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Francisco DaCosta
Environmental Justice Advocacy

Martin Homec

ALSO PRESENT

Stephen Hill
Regional Water Quality Control Board

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

2 9:02 a.m.

3 HEARING OFFICER FAY: This is the fourth
4 day of evidentiary hearings in the application for
5 certification of the San Francisco Electric
6 Reliability project. This proceeding is being
7 conducted by the California Energy Commission.
8 I'm the Hearing Officer, Gary Fay. To my left is
9 the Presiding Commissioner on the Committee
10 designated to handle this case, Commissioner Jim
11 Boyd. And to my right is Associate Member of the
12 Committee, Commissioner John Geesman. And to
13 Commissioner Boyd's left is his Advisor, Peter
14 Ward.

15 I think we'll just briefly take
16 appearances. Ms. Sol,, on behalf of the
17 applicant.

18 MS. SOL : Jeanne Sol, on behalf of the
19 City and County of San Francisco.

20 MR. VARANINI: Gene Varanini with the
21 California Power Authority and assisting Ms. Sol,.

22 MR. RATLIFF: Dick Ratliff, Energy
23 Commission Staff Counsel. And with me is Bill
24 Pfanner, the Project Manager.

25 HEARING OFFICER FAY: We have a guest

1 today from the Water Board?

2 MR. RATLIFF: Yes, we have with us Steve
3 Hill, who's the head of the Toxics Cleanup
4 Division at the Regional Water Quality Control
5 Board who was good enough to come today to answer
6 questions from the Committee concerning the
7 responsibilities of his agency and the cooperation
8 that we've had with the Regional Board.

9 HEARING OFFICER FAY: All right. Is any
10 other party or intervenor represented here today?
11 I hear no indication, so we'll begin with Mr.
12 Hill's statement. And, Mr. Hill, if you don't
13 mind we'd like to have you sworn in. Please
14 stand.
15 Whereupon,

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

20 THE REPORTER: Please state and spell
21 your full name for the record.

22 MR. HILL: My name's Stephen Hill,
23 S-t-e-p-h-e-n, Hill, H-i-l-l. I'm Head of the
24 Toxics Cleanup Division at the Regional Water
25 Quality Control Board in Oakland. Would you like

1 that address?

2 REPORTER: No, that's fine; thank you.

3 DIRECT TESTIMONY

4 MR. HILL: My duties as the Head of the
5 Toxics Cleanup Division at the Board are to
6 oversee about 20 staff that oversee cleanup
7 throughout the Bay Area for a full range of
8 different cleanup sites, all the way from gas
9 stations to federal Superfund sites.

10 I review draft orders and directive
11 letters. I assure that our cleanups comply with
12 policy. I make presentations to the Board and in
13 other settings.

14 What I'd like to do is make a few
15 opening remarks about the Board in general, and
16 our cleanup process; say a few words about what
17 we've been doing with the San Francisco Energy
18 Reliability project and our role as oversight
19 agency for cleanup. And then try and address any
20 questions that you may have.

21 I think I should be able to do this in
22 about 15 minutes if that's okay.

23 HEARING OFFICER FAY: Okay.

24 MR. HILL: So, for background, the
25 Regional Board is one of nine regional boards in

1 the State of California. We're part of Cal-EPA.
2 The boards were created in the 1960s by the
3 Porter-Cologne Water Quality Control Act. Our
4 initial focus has been on water quality, but that
5 role has expanded to address site cleanup, as
6 well. And I'll go into that more.

7 Cleanup involves roughly 30 percent of
8 our Board's budget and staffing, so it's a pretty
9 substantial program.

10 Our authority to do cleanup comes from
11 the Porter-Cologne Act that I mentioned earlier,
12 specifically sections 13267 allow us to require
13 technical reports of parties who may have caused
14 contamination or other things. And section 13304
15 allows us to direct parties to conduct cleanup and
16 abatement activities. Those are the two code
17 sections that we principally use.

18 In other words, the law provides the
19 Board a clear authority for site characterization
20 and remediation.

21 Our authority also addresses protection
22 of water quality as well as human health. The
23 authority to regulate human health comes through
24 the nuisance provisions of the Water Code.

25 And one thing I'd like to note here is

1 that the statute gives us discretion on the
2 cleanup process. It's not as prescriptive as the
3 law that DTSC goes by. We tend to focus on
4 performance standards and end results with some
5 discretion on how we get to that point.

6 Our policy for cleanup is found in two
7 places. Our State Board has a resolution 92-49
8 which specifies the process and the things that
9 we're supposed to consider in cleanup, and the
10 factors we're supposed to address on setting
11 cleanup standards.

12 And then our basin plan; each regional
13 board has a basin plan which states policy. And
14 our basin plan has various policies for cleanup,
15 as well.

16 I'll touch briefly on process for
17 cleanup. Basically we are directing third parties
18 to investigate and clean up. We're not actually
19 doing the work, ourselves. The basic steps
20 involve us asking those parties to confirm the
21 release; conduct remedial investigation, sometimes
22 referred to as site characterization; perform
23 various interim steps to deal with the media
24 problems, removing source control, obvious
25 hazards; doing risk assessments; prepare cleanup

1 plans and then implementing those cleanup plans.

2 Sometimes that implementation involves
3 risk management for things that can't be actively
4 cleaned up.

5 The type of oversight we provide depends
6 on the case type. I mentioned earlier some of our
7 cases are less complex, some are more complex.
8 The more complex the cases we will issue orders
9 under section 13304 at the more complex sites.
10 Those will be issued by the Board, itself. At the
11 simpler sites we will oftentimes proceed with
12 directives under 13267, and it'll be overseen just
13 by the staff.

14 HEARING OFFICER FAY: How would you
15 characterize the project site?

16 MR. HILL: This one falls in the middle.
17 It's a voluntary cleanup. We often don't use the
18 Board orders for voluntary cleanups where
19 responsible parties are willing to propose work
20 that we feel is adequate. If we felt there was
21 very substantial contamination or very substantial
22 public interest that would cause it to tip over
23 into a Board order.

24 Let me also touch on when we require
25 cleanup. We would require active cleanup to

1 accomplish source control. For instance, if you
2 have free product floating on the water table or
3 very high concentrations in a source area we would
4 require cleanup to protection of health, to
5 protect water quality and to address other
6 environmental concerns such as nuisance. In other
7 words, it may smell pretty bad even if it meets
8 those other standards.

9 When we do that we consider both current
10 uses and proposed future uses. And very often
11 you'll find a mix, we will ask for a mix of both
12 cleanup and risk management. An example of that
13 would be a groundwater cleanup that will take many
14 years, and in the meantime we would require a deed
15 restriction on the property to make sure that no
16 new wells were installed.

17 And here I guess I'd like to stress we
18 don't specify a cleanup method, we specify a
19 cleanup standard. And we review and approve
20 proposals for how a responsible party wishes to do
21 that. That's something that's actually set in
22 law.

23 I wanted to touch on the role of the
24 Board as a Cal-EPA-designated administering
25 agency. And that term administering agency comes

1 from a law that was passed in mid 1990s. We know
2 it as AB-2061. It's part of the Health and Safety
3 Code. It was passed to assure that there would be
4 a single lead agency for sites.

5 And that process allows a responsible
6 party to request a particular oversight agency.
7 And Cal-EPA site designation panel hears arguments
8 pro and con; makes a determination.

9 Once an agency is designated under this
10 law it requires that agency to consider other
11 agencies' concerns and act on behalf of all
12 agencies regarding cleanup issues.

13 So, in this case the Water Board was
14 designated as the administering agency back in
15 1999. DTSC is a key agency we coordinate with
16 because they have their expertise in soil cleanups
17 and human health protection.

18 At the end of the process, or the end of
19 the active cleanup, there is what's called a
20 certificate of completion that's issued by the
21 administering agency. And that basically provides
22 some assurance to the responsible party that no
23 one is going to come back and ask them to do it
24 again in the future.

25 There may still be some what I would

1 call O&M activities to be done, risk management,
2 cap maintenance, things like that. But that would
3 signify the end of the active cleanup.

4 We oversee about 12 cases under this
5 program. And also contain certain procedural
6 requirements, most of which were addressed in our
7 regular process; things having to do with public
8 notice prior to actions and things like that.

9 Let me also touch generally on public
10 participation in our Board oversight process. The
11 Board's decision process is inherently public, but
12 not all cleanup decisions are made at the Board
13 level. In many cases, and probably in this case,
14 the cleanup decision would be made at a staff
15 level after appropriate hearing and comment.

16 The Board recently developed public
17 participation tools to assure adequate public
18 participation at a staff level. And the key
19 principle in these tools is to -- the level of
20 effort to the need, the contamination severity and
21 the public interest in the site.

22 And those tools involve determining what
23 category a site is in. Is it a category where
24 there's a lot of public interest, there's a
25 significant contamination issue. Or is it at the

1 other end of the spectrum. So the things that the
2 agency does on public participation depends on
3 what category it's placed in by staff.

4 So after the tools identify which public
5 participation steps would happen at each category,
6 and the types of activities would include initial
7 notices to all sites basically letting the
8 surrounding neighborhood and the interested public
9 know that the investigation and cleanup will be
10 going on.

11 Thirty-day public comment periods for
12 key reports. Fact sheets that would be issued to
13 mailing lists of people in the neighborhood and
14 other interested parties. Information reports,
15 such as a risk assessment. Responsiveness
16 summaries if the public does submit comments.

17 We assigned public participation
18 categories to all our sites earlier this year.
19 This particular site was initially assigned a
20 lower category because there really wasn't very
21 much going on at the site. And we are reassessing
22 that and will probably give it a higher category
23 to make sure that additional public participation
24 occurs.

25 So at this point I'd like to shift over

1 to talking about the San Francisco Electric
2 Reliability project and our role with that
3 project.

4 As I mentioned earlier the Regional
5 Board was designated as the administering agency
6 in 1999 for the 26-acre San Francisco site that
7 includes this project site, as well as a Muni
8 parcel and the Port of San Francisco parcel.

9 The Board Staff has reviewed a number of
10 documents with respect to this larger site prior
11 to 2002. We've reviewed and approved a remedial
12 investigation, a risk assessment and risk
13 management plan for the Muni parcel. We've
14 reviewed and approved remedial investigation and
15 risk assessment for the Port parcel.

16 And just to refresh your memory, the
17 Port parcel is where the four-acre San Francisco
18 Energy recovery project parcel was carved out of,
19 so it's a smaller part of the original Port
20 parcel.

21 So, since 2002 there has not been --
22 there wasn't recent activity after 2002. More
23 recently we have this energy project coming along
24 and the Muni parcel under construction.

25 We started discussions with Commission

1 Staff earlier this year with respect to the San
2 Francisco Energy Recovery project. We met on
3 January 31st specifically to discuss data gaps and
4 what additional work was needed on the site. That
5 meeting was attended by Energy Commission, San
6 Francisco PUC, Water Board and DTSC Staff.

7 And we reached a consensus on what
8 additional data was needed, and that became the
9 basis for the data gaps work the City has just
10 completed.

11 Let me shift now to some questions that
12 I think that the Commission may have, and I'll
13 touch on those, each of these in turn. I
14 understand the Commission was interested to know
15 what process we will follow to determine whether
16 remediation is necessary.

17 And basically earlier I described the
18 four- or five-step process that we will use in
19 terms of directing the responsible party to
20 complete the remedial investigation; update the
21 risk assessment; prepare what I would call a
22 cleanup plan, I think it's being referred to as a
23 SCP in this case; and a risk management plan. And
24 it would be the regular sequential process that
25 our Board uses. And I'd be happy to elaborate on

1 any of the procedural aspects of that if you would
2 like to hear more.

3 I understand the Commission's also
4 wanting to know if the performance standards for
5 public health and worker safety would be
6 implemented in any remediation required, and I'd
7 like to assure the Commission that that would be
8 the case. The Water Board uses the same
9 acceptable risk thresholds as USEPA and other Cal-
10 EPA agencies.

11 And that's conventionally expressed in
12 two different forms for potential carcinogens. We
13 talk about a 10 to the minus 6, 10 to the minus 4,
14 excess cancer risk. So-called one in a million or
15 one in ten thousand.

16 And we normally apply that 10 to the 6
17 standard at residential areas; and 10 to the minus
18 5 at commercial and industrial sites. So this is
19 consistent with the draft Commission performance
20 standards of 10 to the minus 5 for public health
21 and worker safety.

22 I understand the Commission was also
23 curious to know that if remediation was required,
24 what sorts of measures would be possibly included
25 for this site. And I think -- I don't want to get

1 ahead of ourselves; we don't have a complete
2 investigation yet. There's still some -- we're
3 waiting to see some of the data gap results in a
4 written form. So it depends a bit on the
5 contaminant and location type for immobile soil
6 contaminants such as metals, excavation is a very
7 common remediation method.

8 For contaminants that are more mobile in
9 the soil, such as fuels, we have the technology
10 called soil -- extraction, which we apply a vacuum
11 to the soil and basically just remove the vapors,
12 treat them if necessary; that cleans up the soil.

13 Turning to groundwater, if the
14 contaminants are mobile, they can migrate, things
15 like solvents and fuels, there are a variety of
16 technologies what we call pump-and-treat,
17 installing a well, pumping out the water, treating
18 it, and then discharging it to say a storm drain
19 or a sand -- sewers; probably the most familiar
20 method.

21 But we also have other technologies such
22 as permeable reactive barriers where you would
23 install iron or some other material in a trench
24 and allow the contaminated groundwater to flow
25 through it and remove the contaminants as it goes

1 through the wall. Bi- degradation is a commonly
2 used technology now, especially for fuels, but
3 increasingly for solvents. That's an inplace
4 method. And also rapid oxidation, where you
5 introduce an oxidant such as ozone or hydrogen
6 peroxide to actually chemically break down the
7 compounds.

8 For immobile contaminants in groundwater
9 such as heavy oils or metals, treatment is much
10 more difficult and very often those are managed in
11 place if they're not posing a threat to beneficial
12 uses of groundwater, and they're not threatening
13 to daylight.

14 The Commission also wondered if we
15 thought that those sorts of remediation measures
16 can be accomplished at this site while observing
17 the performance standards. And I argue that we do
18 that all the time in our cleanup sites. We
19 typically require worker health and safety plans
20 at sites where cleanup or construction has the
21 potential for significant construction worker
22 exposure.

23 And the level of effort would, of
24 course, depend on what remediation is being
25 proposed. Excavation would require more

1 considerable health and safety measures; some of
2 the in-place measures would require less.

3 The Commission also wondered what kind
4 of things do you normally require in the cleanup
5 plan or the SCP to make sure the standards were
6 complied with. And all cleanup and risk
7 management plans include monitoring and reporting
8 requirements. The purpose there is to document
9 the implementation of the cleanup plan and also to
10 document trends in groundwater concentrations and
11 soil cleanup.

12 We also inspect sites and meet with
13 responsible parties to monitor progress. And in
14 the event we have noncompliance our statute gives
15 us the authority to take enforcement action
16 against parties that are in violation of our
17 cleanup directives. We can impose civil liability
18 administratively through our Board, ACL. We can
19 also refer noncompliant parties to the Attorney
20 General for a civil liability in front of a court
21 for injunctive relief. We can also refer to the
22 DA.

23 I think I'll stop there and see if there
24 are any further questions. Thank you.

25 HEARING OFFICER FAY: I'd just like to

1 ask you, Mr. Hill, have you looked at the proposed
2 conditions of certification that the staff has
3 presented?

4 MR. HILL: Yes, I have.

5 HEARING OFFICER FAY: In the area of
6 soil and water and also waste management?

7 MR. HILL: Yes, I have. I've seen those
8 most recently summarized in the City's May 1
9 submittal to this panel. And I've reviewed those
10 and those are consistent with the process we've
11 described.

12 In fact, we are poised to issue a
13 directive to the City that would basically
14 incorporate those conditions.

15 HEARING OFFICER FAY: Okay. Then, if
16 you don't mind, we'll offer a brief opportunity, a
17 very brief opportunity for some of the parties to
18 ask questions. Ms. Sol,, any questions?

19 MS. SOL : I have maybe two questions
20 for you, Mr. Hill.

21 EXAMINATION

22 BY MS. SOL :

23 Q I believe that in the middle of 2005 the
24 City had asked the Regional Water Quality Board if
25 it could apply the risk management plan and site

1 management plan for Muni to this site, is that
2 correct?

3 A I believe that's correct, yes.

4 Q But we're now agreed -- and we have
5 agreed to abide by those documents until an
6 updated document is available, are you aware of
7 that?

8 A I believe that's correct, yes.

9 Q And the other question is the City
10 prepared a report from the additional data gap
11 work that you referred to. A draft report, I
12 believe, was submitted in March. Are you familiar
13 with that?

14 A I understand that raw data was submitted
15 to the Commission and we got a copy. But we have
16 not -- we gave that a cursory review, but we're
17 waiting for the full report before we give it a
18 full review.

19 Q Okay. And a final report was submitted
20 yesterday?

21 A My staff has received that report and
22 they have not reviewed it. I suspect that we
23 would probably be still looking for what we
24 consider an RI report before we would wrap up that
25 stuff.

1 MS. SOL : Okay, thank you, Mr. Hill.

2 HEARING OFFICER FAY: Mr. Ratliff, any
3 questions?

4 MR. RATLIFF: Yes.

5 EXAMINATION

6 BY MR. RATLIFF:

7 Q I'd like to ask Mr. Hill to essentially
8 indicate whether or not the Energy Commission
9 Staff and the staff of the Water Board are going
10 to enter into a memorandum of agreement or a
11 memorandum of understanding concerning the
12 remediation activities.

13 A That's correct. We have exchanged
14 drafts of the memorandum of agreement; and I
15 believe the ball's in the Commission's court at
16 this point. We have a draft we're satisfied with;
17 we're prepared to sign that as soon as we hear
18 back and have a mutually agreeable document.

19 I don't foresee any difficulty in doing
20 that; it's a fairly straightforward document.

21 Q And just to clarify, that document will
22 allow the Commission Staff to act in a consultive
23 role with the Regional Board Staff to basically
24 provide their opinions to the staff regarding any
25 cleanup remediation measures, is that correct?

1 A That's correct.

2 MR. RATLIFF: Okay, thank you.

3 HEARING OFFICER FAY: Anything further?

4 MR. RATLIFF: No.

5 HEARING OFFICER FAY: Mr. Sarvey?

6 MR. SARVEY: Yeah.

7 EXAMINATION

8 BY MR. SARVEY:

9 Q In case there's a disagreement in
10 conditions of certification who has authority over
11 the site, the Regional Water Quality Board or the
12 CEC?

13 MS. SOL : Objection, Your Honor, that's
14 a legal question.

15 MR. RATLIFF: There are a couple of
16 things going on here. First of all, Mr. Hill is
17 coming here today not to present testimony, not to
18 be cross-examined, but to basically provide
19 information to the Committee.

20 I would ask that he not be asked to
21 provide legal conclusions to questions that may be
22 unanswerable by any of us. But, also that he not
23 be cross-examined. I think that the question
24 should be posed to the Committee and then
25 reflected back to Mr. Hill. I think that would be

1 the appropriate process.

2 HEARING OFFICER FAY: Well, of course,
3 we allowed the other parties to question him
4 directly. But, let me interrupt. Mr. Hill, are
5 you staff counsel at the Water Board?

6 MR. HILL: No, I'm not, I'm basically
7 overseeing technical staff. I do not have legal
8 qualifications. And I don't think I would have an
9 answer to that question because I don't have a
10 legal background.

11 HEARING OFFICER FAY: Okay. That may
12 just be something that the parties would have to
13 address in their briefs if they think that the
14 conditions are not satisfactory.

15 Anything else, Mr. Sarvey?

16 MR. SARVEY: Yeah.

17 BY MR. SARVEY:

18 Q You mentioned that you'd received the
19 draft report. Can you tell me who you received
20 that draft report from?

21 A Could you clarify which report you're
22 referring to?

23 Q The report, the investigation report
24 that was submitted on May 1, 2006. You said you
25 just received it. I'm wondering who you received

1 it from.

2 A I believe that was on the Energy
3 Commission's website, I believe that's where I got
4 it.

5 Q And does the adjacent Muni site have a
6 permit to discharge water to the Bay?

7 A The adjacent Muni site applied for and
8 received permit coverage under the general permit
9 for construction, for the portion of the site
10 which does drain to the Bay. The bulk of the site
11 does not drain to the Bay and is not subject to
12 permitting requirements.

13 Q And have you received any complaints
14 from the CEC Staff on dust control measures at the
15 Muni site?

16 A From the Commission Staff?

17 Q Yes.

18 A No, I have not.

19 MR. SARVEY: Okay, thank you, that's
20 all.

21 HEARING OFFICER FAY: Okay, thank you.

22 EXAMINATION

23 PRESIDING MEMBER BOYD: Mr. Hill, a
24 quick question, and I don't know how much
25 experience you've had with other power plant

1 siting cases within the jurisdiction of your
2 Board, but do you see the issues you're dealing
3 with at this site as unusual in any way, as
4 compared to other sites?

5 In your opening remarks you said you'd
6 rate this somewhere in the middle; a little later
7 on you said you rated it initially lower, and now
8 you're considering perhaps upgrading the rating.

9 So, I'm a little -- I'd like you to
10 clarify that and get back to the first question,
11 which is, is this unusual in any way.

12 MR. HILL: Sure. On the public
13 participation piece, the narrower part of the
14 question, we were not really thinking about the
15 energy, or the power plant project for this middle
16 chunk of the parcel when we made that
17 categorization.

18 And as we became more aware of that,
19 that caused us to rethink that. Because obviously
20 that's a fairly significant proposal on a Port
21 parcel that previously didn't have any
22 redevelopment plans in the near term. So that
23 would be a reason for the re-assessment there.

24 In terms of the overall degree of
25 contamination or concern at this site, I would say

1 it's pretty typical for bayside waterfront
2 property in San Francisco where you have some of
3 the land has been filled; and the fill materials
4 were placed pretty much wherever they could be
5 from wherever they could be obtained.

6 So you have a bit of a hodge-podge in
7 the fill. And whenever that happens you have to
8 take a look around and see what's there.

9 We don't see anything that's really
10 dramatic here that would pose a particular threat
11 in terms of human health or water quality, though.

12 PRESIDING MEMBER BOYD: Thank you.

13 HEARING OFFICER FAY: All right. Mr.
14 Hill, that concludes our questions. And we very
15 much appreciate you coming down today and offering
16 your testimony. Thank you.

17 MR. HILL: Thank you very much.

18 HEARING OFFICER FAY: Before we continue
19 on I'd just like to mention a few preliminary
20 matters and ask if there are any others mentioned.
21 I'll call the parties' attention to the fact that
22 the Committee issued a revised tentative exhibit
23 list on May 26th, and that indicates the days that
24 all or portions of any of the exhibits have been
25 introduced into the record.

1 If one of your exhibits has no date by
2 it, then as of now it is not part of the record.
3 And if that remains the case at the close of
4 business today, it will never be part of the
5 record. So, I hope the parties have reviewed the
6 exhibit list. That's why we keep sending it out
7 with revisions.

8 Any other preliminary matters before we
9 get started?

10 MS. SOL : Your Honor, I had three brief
11 matters that I want to bring to the Committee's
12 attention and your attention.

13 The first is that we will do everything
14 we can, and we would urge the other parties to
15 cooperate with us; we would really like to get
16 these hearings done today. If there's anything
17 that we can do in terms of having snacks brought
18 in so that we can stay as long as it takes to
19 finish this, we would very much appreciate.

20 We understand that if there's another
21 hearing date that would be about a month from now,
22 and that would be a very significant setback to
23 our schedule. So we would really urge that we do
24 everything we can to get done today if at all
25 possible.

1 The second thing that I'd like to note
2 with regard to the hearing notice that went out is
3 that we would like to do some very brief redirect.
4 Last hearing we were trying to get through so that
5 Mr. Greenberg didn't have to reappear. But we
6 have a few questions that we think are important
7 to clarify the record on air quality.

8 And my final point is that on public
9 health, the notice failed to note that Mr. Jerry
10 Salamy has been added to a panel. We gave notice
11 of that several, I believe perhaps a month or a
12 couple weeks ago. I have declarations from Mr.
13 Salamy, and I think that it will be helpful to
14 have him there so we can have full and complete
15 answers.

16 HEARING OFFICER FAY: Yes. I want to
17 confirm that all three of those points you raised
18 with me. And we do have the email regarding Mr.
19 Salamy. And I'd note that that was sent to all
20 the parties.

21 Okay. Do you want to go ahead then and
22 bring up your air quality witnesses for redirect?

23 MS. SOL : Yes, Your Honor.

24 MR. SARVEY: I'm going to have to
25 object, Mr. Fay.

1 HEARING OFFICER FAY: What's the
2 problem, Mr. Sarvey?

3 MR. SARVEY: Staff doesn't have their
4 witnesses here, and --

5 HEARING OFFICER FAY: Well, is staff
6 objecting?

7 MR. RATLIFF: No.

8 HEARING OFFICER FAY: Okay.

9 MR. SARVEY: I think it's a little
10 unusual to have redirect after a seven-day recess.

11 HEARING OFFICER FAY: It is a little
12 unusual. We're --

13 MR. SARVEY: Well, I --

14 HEARING OFFICER FAY: -- just trying to
15 accommodate because the applicant accommodated the
16 staff witness who had a scheduling conflict.

17 MR. SARVEY: I accommodated the staff
18 witness, as well, and I had many more questions I
19 wasn't allowed to ask, so, like I say, I'm going
20 to object for the record.

21 HEARING OFFICER FAY: Okay, your
22 objection is noted.

23 MS. SOL : Okay, I believe Mr.
24 Rubenstein has already been sworn, so I'm just
25 going to go ahead and ask the questions.

1 Q Mr. Rubenstein, you testified that the
2 SFERP PM10 emission rate would be similar to or
3 potentially a little bit lower than that of
4 Potrero 3 on a pounds-per-megawatt-hour basis. Do
5 you recall that testimony?

6 A Yes, I do.

7 Q Do you believe that the overall annual
8 PM10 emissions from the SFERP would be similar to
9 or potentially a little bit lower than that of
10 Potrero 3?

11 A I believe the annual PM10 emissions from
12 SFERP would be much lower than those from Potrero
13 3, because SFERP is a much smaller plant.

14 Q Would there also be some operational
15 characteristics of Potrero 3 that would impact
16 your answer?

17 A Yes. In addition, SFERP is designed to
18 be, and will be, operated as a peaking facility.
19 And consequently, I would expect it would operate
20 fewer hours of the year and at lower loads than
21 Potrero 3.

22 And the combination of the difference in
23 size and the operating characteristics would both
24 result in lower annual emissions of PM10 from
25 SFERP as compared with Potrero 3.

1 Q Okay. At the last hearing Mr. Sarvey
2 handed you a page from the southeast waterfront
3 EIR containing tables showing air quality impacts
4 from various projects analyzed in that EIR. Do
5 you recall that?

