 content might be.

4 And you may even go one step further,
5 which has been indicated today, go through a
6 hydrometer test.

7 Q To what degree of accuracy does visual
8 inspection by a trained geologist describe the
9 silt content?

10 A Approximately about plus or minus 10
11 percent is roughly what we're seeing as far as the
12 visual observations compared to an experience
13 engineering geologist, compared to -- their visual
14 observations are about plus or minus 10 percent,
15 with the laboratory results.

16 And Dal Hunter, in his previous
17 testimony, agree with this, roughly about plus or
18 minus 10 percent as far as the visual observation
19 goes for a geologist, plus the sieve analysis.

20 Q In your opinion are the visual
21 inspection results from the first two LOR
22 Geotechnical reports reliable? And if so, to what
23 degree?

24 A Yes, they are reliable. They're
25 reliable in the sense that they're evaluating the

1 topsoil data from zero to one feet. As well as
2 the artificial fill material.

3 They are good approximations of the silt
4 content. They show that there's variability there
5 amongst both the topsoil and the fill. Even in
6 the visual observation, separating out the topsoil
7 and the artificial fill, the visual observations
8 indicate that even the topsoil has a slightly
9 finer content than the artificial fill.

10 And they are reliable in a sense to get
11 an approximation or an estimate of the silt
12 content at the site.

13 Q Did your review of the third and final
14 set of silt data, that is the sieve analysis
15 provided by LOR this month, change your opinion
16 about the silt content of the soil?

17 A No, they did not. The sieve analyses
18 that have been performed to date -- we just talked
19 and mentioned the three different types of units
20 that are out at the site -- to date there have
21 been a total of 12 sieve samples that have been
22 collected.

23 I would argue that 11 of those 12 have
24 come from primarily weathered bedrock that exists
25 at the site. They've come from zero to three

1 feet, that's a sample; that would contain a little
2 bit of topsoil as well as the weathered bedrock.
3 That's the first set of samples that were taken
4 that were used in our initial assessment.

5 Subsequent samples were taken from one
6 to three feet, as well as three to six feet. The
7 one-to-three foot samples, three of those test
8 pits were excavated based on contouring the
9 thickness of the fill across the site; were
10 collected primarily in weathered bedrock, zones of
11 bedrock without any artificial fill. So the one-
12 to-three foot samples are probably primarily
13 weathered bedrock. And the three-to-six getting
14 into the more solid bedrock.

15 The one sample that was collected
16 appears to be from the artificial fill or the
17 thicker deposits. It stands out amongst all the
18 samples. It has a percentage of 15.5 percent
19 fines. That was from one to three feet, and from
20 test pit 2 near unit 1.

21 And as you contour up the bore hole data
22 and the test pit data, that's close to a test pit
23 that had about three feet of artificial fill. And
24 so the silt content from one to three feet, it's
25 an average. You're not actually -- I don't know

1 what the fill looks like, whether it's bedded or
2 whether it's massive material -- but that one to
3 three feet had a silt content of about 15.3.

4 So I would argue that 11 of those
5 samples that have been collected to date are
6 primarily within bedrock. And they're not
7 characterized in that zero-to-one foot thick
8 topsoil. As well as the artificial fill that
9 appears to exist in the southern part of the site
10 in this paleo drainage.

11 Q Mr. Baldwin, just so the record is
12 completely clear for those who are not versed in
13 the appropriate terminology, when you say one to
14 three feet, that excludes the topmost foot that's
15 the zero to one foot? Is that right?

16 A That's correct.

17 Q Okay. You also said in the course of
18 your answers, you used the colloquial phrase "I
19 would argue". Were you presenting argument at
20 that point, or were you expressing your
21 professional opinion?

22 A My professional opinion.

23 Q And finally, in your opinion, based on
24 all the data, what would you expect to be a
25 reasonable range of silt content on the site to

1 be?

2 A Well, I would expect the silt content
3 within the bedrock, based on all of the existing
4 sieve analyses, that we have 11 now of those 12
5 that are from the weathered bedrock, of probably
6 somewhere less than 10 percent. There's some good
7 numbers from that.