6 A Yes, I do.

7 Q Okay.

8 MS. SOL : Your Honor, I would like to
9 introduce a portion of the southern waterfront EIR
10 that that table was drawn from, just to provide a
11 little bit more context.

12 I'm going to clarify that Mr. Sarvey had
13 requested the southern waterfront EIR and I
14 believe it was the Illinois Bridge EIR in one of
15 his data requests. It is not our intention to
16 introduce those entire documents into the record.
17 They were provided to Mr. Sarvey.

18 But I think that it would be excessive
19 to put the entire documents into this record. But
20 we believe that a little bit of context would be
21 helpful.

22 Shall I distribute the exhibit?

23 HEARING OFFICER FAY: Yes, and is it an
24 excerpt from the southern waterfront EIR?

25 MS. SOL : It is, it's the excerpt that

1 Mr. Sarvey referred to when he cross-examined Mr.
2 Rubenstein. But it provides a little bit more
3 context.

4 HEARING OFFICER FAY: So, this is pages
5 D-7 and 166, as described on the last page of the
6 exhibit list, exhibit 92?

7 MS. SOL : Actually what I was intending
8 to provide was pages D-1 through D-8, which
9 includes D-7.

10 HEARING OFFICER FAY: Okay. Let's mark
11 this for identification as exhibit 92(a).

12 MR. SARVEY: Mr. Fay, I have the exact
13 document here that she requested, the southern
14 waterfront EIR. You requested a copy for
15 docketing for the exhibit, so I brought the whole
16 thing.

17 HEARING OFFICER FAY: Okay. Well, we
18 may -- show it to counsel, and if she's
19 comfortable we'll just re-identify that as exhibit
20 93, and use it hereafter.

21 MS. SOL : Your Honor, I believe that
22 having the entire EIR introduced would be
23 excessive. I haven't had the opportunity to
24 review the entire thing, and there's been, you
25 know, there haven't been witnesses to sponsor and

1 talk about the entire thing, and put it into
2 appropriate context.

3 So, I'm worried that if we introduce the
4 entire exhibit, people might cite to it, take, you
5 know, without the appropriate putting into context
6 and updating. After all, the document is a 1999
7 document.

8 So I think the better approach would be
9 to take those portions that Mr. Sarvey wanted to
10 refer to and look at those, and give us an
11 opportunity then to respond.

12 HEARING OFFICER FAY: All right, well,
13 let's go ahead and mark this as exhibit 92(a).
14 And would you identify it for us, specifically,
15 Ms. Sol,?

16 MS. SOL : Yes, Your Honor. It's the
17 southern waterfront EIR appendix D; and it's pages
18 D-1 through D-8.

19 (Pause.)

20 BY MS. SOL :

21 Q Okay, Mr. Rubenstein, do you have
22 anything to add to your prior response regarding
23 the southern waterfront EIR and the tables showing
24 air quality impacts from various projects analyzed
25 in that EIR?

1 A Yes, having reviewed all of appendix D,
2 as well as -- rather, including the page that Mr.
3 Sarvey handed me, I can indicate that the data on
4 the page he handed out in terms of the potential
5 impacts from these other facilities would not
6 change my conclusions regarding cumulative impacts
7 for SFERP.

8 The reason is that when I compare the
9 PM10 concentrations shown on page D-7 of exhibit
10 92(a), both for the 24-hour average and annual
11 average concentrations, when I compare those
12 values with the values included in the cumulative
13 impacts analysis provided with supplement A, which
14 is exhibit 15, and in particular I'm referring to
15 appendix 8.1F, as in frank, which is the air
16 quality appendix relating to the cumulative
17 impacts analysis, there are three tables included
18 in that analysis which provide the results of a
19 cumulative dispersion modeling analysis that is
20 analogous to what's presented on page D-7 from the
21 southern waterfront EIR.

22 For example, taking a look at the
23 maximum concentration shown on page D-7 for 24-
24 hour average PM10, which is 1.16 mcg/cubic meter,
25 all that would do in my cumulative impacts

1 analysis is modify the value that I show for other
2 cumulative sources. Meaning sources that are not
3 necessarily reflected in the background air
4 quality measurements.

5 And in the case of 24-hour average PM10,
6 the number would change from 8.7 mcg/cubic meter
7 up to 9.9, assuming that all of the facilities
8 identified in the southern waterfront EIR were
9 built and operational, but not until some time
10 after 2003, which is the data upon which our
11 background air quality measurements are made.

12 So, it's a fairly hypothetical
13 situation. But even if that was the case, and I
14 were to add all of these impacts on top of the
15 impacts we modeled, it would not change our
16 conclusions with respect to cumulative impacts.
17 Which is that the 24-hour average PM10 impacts and
18 the annual average PM10 impacts from this project
19 contribute to levels that on a worst case already
20 exceeding the air quality standards, which is one
21 of the reasons why we're providing mitigation.

22 But the changes are minor in terms of
23 both the increment and the total cumulative
24 impact. And as a result, my conclusions would not
25 change regarding SFERP.

1 Q And as you mentioned, the City is
2 proposing to mitigate its PM10 impacts in any
3 event?

4 A That's correct. And as I said earlier,
5 that mitigation is substantially in excess of the
6 project's PM10 emissions.

7 Q Do you recall questions by Mr. Sarvey
8 regarding a simple cycle power plant in
9 Massachusetts with permit limits of 2.5 ppm for
10 NOx and 6 ppm for ammonia slip?

11 A Yes, I do.

12 Q Are you familiar with that plant?

13 A Yes, I am. That's the PPL Wallingford
14 Power Plant in Massachusetts. The reason why I'm
15 familiar with that plant is that I sit on the BACT
16 Scientific Review Committee for the South Coast
17 Air Quality Management District.

18 And that plant was brought before the
19 Committee last fall to be potentially listed by
20 the South Coast AQMD as an example of best
21 available control technology.

22 Based on the Committee's recommendation,
23 the South Coast District decided not to list that
24 plant because it did not demonstrate the ability
25 to consistently meet those limits, even with

1 periodic, just periodic source testing. And to
2 the best of my recollection that plant does not
3 require continuous monitoring, which is a common
4 enforcement tool in California.

5 Consequently the South Coast District
6 did not list that as an example of BACT.

7 PRESIDING MEMBER BOYD: Mr. Rubenstein,
8 remind me again the technology on the plant in
9 question.

10 MR. RUBENSTEIN: Yes. That's a simple
11 cycle gas turbine plant equipped with selective
12 catalytic reduction.

13 PRESIDING MEMBER BOYD: Thank you.

14 ASSOCIATE MEMBER GEESMAN: Do you happen
15 to recall how periodic the periodic monitoring
16 was?

17 MR. RUBENSTEIN: Yeah, there were just
18 annual source tests, and even with just annual
19 source tests I believe there were four or five
20 identical units, I don't think there was a single
21 year in which all five of the units met both NOx
22 and ammonia slip limits.

23 BY MS. SOL :

24 Q Do you know what the South Coast AQMD's
25 most recent BACT determination has been for NOx

1 emissions from simple cycle combustion turbine
2 similar to those proposed for the SFERP?

3 A Yes. The most stringent and most recent
4 BACT determination from the South Coast was 3.5
5 ppm NOx level, in combination with a 5 ppm ammonia
6 slip. The South Coast District is relatively
7 unique in that they make an affirmative BACT
8 determination for ammonia. Most air districts in
9 California do not.

10 And as I've indicated before there is a
11 linkage between the NOx and ammonia emission
12 limits where increasing the stringency of one
13 makes it more difficult to comply with the other.

14 The South Coast District, because of the
15 air chemistry in that part of the state, has
16 chosen to more stringently regulate ammonia than
17 many other parts of California. In this example,
18 dealing with simple cycle combustion turbines,
19 they've actually tilted the balance differently
20 than other air districts. The South Coast
21 requiring more stringent ammonia slip level and
22 allowing a slightly higher NOx level as compared
23 with, in this case, the Bay Area District
24 requiring a more stringent NOx level and allowing
25 a higher ammonia slip level.

1 And I think those differences are
2 reasonable and are explainable to the differences
3 in air chemistry between the two regions.

4 Q And so are you aware of the South Coast
5 AQMD ever requiring an applicant to meet both a
6 2.5 ppm limit for NOx and a 5 ppm ammonia slip
7 limit for a simple cycle combined turbine project?

8 A No, I am not.

9 Q And are you aware of any instances in
10 which the Bay Area Air Quality Management District
11 allowed an entity to offset its NOx emissions by a
12 program other than the purchase of emission
13 reduction credits?

14 A No. Under Bay Area District regulations
15 any emission reductions that are proposed to be
16 used as offsets have to qualify as emission
17 reduction credits under the District's banking
18 rule. There is no way to avoid those
19 requirements.

20 And as a result, proposing emission
21 reductions based on things such as vehicle
22 scrappage programs, modifications to mobile
23 sources are extremely rare if not unheard of,
24 because those types of reductions simply can't
25 satisfy the requirements of the banking rule.

1 MS. SOL : That's all I have, Your
2 Honor.

3 HEARING OFFICER FAY: All right. And
4 Mr. Rubenstein was your only recalled witness?

5 MS. SOL : Yes, Your Honor.

6 HEARING OFFICER FAY: Okay. Mr.
7 Ratliff, any questions?

8 MR. RATLIFF: No.

9 HEARING OFFICER FAY: Mr. Sarvey?

10 MR. SARVEY: Yeah, a couple matters.
11 First I want to renew my objection to testimony
12 received a week after, or that applicant's had a
13 week to examine the questions and his answers, and
14 then come back and provide other answers. I think
15 that's totally out of the ordinary, I've never
16 seen before in a Commission proceeding. And I
17 want to object to it one more time.

18 The second issue is at the last hearing
19 you requested a complete copy of the southern
20 waterfront EIR. And I provided it. And I'm going
21 to ask to have the entire document because, once
22 again, someone is taking information that's out of
23 context. And I'll expose that in my cross-
24 examination of Mr. Rubenstein.

25 So, those are the two procedural matters

1 first that I wanted to comment on.

2 And I'd like to ask Mr. Rubenstein a
3 couple questions.

4 RECROSS-EXAMINATION

5 BY MR. SARVEY:

6 Q Mr. Rubenstein, do you recall the
7 witness from the Bay Area Air Quality Management
8 saying that he would accept real-time ERCs as
9 mitigation for the project in the last hearing
10 that we had?

11 A I don't believe that's what Mr. Bateman
12 said. So, no, I don't recall that he said that.

13 Q Can you relate to us what your
14 understanding is of what he said?

15 A Well, the transcript will speak for
16 itself, but my recollection is that he indicated
17 that theoretically it would be possible to use
18 those kinds of reductions. As I explained, while
19 that may be possible in theory, the fact is that
20 those types of reductions would have to be banked
21 under the District's emissions banking rule.

22 And in my experience, which is very
23 current because I'm attempting to bank mobile
24 source emission reductions in two air districts in
25 California right now, getting mobile source

1 reductions or other types of, as you refer to
2 them, real-time reductions is extremely difficult
3 and very challenging. It's rarely been approved.

4 Q Earlier you said it had never been
5 approved. Are you changing your testimony to
6 rarely been approved? Is that your testimony?

7 A To the best of my knowledge mobile
8 source reductions have been approved only once in
9 the State of California, and they were -- as
10 emission reduction credits, they were approved for
11 the Otay Mesa Power Plant. And getting that
12 approval required an amendment to the state
13 implementation plan. It was an extraordinary
14 process. And to the best of my knowledge is the
15 only mobile source reduction program that's been
16 approved as emission reduction credits.

17 Q In the southern waterfront EIR can you
18 describe to the Committee where the projects are
19 located in relation to the SFERP?

20 A Not precisely. It was some time ago I
21 took a look at that, but in general these projects
22 are located between downtown San Francisco and the
23 southern boundary of the City all along the
24 waterfront.

25 Q Okay. And in your review of the

1 southern waterfront EIR did you happen to read the
2 CEQA conclusions?

3 A I'm sure I did some time ago.

4 Q Did you happen to read this on page 166:
5 However, cumulative concentrations of PM10 and
6 diesel particulate cannot be quantified because of
7 the multitude of existing sources. Therefore, to
8 be conservative these emissions are deemed
9 cumulatively significant, although the project,
10 itself, would not have a significant effect with
11 regard to local concentrations of PM10 or diesel
12 particulate."

13 Did you happen to read that part of it?
14 It's on page 166.

15 A I see that.

16 Q Okay, thank you.

17 MR. SARVEY: So, with that I'd like to
18 move the entire southern waterfront EIR as an
19 exhibit, if I could, Mr. Fay.

20 HEARING OFFICER FAY: Is there
21 objection?

22 MS. SOL : Yes, Your Honor. Mr. Sarvey
23 asked Mr. Rubenstein about one page. As I
24 mentioned previously, this is an extensive
25 document done in 1999. And, you know, how

1 relevant and appropriate it is to bring those
2 conclusions about various and sundry topics cannot
3 be determined just from looking at a three-inch
4 stack of paper that was produced seven years ago.

5 HEARING OFFICER FAY: Mr. Sarvey, do you
6 have any other questions related to the southern
7 waterfront EIR? We can identify the page you just
8 asked Mr. Rubenstein about.

9 MR. SARVEY: I could go through the EIR
10 and ask dozens of questions, but I don't think we
11 have time for that. That's --

12 HEARING OFFICER FAY: Can we just
13 identify that page, then?

14 MR. SARVEY: I'd like to identify the
15 whole project EIR. I mean it's customary in
16 Energy Commission --

17 HEARING OFFICER FAY: All right, let's
18 just identify it, the entire -- we'll overrule
19 applicant's objection and identify the entire
20 southern waterfront SEIR. What's the date on
21 that?

22 MR. SARVEY: February 15, 2001.

23 HEARING OFFICER FAY: And you'll provide
24 us with a copy?

25 MR. SARVEY: Yeah, I have a copy over

1 there with the applicant that I've given them.

2 HEARING OFFICER FAY: That's marked for
3 identification.

4 MR. RATLIFF: Could I ask, is the entire
5 EIR devoted to air quality, or is it just portions
6 that are --

7 HEARING OFFICER FAY: Well, I'm
8 concerned about the time that it would take to go
9 through; and based on what Mr. Sarvey indicated,
10 that there were numerous portions he's interested
11 in, I think we may be better served by just
12 identifying the document. And if it does come up
13 again, it's marked for identification; we can
14 refer to it.

15 MR. RATLIFF: I understand, but if only
16 a portion of the document is about air quality,
17 and that's the only thing that's been addressed
18 with regard to the document, can we just limit it
19 to that?

20 MR. SARVEY: I've already asked
21 questions about water resources, as well, so, if
22 you review the transcript from the last
23 proceeding.

24 MS. SOL : Yeah, and I believe in
25 addition that it could be taken administrative

1 notice of.

2 HEARING OFFICER FAY: Well, we may
3 choose to do that if it's requested, but we're
4 marking it for identification as exhibit 92(b) and
5 that will cover the entire document.

6 That date again, Mr. Sarvey?

7 MR. SARVEY: The document's dated
8 February 15, 2001.

9 HEARING OFFICER FAY: Thank you. And we
10 want to make it explicit that we have overruled
11 your objection, Mr. Sarvey, on the redirect.

12 Do you have anything further of Mr.
13 Rubenstein?

14 MR. SARVEY: No, I'm done with Mr.
15 Rubenstein.

16 HEARING OFFICER FAY: Okay. Anything on
17 recross -- redirect, rather?

18 FURTHER REDIRECT EXAMINATION

19 BY MS. SOL :

20 Q Mr. Rubenstein, Mr. Sarvey asked you to
21 read page 166 of the southeast waterfront EIR --
22 the southern waterfront EIR. Does that paragraph
23 change your conclusions?

24 A No, it does not. The reason why it does
25 not is that paragraphs suggests that it's not

1 possible to do the type of cumulative impact
2 analysis that, in fact, is reflected in exhibit
3 15, appendix A.1F. Clearly it is possible to do
4 that type of analysis and we did.

5 And my testimony earlier remains my
6 testimony, which is that even taking into account
7 the theoretical potential additional impacts from
8 the sources identified in the southern waterfront
9 EIR, combining that with the cumulative impacts
10 that we had previously identified, my conclusion
11 regarding SFERP does not change.

12 HEARING OFFICER FAY: Anything further?

13 MS. SOL : No, Your Honor.

14 HEARING OFFICER FAY: Mr. Ratliff?

15 MR. RATLIFF: No.

16 HEARING OFFICER FAY: Mr. Sarvey?

17 MR. SARVEY: Nothing further.

18 HEARING OFFICER FAY: Okay. Thank you,
19 Mr. Rubenstein, appreciate that.

20 We'll now move to Intervenor Sarvey's
21 air quality testimony. Are you prepared, Mr.
22 Sarvey, to offer --

23 MR. SARVEY: Yes. I just have a handout
24 here.

25 HEARING OFFICER FAY: Okay.

1 (Pause.)

2 Whereupon,

3 ROBERT SARVEY

4 was recalled as a witness herein, and having been
5 previously duly sworn, testified further as
6 follows:

7 DIRECT TESTIMONY

8 MR. SARVEY: The handout I've provided
9 here is figure 2 from the southern waterfront EIR,
10 and it gives you some conception of where this
11 project is located. The applicant's characterized
12 this as somewhere between the Port and downtown.
13 And in the middle of the map there's the future
14 Muni maintenance storage facility.

15 Yes, I'm testifying --

16 MS. SOL : Your Honor, is this
17 testimony? I don't believe Mr. Sarvey has been
18 sworn yet.

19 MR. SARVEY: Yes, I have.

20 HEARING OFFICER FAY: Yes, and this is
21 part of your air quality testimony, Mr. Sarvey?

22 MR. SARVEY: Yes, it is.

23 HEARING OFFICER FAY: Okay. I think he
24 has, but I want to further identify this as figure
25 2 revised for the southern waterfront SEIR. And

1 we'll identify that as exhibit 92(c).

2 I'm sorry, go ahead.

3 MR. SARVEY: Well, as you can see, where
4 the future Muni maintenance storage facility is
5 right in the middle of the southern waterfront
6 development; and the SFERP is located right next
7 to it. That's why it's so important that this
8 project be analyzed for its cumulative impact.
9 It's not a remote project.

10 The applicant has chosen to choose two
11 diesel generators that are several miles away from
12 the project in their cumulative analysis. And
13 it's an inadequate cumulative analysis. And
14 that's what this depicts.

15 Just for a moment I want to go real
16 quickly through some of the projects that are
17 located on this map, so the Committee can
18 understand that the impacts from these projects
19 are going to be very closely distributed as the
20 same impacts as the SFERP.

21 And Bode Gravel has proposals there to
22 build a new readymix facility with the production
23 of 5000 cubic yards. Mission Valley has a
24 proposal there for next to Bode Gravels for the
25 aggregate amount that is yet to be determined.

1 Mission Valley Rocks proposal to construct a new
2 asphalt plant with an annual production of 400,000
3 to 500,000 tons per year at Pier 92.

4 And BPA has a proposal to construct a
5 readymix concrete/asphalt plant at Pier 94. USG
6 has a proposal to develop a fly ash storage
7 facility using former grain silos with an ultimate
8 volume of 100,000 tons per year.

9 RMC Pacific, proposal to develop a new
10 readymix concrete facility with an annual
11 production of 325,000 to 425,000 cubic yards.

12 Waste Resources Technologies, a proposal to
13 operate a construction demolition material
14 recovery facility that will handle 350 tons per
15 day.

16 Coach USA's proposal to develop a bus
17 storage maintenance and repair facility with 410
18 daily vehicle trips by bus. And there's also
19 several proposals by the Port to increase
20 shipping. There's the intermodal Illinois Street
21 Bridge.

22 And as you can see there's just numerous
23 projects that are surrounding the SFERP. And
24 these projects are sponsored by the Port and the
25 Port happens to be controlled by the applicant, so

1 I think it was more than an oversight not to
2 include this into a cumulative impact report. The
3 impacts from this project, as you can see from
4 what the applicant handed out in D-7 are fairly
5 substantial.

6 So I just wanted to make that point in
7 my testimony. It's already in there, but I wanted
8 to elaborate a little bit.

9 The other thing I wanted to talk about
10 was that all parties in this proceeding agree that
11 there's going to be PM2.5 impacts from this
12 project. And staff's prepared two conditions
13 AQSC-11 and AQSC-12 to mitigate the local PM2.5
14 impacts. This is the most important two
15 conditions in the entire project as far as I'm
16 concerned.

17 And as the Committee knows, I requested
18 a conference to reach an agreement with the
19 applicant and the staff on AQSC-11 and -12. And I
20 think it's important that the Committee know what
21 went on at that conference. And I also want to
22 take an unusual step to allow the applicant and
23 staff to correct me if I mischaracterize their
24 positions on this.

25 MS. SOL : Your Honor, I believe that

1 was in the nature of a settlement conference. So,
2 I believe that was in the nature of a settlement
3 conference. Those types of deliberations are
4 confidential. And the reason for that is so that
5 people can be as, you know, open to discussion and
6 suggestions.

7 But I believe that it's inappropriate to
8 allow those types of discussions into evidence.

9 HEARING OFFICER FAY: So, you're
10 objecting?

11 MS. SOL : Yes, Your Honor.

12 (Pause.)

13 HEARING OFFICER FAY: All right, we're
14 going to uphold your objection. And, Mr. Sarvey,
15 the reason is the same reason that we don't allow
16 Commissioners or Hearing Officers to attend
17 workshops or settlement conferences. It's to
18 encourage the parties to be very frank in trying
19 to come up with a solution.

20 Once they come up with a solution, then
21 that has to be, of course, put into the docket and
22 made public. And everybody can consider it and
23 argue about it.

24 But, the open back-and-forth we don't
25 want to cause any sort of intimidation in that

1 exchange. And so the applicant's objection is
2 upheld.

3 MR. SARVEY: Okay. Well, I would just
4 like to propose a condition, and I'd like to have
5 the Committee see it, if I could, at this time.

6 HEARING OFFICER FAY: Certainly.

7 MR. SARVEY: This is AQSC-11 revised.
8 The only --

9 HEARING OFFICER FAY: Okay, excuse me,
10 Mr. Sarvey. We're going to mark this as exhibit
11 93, if that's acceptable to you?

12 MR. SARVEY: Sure.

13 HEARING OFFICER FAY: Will this be made
14 part of your testimony?

15 MR. SARVEY: Yes.

16 HEARING OFFICER FAY: Okay.

17 MS. SOL : Your Honor, I'm going to have
18 to object again. I mean this is a condition of
19 certification that's being proposed at this time
20 without giving -- you know, our testimony is done.
21 We don't have the opportunity to comment on it. I
22 think it's inappropriate to be introduced as part
23 of testimony, as opposed to submitted in advance
24 so that people have an opportunity to provide
25 their response and testimony.

1 HEARING OFFICER FAY: All right. Well,
2 I think in fairness to Mr. Sarvey and all the
3 other parties, we're going to let this in and give
4 leave to the applicant and the staff to respond.
5 You can respond specifically with ten days, or
6 simply choose to respond in your briefs.

7 MS. SOL : Thank you, Your Honor.

8 HEARING OFFICER FAY: Go ahead, Mr.
9 Sarvey.

10 MR. SARVEY: Basically the only thing
11 that was agreed upon in our telephonic conference
12 with the staff and the intervenors about the
13 number \$800,000 gave the applicant a realistic
14 chance to achieve the mitigation. And that's why
15 I'm proposing this.

16 And the applicant expressed that they
17 were uncomfortable with --

18 MS. SOL : Your Honor, if he is
19 testifying about the confidential settlement
20 discussions that you just indicated were not to
21 be --

22 MR. SARVEY: That was in an email,
23 excuse me. I emailed that to all the parties
24 after the conference. That's not confidential.

25 HEARING OFFICER FAY: All right, but --

1 MR. RATLIFF: The email was a
2 discussion, a description of the settlement
3 discussions, themselves. And I don't see any
4 difference between describing the settlement
5 discussions in an email and then reiterating it
6 here, or just talking about what the settlement
7 discussions were, if we're going to do that.

8 HEARING OFFICER FAY: I think you're
9 just going to have to observe our limitation on
10 this.

11 MR. SARVEY: Okay.

12 HEARING OFFICER FAY: You understand?
13 No, Mr. Boyd, we're not accepting questions. This
14 is Mr. Sarvey's time to testify.

15 MR. BOYD: It's not a question. I
16 participated in the conference, too, and several
17 parties --

18 HEARING OFFICER FAY: Well, this is Mr.
19 Sarvey's time to testify --

20 MR. BOYD: -- filed testimony on what
21 was discussed in that. San Francisco Power filed
22 testimony and you accepted it. And so did the
23 Dogpatch group --

24 HEARING OFFICER FAY: Okay, we have very
25 tight time constraints today --

1 MR. BOYD: -- and you accepted their
2 testimony on this very subject.

3 HEARING OFFICER FAY: -- and you are
4 taking away --

5 MR. BOYD: And it's --

6 HEARING OFFICER FAY: -- from Mr.
7 Sarvey's time, I'm afraid.

8 MR. BOYD: Okay, sorry.

9 MR. SARVEY: I'm satisfied with the
10 entry of the condition, and my testimony is
11 through. Thank you. I'm available for cross-
12 examination.

13 HEARING OFFICER FAY: Okay. Did you
14 have anything further to summarize in your direct
15 testimony that you prefiled?

16 MR. SARVEY: No, I'm assuming
17 everybody's read my testimony.

18 HEARING OFFICER FAY: All right.

19 MR. SARVEY: It's pretty explicit, so I
20 don't think there's much more to add, thank you.

21 HEARING OFFICER FAY: Thank you. So we
22 have Mr. Sarvey's prefiled testimony and his
23 revised exhibit AQSC-11 marked as exhibit 93. And
24 he is available for cross-examination.

25 MS. SOL : Your Honor, I'd like to begin

1 by objecting to the introduction of Mr. Sarvey's
2 testimony. To begin with, the testimony is
3 portrayed as being that of Mr. Powers and Mr.
4 Sarvey. I don't believe -- is Mr. Powers present
5 here today?

6 MR. SARVEY: I have his declaration
7 right here. He's not available.

8 MS. SOL : Well, Your Honor, I believe
9 that if this is portrayed as his testimony, then
10 Mr. Powers is supposed to be here to answer
11 questions. And he's not.

12 And the second objection I have to the
13 introduction of this testimony as expert testimony
14 is that Mr. Sarvey, if one reviews his
15 qualifications, is not an air quality professional.
16 He is an intervenor and a dedicated one, but he's
17 not an air quality professional. And so I believe
18 that that testimony should be characterized as
19 comment.