8 As far as the zero to one foot, which
9 hasn't been sampled yet, we just have visual
10 observations on that, as well as the artificial
11 fill, we only have one sample and that was 15
12 percent, I would still rely right now on the
13 visual observations of the geologists that there
14 could be a range of anywhere between 18 and 38
15 percent silt content in either the topsoil or that
16 underlying artificial fill that's in the southern
17 part of the site.

18 And the weathered bedrock out there has
19 been very well characterized by most of the
20 samples that we have to date.

21 Q Thank you.

22 MR. JOSEPH: Mr. Baldwin is available
23 for cross-examination.

24 HEARING OFFICER FAY: Ms. DeCarlo -- I'm
25 sorry, Mr. Thompson, would you like to cross-

1 examine this witness?

2 MR. THOMPSON: Just a couple questions.

3 CROSS-EXAMINATION

4 BY MR. THOMPSON:

5 Q Mr. Baldwin, your testimony is dated
6 August 13th, is that the same date as your letter
7 testimony and background information?

8 A Yes, I believe so.

9 Q And when did you visit the site?

10 A I visited the site this morning.

11 Q So is it fair to say that your
12 conclusions were not based on your view of the
13 site or any samples or data that you collected at
14 the site?

15 A My conclusions are based on the
16 information that's presented today by LOR
17 Geotechnical, and my brief site visit today.

18 Q But your testimony was submitted on
19 August 13th?

20 A That's correct. And my testimony
21 includes data presented by LOR Geotechnical. It
22 does not include the supplemental information
23 that's been collected at the end of last week.

24 MR. THOMPSON: That's all the questions
25 we have, but we would like to put Mr. Johnston for

1 a couple of questions at the end of this, because
2 I think that the record would benefit from a more
3 complete description of the testing.

4 HEARING OFFICER FAY: Okay. Let's get
5 through this. Ms. DeCarlo, any questions of this
6 witness?

7 MS. DeCARLO: Yes, just one.

8 CROSS-EXAMINATION

9 BY MS. DeCARLO:

10 Q In general what is more accurate, a
11 visual analysis or a sieve test?

12 A A sieve analysis.

13 MS. DeCARLO: That's all.

14 HEARING OFFICER FAY: Okay. Any
15 redirect, Mr. Joseph?

16 MR. JOSEPH: Just one question.

17 REDIRECT EXAMINATION

18 BY MR. JOSEPH:

19 Q Did your site visit this morning change
20 any of your previous opinions based on the
21 documentation?

22 A No, it actually enhanced my feeling that
23 the data that's been collected to date, as well as
24 the observations made by LOR Geotechnical in their
25 previous investigations, in particular the phase

1 one environmental site assessment, were good. And
2 I feel stronger about my testimony now, having
3 visited the site.

4 MR. JOSEPH: Thank you.

5 HEARING OFFICER FAY: Commissioner
6 Geesman.

7 COMMISSIONER GEESMAN: What exactly did
8 you do at the site this morning?

9 MR. BALDWIN: I rolled up in my car at
10 about 7:00. And I proceeded to park it and noted
11 that the site, itself, is fenced off with a recent
12 fence. I parked my car on the side of the road
13 and what I did was is I pulled out the maps that
14 had been prepared by LOR Geotechnical to get a
15 feel for the layout of the property, to take a
16 look at what I could. Some of the existing
17 bedrock highs of these cornerstones or floaters,
18 as we've heard earlier today by LOR Geotechnical.

19 So I visually observed the site from
20 behind the fence, both from Acorn Street, I
21 believe it is, and then on the back side, on the
22 east side on Payton. So my site visit was
23 primarily a view from behind the fence, but using
24 existing maps to feel comfortable about this paleo
25 drainage, and looking at, when I could, some of

1 the steep cuts that are in that eastern cut wall
2 near Payton, Payton Avenue, from afar.

3 HEARING OFFICER FAY: Thank you.
4 Anything further, Mr. Joseph?

5 MR. JOSEPH: No.

6 HEARING OFFICER FAY: Thank you, Mr.
7 Baldwin, you're excused.

8 Is there any objection to recalling Mr.
9 Johnston? All right, go ahead, Mr. Thompson.

10 MR. THOMPSON: Thank you. Mr. Johnston
11 has been previously sworn.

12 Whereupon,

13 JEFFREY J. JOHNSTON
14 was recalled as a witness herein, and having been
15 previously duly sworn, was examined and testified
16 further as follows:

17 DIRECT EXAMINATION

18 BY MR. THOMPSON:

19 Q Mr. Johnston, were you here for the
20 testimony of Mr. Baldwin?

21 A Yes, I was.

22 Q And I believe I heard him say that none
23 of the tests were done on that area between zero
24 and one foot. Would you clarify what tests you
25 performed?

1 A Last week, the tests that we talked
2 about last week I had addressed briefly in my
3 summary of our testimony. And to address these
4 issues about our values only representing the
5 bedrock, we went back out to the site and we took
6 a backhoe and we dug down adjacent to trenches
7 which are shown in our report as TP-5, TP-6, TP-7
8 and TP-8, which are in the areas of major concern.

9 And noted in there the layers, the not
10 bedrock materials, the fill and the topsoil
11 materials that are going to be moved around, in
12 question. And they ranged from anywhere from 1.8
13 foot to 5.8 foot, which is what we had anticipated
14 in our original -- or our secondary study, the one
15 that was looking for corestone, we call them,
16 floater materials, these harder rocks.

17 And then we sampled those directly, did
18 not use visual samples, actually took samples of
19 those back to the lab and ran analysis of those
20 upper materials, completely leaving out the
21 bedrock portions.

22 And on TP-5 we had a result of -- now,
23 this is again, this is silt or fines, I'm sorry,
24 this is fines content, defined as the ASTM of 75
25 microns and smaller. So it includes those larger

1 particles that we would not anticipate, or would
2 not be concerned with, but it does include those.

3 But in TP-5 we had a fines content of
4 13.2 percent. In TP-6 we had a fines content of
5 9.7 percent. In TP-7 we had a fines content of
6 12.4 percent. And in TP-8 we had a fines content
7 of 13 percent.

8 Those correlated to my visual analysis
9 which were all much higher of ranking from 15
10 percent to 35 percent, which indicated to me that
11 my visual analysis is high on all those. Which is
12 not a surprise, because those, again, as we
13 mentioned, you know, are rough calculations. And
14 are not considered as significant in what they
15 were originally done for.

16 But these last values are considered to
17 be accurate values. And in my opinion, better
18 represent what is truly there in that fill
19 materials.

20 Q Finally, would you identify where on the
21 site these tests were performed?

22 A Well, again, they were adjacent to my
23 TP-5, TP-6, TP-7 and TP-8, which are TP-7 and -8
24 are over in the -- these are the generator areas,
25 correct. And TP-5 and -6 are over in the areas of

1 the power grid, I believe that's called there.

2 Q Yeah, --

3 A -- I'm sorry, yes.

4 Q And would it be fair to characterize TP-
5 6, and to a lesser extent TP-5, as being in the
6 southwest corner of the site?

7 A Yes.

8 Q Where all the fill is?

9 A Yes.

10 Q Thank you very much.

11 MR. THOMPSON: That's all we have.

12 HEARING OFFICER FAY: Do you have any
13 cross, Ms. DeCarlo?

14 MS. DeCARLO: One question.

15 CROSS-EXAMINATION

16 BY MS. DeCARLO:

17 Q These new samples, were they taken in
18 the areas most likely to have the most
19 construction on them, the most grading,
20 earthmoving activity?

21 A They were taken -- yes, and they were
22 also taken in the areas where the maximum amount
23 of this fill was found in our original studies.
24 Because we kind of had found that in our original
25 studies the bulk of the site doesn't really have

1 much to speak of. You know, to us it's
2 insignificant, it's just a few inches of these
3 materials.

4 I don't know where 20 feet is coming
5 from. But, you know, we did find a couple areas
6 that had six to eight feet in just like two of the
7 trenches out of the 30 done there.

8 So we went back to those to see, okay,
9 if this is what everybody's concerned about, this
10 would be the worst case. What is the silt content
11 where the worst case is. And, yes, there is
12 construction proposed in those sites.