20 HEARING OFFICER FAY: Mr. Sarvey, do you
21 have a response?

22 MR. SARVEY: Well, if you review my
23 r, sum, I was on the Advisory Board of the San
24 Joaquin Valley Air Pollution Control District;
25 I've been in over ten proceedings with the CEC. I

1 have testified previously on air quality matters.
2 And I would note for the record that the applicant
3 had -- or the Bay Area Air Quality Management
4 District changed the permit based on my comments
5 from PM2.5 emissions from (inaudible) an hour to
6 2.5 -- an hour, so I think that speaks for itself.

7 HEARING OFFICER FAY: And what about the
8 absence of Mr. Powers?

9 MR. SARVEY: I have Mr. Powers'
10 declaration here. I'm prepared to answer any
11 questions related to the testimony.

12 HEARING OFFICER FAY: Well, the
13 parties --

14 MR. SARVEY: I tried to arrange a phone
15 call but I have not been able to.

16 HEARING OFFICER FAY: This matter is a
17 subject of adjudication, so you can't just choose
18 to submit the declaration. I'm afraid we're going
19 to have to remove Mr. Powers from the testimony.
20 And you can take responsibility for it, yourself.
21 But, --

22 MR. SARVEY: That'll be fine, Mr. Fay.

23 HEARING OFFICER FAY: -- the parties
24 required live witnesses. And as you have the
25 right to require live witnesses of them, you

1 didn't produce Mr. Powers.

2 So, we'll just strike him and --

3 MR. SARVEY: Okay.

4 HEARING OFFICER FAY: -- his
5 qualifications from the testimony. And I'm going
6 to allow Mr. Sarvey as an expert, based on his
7 experience with the Air District and other
8 proceedings before this agency. But the Committee
9 will take into account his background,
10 professional background and qualifications in
11 addition to that. So, go ahead.

12 Ms. Sol,, your objection to Mr. Powers
13 sponsorship is sustained. Your objection to Mr.
14 Sarvey being identified as an expert is overruled.

15 MR. RATLIFF: Mr. Fay, could I just ask
16 a question? Although I'm sympathetic with the
17 applicant's objection to talking about the
18 settlement discussions, my fear is that those
19 settlement discussions have already been
20 characterized by so many people in so many
21 different ways that it's almost like the bell's
22 been rung and it can't be un-rung.

23 And my concern is that staff's position
24 may be already mischaracterized with regard to
25 that. I don't know whether you want to revisit

1 whether or not we should discuss that settlement
2 discussion or not. But, you know, I definitely am
3 uncomfortable with the suggestions that have been
4 made about what the staff position was.

5 It's already been characterized, for
6 instance, by other parties such as, I believe, one
7 of the neighborhood associations as being a
8 position that, I think, is not -- if you had been
9 a participant of those discussions I think you
10 would have seen it was somewhat different and came
11 out in a different context.

12 If I ever participate in such
13 discussions again it will be with the
14 understanding that the discussions are not to be -
15 - that they are to be not subject to further
16 discussion in public. Because I think it's very
17 unproductive to have them bandied about
18 afterwards. But my fear is that that's already
19 occurred.

20 HEARING OFFICER FAY: Well, because of
21 how unproductive that is, the ruling's going to
22 stand, because we don't want to give any
23 encouragement at all to the weight of those
24 discussions, the substance of them. They just
25 don't exist as far as the record goes. What

1 exists is what the parties bring out of the
2 discussion and choose to put into the record.

3 So, the ruling stands and we're not
4 going to accept testimony on what happened in a
5 workshop or a settlement conference.

6 MR. RATLIFF: I accept that ruling, and
7 I would also offer then that any discussion of any
8 reiteration of those discussions would also be
9 subject to the hearsay objection. Because it
10 doesn't appear in the testimony certainly of the
11 staff or the applicant, or the other parties as to
12 with the witness who sponsored, saying that this
13 is what I suggest. So, I think it would be
14 hearsay.

15 HEARING OFFICER FAY: Fair enough. And
16 I think that should also go to submittals
17 submitted by some of the other parties who, I
18 don't believe, are here today. But neighborhood
19 associations that wrote in asserting that certain
20 things happened at settlement conferences.

21 So, I believe we're -- Ms. Sol,, it's
22 your cross-examination of Mr. Sarvey at this time.

23 MS. SOL : Yes, Your Honor.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MS. SOL :

3 Q Mr. Sarvey, have you seen the City's air
4 quality mitigation and community benefits package
5 that was filed with the CEC in this proceeding?

6 A Yes, I have.

7 Q I'm going to give you a copy just for
8 your convenience. It's been marked as exhibit 38.

9 (Pause.)

10 BY MS. SOL :

11 Q Could you turn to the last page of that
12 exhibit that's attachment A, organizations
13 visited.

14 A Okay, I have it.

15 Q Did you attend any of these meetings?

16 A Yes, I did.

17 Q Which one?

18 A I attended several; in fact, I spoke
19 with you at one of them. Off the top of my head I
20 can't tell you exactly which one it was. I
21 actually attended three of them, but not knowing
22 the names of what you call these organization
23 visits, I can't really testify as to which ones I
24 was at. But I know for a fact I saw you at one of
25 them.

1 Q Did you participate in the Bay View
2 Hunter's Point open house on June 20, 2005?

3 A No, I did not.

4 Q Did you participate in the Potrero open
5 house on June 21, 2005?

6 A I don't believe that I did, no.

7 Q Did you participate in the workshops and
8 breakout groups where community members were asked
9 to discuss 47 different mitigation measures that
10 were being considered by the City?

11 A Yes, in fact, I did attend one with Mr.
12 Brown. And I believe I spoke to you at that
13 meeting; it was at the Fine Arts Building, I
14 believe it was. So, yes, I was at one of them.
15 And I believe I presented you with a mitigation
16 plan at that time that I was requesting that you
17 adopt. In fact, it was the second of four
18 mitigation plans that I submitted to the City.

19 MS. SOL : Okay, that's all my
20 questions.

21 HEARING OFFICER FAY: Okay, before we go
22 on I just want to ask Mr. Sarvey, do you want to
23 move your air quality testimony and that's
24 identified as exhibit 7 -- I'm sorry, well, the
25 previous --

1 MR. SARVEY: I would like to move all --

2 HEARING OFFICER FAY: Yeah, why don't
3 you identify it.

4 MR. SARVEY: I'd like to move all my
5 exhibits at this time, actually. Exhibit 74, air
6 quality testimony of Powers and Sarvey submitted
7 on April 17, 2006.

8 Do you want me to go through my list of
9 exhibits and --

10 HEARING OFFICER FAY: The ones that are
11 relevant to your testimony.

12 MR. SARVEY: Okay. Exhibit 63, City and
13 County of San Francisco prehearing conference
14 dated April 16, 2002. Exhibit --

15 MS. SOL : Your Honor, can we just take
16 them one by one? I have objections --

17 HEARING OFFICER FAY: Sure.

18 MS. SOL : -- to some of them.

19 HEARING OFFICER FAY: What was the first
20 one, Mr. Sarvey?

21 MR. SARVEY: Exhibit 63, City and County
22 of San Francisco prehearing conference statement
23 for the Potrero 7 Power Plant.

24 MS. SOL : And I have previously
25 objected on the grounds that it relates to a

1 different project. And that it's hearsay.

2 HEARING OFFICER FAY: What's the
3 relevancy to your testimony, Mr. Sarvey?

4 MR. SARVEY: It's included in my
5 testimony because it defines the LORS of the City
6 as related to power plant siting and their
7 position on mitigation; for their various LORS;
8 and that's why it's included in there.

9 MS. SOL : Your Honor, we've already
10 spoken about the Maxwell ordinance; it speaks for
11 itself. And the Commission can take
12 administrative notice of it.

13 HEARING OFFICER FAY: Yeah, I'm afraid
14 we're going to sustain that objection, Mr. Sarvey.

15 MR. SARVEY: Okay. Exhibit 64, City and
16 County of San Francisco, comments on the
17 preliminary staff assessment for Potrero 7 plant.

18 MS. SOL : Same objection, Your Honor.

19 HEARING OFFICER FAY: Different
20 proceeding. Sustained.

21 MR. SARVEY: Exhibit 65, memorandum from
22 John Seitz to David Howekamp, use of emission
23 reduction credits, dated August 26, 1994.

24 HEARING OFFICER FAY: Any objection?

25 MS. SOL : No.

1 HEARING OFFICER FAY: All right.

2 MR. SARVEY: Exhibit 26 (sic) from Toby
3 Levine to Byron Rhett re: Potrero Plant impact.

4 HEARING OFFICER FAY: I didn't hear
5 that. What number?

6 MR. SARVEY: 65.

7 HEARING OFFICER FAY: Okay.

8 MR. SARVEY: This is exhibit 66,
9 memorandum from Toby Levine to Byron Rhett re:
10 Potrero Power Plant; identification and mitigation
11 proposals dated June 29, 2001.

12 HEARING OFFICER FAY: Any objection?

13 MS. SOL : I believe I have an objection
14 to that, but I'm trying to -- was that part of
15 what was circulated in the April 16th testimony --
16 no, sorry.

17 HEARING OFFICER FAY: How is that
18 relevant to your testimony today?

19 MR. SARVEY: Just comparing power plant
20 mitigation in the area of this power plant; it's
21 like a half mile, or less than a half mile away
22 from the SFERP.

23 MS. SOL : I haven't seen that document.
24 I'm looking at Mr. Sarvey's exhibit list. Was
25 that part of what you submitted --

1 MR. SARVEY: I don't know how they broke
2 that out to be honest with you.

3 MR. RATLIFF: I have not seen it,
4 either.

5 MR. SARVEY: I don't know how they broke
6 that out. I don't even know where they got this
7 particular exhibit from.

8 HEARING OFFICER FAY: Well, you know,
9 unfortunately because the way that Mr. Sarvey
10 filed his testimony, the breakouts were arbitrary
11 because they weren't all labeled as exhibits.

12 MS. SOL : Your Honor, it appears that,
13 Mr. Rubenstein has just reminded me, it appears
14 that that is an attachment to the City's PSA,
15 Potrero 7 PSA comments. I can confirm that, but I
16 hadn't specifically located that document.

17 HEARING OFFICER FAY: Okay, why don't we
18 come back to that one. Go ahead, Mr. Sarvey.

19 MR. SARVEY: Exhibit 67, collection of
20 comments relating to the Potrero power Plant.

21 MS. SOL : Same objection, Your Honor,
22 that is Potrero 7. A collection of comments on
23 Potrero 7 that was submitted by the City as an
24 attachment to its -- either its prehearing
25 conference statement or preliminary staff

1 assessment Potrero 7 comments.

2 HEARING OFFICER FAY: Mr. Sarvey,
3 without specifically tying these in, we're going
4 to rule against all the ones that are regarding a
5 different power plant.

6 MR. SARVEY: I believe I did
7 specifically tie them in. These are the LORS that
8 the City applied to the Potrero Power Plant.
9 They're as relevant to that plant as they are
10 here. And that's the reason they're in there and
11 in my testimony.

12 HEARING OFFICER FAY: We can take
13 administrative notice of the LORS --

14 MR. SARVEY: I clarify that;
15 administrative notice is fine --

16 HEARING OFFICER FAY: -- and they will -
17 - okay.

18 MR. SARVEY: -- for those documents;
19 administrative notice is fine.

20 HEARING OFFICER FAY: Well, we'll take
21 administrative notice of the City's LORS. Not
22 what is in these documents.

23 MR. SARVEY: Okay, thank you, Mr. Fay.
24 Exhibit 68, monitoring data from the Bay Area Air
25 Quality Management District website for San

1 Francisco November and December 2004, as well as
2 January and February 2005. That would be the
3 Bayview monitoring station.

4 Exhibit --

5 HEARING OFFICER FAY: Objection?

6 MS. SOL : No.

7 MR. SARVEY: Exhibit 69, projected
8 emission inventory for particulate matter 2.5
9 microns, 2005 Almanac data.

10 MR. RATLIFF: When you say Almanac, do
11 you mean the CARB air quality --

12 MR. SARVEY: CARB, yeah.

13 HEARING OFFICER FAY: Any objection?

14 MS. SOL : No.

15 MR. SARVEY: Exhibit 70 -- the way this
16 is broken down this is all actually one exhibit,
17 table A-1, B-1, C-1. Basically that's the CARB
18 NOx report to the Legislature. Basically that's
19 the entire exhibit and it encompasses exhibit 70,
20 71, 72, 73. So it encompasses all that.

21 HEARING OFFICER FAY: Any objection?

22 All right. And --

23 MR. SARVEY: And I've already introduced
24 exhibit 74. Exhibit 78 which again is the
25 California Air Resources Board report to the

1 Legislature; and 72, 73 and 74 are just appendixes
2 to that, so.

3 HEARING OFFICER FAY: And we have
4 stricken Mr. Powers from exhibit 74.

5 MR. SARVEY: That's correct.

6 HEARING OFFICER FAY: Back to exhibit
7 66, is that your same objection, Ms. Sol,, that
8 it's regarding the Potrero Power Plant?

9 MS. SOL : Yeah, I believe that that is
10 one of the attachments to the City's preliminary
11 staff assessment comments.

12 HEARING OFFICER FAY: So that is
13 sustained for the same reason.

14 MR. SARVEY: There is also one that I'm
15 not sure is on here; it's the CARB power plant
16 guidance document. It was submitted as an
17 exhibit; I don't see it here on the exhibit list.

18 HEARING OFFICER FAY: Well, that's why
19 we've been sending them out after each hearing.

20 MR. SARVEY: Right. Well, I can
21 identify it as to my exhibit; I can't identify it
22 on here. It's quoted in the applicant's testimony
23 several times.

24 HEARING OFFICER FAY: Do you want to
25 fully identify it, then?

1 MR. SARVEY: I can identify it a little
2 better.

3 MS. SOL : Just, Mr. Sarvey, so I can
4 try to keep track of this, is this something
5 different from the ARB report to the Legislature
6 that's number 12 on what you filed on April 17th?

7 MR. SARVEY: Yes, it is, counselor.
8 It's the guidance for power plant siting and best
9 available control technology as approved by the
10 Air Resources Board on July 22, 1999. Stationary
11 source division issued September 1999.

12 MR. RATLIFF: That's exhibit 6 in
13 Sarvey's filing. That's what --

14 MR. SARVEY: That's correct.

15 MS. SOL : Oh, okay. No, we don't have
16 an objection to that.

17 MR. SARVEY: And I believe that's all my
18 air quality exhibits.

19 HEARING OFFICER FAY: Okay, that last
20 will be identified as exhibit 94.

21 MR. SARVEY: I apologize for not picking
22 that up earlier, Mr. Fay.

23 HEARING OFFICER FAY: I'm sorry, what?

24 MR. SARVEY: I apologize for not picking
25 that up, that it wasn't on the exhibit list

1 earlier.

2 HEARING OFFICER FAY: All right, is
3 there any questions about the exhibits that Mr.
4 Sarvey has moved? Do we need to review all those
5 again?

6 Okay. So, is there any further
7 objection other than those we've already heard, to
8 receiving these into evidence?

9 Okay, hearing none, they are received
10 from Mr. Sarvey.

11 All right, and, Mr. Ratliff, did you
12 have cross-examination?

13 MR. RATLIFF: No.

14 HEARING OFFICER FAY: Okay, very good.
15 Any redirect testimony, Mr. Sarvey?

16 MR. SARVEY: Not on that.

17 HEARING OFFICER FAY: Okay. Good.
18 We'll take a ten-minute break and I'll ask the
19 court reporter to be sure that we're on the record
20 in ten minutes.

21 (Brief recess.)

22 HEARING OFFICER FAY: We're continuing
23 now after our morning break with the topic of
24 public health. In the previous hearing we took
25 the staff testimony on public health. And now

1 we're moving to the applicant's witnesses. Ms.
2 Sol,.

3 MS. SOL : Yes, Your Honor, I want to
4 just begin by pointing out that we, as I
5 mentioned, we added Jerry Salamy to the panel.
6 His qualifications were included in appendix A to
7 the prehearing conference statement, but through
8 an oversight a declaration for him had not been
9 included. And so I have his declaration and I'd
10 like to have it marked as an exhibit, please.

11 HEARING OFFICER FAY: We'll mark the
12 declaration of Jerry Salamy as exhibit 95.

13 MS. SOL : Actually, Your Honor, that
14 bring the whole question of the prehearing
15 conference statement and the appendices have not
16 been marked as an exhibit, either, I don't
17 believe. And that includes all of the
18 qualifications and declarations.

19 HEARING OFFICER FAY: All right. If
20 you'd like to have that marked we can just make
21 exhibit 95 all the applicant's witnesses'
22 qualifications and declarations contained in your
23 prehearing conference statement.

24 MS. SOL : That would be great. Okay, I
25 believe we have Mr. Rubenstein, and then we have

1 Mr. Lowe and Mr. Jerry Salamy present. Mr. Lowe
2 and Mr. Salamy have not yet testified, so they
3 need to be sworn in.

4 Whereupon,

5 JOHN LOWE and JERRY SALAMY
6 were called as a witness herein, and after first
7 having been duly sworn, were examined and
8 testified as follows:

9 Whereupon,

10 GARY RUBENSTEIN
11 was recalled as a witness herein, and having been
12 previously duly sworn, was examined and testified
13 further as follows:

14 THE REPORTER: Would you each
15 individually state and spell your full names.

16 MR. LOWE: John Lowe, J-o-h-n L-o-w-e.

17 MR. SALAMY: Jerry Salamy, J-e-r-r-y
18 S-a-l-a-m-y.

19 MS. SOL : Okay, and I'm going to have
20 Mr. Lowe go through the documents on behalf of the
21 panel.

22 DIRECT EXAMINATION

23 BY MS. SOL :

24 Q Mr. Lowe, do you have before you the
25 City's April 17th testimony?

1 MR. LOWE: Yes, I do.

2 MS. SOL : The section on public health?

3 MR. LOWE: Yes.

4 MS. SOL : And in section 1C, prior
5 filings, there's a list of documents. I'm going
6 to go through those for you. We have supplement A
7 to the application for certification for the San
8 Francisco Electric Reliability project, volume 1,
9 dated March 24, 2005, section 8.6; that's the
10 section on public health. That's exhibit 15.

11 We have the applicant's response to CARE
12 data request, data response set 3, response to
13 data request 3.5-9. It's dated June 9, 2005;
14 exhibit 25. And for clarification I'll note that
15 you are not sponsoring the backup documents that
16 were included in that data response, but only the
17 data response, itself.

18 We have applicant's comments on the
19 preliminary staff assessment set 1, comments 39
20 through 41, dated October 12, 2005. That's
21 exhibit 39.

22 Supplement B to the application for
23 certification for the San Francisco Electric
24 Reliability project, dated January 11, 2006,
25 section 3.2, the section on public health. And

1 that's exhibit 16.

2 To the extent there are facts in those
3 documents, are they true to the best of your
4 knowledge?

5 MR. LOWE: Yes, they are.

6 MS. SOL : And to the extent there are
7 opinions, do they represent your professional
8 judgment?

9 MR. LOWE: Yes, they do.

10 MS. SOL : Do you have any corrections
11 to make at this time?

12 MR. LOWE: No, I don't.

13 MS. SOL : And do you adopt those
14 documents as your sworn testimony here today?

15 MR. LOWE: Yes, I do.

16 MS. SOL : Okay. And, Mr. Rubenstein,
17 I'd like to go through a list that's also on the
18 April 17, 2006 testimony of the City. There's
19 applicant's response to the CEC Staff data request
20 set 1A, dated July 6, 2004, responses to data
21 requests 42 through 47; that's exhibit 3.

22 Applicant's response to CEC Staff data
23 request informal set 2, dated August 20, 2004,
24 responses to data requests 120 through 123; that's
25 exhibit 8.

1 Applicant's response to CEC Staff data
2 request informal set 3, dated August 20, 2004,
3 responses to data request 150; that's exhibit 9.

4 And then there's supplement A to the
5 application for certification for the San
6 Francisco Electric Reliability project dated March
7 24, 2005, analyses in support of section 8.6,
8 public health. That's exhibit 15.

9 To the extent there are facts in those
10 documents, are they true to the best of your
11 knowledge?

12 MR. RUBENSTEIN: Yes, they are.

13 MS. SOL : And to the extent there are
14 opinions, do they represent your professional
15 judgment?

16 MR. RUBENSTEIN: Yes, they do.

17 MS. SOL : And do you adopt those
18 documents as your sworn testimony here today?

19 MR. RUBENSTEIN: Yes, I do.

20 MS. SOL : Do you have any corrections
21 to -- no, you didn't have corrections.

22 I would like to move to have those
23 exhibits and portions of exhibits entered into the
24 record.

25 HEARING OFFICER FAY: All right. Is

1 there objection?

2 MR. SARVEY: Clarifying question. Are
3 you guys moving the offsite consequence analysis
4 into the record as part of this?

5 MS. SOL : That was already moved into
6 evidence as part of the hazardous waste testimony.

7 MR. SARVEY: It's also part of the
8 public health testimony you prepared to answer --

9 MS. SOL : It is a reference. It's
10 already in evidence and we have somebody here who
11 can answer questions about it.

12 MR. SARVEY: Have you presented Mr.
13 William Hung or Steve Norcane at any point in this
14 proceeding?

15 MS. SOL : Mr. Salamy is here to answer
16 questions about the offsite consequence analysis.
17 He directed the preparation of the offsite
18 consequence analysis.

19 MR. SARVEY: Okay.

20 HEARING OFFICER FAY: Ms. Sol,, could
21 you just take a moment and march through the
22 exhibits that you're moving at this time, just
23 very briefly.

24 MS. SOL : Okay, that's exhibit 15, or,
25 sorry, section 8.6 of exhibit 15; the response to

1 data request 3.5-1 of exhibit 25 without the
2 backup documents. Comments 39 through 41 of
3 exhibit 39. Section 3.2 of exhibit 16. Data
4 requests 42 through 47 of exhibit 3. Data
5 requests -- well, data responses 120 through 123
6 of exhibit 8. Response to data request 150 of
7 exhibit 9. And basically just to point out that
8 Mr. Rubenstein did the analysis in support of
9 section 8.6 of exhibit 15.

10 HEARING OFFICER FAY: All right. And is
11 there any objection to receiving these? Okay,
12 hearing none, so moved. They'll be received in
13 the record at this point.

14 MS. SOL : Okay, I'd like Mr. Lowe to
15 present an opening statement on behalf of the
16 panel, please.

17 MR. LOWE: Thank you. Good morning,
18 Commissioners, Staff and members of the public.
19 My name is John Lowe and I'm a Senior Human Health
20 Risk Assessor with CH2M HILL.

21 For over 25 years my work has involved
22 assessing the potential for adverse effects to
23 human health associated with chemical contaminants
24 in the environment. I am here today to answer
25 questions regarding public health as they pertain

1 to the proposed San Francisco Energy Reliability
2 project.

3 The public health impact analysis for
4 the SFERP shows this project would have no
5 significant impacts on public health. So no
6 significant public health impacts are anticipated.
7 A community benefits plan will be implemented as
8 part of this project to address asthma, a
9 recognized preexisting health problem for this
10 community.

11 The analysis of public health impacts
12 addressed emissions of toxic air contaminants
13 during facility operation and during construction,
14 including potential cumulative impacts with other
15 emission sources in the community, and potential
16 influences of project emissions on preexisting
17 health issues in the surrounding community.

18 It also addresses potential offsite
19 consequences associated with the worst case
20 release of aqueous ammonia that will be stored and
21 used at the facility. And potential exposures to
22 soil and groundwater contaminants detected at the
23 project site.

24 A human health risk assessment was
25 conducted to evaluate the emissions from the

1 proposed facility. This human health risk
2 assessment addressed the emissions from diesel-
3 powered equipment that would be used during
4 construction, and emissions that would occur
5 during routine operation of the facility.

6 The health risk assessment was prepared
7 according to guidelines developed by the State of
8 California and the U.S. Environmental Protection
9 Agency, and is based on conservative methods and
10 assumptions that are intended to protect human
11 health.

12 The human health risk assessment
13 evaluated potential cancer risks, noncancer
14 effects from chronic or long-term exposure, and
15 noncancer effects from acute or short-term
16 exposure.

17 The health risks from emissions were
18 estimated at the point of maximum impact. This is
19 the location where the maximum concentrations in
20 air and the maximum risks from facility emissions
21 are expected to be located, taking into
22 consideration the characteristics of the emission
23 sources and local meteorological conditions.

24 The concentrations in air at the point
25 of maximum impact were modeled using the maximum

1 emission rates from the facility.

2 Health risks were assessed at the point
3 of maximum impact regardless of whether or not
4 there is a residence of individual there. An
5 individual is hypothetically assumed to reside at
6 the point of maximum impact continuously for an
7 entire 70-year lifetime. Therefore, the impacts
8 from facility emissions at locations where
9 residents or other individuals may be located will
10 be lower than the maximum impacts projected in
11 this analysis.

12 Emissions from the SFERP facility during
13 operation would be associated with an increased
14 lifetime cancer risk of 0.05 in one million. This
15 estimated cancer risk, which is based on the
16 maximum project emissions, estimated at the point
17 of maximum impact, is much lower than the 10 in
18 one million cancer risk threshold used as a level
19 of significance by the Energy Commission Staff.

20 In addition, the 10 in one million
21 cancer risk threshold is consistent with the
22 significance level adopted by the Bay Area Air
23 Quality Management District for the review and
24 approval of projects that may emit toxic air
25 contaminants.

1 Diesel emissions to the air during
2 construction from the proposed facility would be
3 associated with an increased lifetime cancer risk
4 from 0.75 to 1.1 in one million at the point of
5 maximum impact located at the facility fenceline.
6 Again, this estimated risk is below the 10 in one
7 million cancer risk threshold used as a level of
8 significance of public health impacts.

9 Estimated impacts from facility
10 emissions also would fall well below the most
11 sensitive thresholds for both chronic and acute
12 noncancer effects. The methods used to evaluate
13 these kinds of adverse effects, in other words
14 noncancer effects, are based on protection of
15 sensitive members of the population.

16 In this case the maximum exposure level
17 is compared with a reference exposure level. A
18 reference exposure level is a pollutant
19 concentration in air that is intended to protect
20 the public, including sensitive populations, and
21 is based on the most sensitive health effect
22 associated with that pollutant.

23 If exposures at the point of maximum
24 impact fall below the referenced exposure level,
25 there is little likelihood that emissions from the

1 facility will produce adverse noncancer health
2 effects.

3 The maximum impacts from the facility
4 emissions also would not produce a significant
5 cumulative impact when combined with other sources
6 of toxic air contaminants in the area. An
7 analysis conducted by the Energy Commission Staff
8 of the potential cumulative impacts from emissions
9 from 20 facilities representing 50 individual
10 sources concluded that emissions from the SFERP
11 will contribute approximately 1 percent or less of
12 the total risk from the emissions of all these
13 facilities when evaluated at residences and
14 sensitive receptor locations near the proposed
15 facility.

16 The maximum cancer risk estimated for
17 any of the sources in the cumulative analysis was
18 19 in one million estimated near a dry cleaner.
19 The largest contribution to potential cumulative
20 air toxics impacts from benzene, 1,3 butadiene and
21 formaldehyde measured in ambient air. The Bay
22 Area Air Quality Management District in 2002
23 estimated that the average cancer risk in the Bay
24 Area, based on air monitoring data from stations
25 including the Arkansas Street station, was 162 in

1 one million. Again, principally from benzene, 1,3
2 butadiene and formaldehyde. The SFERP's
3 contribution to these totals is de minimis.

4 Moreover, it is important to understand
5 that for air toxics, rather than establishing
6 background concentration limits, the Bay Area AQMD
7 has established extremely stringent individual
8 facility standards. These very stringent
9 standards for individual facilities, which the
10 SFERP meets easily, in combination with regional
11 programs to reduce air toxics, are designed to
12 minimize public health impacts from air toxics.

13 In fact, regional regulatory programs
14 are addressing the risks potentially associated
15 with the emissions from existing stationary and
16 mobile sources.

17 Monitoring data collected by the
18 California Air Resources Board has shown decreases
19 in key toxic air contaminants and their associated
20 risks over the past several years in response to
21 different control measures, particularly for
22 mobile source emissions.

23 The California Air Resources Board 2006
24 Almanac shows that the total cancer risk in the
25 Bay Area from toxic air pollutants has decreased

1 from 1153 in one million in 1990, to less than 600
2 in one million in 2005, principally due to
3 reductions in emissions from mobile sources,
4 including diesel emissions.

5 Both the U.S. Environmental Protection
6 Agency and the California Air Resources Board are
7 instituting more stringent controls on emissions
8 of perchloroethylene used in dry cleaning, which
9 will further reduce the risks associated with
10 those sources.

11 Considering both the extremely small
12 incremental increase in risks, along with the risk
13 reductions occurring from control measures being
14 applied to the existing stationary and mobile
15 sources, the emissions from the proposed SFERP
16 would not produce a cumulative public health
17 impact.

18 Emissions from the proposed facility
19 also will not contribute to existing public health
20 issues identified as concerns for the Bayview
21 Hunter's Point community. These include instances
22 of certain cancers, childhood mortality and
23 asthma.

24 As shown in the human health risk
25 assessment the risks from emissions from the

1 project were estimated using very conservative
2 methods that are designed to account for the most
3 sensitive individuals in the population.

4 The estimated risks associated with
5 emissions from the project at the point of maximum
6 impact are well below regulatory levels of
7 significance. Therefore, the project emissions
8 would not be expected to have an influence on
9 either the observed cancer incidence in the
10 community, or an influence on those causes of
11 childhood mortality, such as cancer or birth
12 defects, where environmental exposures might be a
13 factor.

14 Some neighborhoods in southeastern San
15 Francisco report higher rates of hospitalizations
16 for asthma compared with other neighborhoods in
17 the City, and compared with national statistics.
18 Factors that may be associated with asthma include
19 heredity; allergic reactions to common substances
20 such as mold, dust mites and pet hair;
21 socioeconomic factors; and environmental factors,
22 including air pollutants.

23 Particulate matter may increase the
24 severity of asthma symptoms. However, particulate
25 matter emissions associated with the project will

1 be mitigated completely.

2 Some of the chemicals emitted from the
3 proposed facility are short-term respiratory
4 irritants which might increase the severity of
5 asthma symptoms. The levels of these chemicals
6 emitted into the air would be well below acute or
7 short-term, no-effect thresholds.

8 These thresholds are based on the most
9 sensitive associated with exposure to a chemical
10 and incorporate additional safety factors for
11 protection of sensitive individuals. Therefore,
12 the concentrations in air are well below limits
13 that would affect sensitive individuals. And it
14 would not be expected to be an influence on the
15 observed asthma incidence in the community.

16 In addition, the project provides for a
17 community benefits plans that will include indoor
18 air quality measures to address several of the
19 factors contributing to asthma, particularly the
20 factors associated with indoor air quality. This
21 benefits program will include improvements to
22 indoor ventilation, cleaning or replacement of
23 carpets, and providing vacuum cleaners equipped
24 with high efficiency particulate air or HEPA
25 filters; along with an educational program to

1 address children affected with asthma.

2 The benefits for this program will be to
3 reduce exposure to the allergens that might be
4 responsible for triggering asthma, and to reduce
5 indoor air concentrations of particulates and
6 respiratory irritants that can exacerbate asthma
7 symptoms.

8 As Mr. Rubenstein mentioned during his
9 testimony, the enhanced street-cleaning program
10 also will reduce risk to public health by reducing
11 emissions of urban dust and generating at
12 breathing level for cars, for trucks on
13 neighborhood streets.

14 The potential offsite consequences for
15 the storage and use of ammonia at the facility
16 were analyzed using highly conservative
17 assumptions. For example, emissions were based on
18 a constant, unchanging evaporation rate of ammonia
19 from a spilled pool of 29 percent ammonia solution
20 occurring during nighttime, under the worst case
21 atmospheric stability conditions, but also during
22 the maximum air temperature of 97 degrees
23 Fahrenheit, which would occur only during daylight
24 conditions.

25 This represents a combination of

1 conditions that is unlikely ever to occur. Based
2 on these conservative assumptions this worse case
3 release is not expected to result in an off-site
4 concentration of ammonia greater than 5 ppm in air
5 in areas accessible to the public to the north and
6 south or east of the site.

7 This 5 ppm, part per million,
8 concentration represents the odor threshold for
9 ammonia. The offsite consequence analysis
10 indicates that ammonia concentrations exceeding
11 2000 parts per million in air extend to the west,
12 approximately 35 feet onto the proposed Muni
13 maintenance and operations center, which will not
14 be accessible to the public.

15 Muni is a department of the City, and
16 the City is committed to assuring protection of
17 all of its employees, including those on the SFERP
18 site and on the Muni site from potential
19 consequences associated with a release from the
20 proposed project.

21 In addition, as a condition of
22 certification, a safety management plan will be
23 developed containing mitigation measures to alert
24 employees and to provide for appropriate spill
25 response in the event of an ammonia release.

1 With these conditions potential impacts
2 associated with ammonia storage and use at the
3 facility will be mitigated to less than
4 significant levels.

5 Chemicals have been detected in soil and
6 groundwater at the proposed project site. The
7 chemicals principally of concern in soil, based on
8 a site investigation conducted in February of
9 2006, include diesel, motor oil and Bunker C-
10 range petroleum hydrocarbons, polycyclic aromatic
11 hydrocarbons, polychlorinated biphenyls and the
12 metals arsenic, chromium and lead. Asbestos was
13 reported in some soil samples, however
14 concentrations of asbestos in soil were above
15 trace levels in only a few samples.

16 Volatile organic compounds, principally
17 benzene, toluene, ethylbenzene and xylenes were
18 detected in a limited number of soil samples.

19 The chemicals principally of concern in
20 groundwater included petroleum hydrocarbons,
21 polycyclic aromatic hydrocarbons and metals.

22 While some of these constituents were
23 widespread across the site, there are a few
24 locations where elevated concentrations of
25 polycyclic aromatic hydrocarbons and chromium have

1 been detected in soil.

2 Potential exposure pathways to the
3 offsite public would be limited to inhalation of
4 contaminants adhering to dust generated from soil
5 disturbance during construction. Potential
6 exposure pathways to individuals onsite, such as
7 construction workers, would include dust
8 inhalation and direct contact exposure pathways
9 such as soil ingestion and dermal contact with
10 soil.

11 As a condition of certification a site-
12 specific human health risk assessment will be
13 prepared subject to the oversight of the Regional
14 Water Quality Control Board, the San Francisco
15 Department of Health, and the CEC to further
16 evaluate the potential risks associated with the
17 soil and groundwater contamination at the project
18 site.

19 However, previous investigations show
20 that the contaminants detected at the project site
21 are consistent with those typically detected at
22 former industrial properties or brownfield sites.
23 There are well established mitigation or risk
24 management measures used routinely at brownfield
25 sites that will reduce risks from the potential

1 exposure to contaminants at the project site to
2 less than significant levels.

3 The City has agreed to mitigate the
4 risks to achieve health-based standards; in this
5 case, excess lifetime cancer risk to the offsite
6 public of 1 in one million, and an excess lifetime
7 cancer risk of 10 in one million for onsite
8 construction workers.

9 These standards have been incorporated
10 into a condition of certification enforceable by
11 the CEC.

12 In addition to mitigation measures that
13 the Regional Water Quality Control Board may
14 require, any activities involving soil disturbance
15 will comply with the requirements of article 22(a)
16 of the San Francisco Public Health Code.

17 With regard to the proposed SFERP
18 project, the individuals likely to come into
19 contact with these contaminants are construction
20 workers. However, as a condition of certification
21 contaminants at the project site will be mitigated
22 to achieve a health-based standard that protects
23 offsite public as well as workers.

24 Also as a condition of certification a
25 site-specific risk management plan, which includes

1 dust control measures, will be implemented to
2 reduce exposures to site contaminants during
3 construction.

4 In addition, a site management plan
5 included as a condition of certification will be
6 implemented so that mitigation measures intended
7 to protect public health and the workers are
8 maintain after the project is constructed.

9 With the implementation of these
10 conditions of certification, which include the
11 Regional Water Quality Control Board and local
12 regulatory requirements, the soil and groundwater
13 contamination detected at the project site will
14 have no significant impact on public health.

15 In conclusion, the proposed San
16 Francisco Electric Reliability project is
17 anticipated to have no significant impacts to
18 public health.

19 Thank you for the opportunity to speak
20 to you today, and I'm available to answer any
21 questions concerning my testimony.

22 HEARING OFFICER FAY: Okay, thank you.

23 Mr. Ratliff?

24 CROSS-EXAMINATION

25 BY MR. RATLIFF:

1 Q Just one clarifying question. Mr. Lowe,
2 you mentioned three of the primary, I think,
3 carcinogens in the Bay Area of concern, benzene,
4 butadiene and formaldehyde.

5 MR. LOWE: Yes.

6 MR. RATLIFF: What is the principal
7 source of those emissions?

8 MR. LOWE: The principal source of those
9 emissions, according to the Bay Area Air Quality
10 Management District is mobile sources.

11 MR. RATLIFF: Thank you. I have nothing
12 further.

13 HEARING OFFICER FAY: Nothing further?
14 All right. Mr. Sarvey.

15 CROSS-EXAMINATION

16 BY MR. SARVEY:

17 Q Mr. Lowe, have you ever looked on the
18 website of the Air Resources Board and their
19 CHAPAS program? Are you familiar with that?

20 MR. LOWE: Not by that acronym.

21 MR. RUBENSTEIN: I have, though.

22 MR. SARVEY: And have you ever looked up
23 what the estimated cancer risk is in San
24 Francisco?

25 MR. LOWE: The estimated cancer risk

1 from what kinds of sources?

2 MR. SARVEY: From all sources.

3 MR. LOWE: I believe according to my
4 testimony the Air Resources Board in their 2006
5 Almanac estimated that the excess lifetime cancer
6 risks in the Bay Area in 1990 were 1153 in a
7 million. And that some years later that it
8 dropped to 600 in a million. And, again, that's
9 largely from mobile source emissions.

10 HEARING OFFICER FAY: Excuse me just a
11 second, Mr. Sarvey. Ms. Sol,, Mr. Rubenstein is
12 part of the panel, as well, so they're both
13 available for questioning?

14 MS. SOL : Yes, Your Honor.

15 HEARING OFFICER FAY: Okay, go ahead,
16 Mr. Sarvey.

17 MR. SARVEY: Okay, your testimony on
18 page 8.6-3 states that there are sensitive
19 receptor locations within 300 feet of the proposed
20 project, is that correct?

21 MS. SOL : Can you point us to the page,
22 again, Mr. Sarvey, so we can follow along.

23 MR. SARVEY: 8.6-3.

24 MS. SOL : Okay.

25 MR. LOWE: Yes, that's correct.

1 MR. SARVEY: Okay. And your testimony
2 in exhibit 15 on page 8.184, it predicts the
3 maximum model PM construction emissions at 14.2
4 mcg/cubic meter at the fenceline and 5 mcg/cubic
5 meter within 1500 feet of the project fenceline.

6 Have you analyzed the health impacts to
7 the public and workers at adjacent facilities
8 considering the high levels of toxic soil that
9 were discovered in the applicant's field sampling
10 plan, exhibit 42?

11 MR. LOWE: Yes, there would be no
12 cumulative impact between the chemicals detected
13 in soil and these diesel emissions.

14 MR. SARVEY: So you already have
15 knowledge of what's in that soil? Is that what
16 you're -- is that your testimony?

17 MR. LOWE: Could you clarify for me what
18 soil you're speaking of, again?

19 MR. SARVEY: The toxic soil contaminant
20 that was discovered and docketed in exhibit 42 on
21 May 1, 2006.

22 MR. LOWE: Mr. Sarvey, if you're
23 speaking about soil contamination that was
24 detected in the field sampling program that was
25 conducted February 2006, yes, I have reviewed that

1 document.

2 MR. SARVEY: And you're confident that
3 there will be no impacts to the offsite public?

4 MR. LOWE: Yes, I am.

5 MR. SARVEY: Okay. Well, the risk
6 management plan -- let me strike that. Do you
7 have mitigation measures that are going to reduce
8 the PM construction emissions of 14.2 mcg/cubic
9 meter and 5 mcg/cubic meter within 1500 feet of
10 the project fenceline?

11 MR. RUBENSTEIN: Yes, we do. Those are
12 included in the -- well, first of all, those are
13 discussed in exhibit 15, appendix 8.1D, the
14 construction impacts analysis. And they're
15 further specified in the staff's proposed
16 conditions of certification, more specifically
17 they're included in conditions AQSC-1 through
18 AQSC-5.

19 MR. SARVEY: Well, was your PM
20 construction emissions estimated with the control
21 measures in place?

22 MR. RUBENSTEIN: In general they were,
23 but not all the benefits of those control measures
24 could be quantified, and the impact analysis we
25 present is a conservative over-statement of the

1 expected impacts.

2 MR. SARVEY: Your soil and water experts
3 introduced an exhibit at our last hearing --
4 exhibit 91, revised estimates of soil loss by
5 water and wind erosion. And now in your testimony
6 you predict that there's going to be two tons of
7 soil lost from -- or two tons of fugitive PM10.
8 And their new testimony says that there will be
9 3.4 tons.

10 Have you revised your analysis since you
11 received that new data?

12 MR. RUBENSTEIN: Can you show me where
13 you're finding the two ton number?

14 (Pause.)

15 MR. RUBENSTEIN: Perhaps I can help. Is
16 it in exhibit 15, appendix 8.1D, page D-3, table
17 8.1D-2?

18 MR. SARVEY: I'll strike that question.
19 Have you revised your analysis since you received
20 the new revised 3.4 mitigated TSP from your soil
21 analysis?

22 MR. RUBENSTEIN: No, I have not because
23 there is no reason to.

24 MR. SARVEY: Okay, thank you. Did you
25 prepare a cumulative public -- or analysis of

1 impacts from all the sources in the area for
2 health risks?

3 MR. LOWE: I reviewed the cumulative
4 impact analysis produced by the Energy Commission,
5 and I concur with its findings. In addition, I
6 also looked at the potential impacts from the
7 SFERP facility in light of that analysis, in light
8 of the information concerning potential risks from
9 existing sources of toxic air contaminants,
10 principally mobile sources.

11 MR. SARVEY: Earlier the applicant
12 handed out a portion of the southern waterfront
13 EIR D-1 through D-8. And I'd like to draw your
14 attention to page D-8.

15 MR. LOWE: Yes.

16 MR. SARVEY: Did you include those
17 impacts, or did the Energy Commission include
18 those impacts in any cumulative health risk
19 analysis?

20 MR. LOWE: I did not include these
21 impacts.

22 MR. SARVEY: Thank you, that's all I
23 have.

24 HEARING OFFICER FAY: Okay. Mr. Boyd,
25 does CARE have any questions?

1 MR. BOYD: Yes, sir.

2 HEARING OFFICER FAY: All right, go
3 ahead.

4 MR. BOYD: First, before I ask my
5 questions, I had a kind of a procedural question.
6 There was exhibit 45, the draft -- excuse me,
7 exhibit 42 is the applicant's draft field
8 investigation summary report. I noticed yesterday
9 that -- I received an email with something called
10 a final field investigation summary report. Is
11 that correct, that you guys docketed that
12 yesterday?

13 MS. SOL : Yes, that's correct.

14 MR. BOYD: I didn't really have a chance
15 to print out a copy, but there were some responses
16 there that were relevant to public health that you
17 included in there. Is it possible to get a copy
18 of that?

19 MS. SOL : Sure.

20 MR. BOYD: And has this been given an
21 exhibit number here, Gary?

22 HEARING OFFICER FAY: No, it hasn't been
23 offered.

24 MS. SOL : It has not. We didn't intend
25 to introduce it into the record unless the parties

1 would like us to. Basically we're just proceeding
2 with the process that we committed to, and we
3 wanted to make the copies available to the public
4 and to the parties in the spirit of keeping you up
5 to date on what we're doing.

6 (Pause.)

7 MR. BOYD: Is this report signed by a
8 professional engineer or geologist?

9 MS. SOL : Yes, it is.

10 MR. BOYD: The preliminary report
11 wasn't, though?

12 MS. SOL : The preliminary report was a
13 preliminary report. The registered geologist
14 signed the final report.

15 Perhaps these questions would be better
16 addressed when we have Mr. Cheung and Ms. Gallardo
17 here on biology. But there are no changes to the
18 data from the draft and the final report.
19 There's, I think, one component -- one
20 specification was left out of a table, which has
21 been included now.

22 MR. BOYD: Okay, --

23 HEARING OFFICER FAY: Why don't you just
24 briefly call our attention to where that change
25 is.

1 MS. SOL : Excuse me?

2 HEARING OFFICER FAY: Point out which
3 table it is on which page, where the change is.

4 MR. BOYD: Okay, I'll move on to my
5 other questions.

6 MS. SOL : The final table to this
7 report, final report, has comments that were
8 submitted by the Regional Water Quality Control
9 Board and the response. And so it shows where any
10 changes were made from the draft and the final
11 report.

12 HEARING OFFICER FAY: Is this at the end
13 of the report and it's labeled attachment C,
14 responses to RWQCB comments?

15 MS. SOL : Yes.

16 HEARING OFFICER FAY: Okay, thank you.

17 MR. BOYD: Well, I don't know if they're
18 going to make it part of the record yet. That's
19 my problem, so --

20 MS. SOL : If parties wish us to make it
21 part of the record, we'd be happy to do it. We
22 circulated it to all parties.

23 MR. BOYD: Well, I like your old one
24 better.

25 (Laughter.)

1 HEARING OFFICER FAY: Well, --

2 MS. SOL : Okay.

3 HEARING OFFICER FAY: -- the old one is
4 part of the record, and you're welcome to ask
5 questions about it. But, keeping in mind that it
6 apparently has been revised.

7 MR. BOYD: Okay.

8 HEARING OFFICER FAY: What would you
9 like to do, Mr. Boyd?

10 MR. BOYD: I'm just going to move on to
11 my other questions.

12 HEARING OFFICER FAY: Okay.

13 (Cellphone ringing.)

14 MR. BOYD: Let me press the button here
15 so this thing stops making noise.

16 There, okay.

17 CROSS-EXAMINATION

18 BY MR. BOYD:

19 Q You used the Office of Environmental
20 Health Hazard assessment 2003 hot spot guidance in
21 developing your risk assessment, according to your
22 testimony, is that correct?

23 MR. LOWE: Yes.

24 MR. BOYD: The 2003 guidance recommends
25 strongly on page 4-21 that five years of

1 meteorological data be used in the risk
2 assessment. How many years did yours use?

3 MR. RUBENSTEIN: I believe our analysis
4 was based on one year of meteorological data. And
5 I don't believe that that's a correct
6 characterization of the OEHHA guidance. I believe
7 that's a subset of what the recommendation is.

8 MS. SOL : And I believe these questions
9 were asked and answered; asked of Mr. Rubenstein
10 by Mr. Sarvey.

11 MR. SARVEY: No, that was air quality,
12 not risk assessment.

13 MR. BOYD: This is in public health.

14 HEARING OFFICER FAY: Ms. Sole, you need
15 your mike on.

16 MR. BOYD: Was that a complete year of
17 data?

18 MR. RUBENSTEIN: Yes, it was.

19 MR. BOYD: Did your impacts analysis for
20 health risk assessment compare different years to
21 find the year that yields the worst case offsite
22 chronic impact, as recommended by the OEHHA 2003
23 hot spot guidance document?

24 MR. RUBENSTEIN: As I believe I
25 responded to Mr. Sarvey when he asked me the same

1 questions in the context of air quality, to the
2 best of my recollection this data was collected at
3 the Potrero Power Plant as part of a special
4 monitoring study.

5 And that the choice we had was to pick
6 one year's worth of data that was located very
7 close to the project site versus five years' worth
8 of data from a site that was more distant.

9 We proposed and received verbal from
10 both the Bay Area District and the Energy
11 Commission Staff to use the Potrero monitoring
12 data. Because of that tradeoff, but by the
13 selection of the single site, of course we can't
14 evaluate multiple years' worth of data because I
15 believe there's only one year's data available.

16 MR. BOYD: Okay. In this guidance at
17 421 it says, if it is desired to use a single year
18 to represent long-term average, i.e., chronic
19 exposure, then the worst case here should be
20 used. The worst case here should be the
21 year that yields the greatest maximum chronic
22 offsite risk.

23 The site you picked, does this yield the
24 greatest maximum chronic offsite risk?

25 MR. RUBENSTEIN: Of all the years of

1 data that are available, yes, because there was
2 only one year of data available.

3 MR. BOYD: You concluded that your
4 cancer risk from diesel construction for onsite
5 workers is 1.1 in a million, is that correct?

6 MR. LOWE: Yes.

7 MR. BOYD: In calculating the onsite
8 diesel risk you adjusted the exposure factor by
9 .043 to account for a 70-year lifetime. What
10 would be the diesel risk factor if you had not
11 adjusted it for 70 years?

12 MR. RUBENSTEIN: I'm sorry, could you
13 restate the question?

14 MR. BOYD: Okay. In calculating the
15 onsite diesel risk you adjusted the exposure
16 factor by .043 to account for a 70-year lifetime.
17 What would be the diesel risk factor if you hadn't
18 adjusted for the 70-year lifetime?

19 MS. SOL : Could you point us to the
20 reference for that adjustment, please.

21 MR. BOYD: Bear with me.

22 (Pause.)

23 MR. BOYD: Okay, strike that. I just
24 want to know if you adjusted the exposure factor
25 to account for a 70-year lifetime.

1 MR. RUBENSTEIN: I'm still trying to
2 understand the question. Are you asking what
3 would the risk be if the project construction
4 continued for 70 years, and there were offsite
5 workers at the same location for 70 years?

6 If that is your question, and I think it
7 is, then I don't know what the answer is. We did
8 not do that calculation.

9 MR. BOYD: Okay. Is it your experience
10 that construction workers work only one job in
11 their lifetime?

12 MR. LOWE: No. Construction workers
13 will work multiple jobs in their lifetime.
14 However, the risk thresholds that are being
15 applied are intended to address emissions from a
16 specific project.

17 MR. BOYD: On page 8.65 of your, what's
18 it, supplement A, you state that epidemiological
19 studies have indicated that exposure to elevated
20 levels of particulate and ozone are associated
21 with a variety of respiratory and cardiovascular
22 effects. How do the reductions in pollutants in
23 1985 offsets pollutants in -- offset pollutants in
24 2008 in a community the applicant admits is
25 overburdened now? I'm talking about ERCs, your

1 using the 1985 ERCs to offset the pollutants in
2 2008.

3 MR. RUBENSTEIN: Right. And those
4 offsets are not intended to address any of the
5 health risks that are discussed on page 8.6-5. So
6 I'm not quite sure what the --

7 MR. BOYD: So, they're not mitigation
8 then?

9 MR. RUBENSTEIN: I'm sorry, I didn't
10 hear that question.

11 MR. BOYD: So you're saying that's not a
12 mitigation for the elevated levels of particulate
13 and ozone that are associated with this community?

14 MR. RUBENSTEIN: No, that's not what I'm
15 saying. And I'm still trying to find what it is
16 that you're referring to.

17 MR. BOYD: On page 8.65.

18 MR. RUBENSTEIN: You're actually looking
19 at language that starts on page 8.6-4, dealing
20 with criteria pollutants, is that correct?

21 MR. BOYD: Yeah, you're right.

22 MR. RUBENSTEIN: Okay, with that
23 understanding, now can you repeat your question?

24 MR. BOYD: Okay. You state that the
25 epidemiological studies have indicated that

1 exposure to elevated levels of particulate and
2 ozone are associated with a variety of respiratory
3 and cardiovascular effects. How do reductions in
4 pollutants in 1985, in other words 1985 ERCs,
5 correct, offset pollutants in 2008 in a community
6 that the applicant admits is overburdened now?

7 MR. RUBENSTEIN: I already answered the
8 same question when it was posed to me by Mr.
9 Sarvey in the context of air quality. My answer
10 in the context of public health remains the same.

11 The provision of reduction credits is a
12 programmatic mitigation element adopted by the Bay
13 Area Air Quality Management District. The fact
14 that reductions occurred in 1985 means that the
15 community was enjoying the benefits of those
16 reductions for what would be 12 or 13 years before
17 the increases actually occur.

18 Consequently, I do believe it's
19 appropriate to consider that as mitigation for the
20 impacts of this project.

21 However, in addition, because of the
22 City's concerns regarding exposures within the
23 community to a wide range of pollutants, including
24 particulate matter and ozone, the City has gone
25 beyond the basic requirements of the Air District

1 and has proposed the community mitigation and
2 community benefits packages, which the City
3 believes will result in additional public health
4 benefits.

5 MS. SOL : And I'll note that we have a
6 limited amount of time, and repeating questions
7 that were asked during air quality doesn't do much
8 to keep us moving.

9 MR. BOYD: I've only got like three more
10 questions.

11 HEARING OFFICER FAY: Okay, go ahead,
12 Mr. Boyd.

13 MR. BOYD: So the community benefits
14 package being proposed, do you consider that
15 mitigation?

16 MR. RUBENSTEIN: Yes. I'd indicated
17 that in my air quality testimony; and that holds
18 true for public health, as well.

19 MR. BOYD: Okay. Do you have a San
20 Francisco Bay Regional Water Quality Control
21 Board-approved cleanup plan, or remedial
22 investigation report in which there's necessary
23 data to perform human health and ecological risk
24 assessment on disturbance of onsite contamination
25 of water and soil associated with this project?

1 MR. LOWE: The human health and
2 ecological risk assessments are in preparation.
3 The data are available in those documents, as well
4 as the remedial action work plan are being
5 prepared.