13 MS. DeCARLO: Thank you, that's all.

14 HEARING OFFICER FAY: Okay. Mr. Joseph?

15 MR. JOSEPH: We have no questions; we're
16 still quite content with his record.

17 HEARING OFFICER FAY: Okay. Thank you.
18 Anything further, Mr. Thompson?

19 MR. THOMPSON: No, not in this area.

20 HEARING OFFICER FAY: Okay. Thank you,
21 again, Mr. Johnston.

22 I think that concludes our taking of
23 testimony on geology. And I believe that lunch is
24 ready in the next room. And it's very nice of the
25 City to provide this. It allows us to move

1 quickly. So I encourage people to partake of
2 lunch and then come back to the room and keep the
3 break as short as possible so that we can finish
4 our business, and people can get on with their
5 day.

6 We're off the record.

7 (Whereupon, at 12:35 p.m., the hearing
8 was adjourned, to reconvene later this
9 same day.)

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AFTERNOON SESSION

1:25 p.m.

HEARING OFFICER FAY: Okay, the next topic is noise and biology; and based on the agenda my indication is that both staff and applicant plan to introduce the testimony on declaration, is that correct, Mr. Thompson?

MR. THOMPSON: Yes, that's correct.

HEARING OFFICER FAY: Okay, why don't you go ahead.

MR. THOMPSON: I have located an original and one copy, I could make more if need be, of the prepared direct testimony of Brian Arnold, along with an original signed declaration in the field of biological resources.

I would ask that without opposition this be moved into the record.

HEARING OFFICER FAY: Any objection? All right, so moved. Is that the same identical as what's previously filed?

MR. THOMPSON: It is.

HEARING OFFICER FAY: And has the declaration been previously filed?

MR. THOMPSON: No.

HEARING OFFICER FAY: Okay. Let's mark

1 that declaration as exhibit 17.

2 MR. THOMPSON: Just the declaration, or
3 the declaration attached to the testimony?

4 HEARING OFFICER FAY: Well, sure, the
5 declaration with the testimony.

6 And does the staff want to proceed,
7 then?

8 MS. DeCARLO: Yes. We have in exhibit
9 12 the testimony of Melinda Dorin for biological
10 resources. Also included in exhibit 12 is her
11 declaration.

12 And we would like to admit those.

13 HEARING OFFICER FAY: Is there any
14 objection? All right, I hear none, so we'll
15 receive that into the record as if read. And that
16 was previously filed with exhibit 12?

17 MS. DeCARLO: Yes.

18 HEARING OFFICER FAY: Thank you. And
19 then moving to noise, I understand that the
20 applicant does have a live witness.

21 MR. THOMPSON: We do, thank you very
22 much. Applicant would like to call Mr. David
23 Wieland.

24 HEARING OFFICER FAY: Would the court
25 reporter please swear the witness.

1 Whereupon,

2 DAVID WIELAND

3 was called as a witness herein, and after first
4 having been duly sworn, was examined and testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q Please state your name and business
9 affiliation for the record.

10 A My name is David Wieland; I'm a
11 Principal Consultant with Wieland Associates.

12 Q What was that, again?

13 A My name is David Wieland; I'm a
14 Principal Consultant with Wieland Associates.

15 Q Are you the same David Wieland that has
16 supplied prepared direct testimony, along with
17 attached tables, previously in the record in this
18 case?

19 A Yes.

20 Q Do you have any deletions, corrections
21 or additions to make to this testimony?

22 A No.

23 Q Would you please briefly summarize your
24 testimony.

25 A Our firm was retained by Power Engineers

1 to conduct a study of noise levels generated by
2 the construction and operation of the proposed
3 RERC.

4 To do our analysis, we measured noise
5 measurements throughout the study area. Conducted
6 our analysis based upon manufacturer's data. And
7 prepared a report of findings to Power
8 Engineering, which there was no significant
9 impacts associated with either the construction or
10 the operation of the proposed plant.