6 MR. BOYD: Without this isn't any
7 testimony on the impacts on public health
8 speculative at this time?

9 MR. LOWE: I've reviewed the data for
10 the SFERP site as presented in the 2006 field
11 investigation report; and based on that
12 information, based on the information from the
13 adjoining Muni site, and taking into consideration
14 a wide range of brownfield sites I was able to
15 come to the conclusion that there would be no
16 significant impacts to the public health either
17 offsite or for workers when looking at the nature
18 and distribution of that contamination, and the
19 mitigation measures that have been proposed and
20 are agreed to by the City.

21 MR. BOYD: Do you have agreement yet, as
22 I asked before, by the Regional Water Quality
23 Control Board to those mitigation measures?

24 MR. RATLIFF: I believe Mr. Hill earlier
25 today said that we do.

1 HEARING OFFICER FAY: That's correct.
2 I'm not sure if you were here, Mr. Boyd, but that
3 was clarified by Mr. Hill.

4 MR. BOYD: That they do have --

5 HEARING OFFICER FAY: That they have
6 agreement.

7 MR. BOYD: -- Regional Board-approved
8 remedial investigation and --

9 HEARING OFFICER FAY: No. Of the range
10 of mitigation steps --

11 MR. BOYD: Oh, all the mitigation
12 measures that are being offered.

13 HEARING OFFICER FAY: Yeah, but the
14 specific ones have not yet been determined.

15 MR. BOYD: Okay. Have you performed a
16 fate (phonetic) and transport analysis to see if
17 toxic contamination at this site has the potential
18 to harm marine life in San Francisco Bay?

19 MS. SOL : Objection, Your Honor, that
20 goes beyond the scope of public health.

21 MR. BOYD: People eat those fish, Your
22 Honor.

23 HEARING OFFICER FAY: Okay, well,
24 biology is coming up next. Will some of your
25 witnesses be able to address it at that time?

1 MS. SOL : As we mentioned before, we
2 thought that the topic has been covered. But we
3 do have the ecorisk and the people who are working
4 on the ecorisk and health risk assessment present
5 today.

6 HEARING OFFICER FAY: Okay. Why don't
7 you wait and ask it then.

8 MR. BOYD: That's fine. I'm done, thank
9 you.

10 HEARING OFFICER FAY: Okay, great.
11 Thank you very much. Any redirect, Ms. Sol,?

12 MS. SOL : I have a few questions.
13 Could I take a moment to confer with my witnesses?

14 HEARING OFFICER FAY: Sure.

15 (Pause.)

16 REDIRECT EXAMINATION

17 BY MS. SOL :

18 Q Mr. Rubenstein, you were asked about the
19 change in calculations for the TSB, and the
20 changes that the soil witness testified to during
21 the last hearing.

22 Why don't those numbers make a
23 difference to your analysis?

24 MR. RUBENSTEIN: Mr. Sarvey was
25 comparing, or Mr. Boyd, I guess in this case, I'm

1 sorry, I get confused. I think it was Mr. Sarvey
2 was comparing apples and oranges, in that the
3 table he was referring to in the soils and water
4 discussion related to erosion was looking at total
5 suspended particulates, particulate matter of all
6 sizes.

7 He was asking whether I had changed my
8 analysis, which was looking just at PM10, which is
9 a subset of total suspended particulates. So the
10 numbers are the same -- the numbers are different
11 in our different bases, so there was no reason for
12 me to correct my analysis.

13 MS. SOL : And isn't it true that your
14 numbers were arrived by a different method of
15 analysis and therefore didn't require correction?

16 MR. RUBENSTEIN: That's correct. The
17 analysis on soils and erosion was done using the
18 (inaudible) model, which is a fairly simple and
19 very conservative model. The analyses that I
20 prepared for the air quality/public health
21 sections were based on the underlying science
22 behind the model, but with more specific
23 assumptions directly related to this project.

24 MS. SOL : You were asked, as well,
25 whether your analysis included the impacts of

1 projects listed in the southern waterfront EIR.

2 Could you explain whether there's a problem in
3 terms of your analysis and those projects?

4 MR. RUBENSTEIN: No, there isn't a
5 problem. The question was raised about table D-7
6 on page D-8 of the appendix D of the southern
7 waterfront SEIR. And the risks that are reflected
8 there projecting for the future are related to
9 diesel particulates.

10 Diesel particulates are reflected in the
11 risk numbers that Mr. Lowe discussed earlier in
12 terms of background risks. And as he indicated,
13 as a result of the Air Resources Board's diesel
14 risk reduction program those numbers have been
15 dropping significantly and are expected to
16 continue dropping regardless of the presence or
17 absence of any of the projects identified in the
18 1999 southern waterfront SEIR.

19 So, I don't believe that the failure to
20 explicitly reflect these individual projects
21 affects our conclusions regarding the significance
22 of the impacts from SFERP.

23 MS. SOL : And there was some discussion
24 about the one year of data. Should there be any
25 concerns about use of that data?

1 MR. RUBENSTEIN: No. It is correct that
2 it's generally preferable when performing air
3 quality dispersion analyses, whether for criteria
4 pollutants or for toxic air contaminants, to use
5 five years' worth of data, as recommended by
6 OEHHA.

7 However, the guidance from both OEHHA
8 and the Air Resources Board, the Bay Area District
9 and the Energy Commission generally indicates that
10 having data that is representative of local
11 conditions is preferable to having multiple years'
12 worth of data.

13 And as I indicated earlier, if there's a
14 tradeoff between one year of local data versus
15 five years of data that's more remote, regulatory
16 agencies invariably will recommend the use of the
17 one year local data. And that's what occurred in
18 this case.

19 MS. SOL : I have no further questions.

20 HEARING OFFICER FAY: Okay. Mr.
21 Ratliff, any recross?

22 MR. RATLIFF: No.

23 HEARING OFFICER FAY: No. Mr. Sarvey?

24 MR. SARVEY: No, I'm satisfied.

25 HEARING OFFICER FAY: Mr. Boyd?

1 MR. BOYD: No.

2 HEARING OFFICER FAY: Okay. Good.

3 Thank you very much. I thank the panel for their
4 testimony, and that concludes our taking of
5 evidence on the topic of public health.

6 And now we'd like to move on to the
7 topic of biology. The parties agreed that staff
8 could submit its written testimony on declaration.

9 And I understand that Mr. Smallwood is
10 not available, did not file testimony?

11 MR. BOYD: He told me he couldn't
12 without that --

13 HEARING OFFICER FAY: We understand
14 that. So that was a typo --

15 MR. BOYD: -- assessment.

16 HEARING OFFICER FAY: -- on our chart.

17 MR. BOYD: He's going to provide me
18 subsequent a letter to that effect, which I'll --

19 HEARING OFFICER FAY: That's fine.
20 Submit that as comment. And just tell him to be
21 as specific as he can regarding the record.

22 So what we'd like now is applicant to
23 present its panel of Cleckler and Rubenstein on
24 biology.

25 MS. SOL : And in addition, Mr. Cheung

1 and Ms. Gallardo are available.

2 HEARING OFFICER FAY: Right, in case any
3 questions come up that affect their area.

4 MS. SOL : Right.

5 HEARING OFFICER FAY: And this was
6 previously announced by applicant really as just a
7 courtesy to the parties in case the range of
8 questions goes beyond the expertise of these two
9 witnesses.

10 Mr. Cleckler, I believe, needs to be
11 sworn.

12 Whereupon,

13 JOHN CLECKLER

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

17 THE REPORTER: Please state and spell
18 your full name.

19 MR. CLECKLER: John Cleckler, it's
20 J-o-h-n C-l-e-c-k-l-e-r.

21 Whereupon,

22 GARY RUBENSTEIN, SUSAN GALLARDO and ROBERT CHEUNG
23 were recalled as witnesses herein, and having been
24 previously duly sworn, were examined and testified
25 further as follows:

1 DIRECT EXAMINATION

2 BY MS. SOL :

3 Q Good afternoon, Mr. -- or good morning,
4 Mr. Cleckler. Do you have before you the City's
5 testimony that was filed on April 17, 2006?

6 MR. CLECKLER: Yes.

7 MS. SOL : Could you turn, please, with
8 me to the section on biology which is on page 15.

9 MR. CLECKLER: Okay.

10 MS. SOL : There is a list of documents
11 there that I'm going to walk you through. The
12 first is the application for certification for the
13 San Francisco Electric Reliability project dated
14 March 2004, appendices 8.2A and 8.2B; that's
15 portions of exhibit 1.

16 Supplement A to the application for
17 certification for the San Francisco Electric
18 Reliability project, volume 1, dated March 24,
19 2005, section 8.2, biological resources, a portion
20 of exhibit 15.

21 Supplement A to the application for
22 certification for the San Francisco Electric
23 Reliability project, volume 2, dated March 24,
24 2005, appendix 8.2C; that's exhibit 15.

25 And supplement B to the application for

1 certification for the San Francisco Electric
2 Reliability project, dated January 11, 2006,
3 section 8.6 on biological resources. That's a
4 portion of exhibit 16.

5 And the applicant's comments on the
6 preliminary staff assessment, set 1, comment 24,
7 dated October 12, 2005; that's a portion of
8 exhibit 39.

9 MR. CLECKLER: Yes.

10 MS. SOL : Do you have any corrections
11 to make to those documents?

12 MR. CLECKLER: I do have a comment. The
13 approach to the stormwater discharge during the
14 operation has changed since the preparation of the
15 biology section of supplement A.

16 In a November 18, 2005 letter, the City
17 submitted a project description change concerning
18 the stormwater discharge. The original design
19 delivered stormwater to the combined sewer system,
20 whereas the new design involves the flow of
21 stormwater to the Bay through vegetative swale, as
22 described in exhibit 17.

23 This design change does not change my
24 conclusions concerning the project's effects on
25 biological resources.

1 MS. SOL : Okay, and with that
2 clarification to the extent there are facts in
3 those documents are they true to the best of your
4 knowledge?

5 MR. CLECKLER: Yes, they are.

6 MS. SOL : And to the extent there are
7 opinions, do they represent your professional
8 judgment?

9 MR. CLECKLER: Yes, they do.

10 MS. SOL : And do you adopt those
11 documents as your sworn testimony here today?

12 MR. CLECKLER: Yes.

13 MS. SOL : Okay, and, Mr. Rubenstein,
14 I'd like to turn to you. Do you have before you
15 the applicant's April 17, 2006 testimony of the
16 section on biological resources?

17 MR. RUBENSTEIN: Yes, I do.

18 MS. SOL : There are a number of
19 documents there attributed to you, the applicant's
20 response to CEC Staff data request, set 2A, dated
21 October 12, 2004, responses to data requests 157
22 through 159; that's a portion of exhibit 6.

23 Supplement A to the application for
24 certification for the San Francisco Electric
25 Reliability project, dated Mach 24, 2005, analyses

1 in support of section 8.2, biological resources
2 related to nitrogen deposition; that's a portion
3 of exhibit 15.

4 And applicant's response to CARE data
5 request set 3, dated June 9, 2005, response to
6 data request 3.7-1; that's a portion of exhibit
7 25.

8 Do you have any corrections or changes
9 to make at this time?

10 MR. RUBENSTEIN: No, I do not.

11 MS. SOL : To the extent there are facts
12 in those documents, are they true to the best of
13 your knowledge?

14 MR. RUBENSTEIN: Yes, they are.

15 MS. SOL : And to the extent there are
16 opinions, do they represent your professional
17 judgment?

18 MR. RUBENSTEIN: Yes, they do.

19 MS. SOL : And do you adopt those
20 documents as your sworn testimony here today?

21 MR. RUBENSTEIN: Yes, I do.

22 MS. SOL : Your Honor, I'd like to have
23 these exhibits entered into the record at this
24 time.

25 HEARING OFFICER FAY: Is there

1 objection? All right, hearing none, so moved.

2 MS. SOL : And so the witnesses are
3 available -- no, I'm sorry, I'd like Mr. Clecker
4 to make an opening statement on behalf of the
5 panel, please.

6 MR. CLECKLER: The proposed SFERP site
7 is located in a highly industrialized area of San
8 Francisco. The proposed power plant site and the
9 immediate temporary work areas are characterized
10 by surfaces such as concrete, pavement, gravel and
11 hardpan soil.

12 Biologically the baseline conditions of
13 the site do not provide significant resources for
14 common or special status plants or wildlife.

15 Accordingly, the three primary
16 biological concerns that we identified and
17 addressed for this project were nitrogen
18 deposition on San Bruno Mountain; the risk of
19 avian strikes; and the potentials for effects on
20 the Bay.

21 As shown in my written testimony, SFERP
22 would not result in any significant unmitigated
23 impacts to the biological resources.

24 Concerning San Bruno Mountain, emissions
25 from fuel combustion, whether they are from power

1 plants or other conventional fuel-burning sources,
2 can result in emissions or formation of compounds
3 that eventually settle on surfaces. This
4 deposition can compromise plant function and
5 productivity.

6 Of particular concern in the Bay Area,
7 nitrogen deposition can represent the addition of
8 significant nutrients that can modify plant
9 species composition and unique plant communities.
10 Serpentine soils are nutrient poor and host an
11 array of plant and associate insect species. Some
12 of these species are rare, endemic and are listed
13 as federally threatened or endangered. Such
14 species are found on nearby San Bruno Mountain.

15 Deposition modeling was conducted to
16 predict the amount of nitrogen deposition that
17 SFERP would contribute to the habitats of San
18 Bruno Mountain. This analysis was conducted by
19 those from the air quality discipline.

20 Baseline deposition on San Bruno exceeds
21 the current accepted significant levels. However,
22 SFERP would contribute less than .1 percent of the
23 current baseline levels and the contribution has
24 been mitigated by the offset of NOx -- by the use
25 of NOx offsets.

1 In addition, modeling shows that there
2 will be a net decrease in nitrogen deposition at
3 San Bruno from inCity power plants with the
4 closure of Hunter's Point Power Plant and the SCR
5 retrofit of the Potrero Unit 3.

6 Finally, to the extent the SFERP
7 facilitates the closure of Potrero Power Plant,
8 additional decreases can be expected.

9 Accordingly, it is my opinion that the
10 impacts of the SFERP on nitrogen deposition on San
11 Bruno Mountain are individually significant --
12 insignificant, sorry, to the extent they could be
13 considered to be cumulatively considerable, they
14 have been mitigated to a less than significant
15 level.

16 The U.S. Fish and Wildlife Service
17 concurred that the project would not likely result
18 in -- would not likely adversely affect any
19 federally listed species. And their only project
20 condition was the City provide proof of its offset
21 credits prior to operation.

22 On the issue of avian collision, above-
23 ground utilities compose a risk of bird collision
24 and electrocution. The project design includes
25 structure heights that are low, relative to

1 surrounding industrial development. The
2 associated powerline will be buried.

3 In addition, the project site does not
4 and will not provide resources that will provide a
5 significant attraction to birds. Although a large
6 number of birds migrate through the San Francisco
7 area, the proposed power plant is unlikely to be a
8 significant obstacle due to its stature and
9 location.

10 Regarding the aquatic habitats of the
11 San Francisco Bay, coastal-situated power plants
12 opting to utilize the closest and most abundant
13 water source, the Bay and ocean waters, for
14 operational use. And also discharge effluent
15 water into those aquatic environments, creating a
16 host of ecological modifications and problems with
17 the probability to adversely affect species
18 throughout the marine ecosystems.

19 Unlike the existing nearby power plants,
20 SFERP will operate on a closed system that intakes
21 water from the City's recycled waterline, and
22 discharges effluent into the City's combined sewer
23 system.

24 During construction stormwater will be
25 diverted to a catch structure and delivered to an

1 appropriate treatment system. During construction
2 stormwater will be -- during plant operations
3 stormwater will be diverted to a vegetative swale
4 designed to capture suspended sediments before the
5 rainwater reaches the Bay. The swale is designed
6 to be consistent with the standards and practices
7 of the Port of San Francisco, compliant with the
8 NPDES permit. Therefore, adverse effects to
9 aquatic habitats are avoided by the project
10 design.

11 As discussed in previous testimony,
12 potential concerns about the Bayward migration of
13 existing soil and groundwater contaminants and
14 their potential adverse impacts on the marine
15 environment will be addressed through a process
16 overseen by the Regional Water Quality Control
17 Board.

18 The extensive characterization of the
19 site provides the basis to conclude that there are
20 mitigation measures available to address
21 ecological impacts, if any exist, associated with
22 the existing contamination through source
23 remediation or by removing chemical migration
24 pathways into the Bay.

25 The ecological screening process, as

1 overseen by the Water Board, will provide for the
2 identification and implementation of the specific
3 mitigation measures needed to achieve the
4 requirements of the regional basin plan.

5 MS. SOL : So, Your Honor, this panel is
6 available for cross-examination.

7 HEARING OFFICER FAY: All right, thank
8 you. Mr. Ratliff?

9 MR. RATLIFF: Yes, a question probably
10 for Mr. Rubenstein.

11 CROSS-EXAMINATION

12 BY MR. RATLIFF:

13 Q Mr. Rubenstein, do you know what the
14 trend line is for nitrogen oxide emissions in the
15 Bay Area from all sources?

16 MR. RUBENSTEIN: I'm fairly certain, and
17 if you want a more precise number I can actually
18 find it in the Air Resources Board's Almanac, but
19 I'm fairly certain that the trend line is an
20 overall reduction in oxides of nitrogen emissions
21 from all sources as a result of both mobile source
22 and stationary source control programs.

23 MR. RATLIFF: The trend line that you're
24 talking about does presumably not take into
25 consideration the closure of Hunter's Point or the

1 potential closure of Potrero Unit 3, is that
2 correct?

3 MR. RUBENSTEIN: It would on a general -
4 -in a general sense, because it would reflect a
5 forecast of electricity demand as a function of
6 population. And that electricity demand is going
7 to be served by some power plant somewhere.

8 The inventory forecasts aren't so
9 specific as to predict the shutdown at any
10 particular time of a specific power plant. So the
11 forecast does not specifically predict the
12 shutdown of the Hunter's Point Power Plant. Nor
13 does it specifically predict the operation of
14 SFERP.

15 But it does take into account the
16 applicable regulations governing NOx emissions
17 from power plants. It also takes into account, as
18 I said, changes in population, and forecast
19 emissions that way.

20 In the particular case of oxides of
21 nitrogen emissions, power plants are a fairly
22 small contributor in the San Francisco Bay Area,
23 as they are statewide, as compared with the mobile
24 sources. So the overall trend line is driven
25 largely by mobile sources.

1 And now looking at the Air Resources
2 Board's Almanac, I can confirm that the trend line
3 is negative; emissions going down over time.

4 MR. RATLIFF: Mr. Clecker, question for
5 you about the existing contamination on the site.
6 What do we know about the existing contamination
7 at the SFERP site with regard --

8 MS. SOL : Your Honor, I believe that
9 that question --

10 MR. RATLIFF: -- with regard to its --
11 with regard to its effect on the Bay?

12 MS. SOL : I believe that is still
13 better directed to Ms. Gallardo and Mr. Cheung.

14 MS. GALLARDO: We know what the existing
15 constituents are at the site; however, there is
16 not an established connection between the site and
17 the Bay at this time. And as we indicated in our
18 testimony last week, and that was confirmed by
19 Steve Hill this morning, we are going to be going
20 through the process of doing an ecological risk
21 assessment using the data that has been generated
22 from the site to evaluate whether or not there is
23 a connection between the site and the Bay.

24 MR. RATLIFF: To the extent there is an
25 impact on the Bay, is that from the preexisting

1 pollution at the site?

2 MS. GALLARDO: In terms of what we're
3 evaluating that would be from preexisting
4 conditions. Again, that's been demonstrated by
5 the data that's been generated at the site.

6 MR. RATLIFF: And that would be the
7 subject of the ecorisk assessment that is being
8 required by the conditions of certification?

9 MS. GALLARDO: That's correct.

10 MR. RATLIFF: Okay, thank you.

11 HEARING OFFICER FAY: Anything further,
12 Mr. Ratliff?

13 MR. RATLIFF: No.

14 HEARING OFFICER FAY: Okay. Mr. Boyd,
15 we'll go to you first among the intervenors.

16 MR. BOYD: Certainly.

17 CROSS-EXAMINATION

18 BY MR. BOYD:

19 Q My first question is did you -- I was
20 looking from your supplemental A testimony on
21 biological resources, and I can't really find
22 anything specifically referencing the onsite toxic
23 contamination effect on biological aquatic
24 species, for example.

25 Is there -- I read the whole thing the

1 first time and then I just reviewed it again, and
2 I couldn't really find anything. Is there
3 something in there that I'm missing?

4 MS. SOL : Your Honor, the testimony is
5 what it is.

6 HEARING OFFICER FAY: Why don't you ask
7 a question about his specific analysis.

8 MR. BOYD: Did you examine -- were you
9 aware that chromium has been found on this site,
10 and reported in their samples that they took?
11 Were you aware of that?

12 MR. CLECKLER: No, that information was
13 taken after --

14 MR. BOYD: Testimony?

15 MR. CLECKLER: Yes. And that's being
16 addressed by the ecorisk assessment.

17 MR. BOYD: I guess that begs the
18 question. Do you have a San Francisco Bay
19 Regional Water Quality Control Board-approved
20 cleanup plan or remedial investigation report in
21 which there's necessary data to perform the human
22 health -- in your case, the ecological risk
23 assessment on the disturbance of onsite
24 contamination of water and soil associated with
25 this project?

1 MS. GALLARDO: I'd like to address that
2 again. Data has been generated for the site. The
3 data is adequate for us to move forward with the
4 human health and ecological risk assessment. We
5 are doing that under the direct oversight of the
6 Regional Water Quality Control Board. We'll be
7 working with them through that process.

8 MR. BOYD: But you don't have anything
9 approved yet from the Regional Board, is that
10 correct?

11 MS. GALLARDO: No, we don't have
12 anything approved yet. Again, that is a process
13 that we have outlined; Steven Hill has confirmed;
14 and we will be moving through that process.

15 MR. BOYD: And have you performed a fate
16 (phonetic) and transport analysis to see if the
17 toxic contamination at the site has the potential
18 to harm marine life in the San Francisco Bay?

19 MS. GALLARDO: Fate and transport
20 analysis, as necessary for the ecorisk assessment,
21 will be conducted at that time.

22 MR. BOYD: Which, at this time, is being
23 deferred until after the project's approved by the
24 Commission, isn't that true?

25 MS. GALLARDO: We have --

1 MR. BOYD: Isn't that your condition?

2 MS. GALLARDO: In the conditions of
3 certification it outlines a process and
4 performance standard, so we will go through and do
5 human health risk assessment and an ecological
6 risk assessment. Those documents will serve as
7 the basis for mitigation measures and risk
8 management measures for the site.

9 MR. BOYD: So what's the mechanism for
10 intervenors or the public to comment on that
11 mitigation before the project is approved?

12 MS. SOL : Your Honor, these questions
13 have all been asked and answered when the
14 contamination witnesses were up.

15 HEARING OFFICER FAY: Yes, if that's an
16 objection, it's sustained. They have been asked
17 and answered. And Mr. Hill did address the public
18 process in his agency. And our public process
19 continues. You're familiar with it. And even
20 after licensing, it continues through the
21 compliance process.

22 MR. BOYD: That's fine. I'm finished,
23 Gary.

24 HEARING OFFICER FAY: Okay.

25 MR. BOYD: Thank you.

1 HEARING OFFICER FAY: Thank you, Mr.
2 Boyd. Mr. Sarvey.

3 CROSS-EXAMINATION

4 BY MR. SARVEY:

5 Q Yeah, table 8.2-3 of your testimony,
6 it's on page 8.213.

7 MR. CLECKLER: Yes.

8 MR. SARVEY: Did you examine the soil
9 for any endangered snails, worms, bugs, et cetera?

10 MR. CLECKLER: No, we did not.

11 MR. SARVEY: Okay. On page 8.2-21 and
12 22 you discuss cumulative impacts.

13 MR. CLECKLER: Yes.

14 MR. SARVEY: And in that testimony you
15 have a discussion of the Jefferson-Martin
16 transmission project eliminating nitrogen oxides
17 impacts through the closure of the Hunter's Point
18 Power Plant, is that correct?

19 MR. CLECKLER: Yes.

20 MR. SARVEY: The action plan that you're
21 referring to is going to eliminate 385 megawatts
22 of generation in San Francisco. Have you done an
23 analysis of the nitrogen deposition impacts and
24 the biological impacts from the generation that
25 will be replacing that 385 megawatts?

1 MR. RUBENSTEIN: We did an analysis in
2 appendix, I believe it was 8.2C, of exhibit 15.
3 And in that analysis we took a look at a number of
4 different scenarios including the continued
5 operation of the Potrero and Hunter's Point Power
6 Plants at historical levels. And also the
7 shutdown of Hunter's Point and the continued
8 operation of Potrero. And then the third case was
9 the shutdown of both Hunter's Point and Potrero.

10 And so whether that 385 megawatts is
11 replaced or not, our analysis indicated that there
12 would be a net reduction in nitrogen emissions
13 from power plants within this area that would have
14 an impact on the -- a beneficial impact on San
15 Bruno Mountain.

16 MR. SARVEY: So you really can't
17 identify which power plants or what sources to be
18 used to replace that 385 megawatts, is that
19 correct?

20 MR. RUBENSTEIN: I can't identify
21 specifically what plants there would be, meaning,
22 you know, the extent to which SFERP would provide
23 the power versus other places. However, in terms
24 of potential impacts on San Bruno Mountain, I can
25 be fairly certain because I'm aware of the status

1 of applications filed with the California Energy
2 Commission that there are no projects proposed to
3 replace that capacity that would be close enough
4 to impact nitrogen deposition levels on San Bruno
5 Mountain to any significant level.

6 MR. SARVEY: And did you analyze the
7 impacts of the fourth turbine at the airport on
8 impacts to San Bruno Mountain?

9 MR. RUBENSTEIN: I don't believe that we
10 did in this analysis. However, looking at the
11 numbers and scaling them up, even including that
12 fourth turbine, my conclusions would not change.

13 MR. SARVEY: Okay, thank you.

14 HEARING OFFICER FAY: Is that all, Mr.
15 Sarvey?

16 MR. SARVEY: That's all.

17 HEARING OFFICER FAY: Okay. Any
18 redirect, Ms. Sol,?

19 MS. SOL : No.

20 HEARING OFFICER FAY: Okay. We are
21 going to take a one-hour lunch break. And when we
22 return we'll take up the topic of environmental
23 justice. The staff analysis in that area was
24 sprinkled among all the various topic areas, so
25 they did not file separate testimony under that

1 title.

2 But we do have the applicant's testimony
3 and we have testimony from CARE and Sarvey.

4 And so we'll return at 1:00.

5 (Whereupon, at 12:02 p.m., the hearing
6 was adjourned, to reconvene at 1:00
7 p.m., this same day.)

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1 AFTERNOON SESSION

2 1:02 p.m.

3 HEARING OFFICER FAY: We'll proceed with
4 the applicant's panel of witnesses on
5 environmental justice.

6 MS. SOL : Okay, Your Honor. We have a
7 new witness, Ms. Eng, who needs to be sworn.

8 HEARING OFFICER FAY: Please swear the
9 witness.

10 Whereupon,

11 ANNE ENG

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

15 THE REPORTER: Please state and spell
16 your full name.

17 MS. ENG: My name is Anne Eng, A-n-n-e
18 E-n-g.

19 MS. SOL : And there's a fourth person
20 to this panel, Ms. Hale, who should be here very
21 shortly. But why don't we start with the
22 identification of exhibits. So this panel
23 includes Ms. Eng, Ms. Karen Kubick, Mr. Rubenstein
24 and Ms. Hale.

25 //

1 Whereupon,

2 KAREN KUBICK and GARY RUBENSTEIN
3 were recalled as witnesses herein, and having been
4 previously duly sworn, were examined and testified
5 further as follows:

6 DIRECT EXAMINATION

7 BY MS. SOL :

8 Q Ms. Eng, on behalf of the panel do you
9 have before you the testimony that was filed by
10 the City on April 17, 2006?

11 MS. ENG: I do, yes.

12 MS. SOL : I'm going to refer you to two
13 sections, the first is the section on
14 environmental justice and the second is the
15 section on environmental justice/air quality PM10
16 mitigation/community benefits.

17 So, why don't we start with the section
18 on environmental justice. Do you see the list of
19 documents under section C prior filings?

20 MS. ENG: Yes, I do.

21 MS. SOL : I'm going to go through those
22 one-by-one. There's supplement A to the
23 application for certification for the San
24 Francisco Electric Reliability project, volume 1,
25 dated March 24, 2005, section 4, environmental

1 justice; that's a portion of exhibit 15.

2 Applicant's response to CARE data
3 request response set 3, data response 3.4-1, dated
4 June 9, 2004; that's a portion of exhibit 25.

5 Applicant response to Sarvey data
6 request, response set 1A, data response 1-11,
7 dated July 25, 2005. That's a portion of exhibit
8 27.

9 Applicant's comments on the preliminary
10 staff assessment set 1, comment 1, dated October
11 12, 2005; that's a portion of exhibit 39.

12 Applicant's comments on the preliminary
13 staff assessment set 2, comment 42, dated October
14 31, 2005; that's exhibit 40.

15 And then turning to the section on
16 environmental justice/air quality PM10 mitigation/
17 community benefits, there's applicant's response
18 to CEC data request, data set response 1A,
19 response to data request 47, dated July 6, 2004;
20 that's a portion of exhibit 3.

21 Applicant's response to the San
22 Francisco Community Power data request, data
23 response set 1, response to data request 8, dated
24 August 18, 2004; that's a portion of exhibit 12.
25 And for clarification, that does not include the

1 backup documents that were submitted along with
2 that data response.

3 And then applicant's response to CEC
4 Staff data request, informal data response set 5,
5 responses to data requests 157 and 158, dated
6 September 20, 2004; that's a portion of exhibit
7 11.

8 Applicant's response to CARE data
9 request set 3, data response 3.4-1, dated June 9,
10 2005; that's a portion of exhibit 25.

11 Applicant's response to Sarvey data
12 request, response set 1A, data responses 1-2 and
13 1-3, dated July 25, 2005; that's a portion of
14 exhibit 24.

15 And applicant's air quality mitigation
16 and community benefits plan, dated August 4, 2005;
17 that's exhibit 38.

18 With regards to those documents, to the
19 extent there are facts there, are they true to the
20 best of your knowledge?

21 MS. ENG: Yes.

22 MS. SOL : And to the extent there are
23 opinions, do they represent your professional
24 judgment?

25 MS. ENG: Yes.

1 MS. SOL : And do you adopt those
2 documents as your sworn testimony here today?

3 MS. ENG: Yes, I do.

4 MS. SOL : Your Honor, I would like to
5 move these documents into evidence, please.

6 HEARING OFFICER FAY: Is there
7 objection? All right, hearing none, so moved.

8 MS. SOL : Ms. Eng, could you please go
9 ahead and offer an opening statement, please.

10 MS. ENG: I'll be happy to. Good
11 afternoon. I've worked in the environmental
12 justice field for approximately ten years. I
13 served seven years as the Supervising Staff
14 Attorney with the Environmental Law and Justice
15 Clinic of Golden Gate University School of Law.
16 And for the past two and a half years I've been
17 working with the City as its environmental justice
18 Program Manager.

19 We are really the only municipality I
20 know of in the region, if not in the country, that
21 has an EJ Program Manager.

22 I'm here to tell you that the City is
23 firmly committed to environmental justice, into
24 protecting the community health and the
25 environment, particularly in the southeast sector

1 of the City.

2 As stated by earlier witnesses the
3 primary objective of SFERP is to facilitate the
4 shutdown of the Potrero Power Plant. SFERP is an
5 important component of the City's comprehensive
6 long-term plan to improve and modernize the energy
7 infrastructure in San Francisco.

8 That plan also incorporates renewable
9 energy, energy efficiency measures. We are
10 looking at, for example, tidal, wind, wave
11 energies and moving aggressively to put in solar
12 systems throughout the City, and particularly in
13 the southeast area.

14 When SFERP was first proposed the City
15 was focused on closure of the Hunter's Point Power
16 Plant. After the California PUC approved the
17 Jefferson-Martin transmission project, and there
18 was greater certainty regarding closure of the
19 Hunter's Point Plant, the City turned its
20 attention to Potrero.

21 We were asked by local residents to work
22 towards the release of the RMR for Potrero Unit 3.
23 We had several meetings with community residents
24 regarding this goal. First we had thought they
25 wanted shutdown of the diesel-fired peakers at

1 Potrero 4 and 5 -- units 4, 5 and 6 But we were
2 asked to look at unit 3, the baseload plant,
3 first.

4 We did; we worked with the ISO. And
5 were able to obtain an improved, revised action
6 plan that would enable the release of the RMR for
7 all units at Potrero if this project is built.

8 I know that intervenors, and
9 particularly the two community members here, are
10 concerned about this project and are skeptical.
11 And when I first joined the City two and a half
12 years ago, I was a bit concerned, as well. I was
13 basically coming from a public interest legal
14 background. I had basically worked hard to reduce
15 pollution in Bay View. And when I arrived at this
16 job and learned about this project, I had to
17 wonder, okay, here's another power plant proposal.

18 But this one is different. It's a
19 peaker plant. And it basically follows more than
20 ten years of hard work by the City to protect the
21 local community from pollution from power
22 generation.

23 And I'd like to highlight some of the
24 efforts made by the City over the past 10, 12
25 years, because it sets this project in a larger

1 context. And I think it's important and hopefully
2 it would help the two community residents here
3 understand that this is not just another power
4 plant project coming to their neighborhood.

5 Going back to 1994, SF Energy Company, a
6 subsidiary of AES proposed 240 megawatt cogen
7 facility in Bayview. It was an intense local
8 reaction to this proposal. This was before energy
9 deregulation. There were no plans in place for
10 closure or sale of power plants. Basically it was
11 another third power plant in the same area.

12 The intense reaction from community
13 residents led to a community-wide organizing
14 effort. Several dozen community groups and --
15 organizations built alliances and opposed the
16 project. They persuaded the City policymakers to
17 oppose the AES project on environmental justice
18 grounds.

19 Following or during the site
20 certification proceedings for the AES project
21 local residents in Bayview voiced concerns about
22 the high asthma rates and other health conditions.
23 The City met monthly with community residents at
24 that time. And I, serving as a public interest
25 attorney, also attended these meetings. And we

1 established a local task force, the Bayview
2 Hunter's Point health and environmental task
3 force. Late on the City also established a
4 special asthma task force.

5 These bodies are supported by the City
6 government. And basically they're looking at
7 intervention strategies to address the high rates
8 of asthma and other health concerns of local
9 residents.

10 Moving forward in time, we approached
11 the state divestiture proceedings in the late
12 1990s. And PG&E basically identified Hunter's
13 Point and Potrero Power Plants for sale at an
14 auction, going to sell them to the highest bidder.

15 Local residents in Bayview again voiced
16 concerns. If you sell these plants to an outside
17 energy company, most likely they would try and
18 expand the facilities, repower and we receive
19 additional pollution in the southeast.

20 Again, the City stepped into the
21 proceedings and negotiated, in agreement with
22 PG&E, that provided for closure of Hunter's Point
23 Power Plant and allow the auction of the Potrero
24 Power Plant.

25 And now we see, a couple years following

1 the auction, Mirant did, in fact, come forward and
2 try to build a 540 megawatt unit 7. Because of
3 local opposition that project has not been able to
4 go forward and the CEC recently dismissed the
5 proceedings for that.

6 We are pleased. We are pleased that
7 PG&E has announced the official closure of the
8 Hunter's Point Power Plant. It's been eight years
9 in the making, but it has happened. This is a
10 reality that was achieved as a direct result of
11 the City's commitment to environmental justice.
12 And we're really proud about this.

13 More recently the City appeared in
14 regulatory proceedings before the San Francisco
15 Regional Water Quality Control Board with regards
16 to Mirant's wastewater discharge permit for the
17 Potrero Power Plant. That facility basically
18 draws in 200 million gallons per day of Bay water
19 for once-through cooling. And it doesn't meet
20 modern Clean Water Act standards.

21 Because of the City's input and
22 community activists' input into the Regional Water
23 Quality Control Board proceedings, that re-issued
24 NPDES permit has now been limited to two and a
25 half years. And Mirant will not be allowed to use

1 that once-through cooling system in the future
2 after the two and a half years unless it can show
3 there are no impacts to the Bay.

4 I'd like to shift gears and give you a
5 context for community benefits now. Basically in
6 1998 when the City worked out a deal with PG&E for
7 closure of Hunter's Point Power Plant, the state
8 was involved in those negotiations and stepped in;
9 appropriated \$13 million in CPUC funds to the
10 City. The City placed those funds into a
11 dedicated account for Bayview Hunter's Point and
12 Potrero neighborhoods.

13 We've set up a special environmental
14 justice grant program which I manage. To date
15 we've awarded more than \$9 million in grants to
16 nonprofit local community groups, environmental
17 groups that are serving the Bayview and Potrero
18 neighborhoods.

19 I'd like to just summarize some of the
20 accomplishments with the money spent to day if I
21 may. We have a special independent evaluation
22 going on regarding this project. And the final
23 report from that evaluation will be issued over
24 the next two days. So this is data that I just
25 got hot off the press, and I'm kind of proud of

1 it, so I'm going to share it with you.

2 Basically from the millions and millions
3 of dollars in EJ funds dedicated for Potrero and
4 Bayview neighborhoods, we have served more than
5 10,000 people; we have employed, those funds were
6 used to employ 340 people. We've provided over
7 65,000 hours of employment training to local
8 residents.

9 We've basically helped fund the
10 installation of 71 indoor air filters. We have
11 funded 1.7 megawatts of electricity savings,
12 basically energy efficiency measures. We went in
13 and retrofitted low-income homes; put in
14 weatherization measures installation. And we've
15 basically served several hundred low-income homes
16 in Bayview with this money.

17 We've installed over 42 solar systems in
18 the Bayview and Potrero neighborhoods. So, that's
19 just with these EJ funds. And in addition, the
20 PUC has been working on relatively larger projects
21 in the southeast area, as well.

22 So we try to meet the community
23 concerns. Residents also expressed a need for
24 greater food access, and we were able to
25 distribute over 500,000 pounds of food with this

1 money, as well.

2 So these are statistics that will be
3 published in a report over the next day or two.
4 And basically tells you that the City is not just
5 committing the money towards this community
6 benefits package, but has committed several
7 million dollars over the past few years. These
8 were state PUC funds and we appreciate having
9 these funds so we can work diligently to promote
10 EJ in Bayview and Potrero with this money.

11 I'd like to just, again, go back and
12 talk a bit about City efforts in the energy field.
13 You see this long history of commitment. You're
14 seeing grant money placed into the community.

15 And we also are working aggressively to
16 address emissions from mobile sources. The topic
17 came up in earlier discussions today. I'd like to
18 just tell you about some of the projects that are
19 underway because we recognize that more than half
20 of the pollution that we're dealing with comes
21 from mobile sources. And a lot of toxic air
22 contaminants from diesel emissions. And we
23 recognize this and want to work aggressively in
24 this area.

25 So, for example, last year City

1 representatives worked with the American Lung
2 Association and local school parents and persuaded
3 the San Francisco School District to place a
4 requirement in the school bus contract for
5 reducing diesel emissions.

6 As you may know, diesel emissions often
7 accumulate inside a school bus and not just behind
8 a school bus. We were basically exposing school
9 kids to all this diesel emission. So we now have
10 PM filters going on school buses. The school
11 district does not own or operate its own bus
12 fleet. We contract out to Laidlaw Transit. And
13 they are putting in these measures.

14 Additionally, we've worked with the
15 garbage company, NorCal, and its subsidiaries in
16 cleaning up the garbage trucks. Basically trying
17 to incorporate newer technology, cleaner fuels
18 into garbage trucks.

19 And more recently, NorCal has received
20 approval from the rate board to increase rates,
21 garbage collection rates, so it can basically
22 convert 400 garbage collection trucks to clean
23 fuel.

24 In addition, the Mayor, two weeks ago,
25 issued an executive order, and that executive

1 directive requiring all City vehicles that use
2 diesel fuel to incorporate a blend of biodiesel.
3 And as you may know, biodiesel is made primarily
4 from vegetable sources; it's renewable; lower
5 emissions. And so you will have basically over
6 1000 units of municipal vehicles using this
7 cleaner fuel over the next couple years.

8 The first phase of this project will be
9 in the Bayview neighborhood. We recognize that a
10 lot of the City diesel fleet is based there, and
11 we want to clean up that neighborhood first and
12 reduce the diesel emissions. So, for example, all
13 the Bayview Hunter's Point fire trucks are now
14 going to use biodiesel.

15 The City is also committing resources to
16 help build an infrastructure for biodiesel
17 production, supply and distribution. My EJ grant
18 program recently awarded four grants to projects
19 that would promote biodiesel use, trying to get to
20 reduce diesel emissions.

21 Nine months ago I applied for a grant
22 from the state, California Department of
23 Transportation. And yesterday when I came to work
24 found the good news that we will be receiving
25 \$129,000 in state funds to identify and inventory

1 the diesel emission sources in the Bayview area;
2 and develop mitigation strategies to again reduce
3 diesel emissions.

4 So these are just some of the examples
5 that we're working on, the projects we're working
6 on to address toxic air contaminant concerns in
7 the southeast.

8 So, --

9 PRESIDING MEMBER BOYD: Can I ask you,
10 out of curiosity, what percentage of biodiesel the
11 City's going to utilize? B2? B5? B20?

12 MS. ENG: We'll start with B20, but we
13 hope to basically get to a point where we can
14 actually move to B100. The City already operates
15 one of the most aggressive clean air vehicle
16 fleets in the country. We have over 800 vehicles
17 using alternative cleaner fuel.

18 But we recognize that we still have
19 several diesel fueled vehicles out there. We
20 consume about 8 million gallons of diesel fuel per
21 year. So we really want to make headway into that
22 and use as much cleaner fuel as possible.

23 So, in closing I just want to say that
24 I'm here in support of this project. I firmly
25 believe we will reduce pollution. There will be a

1 net benefit overall in the Bayview area with this
2 project.

3 Thank you.

4 MS. SOL : And so the panel is available
5 for cross-examination.

6 HEARING OFFICER FAY: Okay, and did Ms.
7 Hale arrive?

8 MS. SOL : Yeah, just got here.

9 UNIDENTIFIED SPEAKER: She's coming in.

10 HEARING OFFICER FAY: Oh, all right.
11 Ms. Hale is here. And Ms. Hale was previously
12 sworn as a witness, I believe. So, the entire
13 panel is available at this time.

14 Whereupon,

15 BARBARA HALE
16 was recalled as a witness herein, and having been
17 previously duly sworn, was examined and testified
18 further as follows:

19 HEARING OFFICER FAY: Mr. Ratliff, any
20 questions?

21 MR. RATLIFF: No questions.

22 HEARING OFFICER FAY: Okay. Mr. Sarvey.

23 MR. SARVEY: Yeah.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MR. SARVEY:

3 Q Ms. Eng, what plan does the applicant
4 have for a program to train and use construction
5 workers from minority southeast San Francisco
6 community on this project?

7 MS. KUBICK: Hi. Karen Kubick. There
8 are a few programs that the City has in place.
9 One is called first source hiring whereby
10 applications are pulled together and made
11 available to our contractor, as well as all the
12 subcontractors, to be able to pull folks in.

13 One complexity to this project is that
14 it is highly specialized work in the building of a
15 power plant. But there are the offsite linears
16 where we have paving, pipeline cable work.
17 There's trucking. And, of course, there'll be
18 some hazmat work potentially, as well, at the two
19 locations.

20 We are actually coordinating with the
21 building trades to see how we can better
22 facilitate that hiring process.

23 MR. SARVEY: So what percentage of
24 minority workers do you expect to use in the
25 construction --

1 MS. KUBICK: The requirement is 6
2 percent DVE goal for the project.

3 MR. SARVEY: You're saying the action
4 plan will remove a net 385 megawatts of inCity
5 generation. Where do you suppose this generation
6 will come from?

7 MS. ENG: Well, I recognize that we will
8 be importing more electricity through the
9 transmission system. And I also recognize that
10 there could be more regional EJ concerns.
11 However, I do believe that this does address the
12 environmental justice concerns, or will promote
13 environmental justice, and that we will help shut
14 down the Potrero Power Plant.

15 Power generation has been at that site
16 since the late 1800s; and we are anxious to see
17 the cleanup of that site.

18 MR. SARVEY: So if that generation comes
19 from another community, for example Pittsburg,
20 which has been speculated, which has a higher
21 minority and low-income population than southeast
22 San Francisco, are you not, in fact, shifting the
23 environmental burden to another low-income
24 community? And how will environmental justice be
25 served by that?

1 MR. RUBENSTEIN: This gets to the
2 question that was posed to me earlier about where
3 the power would come from in the context of public
4 health. And the answer is the same. There really
5 is no basis for predicting exactly where the
6 additional capacity will come from.

7 But it's safe to say that if it comes
8 from literally new capacity, that that capacity
9 will have to go through its own environmental
10 review process and will require mitigation under
11 CEQA.

12 If it comes from increased operation of
13 existing power plants, then the impacts of that
14 increased generation have already been analyzed,
15 because the power plants have been analyzed in the
16 context of their maximum allowable emissions.

17 And then finally, with respect to NOx
18 emissions, all of the power plants in not just the
19 San Francisco Bay Area, but the State of
20 California, have been required over the last 25
21 years to comply with a series of increasingly
22 stringent NOx emission reductions so that no
23 matter where the generation is coming from, we can
24 be reasonably certain that it's going to be coming
25 from clean energy sources.

1 MR. SARVEY: Ms. Eng, the second purpose
2 you elaborate in your testimony for the project is
3 the removal of dirty inCity generation. The
4 action plan calls for the release of the Potrero 3
5 RMR contract when the SFERP project becomes
6 operational.

7 Does the removal of the RMR agreement
8 for Potrero 3 guarantee the shutdown of Potrero 3
9 unit?

10 MS. ENG: I think the Potrero facility
11 will no longer be economically viable. It would
12 basically lose a significant income source,
13 guaranteed income source. And given that it has
14 this very old once-through cooling system that
15 also poses a significant pollution concerns, I do
16 not see that plant continuing once the RMR is
17 discontinued.

18 MR. SARVEY: Okay. Ms. Eng, you're
19 familiar with the energy action plan, are you not?

20 MS. ENG: Are you talking about the ISO
21 action plan, or the City's electricity resources
22 plan?

23 MR. SARVEY: The City's electric
24 resource plan.

25 MS. ENG: I have my own autographed copy

1 here.

2 (Laughter.)

3 MR. SARVEY: Good. Could we docket that
4 as an exhibit, please, Mr. Fay? There's a lot of
5 references to that plan in this project, and I'd
6 like to have it as an exhibit, if I could, please.

7 HEARING OFFICER FAY: Well, we can mark
8 it for identification.

9 MS. ENG: Can I tell you that I was
10 joking when I said I had my own autographed copy.
11 This is available online. And if you could take
12 administrative notice that it's, you know, it's a
13 public document that was approved by the board of
14 supervisors.

15 MR. SARVEY: No, I'd like to have it in
16 the evidentiary record. There's thousands of
17 references to it. And I believe it's appropriate
18 that it is in the record.

19 HEARING OFFICER FAY: Okay, --

20 MS. ENG: Fine, I'll give it up.

21 HEARING OFFICER FAY: -- do you want to
22 adequately identify that, Ms. Eng, since it's
23 before you. Can you identify that for us?

24 MS. ENG: Okay. It's the San Francisco
25 Electricity Resource Plan. Has a date revised

1 December 2002.

2 HEARING OFFICER FAY: Okay. And that
3 will be exhibit 96 marked for identification.

4 MR. SARVEY: Okay. On page 63 of the
5 action plan it states that by installing new
6 pollution control technology on either of the
7 plants, Hunter's Point or Potrero, could cost the
8 owners and ratepayers tens of millions of dollars,
9 and could result in the extension of the operation
10 for another 10 to 15 years.

11 Is it true that the Potrero Unit 3 has
12 been retrofitted, Ms. Eng?

13 MR. RUBENSTEIN: Yes, it has been.

14 MS. ENG: Yes.

15 MR. SARVEY: The City recognizes that
16 there will be PM impacts at both Hunter's Point
17 and Bayview communities. Does the City believe
18 that there will be NO₂, CO or SO₂ health-based
19 standards will be exceeded by this project?

20 MR. RUBENSTEIN: No.

21 MR. SARVEY: Now will the use of SO₂ in
22 AQSC-12 mitigate the local PM impacts from this
23 project on the SO₂ as a regional precursor?

24 MR. RUBENSTEIN: I can answer that
25 question in exactly the same way that I answered

1 it when it was posed to me at the last hearing in
2 the air quality discussion.

3 The objective of the surrender of the
4 SO2 emission reduction credits is to address the
5 Energy Commission Staff's concerns regarding
6 quantification and enforceability of mitigation
7 programs.

8 The City believes that there will be
9 additional benefits provided for the same reasons
10 I discussed earlier with respect to the NOx
11 emission reduction credits.

12 But with respect to mitigating PM10 and
13 PM2.5 impacts, the City's primary focus is
14 mitigation program it has proposed which includes
15 the enhanced street-cleaning program, providing
16 roughly 24 tons per year of PM10 benefits, as
17 compared with 15 tons per year of project
18 emissions, combined with the community benefits
19 program, which includes substantial health
20 benefits associated with, in particular, the
21 indoor air quality program.

22 So the SO2 credits do not, by
23 themselves, represent the City's proposed
24 mitigation for PM10 air quality in the community.
25 It's simply part of a larger package intended to

1 address a variety of objectives.

2 MR. SARVEY: So, does the City intend to
3 use AQSC-11 to mitigate the project?

4 MR. RUBENSTEIN: The City intends to
5 comply with the Commission's conditions of
6 approval, which if the staff's recommendations are
7 adopted, will include both AQSC-11 and AQSC-12.
8 The City has not made any judgment as to how it
9 would comply with those conditions as yet.

10 MR. SARVEY: So, how much money are you
11 willing to direct to ASQ-11 to mitigate the
12 project's PM2.5 emissions?

13 MS. SOL : Objection, Your Honor, I
14 think that goes beyond the scope of this witness'
15 testimony.

16 HEARING OFFICER FAY: Well, just ask Mr.
17 Rubenstein, do you know if there is a budget for
18 the --

19 MR. RUBENSTEIN: I imagine there might
20 be a budget. I do not know what it is. And I
21 suspect that the decision as to how to comply will
22 depend on the cost of each individual segment.

23 HEARING OFFICER FAY: All right, go
24 ahead, Mr. Sarvey.

25 MR. SARVEY: Ms. Eng, should money be a

1 consideration in environmental justice decisions?

2 MS. ENG: You have to clarify, because
3 environmental justice is focusing on social
4 justice issues and issues of poverty often. So,
5 money's never not an issue, but can you clarify
6 your question?

7 MR. SARVEY: Sure. You stated earlier
8 that the City's trying to avoid siting projects in
9 southeast San Francisco. And several alternatives
10 have been rejected by the City because of money
11 issues.

12 MS. ENG: No, I didn't say that. I
13 basically tried to give a brief summary of the
14 long efforts, dedicated, consistent, diligent
15 efforts by the City to prevent and reduce
16 pollution in the energy field.

17 Each power plant proposal had its own
18 context, basically a certain point in history.
19 For example, as I mentioned, AES came along when
20 there was no plan for closure. Now we have one
21 closed plant and another one identified by the ISO
22 in its approved action plan.

23 MR. SARVEY: Let me state it another way
24 for you. Wouldn't this southeast community be
25 much better served if you sited this SFERP

1 somewhere else?

2 MS. ENG: I personally and
3 professionally I believe this project will help
4 the City and local residents because it definitely
5 will lead to closure of Potrero.

6 The community residents, we've met with
7 dozens and dozens of residents; have voiced their
8 opinion about this. They are -- there is
9 basically a consensus out there. That's why this
10 room is not filled with opponents. There's a
11 consensus that this project is needed for San
12 Francisco to improve the quality of life.

13 If people -- there are many people here
14 in this room who were present with the AES and
15 Mirant proceedings. This is a very different
16 situation. We do not have dozens upon dozens of
17 people screaming and yelling about this project.

18 MR. SARVEY: The City rejected the site
19 at Jesse Street; it also rejected the site near
20 the Bay Bridge because of monetary reasons. Is
21 that an appropriate rejection under environmental
22 justice considerations?

23 MS. KUBICK: May I step in? Once again,
24 to reiterate Ms. Eng's point, the objective of the
25 project is to create the environments and

1 opportunity following the Cal-ISO action plan,
2 which requires three turbines to be sited. The
3 Jesse site will not accommodate three turbines.

4 MR. SARVEY: It will accommodate one.
5 Would that be more beneficial to the southeast
6 community if you put one there?

7 MS. KUBICK: We're going to fully
8 discuss the siting in the alternatives section.
9 Actually, proximity to residents issues with
10 substations, no, I would disagree with you.

11 MR. SARVEY: Were those minority
12 residents?

13 MS. KUBICK: They're downtown residents.

14 MR. SARVEY: Were they minority
15 residents? Was environmental justice a factor?

16 MS. KUBICK: Environmental justice is
17 the primary factor for this entire project, so
18 that we can create the opportunity to be able to
19 close down the Potrero facility and improve the
20 southeast community.

21 MR. SARVEY: Ms. Eng, on page 4-2 of
22 your testimony you state that ordinance 124-01
23 establishes a series of findings that sets forth
24 unambiguously the City's view that southeast San
25 Francisco is a community of color with relatively

1 high rates of respiratory disease; and that
2 southeast San Francisco has been
3 disproportionately impacted by industrial
4 facilities including electrical power generation.