11 Subsequent to that, in response to
12 comments from CURE, we did a supplemental analysis
13 in which we took into consideration the relocated
14 compressors which had been relocated from the
15 north side of the site to the west side of the
16 site.

17 We also revised our construction noise
18 analysis to conform more to the equipment that was
19 being used in the air quality analysis. We took
20 into account the various -- well, ten-foot-high
21 wall that will be built along the southern and
22 western side of the property, as well as the area
23 of fence provided by the surrounding berms and
24 buildings.

25 And we also took a look at the residents

1 of the Happy Valley Kennels that was identified by
2 CURE.

3 Based upon our analysis we came to the
4 same conclusion that there are no significant
5 impacts associated with the operation or the
6 construction of the facility.

7 The residents at the Kennel is a
8 nonconforming use. Therefore, being in a
9 commercial area, the commercial standard of 65 dB
10 correctly applies to that property and not the
11 residential noise standard of 45 dB.

12 However, we looked at it both ways, and
13 the noise levels from both construction and
14 operation of the RERC will comply with both
15 residential and commercial standards at the Happy
16 Valley Kennel.

17 We also looked at the nearest church,
18 which is over to the southeast on Jurupa. This is
19 a commercially zoned property and a commercial
20 noise standard of 65 dB applies at that property.
21 I believe we're projecting a noise level of 53 dB
22 over at that site, which is well below the
23 commercial standard for that site.

24 And therefore we came to the conclusion
25 that the project has no significant impacts

1 related to noise.

2 Q Thank you. Do you have before you the
3 testimony of Dr. Phyllis Fox and Dr. Petra Pless,
4 really as it applies to the noise issue?

5 A I have it, yes.

6 Q On page 47, the first full paragraph of
7 that page, there's a footnote 31 that references a
8 1971 EPA report. Have you had a chance to look at
9 that report? And, if so, do you have any comment
10 to make?

11 A Yes, I did look at that report and
12 CURE's comment regarding that. Had a few comments
13 about that. The conclusions in the EPA report are
14 baseline metric -- noise and pollution level, or
15 NPL. In the first place, I'm not aware of any
16 agency that uses NPL as a standard. And certainly
17 not the City or County of Riverside or the CEC.

18 Also, the analysis conclusions in that
19 report are based upon a receptor 50 feet away from
20 the noisiest piece of equipment. The nearest
21 sensitive receptors to the construction site of
22 RERC will be the Kennel residence, which is over
23 1160 feet away from the construction equipment.
24 And the recreational trail which is about 830 feet
25 from the construction activity.

1 Therefore, the conclusions drawn in the
2 testimony are inappropriate to this project.

3 Q Second, on page 52, CURE discusses what
4 they call the typical backup and alarm noise
5 level, and they have some figures in there. Have
6 you had a chance to review that, and do you have
7 any comments?

8 A Yeah, I did have a chance to review it.
9 Their analysis is based upon a typical backup
10 alarm level of 112 dB at four feet. This is
11 factually correct, but it's also misleading.

12 I did a quick search on the internet and
13 found that backup alarms can be purchased that
14 range in noise levels as low as 77 dB, all the way
15 up to about 112, as cited by CURE.

16 However, the majority that are available
17 seem to provide a noise level of about 87 to 97
18 dB, which is about 10 to 15 dB below the worst
19 case value used by CURE. And, in fact, less than
20 half as loud as the values cited by CURE.

21 We went on to perform an analysis of
22 backup alarm noise. CURE has identified a level
23 of 57 dB at the trail, so I wanted to investigate
24 that. We felt that the analysis that CURE did was
25 misleading because first it assumes that 15 backup

1 alarms are sounding simultaneously and in synch
2 with each other, which situation is highly
3 improbable.

4 Secondly, the results of their analysis
5 is based on a worst case maximum continuous noise
6 level at the trail. This has no relevance to the
7 LEQ or the average noise level standard which is
8 being applied at the trail.

9 Lastly, they added that -- maximum level
10 of 57 dB to the measured average noise level of 46
11 dB, and derived an 11 dB increase. Well, you
12 can't add a maximum noise level to an average
13 noise level and get anything meaningful.