5 As an environmental justice expert is
6 this not a definition of a cumulative impact?

7 MS. ENG: I'm sorry, what is the
8 definition of cumulative impact? What you just
9 read?

10 MR. SARVEY: Yes.

11 MS. ENG: Basically the City recognizes
12 the southeast area as an environmental justice
13 community that's been heavily burdened by multiple
14 industrial sources.

15 MR. SARVEY: And would you define that
16 as a cumulative impact?

17 MS. ENG: Basically cumulative impact,
18 in my mind, is often used in a CEQA analysis; and
19 you basically are looking at the incremental
20 direct impact of a proposed project in combination
21 with existing or foreseeable projects. And so
22 that is, in my mind, what a cumulative impact is.

23 I think what you read to me kind of
24 mixes up terms. I'm not understanding what --

25 MR. SARVEY: Well, this is a CEQA

1 proceeding here and the City has admitted there's
2 a disproportionate impact. And what I'm asking
3 you is that under the definition of a cumulative
4 impact under CEQA and environmental justice, as
5 well.

6 MS. SOL : It's been asked and answered,
7 Your Honor.

8 MS. ENG: Basically this project,
9 numerous witnesses for the City have submitted
10 testimony saying that, and I believe their
11 statements, their opinions, that this project does
12 not pose a significant impact, incrementally,
13 directly. So the project impacts, in combination
14 with the study, does not cause a cumulative
15 adverse impact. We are mitigating any potential
16 impacts of the project and going beyond that.

17 As I stated earlier, this project will
18 achieve a net environmental benefit.

19 MR. SARVEY: Does the City of San
20 Francisco subscribe to the precautionary
21 principle?

22 MS. ENG: We have adopted the
23 precautionary principle, yes.

24 MR. SARVEY: So are you aware of any
25 other projects in southeast San Francisco around

1 the SFERP that have been located recently, say
2 since 1999? Large industrial projects that may
3 have a cumulative impact?

4 MS. ENG: I think you have already put
5 into the record the supplemental EIR from the Port
6 projects. Is that what you're referring to? I'm
7 not sure what you're trying to get at.

8 MR. SARVEY: I'm just asking you if
9 you're aware of any projects, including --
10 obviously you're aware of the Port in that regard.
11 Is there anything else the City sited down there
12 that would have a cumulative impact, since 1999?

13 MS. ENG: I would have to go and analyze
14 the potential impacts for individual projects.
15 It's hard for me to sit here and tell you yes, you
16 know, projects off the top of my head have
17 cumulative impacts.

18 What I do recognize is the City making
19 improvements. We have the light rail system that
20 is being built on Third Street, going into the
21 Bayview community, that will connect that
22 community to downtown. And basically enable
23 people to use mass transit in a way that they
24 haven't used before. We hope to reduce people in
25 cars and trucks.

1 There's other improvements going on. As
2 you know, the Navy's cleanup of the Superfund
3 site. There's several projects underway. Some
4 have been mentioned in these proceedings earlier.

5 And it's hard for me to say, taken in
6 totality there's a cumulative impact. Again, you
7 have to identify what impacts are you talking
8 about. The universe of impacts in the world? I'm
9 not sure.

10 MR. SARVEY: Okay. Ms. Eng, are you
11 familiar with exhibit 94, the southern waterfront
12 EIR?

13 MS. ENG: Somewhat. It's been awhile
14 since I've gone through that document, but I was
15 aware of the southern waterfront EIR, yes. A
16 programmatic EIR that was first produced over five
17 years ago.

18 MR. SARVEY: Do you believe that the
19 projects analyzed in the waterfront SEIR for the
20 southern waterfront will contribute to a
21 disproportionate impact to the Bayview and Potrero
22 communities?

23 MS. ENG: Let me tell you, share with
24 you, that five, six years ago I served, when I
25 served as the staff attorney with the Golden Gate

1 EJ Clinic, I was concerned about the programmatic
2 EIR that was being developed at that time.

3 Mitigation measures were put in place
4 for Port development projects. Subsequent to that
5 EIR, we have basically conducted extensive air
6 quality monitoring now. We put in the Baycamp --
7 Station; collected data for a year. And what we
8 have discovered is that the air quality in the
9 southeast is not as poor as what is perceived to
10 be.

11 We have data showing, for example, PM2.5
12 violations, or levels above 65 parts per million
13 on two days out of the year. And of those two
14 days, for four hours. So, four hours out of 8700-
15 plus hours you had these high PM2.5 levels.

16 So it makes me think that perhaps some
17 of the asthma crisis that we're seeing in Bayview
18 may not be from outdoor air pollution. It is
19 possibly from the indoor air pollution. So we are
20 working on mold and mildew issues. We have lots
21 of programs in place to improve the substandard
22 housing conditions.

23 So when you're talking about the Port's
24 supplemental EIR from five, six years ago, I think
25 that there is a general concern that, you know,

1 you have a lot of concrete crushing operations, or
2 concrete manufacturing operations, but we're not
3 seeing high PM levels throughout the year in that
4 neighborhood.

5 We didn't see it with the Baycamp
6 station, and that was basically top of the line
7 air monitoring station that we borrowed from the
8 state, California Air Resources Board. And we
9 have air quality data for a year. We have
10 additional PM data that's being generated now by
11 the PUC for this project.

12 MR. SARVEY: So, do you think that the
13 southern waterfront EIR under-estimated impacts?

14 MS. SOL : Your Honor, I believe the
15 question has been asked and answered.

16 MR. SARVEY: It's a totally separate
17 question.

18 HEARING OFFICER FAY: We'll allow the
19 question.

20 MR. RUBENSTEIN: No.

21 MR. SARVEY: I'm asking Ms. Eng, I'm not
22 asking Mr. Rubenstein.

23 HEARING OFFICER FAY: Well, they're a
24 panel, Mr. Sarvey.

25 MR. SARVEY: I understand, but this

1 question is specifically directed to Ms. Eng.

2 HEARING OFFICER FAY: All right, and
3 from the perspective of her expertise?

4 MR. SARVEY: Exactly, of her knowledge
5 of the project.

6 MS. ENG: My knowledge of the Port
7 project, there were several included in that
8 programmatic EIR. Are you saying was the
9 aggregate PM estimates made five years ago
10 incorrect?

11 MR. SARVEY: Under-estimated.

12 MS. ENG: Can you tell me the tons? I
13 mean, you know, I truthfully don't have an opinion
14 about that right now. If you give me even an --

15 MR. SARVEY: Okay, that's fine.

16 MS. ENG: -- absolute number --

17 MR. SARVEY: That's fine.

18 MS. ENG: -- it's all relative.

19 MR. SARVEY: That's fine.

20 HEARING OFFICER FAY: I think you'd
21 better move on.

22 MR. SARVEY: That's fine. If the
23 applicant's truly interested in environmental
24 justice why are they not objecting to the location
25 of three gravel companies and a multitude of other

1 polluting industries around the SFERP?

2 MS. ENG: Those projects have been in
3 operation, many of them have been in operation in
4 the southeast area. And yes, many relocated
5 farther south from Mission Bay area down towards
6 Potrero and Bayview.

7 The City, through its Port, basically
8 issued that EIR, identified potential impacts, and
9 is mitigating those impacts through these
10 conditions and other conditions through the CEQA
11 process that was conducted five years ago.

12 I believe this project with its proposed
13 mitigation, the high efficiency street sweepers
14 will not only take care of our PM impacts from
15 this project, but also any PM or some of the PM
16 impacts from those other projects that you're
17 concerned about.

18 So having this project move forward with
19 its proposed mitigation, I think, will help and
20 address those concerns you're raising.

21 MR. SARVEY: You're an employee of the
22 City, are you, Ms. Eng?

23 MS. ENG: I am employed by the City.

24 MR. SARVEY: Five, six years ago were
25 you an employee of the City?

1 MS. ENG: No.

2 MR. SARVEY: Okay.

3 MS. ENG: No, I --

4 MR. SARVEY: Mr. --

5 MS. ENG: -- mentioned I was employed by
6 Golden Gate University School of Law.

7 MR. SARVEY: Thank you. Mr. Rubenstein,
8 how many tons of PM2.5 will your advanced street-
9 sweeping program remove during the months of
10 November through February?

11 MS. SOL : I believe, Your Honor, that
12 these questions were asked and answered during air
13 quality.

14 HEARING OFFICER FAY: That's correct.

15 MR. BOYD: Did you ask that question?

16 MR. SARVEY: No, I didn't ask that
17 question, not that specific question.

18 HEARING OFFICER FAY: I believe it was,
19 Mr. Sarvey.

20 MR. SARVEY: I don't think so. I'll ask
21 another one, maybe that'll be the same one, too.
22 How effective will your street sweeping be when
23 the majority of rainfall in San Francisco, which
24 is about 21 inches, falls between November and May
25 in the PM season?

1 MS. SOL : This question was also asked.

2 MS. ENG: Well, traffic still occurs in
3 the winter months. And, yes, I think -- sorry --
4 should I --

5 MR. RUBENSTEIN: I've already answered
6 it once. Maybe --

7 MR. SARVEY: If you answered it,
8 that's --

9 MR. RUBENSTEIN: -- he'll like your
10 answer better.

11 MR. SARVEY: If you've answered it
12 before, Gary, that's adequate.

13 HEARING OFFICER FAY: It's in the
14 record, Mr. Sarvey.

15 MR. SARVEY: Sure. I lost track; it's
16 been a long proceeding.

17 The advanced street sweepers are powered
18 by what type of fuel?

19 MR. RUBENSTEIN: I believe we are
20 looking at natural gas fuel for the enhanced
21 street cleaners.

22 MR. SARVEY: And have you reduced your
23 PM reductions from the advanced street-sweeping
24 program by the emissions from the street sweeper?

25 MR. RUBENSTEIN: I don't recall that we

1 have because I think we looked at that, I
2 concluded that it would be insignificant.

3 MR. SARVEY: So your community benefit
4 programs directs \$1,500,000 to tree planting and
5 asthma education, and \$1.75 million for a street-
6 sweeping program, is that correct?

7 MR. RUBENSTEIN: That doesn't sound
8 right. Can you tell me what you're referring to?

9 MR. SARVEY: Your community benefits
10 agreement.

11 MS. KUBICK: If I may, it was half a
12 million for the indoor air quality, plus some
13 administrative money. Plus half a million for the
14 tree planting. And I believe the street cleaning
15 was \$1.75 million; it was over a ten-year
16 program --

17 MR. SARVEY: Yeah, that's exactly --

18 MS. KUBICK: -- for the duration.

19 MR. SARVEY: -- what I said, I think.

20 MS. KUBICK: Oh, I'm sorry, I didn't
21 hear you.

22 MR. SARVEY: The answer's yes, thank
23 you.

24 So since the PM2.5 impacts are the only
25 impacts which all parties agree are significant,

1 why are you not providing more money for ASQC-11?

2 MS. SOL : Objection. Misstates the
3 position of the parties.

4 MR. SARVEY: Withdrawn. Staff has
5 testified that the wood stove program was the
6 applicant's idea. Is that true?

7 MR. RUBENSTEIN: As I said when the same
8 question was asked during the air quality portion
9 of the hearing, the wood stove program was one of
10 the final set of programs that resulted from the
11 City's review of 47 candidate mitigation measures
12 with the community and the creation of the wood
13 stove condition of certification was done by the
14 CEC Staff because they believed that the City's
15 air quality mitigation and community benefits
16 plan, as proposed, was not sufficient.

17 MR. SARVEY: So if you go ahead with
18 this wood stove program will it be administered by
19 the City or by the Bay Area Air Quality Management
20 District?

21 MR. RUBENSTEIN: At the present time if
22 we proceed -- if the City proceeds with the wood
23 stove program to address condition AQSC-11 I
24 expect that the program would be managed by the
25 Bay Area Air Quality District because it would be

1 most cost effective for the City to provide
2 funding to the Bay Area District to enhance their
3 ongoing program.

4 MR. SARVEY: Thank you very much.
5 That's all I have.

6 HEARING OFFICER FAY: Okay. Mr. Boyd,
7 do you have some questions?

8 MR. BOYD: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. BOYD:

11 Q Okay, the first question I guess is
12 about this exhibit, is it exhibit 94, the
13 southwest southern waterfront project draft
14 supplemental environmental impact report. You
15 stated that you're familiar with --

16 HEARING OFFICER FAY: That's not exhibit
17 94.

18 MR. BOYD: Oh, what exhibit is it?

19 HEARING OFFICER FAY: That's exhibit
20 92(b).

21 MR. BOYD: 92(b), okay.

22 Is it your understanding that in 1999
23 the Regional Water Quality Control Board was
24 designated the administrative agency for that
25 project?

1 MS. SOL : Your Honor, that seems to go
2 to a different subject area.

3 MR. BOYD: I'm trying to find out what
4 her knowledge is about the draft EIR, find out if
5 they analyzed this project at that time.

6 HEARING OFFICER FAY: In terms of
7 environmental justice?

8 MR. BOYD: In terms of -- well, just,
9 I'm trying to get her general knowledge. She
10 obviously was involved in it and --

11 HEARING OFFICER FAY: And it's relation
12 to this project is what?

13 MR. BOYD: It's relation is I'm trying
14 to determine if they've done a -- if they
15 considered the potential of a power plant at the
16 site in that environmental review that they
17 completed back in '99. Or if there's a need to
18 supplement that EIR now that this project --

19 HEARING OFFICER FAY: Well, the EIR is
20 for -- it was a programmatic EIR. And it's very
21 general.

22 MR. BOYD: Yeah, but I understand --

23 HEARING OFFICER FAY: And what we're
24 doing now is a very specific EIR equivalent. And
25 so I think we ought to --

1 MR. BOYD: I understand that the witness
2 from the Regional Board said that they're
3 considering holding new hearings because of the
4 public interest in this matter on that.

5 HEARING OFFICER FAY: The Regional Board
6 said, in terms of this matter, this power plant.

7 MR. BOYD: Right.

8 HEARING OFFICER FAY: Not in terms of
9 the waterfront EIR.

10 MR. BOYD: So they weren't talking about
11 supplementing that EIR or --

12 HEARING OFFICER FAY: No.

13 MR. BOYD: Okay. That's fine. That
14 permit then that they issued, there's an NPDES
15 permit only for, at this time, for the Muni
16 project; there isn't a permit for this project
17 yet, is that true? Do you know?

18 MS. SOL : Objection, Your Honor.
19 Again, I don't see how that relates to the EJ
20 testimony. They had their chance to ask questions
21 about the soil and water and contamination issues
22 to a former panel that had the appropriate
23 witnesses on.

24 MR. BOYD: That's fine.

25 HEARING OFFICER FAY: That's sustained.

1 MR. BOYD: Okay, I have a copy here from
2 that same draft EIR of what's called the -- it's
3 got your signature on it. And it's San Francisco
4 southern waterfront -- comments on draft
5 supplemental environmental impact report. And
6 it's got your signature on the back page here.
7 It's part of that exhibit 92 -- what did you --

8 HEARING OFFICER FAY: 92(c), --

9 MR. BOYD: -- 92(c) --

10 HEARING OFFICER FAY: -- the entire --

11 MR. BOYD: -- that Bob introduced --

12 HEARING OFFICER FAY: -- supplemental
13 EIR.

14 MR. BOYD: Supplemental EIR. Can you
15 confirm for me that, in fact, this is your letter?
16 I have a copy here.

17 HEARING OFFICER FAY: Mr. Sarvey, --

18 MS. ENG: It may be my letter that I
19 wrote in a previous --

20 MR. SARVEY: I -- I --

21 MS. ENG: -- employment, but it's not my
22 testimony.

23 HEARING OFFICER FAY: Yes, today --

24 MR. BOYD: It's your comment letter, I
25 understand. But in here there's a section I

1 wanted to read where you're talking about
2 cumulative impacts and mitigation. And Title 6,
3 the Civil Rights Act, which is clearly a
4 environmental justice issue that I wanted to
5 question her about.

6 HEARING OFFICER FAY: Okay, and
7 ultimately how do you plan to tie that into what
8 we're doing here today and environmental justice
9 related to this project?

10 MR. BOYD: I'm trying to find out if her
11 opinion that she expressed back then would also
12 apply to -- would still apply today that she
13 expressed back then. And if it would apply to
14 this case. That's where I'm trying to get with
15 this.

16 HEARING OFFICER FAY: All right, go
17 ahead and ask.

18 MR. BOYD: Okay, but first let me give
19 you a copy. I have some more if anyone else
20 wishes.

21 (Pause.)

22 MR. BOYD: So, can you confirm this as
23 your comment letter?

24 MS. SOL : I would ask that we take a
25 minute to review this document, please.

1 HEARING OFFICER FAY: Mr. Sarvey, where
2 is it found -- I mean, Mr. Boyd, where is it found
3 in exhibit 92(c)?

4 Can you reference the location, Mr.
5 Boyd?

6 MR. BOYD: Bob, can you show them where
7 in the supplemental -- it starts at C&R, that I
8 assume stands for comments and response.

9 MR. SARVEY: Right.

10 MR. BOYD: 84 through 94, page 94.

11 HEARING OFFICER FAY: Okay, thank you.

12 (Pause.)

13 MS. SOL : Your Honor, having reviewed
14 this document I have a couple of concerns. The
15 first is that it relates to a programmatic EIR, as
16 opposed to what we're doing here, which is a
17 project-specific EIR.

18 In addition, we're not here to litigate
19 the appropriateness of the southeast waterfront or
20 southern waterfront EIR. In fact, it was not I
21 who sought to have that document introduced into
22 the record. And this is not the forum in which to
23 decide whether that document was adequate for its
24 purposes, which is what this letter goes to.

25 HEARING OFFICER FAY: All right. Are

1 those objections?

2 MS. SOL : Yes, they are, Your Honor.

3 HEARING OFFICER FAY: Well, I'm going to
4 overrule them at this time, and give Mr. Boyd a
5 chance to begin his questioning. But, you know, I
6 warn you, Mr. Boyd, if we think that it's not
7 relevant to what we're doing here today we will
8 cut you off.

9 MR. BOYD: That's fine.

10 HEARING OFFICER FAY: Okay, go ahead.

11 MR. BOYD: I'll try to establish the
12 relevance for you.

13 I would like to ask you to turn to page
14 10, which is C&R .93, the last paragraph above
15 section 4, draft SEIR fails to -- it says here:
16 We believe that the draft SEIR is misleading in
17 its omissions regarding environmental and public
18 health concerns of the local neighborhood."

19 "Without accurately describing the
20 immediate neighborhood of the project, the draft
21 SEIR fails to recognize the context and
22 significance of the project's effects. The SEIR
23 recognizes that the project will cause significant
24 impacts in traffic and air pollution; and these
25 impacts are not minimized or eliminated by the

1 proposed mitigation measure."

2 "The project will clearly contribute to
3 the disproportionate impacts burdening the
4 Hunter's Point community. This implicates Title 6
5 of the Civil Rights Act."

6 My question is, at that time you clearly
7 felt that that project contributed to a
8 disproportionate impact burden in the Hunter's
9 Point community. And that was a Title 6
10 implication. Do you still feel that today?

11 And then the other question is do you
12 feel that way about this project? And if not, why
13 not?

14 MS. SOL : Your Honor, as to the first
15 part of the question, first of all I would say
16 that the document speaks for itself. So Mr.
17 Boyd's characterization of the document is
18 irrelevant.

19 But as to the first question it's not
20 the southern waterfront project that's the subject
21 of this proceeding.

22 HEARING OFFICER FAY: I'm going to
23 sustain counsel because, Mr. Boyd, you've not
24 established relevance. You're questioning about a
25 different project and different set of mitigation.

1 And so I'm going to ask you to move on.

2 MR. BOYD: Okay. Can I state what the
3 relevance is?

4 HEARING OFFICER FAY: No, we're asking
5 you to move on to a different line of questioning.

6 MR. BOYD: Okay. Thank you. I'll move
7 on. Okay. Were any of you present at the
8 Regional Water Quality Control Board meeting on
9 Mirant NPDES permit? I heard that mentioned
10 earlier, that you were advocating at that Regional
11 Board meeting. And I was just wondering if any of
12 you were present there.

13 MS. ENG: I mentioned in my opening
14 statement the City's involvement in those
15 regulatory proceedings. I personally was not
16 there.

17 MR. BOYD: Are any of the other
18 witnesses in the panel, were they present?

19 MR. RUBENSTEIN: I was not.

20 MS. KUBICK: No, I was not there.

21 MS. HALE: I was present.

22 MR. BOYD: Okay. The reason I'm asking
23 is isn't it true, Ms. Eng, that you said that
24 originally one of the goals of this project was to
25 shut down the Hunter's Point, but since then now

1 it's to shut down the Mirant Power Plant? Isn't
2 that true?

3 MS. ENG: Correct.

4 MR. BOYD: You were present at that
5 meeting and I know Mirant had several speakers, of
6 which one addressed the issue of whether or not
7 Mirant had any immediate plans for the near future
8 for shutting down the Mirant Potrero Power Plant.

9 MS. SOL : Your Honor, first of all, Ms.
10 Eng was not present. And second of all, --

11 MR. BOYD: She was.

12 MS. SOL : -- if what he's going to
13 request is what Mirant said in a different
14 proceeding, again, that's hearsay and we don't
15 have the Mirant person present to cross-examine
16 to --

17 MR. BOYD: I'm just asking her what she
18 heard at the hearing.

19 HEARING OFFICER FAY: Well, she wasn't
20 there, Mr. Boyd, so --

21 MS. SOL : It's hearsay --

22 MR. BOYD: I'm not asking Ms. Eng. I'm
23 asking Ms. Hale --

24 HEARING OFFICER FAY: Well, you directed
25 it to Ms. Eng.

1 MR. BOYD: -- if she heard the Mirant,
2 any of the Mirant speakers address the issue of
3 shutting down one, the Mirant Power Plant in
4 Potrero Hill, or if they had any, stated any
5 intention in the near future to shut down their
6 power plant.

7 MS. SOL : And, again I object on the
8 grounds of hearsay.

9 HEARING OFFICER FAY: All right, it is
10 hearsay, but --

11 MR. BOYD: It's not hearsay if she was
12 there, is it?

13 HEARING OFFICER FAY: -- but we're going
14 to indulge Mr. Boyd and see where this line of
15 questioning goes. Please answer the question.

16 MS. HALE: I was present; I did hear Mr.
17 Jeff Russell represent Mirant's perspective on the
18 -- in response to questions about shutdown.

19 MR. BOYD: And was it for or against
20 shutdown in the near future?

21 MS. HALE: I'm -- was it for or against.
22 I'm sorry, I don't understand your question.

23 MR. BOYD: My understanding was they
24 were being asked -- he was being asked, actually,
25 if there was any intention on the part of Mirant

1 in the near future to shut down the Potrero Power
2 Plant, or that they were planning on continuing to
3 operate.

4 As I remember, he mentioned that they
5 just did some SCR upgrades to continue the
6 operation of that plant, isn't that true?

7 MS. HALE: I recall him being asked by a
8 Board Member whether the removal of reliability-
9 must run would influence a shutdown. I think
10 during the course of the day there was
11 acknowledgement; I don't know if it was Mr.
12 Russell who stated it, but there was certainly
13 acknowledgement of the fact that they've made
14 investments to improve the emissions of the
15 facility.

16 And I think Mr. Russell, as I recall,
17 indicated that, you know, cost was a factor, cost
18 of operating the facility was a factor in its
19 continuing operation. And that, you know, the
20 price they could get for power generated there
21 would also be a factor in considering the ongoing
22 operation of the facility.

23 I certainly couldn't quote him, but
24 that's my general recollection of the tenor of his
25 comments.

1 MR. BOYD: So now any of the witnesses,
2 any of the four witnesses, have any of you seen
3 any testimony, any comments, anything that's part
4 of this record, the administrative record here, to
5 indicate in any way that Mirant intends to shut
6 down their Potrero Hill Power Plant?

7 I'll take the silence to --

8 HEARING OFFICER FAY: Okay, no response
9 from the panel.

10 MR. BOYD: Okay, next question is you
11 mentioned -- I think this is you, Ms. Eng, again -
12 - you mentioned the City's low emission vehicle
13 program. Can you describe what that -- what's the
14 title of that program again? You were talking
15 about, you know, the --

16 MS. ENG: I described several
17 initiatives, many projects underway by the City,
18 supported by the City. Basically have a clean
19 fuel vehicle program. Within my agency,
20 Department of the Environment, we have a clean air
21 program which has helped provide -- obtain
22 funding. We cleaned up a lot of the City's fleet,
23 800 clean fuel vehicles, for example.

24 And we basically have a Mayor's
25 directive to integrate biodiesel as a fuel for

1 Muni, as well as other City vehicles.

2 MR. BOYD: Do you know if the U.S.
3 Department of Energy provided any funding for
4 those -- that program?

5 MS. ENG: I don't know, offhand.

6 MR. BOYD: Are you aware of any federal
7 funding for that program?

8 MS. SOL : Your Honor, objection. Mr.
9 Boyd is trying to elicit here testimony for his
10 civil rights complaint. I don't see how it
11 relates to the specific subject of this
12 proceeding.

13 HEARING OFFICER FAY: Sustained.

14 MR. BOYD: Well, this civil rights is a
15 EJ issue I would think.

16 HEARING OFFICER FAY: Keep it focused on
17 this project, please.

18 MR. BOYD: Okay. Next I'll ask about
19 you also, in the testimony you were talking about
20 one of the benefits was that the project wouldn't
21 use Bay water, isn't that true, for cooling?

22 MS. SOL : Objection, Your Honor, that
23 was a question that -- or that was testimony by
24 the biology witness. And Mr. Sarvey -- sorry, Mr.
25 Boyd had an opportunity to ask him questions when

1 he was here.

2 HEARING OFFICER FAY: Sustained.

3 MR. BOYD: Okay. So, well, let's put it
4 in -- do you believe, in your opinion as an
5 environmental justice expert, is it more
6 beneficial for this project to use Bay water or
7 water that comes from a sewage treatment plant for
8 cooling? Which one is more beneficial for
9 environmental justice-wide or the community?

10 MS. ENG: It's hard for me to provide an
11 opinion. I think I would have to know what was
12 being discharged to the Bay. And what chemicals
13 or constituents might be in the wastewater. I
14 can't say offhand one versus the other, but I do
15 know Potrero uses 200-plus-million gallons per day
16 of Bay water. And our project is so much smaller.
17 And as I heard in earlier hearings, it's a closed
18 system; it's treated wastewater.

19 MR. BOYD: You understand that they
20 evaporate the water in the cooling tower, don't
21 you?

22 MS. SOL : Your Honor, I believe that
23 misstates and misunderstands the testimony.

24 MR. BOYD: No, I'm trying to find out
25 what her understanding is.

1 HEARING OFFICER FAY: No, --

2 MR. BOYD: I mean you're talking about
3 water discharging into the Bay, but I'm also
4 asking about you're putting water into the
5 atmosphere, too.