14 To perform a more reasonable analysis we
15 assumed that CURE's correct about a maximum noise
16 level of 57 dB at the trail. Assuming that each
17 alarm sounds for about .1 second, and that these
18 alarms sound every second for an hour, we came up
19 with a sound level at the trail, an average sound
20 level of 47 dB. Adding this to the measured level
21 of -- measured ambient level of 46 dB yields a 3
22 dB increase, which is a far cry from 11 dB
23 increase cited by CURE.

24 However, this analysis was based on the
25 highest noise levels, 112 dB, that were generated

1 by a backup alarm. Taking a more reasonable value
2 of 87 to 97 dBa, the average noise level at the
3 trail would be only 22 to 32 dBa. And the
4 increase at the trail would be zero dB to the
5 backup alarms.

6 Q Thank you. Finally, with regard to the
7 operational noise at the church, and the correct
8 standard to be used there, do you have any
9 comment? This appears on page 54.

10 A Yeah. CURE states that the operational
11 noise level at the church exceeds the City's
12 nighttime standard of 45 dB. However, the
13 residential standard does not apply to the church.
14 The church is a commercial use, as stated in the
15 noise ordinance. And the predicted level of 53
16 dBa complies with that commercial standard at the
17 church.

18 Q Thank you very much. If I were to ask
19 you the questions contained in your prepared
20 direct testimony would your answers today, under
21 oath, be the same?

22 A Yes.

23 Q Thank you very much.

24 MR. THOMPSON: Mr. Wieland is tendered
25 for cross-examination.

1 HEARING OFFICER FAY: Ms. DeCarlo, any
2 questions for the witness?

3 MS. DeCARLO: Staff has no questions of
4 this witness.

5 HEARING OFFICER FAY: Mr. Joseph, any
6 questions?

7 MR. JOSEPH: We have no questions. And
8 I'd like to explain why. We prepared prefiled
9 noise testimony. After that testimony was filed,
10 the applicant and its consultants performed
11 additional background noise collection, which
12 changed the baseline against which all of the
13 other noise analyses had been done for all the
14 previous time of this case.

15 Because that information was provided
16 just two weeks ago we had to decide whether we
17 were going to go out there and check the accuracy
18 of that, and, you know, on its face, the
19 background noise level was not inherently
20 credible. It was way too loud. And, you know, we
21 didn't believe it.

22 But, despite all the bruises on my shin,
23 we are not going to offer our noise testimony; nor
24 am I going to cross-examine the applicant's noise
25 witness because, frankly, noise is not a linchpin

1 issue in this case.

2 We expect the case will be decided on
3 air quality. And have decided to focus our
4 efforts in that area.

5 MR. THOMPSON: Mr. Fay, I think a very
6 simple "we did not want to do our own
7 measurements" --

8 HEARING OFFICER FAY: Excuse me.

9 MR. THOMPSON: -- would have sufficed.

10 HEARING OFFICER FAY: Let's hold on a
11 minute. Sorry. Do we know what that is about?
12 Okay. Go ahead.

13 MR. THOMPSON: I was just going to point
14 that parties to a proceeding like this have some
15 obligation to do some of their own spade work and
16 come up with data to support their conclusions.

17 A statement on the record like this that
18 they didn't like ours, but didn't care to go get
19 their own values and do their own testing, I think
20 should be ignored.

21 HEARING OFFICER FAY: Okay. Well, this
22 is just in the way of argument, anyway. So, Mr.
23 Joseph, you're not offering the noise portion of
24 the Fox and Pless testimony, is that correct?

25 MR. JOSEPH: That's correct.

1 HEARING OFFICER FAY: Okay, thank you.

2 MR. THOMPSON: Does the Committee have
3 any questions of --

4 HEARING OFFICER FAY: Yes. Let me ask
5 Mr. Wieland, on page 47 and 48 of the -- well,
6 it's not relevant now. CURE has withdrawn the
7 testimony. I won't ask the question, there's no
8 point.

9 Thank you very much.

10 MR. JOSEPH: Mr. Fay, do we have an
11 exhibit number for Mr. Wieland's testimony?

12 HEARING OFFICER FAY: It is exhibit --
13 what'd I say, 17?

14 MR. THOMPSON: Mr. Arnold, I think, was
15 17.

16 HEARING OFFICER FAY: I'm sorry?

17 MR. THOMPSON: I think Mr. Arnold was
18 17.

19 DR. REEDE: Correct. Wieland would have
20 to be 18.

21 HEARING OFFICER FAY: Mr. Thompson, this
22 was later filed, then? This wasn't with the main
23 body of your testimony?

24 MR. THOMPSON: That's right.

25 HEARING OFFICER FAY: Okay. So that

1 would be exhibit 18, I believe. David Wieland
2 testimony is exhibit 18. Thank you.

3 Ms. DeCarlo, you have testimony on
4 noise?

5 MS. DeCARLO: Yes, we have Steve Baker
6 as our witness sponsoring noise testimony. His
7 testimony is contained in exhibit 12, as well as a
8 declaration for that testimony. And we have two
9 items we need marked. One, his supplemental noise
10 testimony, the specific title of that was included
11 in Energy Commission Staff's response to testimony
12 filed on August 13, 2004, by CURE and the
13 applicant. And the noise part of that testimony
14 was included in attachment A.

15 HEARING OFFICER FAY: Okay, that will be
16 exhibit 19.

17 MS. DeCARLO: And then we also have a
18 one-page declaration by Mr. Baker attesting to
19 that supplemental testimony.

20 HEARING OFFICER FAY: Was that filed
21 with that?

22 MS. DeCARLO: No, that's separate.

23 HEARING OFFICER FAY: Separate, okay
24 exhibit 20, then.

25 Is there any objection to receiving Mr.

1 Baker's testimony and supplementary testimony?

2 MR. THOMPSON: None from applicant.

3 MR. JOSEPH: No.

4 HEARING OFFICER FAY: No objection,
5 okay. That will be entered as if read.

6 I think that concludes our business for
7 today. Are there any questions about the way we
8 will proceed tomorrow? We'll be here at 9:00 a.m.
9 and begin with air quality. And we intend to
10 finish tomorrow, even if it means going late. So
11 you can make your plans accordingly.

12 Any questions or --

13 MR. THOMPSON: Order of witnesses?

14 HEARING OFFICER FAY: The order of
15 witnesses is on the agenda. It will be Karl Lany,
16 and then staff's Will Walters. And then CURE's
17 Drs. Fox and Pless and Camille Sears.

18 MR. THOMPSON: Oh, one other thing. We
19 had email to us late Friday for Isopleths from Dr.
20 Sears, and we don't know whether or not that is
21 proposed testimony, or whether there is testimony
22 along with that, or what the underlying
23 assumptions were that led to those four documents.

24 Any enlightenment we can get would be
25 helpful.

1 HEARING OFFICER FAY: Okay. Mr. Joseph?

2 MR. JOSEPH: As the Committee is aware,
3 after we submitted our testimony on August 13th,
4 the applicant presented yet another revised
5 version of its construction emission estimates and
6 modeling.

7 And so the figures, several of the
8 figures that were in Camille Sears' testimony,
9 which were based on the prior version of
10 applicant's story, were hence out of date. And so
11 these are figures updated to reflect the
12 applicant's most current modeling.

13 HEARING OFFICER FAY: So it is the same
14 type of analysis, just reflecting the updated --

15 MR. JOSEPH: Precisely the same.

16 MR. THOMPSON: And does it reflect all
17 of our assumptions? You have no quarrels with any
18 of our assumptions?

19 MR. JOSEPH: We'll provide this in
20 testimony, but the short answer is yes, that's
21 simply making a plot of what the applicant
22 modeled, so that we could see officially.

23 HEARING OFFICER FAY: All right.
24 Anything further, then, before we adjourn for
25 today?

1 Okay, we'll see you tomorrow morning.

2 We're adjourned.

3 (Whereupon, at 1:45 p.m., the hearing
4 was adjourned, to reconvene at 9:00
5 a.m., Tuesday, August 31, 2004, at this
6 same location.)

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CERTIFICATE OF REPORTER

I, JAMES RAMOS, 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 2nd day of September, 2004.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345