6 HEARING OFFICER FAY: The problem, Mr.
7 Boyd, is that you haven't laid the specifics in
8 front of the witness. So this is just extremely
9 general.

10 MR. BOYD: Okay. Now earlier Bob asked
11 a question about shifting the burden from one
12 community to the other. Were you aware that CARE
13 has a civil rights complaint against the
14 Commission and the Air District for permitting a
15 couple of power plants in the Pittsburg community?

16 MS. SOL : Objection, Your Honor, I
17 don't see how that relates to this project.

18 MR. BOYD: Were you aware that CARE has
19 a civil rights complaint against -- and with 20 or
20 30 members of the Bayview Hunter's Point community
21 against the CEC and the City for this project?

22 HEARING OFFICER FAY: We're going to
23 allow the question. Go ahead.

24 MS. ENG: I've looked at the documents
25 you've filed in this proceeding. That included

1 documents relating to your Title 6 complaint, yes.

2 MR. BOYD: So you are aware of the issue
3 that we've raised?

4 HEARING OFFICER FAY: Asked and
5 answered.

6 MR. BOYD: Okay, that's all I have.
7 Thank you.

8 HEARING OFFICER FAY: All right, thank
9 you, Mr. Boyd. Ms. Sol,, any redirect?

10 MS. SOL : One minute, Your Honor.

11 HEARING OFFICER FAY: Sure.

12 (Pause.)

13 MS. SOL : No, Your Honor, I have no
14 redirect.

15 HEARING OFFICER FAY: Okay, then thank
16 you. And as I mentioned earlier, the staff is not
17 presenting testimony directly on EJ because it's
18 dealt with in their various topic areas.

19 So now we'll move to Mr. Sarvey's
20 testimony on environmental justice.

21 MR. SARVEY: At this time I'd like to
22 have Mr. Francisco DaCosta sworn in, please.

23 HEARING OFFICER FAY: Please swear the
24 witness.

25 //

1 Whereupon,

2 FRANCISCO DaCOSTA

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

6 THE REPORTER: Please state and spell
7 your full name for the record.

8 MR. DaCOSTA: My name is Francisco
9 DaCosta, F-r-a-n-c-i-s-c-o D-a-, "dah",
10 C-o-s-t-a, Costa.

11 DIRECT EXAMINATION

12 BY MR. SARVEY:

13 Q Mr. DaCosta, would you state your
14 qualifications for the record.

15 A My name is Francisco DaCosta. I'm the
16 Director of Environmental Justice Advocacy. I
17 have been involved with environmental issues for
18 the last 35 years. More importantly I was
19 involved with environmental issues when I worked
20 for the Presidio of San Francisco.

21 In the last 20 years as the spokesperson
22 for the Miwok Melone Tribe I have been involved
23 with archeological, quality of life issues which
24 includes environmental issues all over the Bay
25 Area.

1 But because of my connections with some
2 organizations all over the world, this fight for
3 quality of life issues extends not only
4 nationally, but internationally.

5 Q Mr. DaCosta, are you being paid anything
6 for your appearance here today?

7 A No, and I won't accept any money.

8 Q Mr. DaCosta, you recently attended a
9 meeting of the San Francisco Regional Water
10 Quality Board to review Mirant's water discharge
11 permit. Did Mirant's representative clearly state
12 that Mirant had no intention of shutting down
13 Potrero 3 Unit?

14 A Yes, they did.

15 MS. SOL : I object on the grounds of
16 hearsay.

17 HEARING OFFICER FAY: All right. Your
18 objection is overruled. We can accept hearsay,
19 and weigh it as such.

20 BY MR. SARVEY:

21 Q Mr. DaCosta, can you elaborate for the
22 record your knowledge of all the reasonably
23 foreseeable projects that are being constructed or
24 planned within six miles of this project? And
25 please detail for the Committee the projects'

1 impacts to the minority community.

2 A When we look at this project, and the
3 project you've been talking about are the three
4 combustion turbines. We need to address them from
5 the perspective of the projects that are going to
6 take place on Port property, and also those
7 projects that are going to be undertaken on the
8 City property.

9 Now, if you look at the Port property
10 right by where the three proposed combustion
11 turbines are going to be placed, there are over
12 six projects in the pipeline that the San
13 Francisco Port Authority is working on. Most of
14 them are linked with maritime uses.

15 If you look at the projects outside that
16 comes under the jurisdiction of the City, there
17 are a multitude of projects. I would say over 25.
18 I stated this when over the telephone when I
19 addressed the California Energy Commission.

20 One of the ways that we can address
21 cumulative pollution is by having a good
22 understanding of the housing element, the
23 transportation document, but it more importantly
24 by attending the land use committee meetings, the
25 planning meetings in the City and County of San

1 Francisco, which I do on a regular basis.

2 And what I find very appalling is in the
3 testimony that I've been hearing for the last one
4 hour, to use the words of one of the Commissioners
5 here, extremely general statements. Extremely
6 general statements that have no facts.

7 And when you hear this extremely general
8 statements, what happens is as much as you could
9 have the best lawyers use verbosity and diatribe,
10 it does not have the constituents. Now, I'm
11 saying this because if you take each and every
12 project, whether they're on the Port property or
13 those projects outside the Port property which
14 come under the jurisdiction of the San Francisco
15 County, the City and County of San Francisco, and
16 within a three-mile area the cumulative impacts
17 just regarding particulates are very very very
18 serious.

19 Now, we can find this out very easily.
20 A very general statement was made that some very
21 sophisticated equipment that monitors particulates
22 was placed up on the hill. The precise area was
23 Whitney Circle. My friends, this very very
24 sophisticated equipment was placed surrounded by
25 trees.

1 I took a number of experts. Now, if you
2 take the most sophisticated equipment and place it
3 in an area surrounded by trees there is no way,
4 there's absolutely no way that you are going to
5 get any type of results, data, empirical data that
6 reflects the real issue at hand.

7 So, I've heard extremely general
8 statements. Not only about particulates, not only
9 about mitigation, not only about projects, but a
10 multitude of things.

11 Now, I'm going to stop there. If you
12 have several questions I'll answer you.

13 Q Mr. DaCosta, did you personally witness
14 dust control violations at the Muni maintenance
15 construction site?

16 MS. SOL : Your Honor, I'm going to
17 object. He's cross-examining his own witness.
18 Witnesses have been allowed to present an opening
19 statement, but this is not the presentation of an
20 opening statement.

21 HEARING OFFICER FAY: Yeah. Mr. Sarvey,
22 and I don't even recall this within the scope of
23 the testimony that was provided. Do you have a
24 response?

25 I don't see it in Mr. DaCosta's

1 testimony.

2 MR. SARVEY: Okay, I'll strike that
3 question. Mr. DaCosta is available for cross-
4 examination.

5 HEARING OFFICER FAY: Okay. And would
6 you like to --

7 MR. SARVEY: I'd like to move his
8 testimony; it's exhibit 75; his r, sum, is exhibit
9 79.

10 HEARING OFFICER FAY: Any objection?

11 MS. SOL : No.

12 HEARING OFFICER FAY: Okay, hearing
13 none, we'll enter that in the record at this
14 point.

15 And ask the applicant if you have any
16 questions of the witness.

17 MS. SOL : No.

18 HEARING OFFICER FAY: Okay. And staff?

19 MR. RATLIFF: No.

20 HEARING OFFICER FAY: And Mr. Sarvey, do
21 you have any questions of Mr. DaCosta?

22 MR. BOYD: I'm not Mr. Sarvey.

23 HEARING OFFICER FAY: Mr. Boyd, I'm
24 sorry.

25 MR. BOYD: I may channel, but --

1 HEARING OFFICER FAY: Does CARE have any
2 questions of --

3 MR. BOYD: Yeah, yeah.

4 MS. SOL : Your Honor, I would object.
5 They introduced statements with Mr. DaCosta. So
6 to consider Mr. DaCosta a separate entity or
7 witness from Mr. Sarvey versus Mr. -- CARE is
8 allowing them to have a second bite at the apple.

9 HEARING OFFICER FAY: That's Mr. Boyd,
10 not Mr. CARE, but --

11 (Laughter.)

12 HEARING OFFICER FAY: -- Mr. Boyd is
13 probably also known as Mr. CARE.

14 MS. SOL : That's the problem.

15 HEARING OFFICER FAY: I'm going to
16 overrule your objection, but I'm going to note
17 that the Committee has observed a lot of
18 cooperation between CARE and Mr. Sarvey, even
19 though Mr. Sarvey strenuously objected to having
20 the two parties combined for the sake of this
21 case, because he said his position was separate
22 from that of CARE.

23 So, we're going to be a little tight on
24 your time, Mr. Boyd. This is not a second --

25 MR. BOYD: Two, three minutes.

1 HEARING OFFICER FAY: -- a second bite
2 at the apple.

3 MR. BOYD: I understand.

4 HEARING OFFICER FAY: Okay.

5 MS. SOL : Your Honor, CARE, you know,
6 submitted a document, I believe it was on May 1st,
7 that they characterized as contamination testimony
8 that included materials and references to Mr.
9 DaCosta as though he were their witness. This
10 isn't a just general they're two separate parties;
11 it's this particular --

12 HEARING OFFICER FAY: I think you're
13 correct, however, in fairness to CARE they did
14 submit this -- I mean, Mr. Sarvey, --

15 MR. BOYD: I requested --

16 HEARING OFFICER FAY: -- did submit the
17 subject testimony separate from CARE. And we're
18 going to allow some limited questioning by CARE of
19 Mr. DaCosta.

20 MR. BOYD: Right. Now, my understanding
21 is that May 1st filing that you approved accepting
22 up to May 11th testimony?

23 HEARING OFFICER FAY: Yes.

24 MR. BOYD: And so my understanding is
25 you accepted that testimony.

1 HEARING OFFICER FAY: Yes.

2 MR. BOYD: Okay.

3 CROSS-EXAMINATION

4 BY MR. BOYD:

5 Q Mr. DaCosta, you were present at the
6 Regional Water Quality Control Board meeting where
7 they approved the Mirant NPDES permit, weren't
8 you?

9 A Yes, I was.

10 MS. SOL : Your Honor, that is both
11 something that Mr. Sarvey already asked Mr.
12 Francisco DaCosta, and it goes way beyond the
13 scope of this testimony. There's no reference in
14 Mr. DaCosta's testimony about that proceeding.

15 MR. BOYD: Let me explain what my
16 dilemma is. Okay, I provided that May 1st
17 document; I can't readily find the May 1st
18 document. It included several pictures. I also
19 presented those same pictures to the Regional
20 Board at the meeting that Mr. DaCosta was present.
21 And I was basically going to show him, confirm the
22 presentation. I made enough copies for the other
23 parties to look at.

24 HEARING OFFICER FAY: All right,
25 overruled. Go ahead, --

1 MR. BOYD: If you could find me the May
2 1st thing, that would suffice.

3 HEARING OFFICER FAY: -- go ahead, Mr
4 Boyd.

5 MS. SOL : But, Your Honor, he's cross-
6 examining the witness then on the testimony that
7 CARE submitted with this witness.

8 MR. BOYD: I'm just trying to confirm
9 that these pictures were provided and taken by Mr.
10 DaCosta. That's all I'm trying to establish --

11 MS. SOL : That would have been
12 appropriate when you were submitting that
13 testimony. As I understand it, that was testimony
14 on contamination. The contamination issue was
15 several days back when --

16 MR. BOYD: I understand.

17 MS. SOL : -- you were not present.
18 This is not --

19 MR. BOYD: I understand.

20 MS. SOL : -- EJ testimony.

21 HEARING OFFICER FAY: Okay, hold --

22 MR. BOYD: This is environmental
23 justice.

24 HEARING OFFICER FAY: -- hold on. I'm
25 trying to locate that filing, as well, Mr. Boyd.

1 You don't have a copy for us?

2 MR. BOYD: Yeah, I do; it's buried
3 somewhere is the problem. But I do have the
4 pictures readily available that he provided me,
5 so.

6 (Pause.)

7 HEARING OFFICER FAY: All right. Mr.
8 Boyd, if you can't provide copies of that for us,
9 I'm not going to allow you to ask questions on it.
10 We need to all have it in front of us.

11 MR. BOYD: I understand.

12 HEARING OFFICER FAY: Okay, go ahead.

13 MR. BOYD: I'll just ask a general
14 question, then.

15 BY MR. BOYD:

16 Q Mr. DaCosta, did you -- assuming that
17 fact, those are the same pictures, are these the
18 pictures that you provided me? And did you take
19 those pictures?

20 A Yes, I did.

21 MS. SOL : Objection, Your Honor. That
22 was a clear contravention of the order that you
23 just gave.

24 HEARING OFFICER FAY: Yeah, sustained.

25 MR. BOYD: Okay.

1 BY MR. BOYD:

2 Q Mr. DaCosta, do you have reason to
3 believe that the applicant might not comply with
4 what are called all laws, ordinances, regulations
5 and standards, i.e., LORS? Example being getting
6 a permit, for example, from the Regional Water
7 Quality Control Board to discharge from their
8 project sites? Can you find me an example of any
9 sites -- any City projects you know of, of where
10 you're aware they were operating without a permit?

11 A Are you referring to SFPUC?

12 Q The City in general, which the PUC is
13 one department, I assume. For example, a Muni
14 site.

15 MS. SOL : Your Honor, again, this is a
16 hearing about this project, not other projects and
17 other violations --

18 HEARING OFFICER FAY: I'm going to allow
19 the question. Go ahead, Mr. DaCosta.

20 BY MR. BOYD:

21 Q Compliance with LORS.

22 A Thank you, Commissioner, thank you very
23 much. One of the ways a layman, if you're a
24 simple layman and you really do investigative
25 reporting, collect documents, attend meetings, pay

1 your dues, is that you observe certain agencies.

2 Now a question has been asked of me
3 whether the City and County of San Francisco,
4 whether I know that the City and County of San
5 Francisco has gone ahead with some projects; and
6 that could SFPUC, that could be Muni, the
7 Department of Public Works, and so on and so
8 forth, and whether that I'm cognizant of the fact
9 that the City has gone ahead and started some
10 projects without the relevant permits.

11 And, Commissioners, my answer to that is
12 yes. If you look at SFPUC and if you look at
13 SFPUC's relationship with polluting the Bay, I
14 will be bold to state that on more than one
15 occasion SFPUC has polluted the Bay by not
16 following certain rules and regulations; by
17 deliberately breaking mandates linked to a permit.

18 I will give you one example. SFPUC some
19 years ago fully cognizant of the fact that a force
20 main pumps out millions and millions of gallons of
21 water, 80 percent from the City and County of San
22 Francisco, and 100 percent from some neighboring
23 counties. Knowing this as a fact; knowing that if
24 this force main was compromised it would affect
25 the health of thousands of people, chose -- chose,

1 without conducting the necessary testing, soil
2 testing; knowing that the area was prone to
3 liquefaction, went ahead and drilled three
4 conduits under a force main, compromising this
5 force main.

6 The result was millions, millions and
7 millions of gallons of half-treated sewage
8 polluted the watershed and polluted the Bay. This
9 is one example.

10 Some of us at that time, this was over
11 three years ago, went before the Regional Water
12 Board. And the Regional Water Board listened to
13 us, but did nothing about it.

14 In the course of time, because I kept
15 repeating this incident, the Regional Water Board
16 has now learned to accept testimony from myself.
17 Because they do understand that when I address
18 certain issues like the compromising of the three
19 conduits, the compromising of the force main by
20 the three conduits, and the impact, the very very
21 serious impact of millions and millions of gallons
22 of half-treated sewage going into the Bay and to
23 Islas Creek, that SFPUC had failed on more than
24 one occasion to follow the rules and regulations
25 mandated and linked to those permits.

1 Now, there are other City agencies,
2 because they are a City agency they think that
3 they do not have to go and get permits from the
4 building inspection; they do not have to get the
5 required permits from the Department of Public
6 Works.

7 And let me give you another very recent
8 incident. And I want you to please pay very
9 careful attention to what I'm saying. On Hunter's
10 Point we have parcel A. Parcel A was conveyed to
11 the City and County of San Francisco. In other
12 words, when parcel A was conveyed to the City and
13 County of San Francisco, parcel A comes under the
14 jurisdiction of the City and County of San
15 Francisco.

16 The City and County of San Francisco
17 proclaims that it is a green city. About three or
18 four months ago over 400 mature trees were cut
19 down without a permit. If you want to cut one
20 mature tree you need to go before the Department
21 of Public Works. Four hundred trees were cut
22 down.

23 When I brought this to the attention of
24 (indiscernible) Mohammed, when I brought this to
25 the attention of the Mayor's Office, when I

1 brought this to the attention of the City
2 Controller, when I brought this to the attention
3 of the Board of Supervisors, they were all
4 shocked.

5 HEARING OFFICER FAY: Mr. Boyd, I have
6 to ask you --

7 MR. BOYD: I'm done.

8 HEARING OFFICER FAY: -- how much --
9 you're all done?

10 MR. BOYD: Yes, sir.

11 HEARING OFFICER FAY: Okay. Fine. Now,
12 we would like to give you an opportunity to
13 present your witness on environmental justice.

14 MR. BOYD: Mr. Brown.

15 MR. DaCOSTA: Thank you very much.

16 HEARING OFFICER FAY: Thank you, Mr.
17 DaCosta.

18 HEARING OFFICER FAY: Mr. Brown, I don't
19 recall. Have you previously been sworn --

20 MR. BROWN: No, I haven't.

21 HEARING OFFICER FAY: -- as a witness?
22 Would you please stand and be sworn at this time.
23 Whereupon,

24 LYNNE BROWN

25 was called as a witness herein, and after first

1 having been duly sworn, was examined and testified
2 as follows:

3 THE REPORTER: Please state and spell
4 your name for the record.

5 MR. BROWN: Lynne Brown. L-y-n-n-e
6 B-r-o-w-n.

7 DIRECT EXAMINATION

8 BY MR. BOYD:

9 Q Mr. Brown, I prefiled your testimony on
10 April 17th. Do you have any additions or
11 deletions to your testimony at this time?

12 A I would like to add onto the MOU of 1998
13 where they had closing, for the closing of
14 Hunter's Point, it didn't say anything about the
15 peakers was going to take supplement for shutting
16 it down because the energy crisis hadn't happened.

17 And like now, we're talking about the
18 peakers still supplementing for Mirant to shut
19 down; they just jumped from -- the City jumped
20 from unit 4 for the peakers and now it's Mirant.
21 I don't understand that at all. How can they do
22 that? And we really don't need the peakers, I'll
23 tell you.

24 The rest of the people who work -- who
25 were on the committee, they get paid from the City

1 anyway through grants. Those grants didn't come
2 up on the hill at all.

3 Q Okay. Is there -- that's it? You don't
4 have any --

5 A No, just start asking me questions. I
6 know we didn't get any of that money.

7 MR. BOYD: That's all I have. The
8 witness is available for cross.

9 HEARING OFFICER FAY: Would you like to
10 move the testimony --

11 MR. BOYD: I'd move Mr. Brown's
12 testimony.

13 HEARING OFFICER FAY: And I show that's
14 a part of exhibit 52.

15 MR. BOYD: Right. Do you want to do it
16 piecemeal or do you want to do it all at one time?

17 HEARING OFFICER FAY: No, that's fine,
18 you can move it all. Is there objection?

19 MS. SOL : Well, Your Honor, it depends
20 what exhibit 52 is supposed to include. I have
21 Mr. Brown's testimony; I have a document that says
22 it's the opening testimony of CARE that has a
23 couple of documents listed. I have a resolution,
24 and I have a transcript which I had previously
25 objected to.

1 So, which -- what is it that we're
2 proposing to move into evidence?

3 HEARING OFFICER FAY: I misstated that.
4 I've mislabeled Mr. Brown's testimony. It's not
5 exhibit 52.

6 MR. BOYD: You're not objecting to Mr.
7 Brown's portion of the testimony, are you?

8 MS. SOL : No.

9 HEARING OFFICER FAY: I think it's
10 exhibit 57, testimony and r,sum, of Lynne Brown,
11 April 17th.

12 MR. BOYD: Okay. But, I think what you
13 were objecting to was this transcript from the PUC
14 proceeding, is that true?

15 MS. SOL : That's correct.

16 HEARING OFFICER FAY: Can we just
17 exclude that and --

18 MR. BOYD: Can we discuss it after, at a
19 later time? I didn't understand there was an
20 objection to that.

21 HEARING OFFICER FAY: Well, what I --

22 MR. BOYD: It's a transcript --

23 HEARING OFFICER FAY: -- interpreted
24 your offer is of exhibit 57, the r,sum, and
25 testimony of Lynne Brown. And are you willing to

1 waive objection on that?

2 MS. SOL : Yes.

3 HEARING OFFICER FAY: Okay. So that is
4 received at this time. The testimony.

5 MR. BOYD: That's fine.

6 HEARING OFFICER FAY: Now, why don't we
7 move ahead.

8 MR. BOYD: Let's do the cross, make him
9 available for cross --

10 HEARING OFFICER FAY: Yeah, any --

11 MR. BOYD: -- and then we can revisit
12 that later.

13 HEARING OFFICER FAY: Is Mr. Brown
14 available?

15 MR. BOYD: Yes, he is.

16 HEARING OFFICER FAY: Good.

17 MS. SOL : No questions, Your Honor.

18 MR. BOYD: I think so.

19 HEARING OFFICER FAY: No questions. Mr.
20 Ratliff, any questions?

21 MR. RATLIFF: No, thanks.

22 HEARING OFFICER FAY: Okay. Mr. Sarvey,
23 are you still here? No questions from Mr. Sarvey?
24 Okay. All right, well, thank you, Mr. Brown. You
25 got off scott free.

1 All right, we're going to take a ten-
2 minute break, and we'd like everybody back here at
3 quarter to three.

4 (Brief recess.)

5 HEARING OFFICER FAY: We're back on the
6 record and we will continue with the applicant's
7 panel on alternatives.

8 MS. SOL : Your Honor, this panel is
9 comprised of Ms. Hale, Ms. Kubick, Mr. Rubenstein,
10 Mr. Brock and Mr. Flynn. I believe all of these
11 witnesses have already been sworn.

12 Whereupon,

13 BARBARA HALE, KAREN KUBICK, GARY RUBENSTEIN,

14 STEVE BROCK and BARRY FLYNN

15 were recalled as witnesses herein, and having been
16 previously duly sworn, were examined and testified
17 further as follows:

18 MS. SOL : I'm going to go ahead and go
19 through the exhibit list.

20 DIRECT EXAMINATION

21 BY MS. SOL :

22 Q Ms. Kubick, on behalf of this panel do
23 you have before you the City's April 17, 2006
24 testimony?

25 MS. KUBICK: Yes. Yes.

1 MS. SOL : There's a list of documents
2 there that I'm going to read to you. It's
3 applicant's response to CEC Staff data request
4 data response set 1A, responses to data requests
5 12 through 18, dated July 6, 2004. That's a
6 portion of exhibit 3.

7 Applicant's response to the San
8 Francisco Community Power data response set 1,
9 number 9, dated August 18, 2004; that's a portion
10 of exhibit 12. And by the way, backup documents
11 are not included.

12 Applicant's response to CEC Staff data
13 requests informal data response set 5, response to
14 data request 160, dated September 20, 2004; that's
15 a portion of exhibit 11.

16 Supplement A to the application for
17 certification for the San Francisco Electric
18 Reliability project, volume 1, dated March 24,
19 2005, section 9 on alternatives; that's a portion
20 of exhibit 15.

21 Applicant's response to CEC Staff data
22 request set 3A, responses to data request 178
23 through 180; that's dated June 3, 2005; and that's
24 a portion of exhibit 19.

25 Applicant's responses to CARE data

1 requests, data response set 3, responses to data
2 requests 3.2-1 and 3.2-2, dated June 9, 2005.
3 That's a portion of exhibit 25.

4 Applicant's response to CARE data
5 request, data response set 3B, further response to
6 data request 3.2-2, dated June 22, 2005; that's
7 exhibit 26.

8 Applicant's response to Sarvey data
9 request, data response set 1A, response to data
10 request 1-13, dated July 25, 2005; that's a
11 portion of exhibit 27.

12 And applicant's comments on the
13 preliminary staff assessment set 1, comments 88
14 through 90, dated October 12, 2005; that's a
15 portion of exhibit 39.

16 Do you have any corrections or changes
17 to make to these documents?

18 MS. KUBICK: No.

19 MS. SOL : To the extent there are facts
20 in these documents, are they true to the best of
21 your knowledge?

22 MS. KUBICK: Yes.

23 MS. SOL : And to the extent there are
24 opinions, do they represent your professional
25 judgment?

1 MS. KUBICK: Yes.

2 MS. SOL : And do you adopt these
3 documents as your sworn testimony here today?

4 MS. KUBICK: yes.

5 MS. SOL : Your Honor, I'd like Ms.
6 Kubick to make an opening statement on behalf of
7 this panel.

8 MS. KUBICK: My name's Karen Kubick.
9 I'm the Project Manager for the SFERP. I've been
10 with the City, well, next week it'll be 20 years.
11 I've been a Project Manager for various City
12 projects for about the last 15.

13 The purpose of the alternatives section
14 is to review alternatives that may feasibly obtain
15 the basic objectives of the project and reduce any
16 significant impacts of the project. The
17 mitigation measures agreed upon result in no
18 significant impacts from the SFERP.

19 Nonetheless, the City undertook an
20 alternatives analysis to evaluate whether
21 insignificant impacts could further be reduced.
22 The City concluded that there are no project
23 alternatives that would meaningfully lessen the
24 impacts of the project while satisfying the
25 project objectives.

1 The City and County of San Francisco's
2 objectives are to develop reliable new energy
3 resources to facilitate the shutdown of old power
4 plants in San Francisco, and to improve air
5 quality in the southeast community. And this
6 includes solar project development, energy
7 efficiency, the siting and development and
8 construction of the CT project, demand management
9 and deployment of other clean energy technologies.

10 After a long process in which the City
11 worked energetically with the community to request
12 that Cal-ISO be specific regarding the
13 requirements for the closure of old inCity
14 generation, Cal-ISO issued an action plan in 2004
15 spelling out the specific projects required for
16 the closure of Hunter's Point and Potrero Power
17 Plants.

18 Hunter's Point Power Plant has closed
19 due to the completion of the construction of the
20 Jefferson-Martin transmission line.

21 The City's project will facilitate the
22 retirement of Potrero 3 and the Potrero peaker
23 units 4, 5 and 6, since they will no longer be
24 needed for reliability.

25 Cal-ISO has testified, I guess that was

1 last month now, that the SFERP is necessary to
2 provide the reliability to support the closure of
3 Potrero 3, 4, 5 and 6; and that at least three
4 turbines of the SFERP must be north of the Martin
5 substation, which is located just south of the San
6 Francisco border.

7 Several sites were considered in the
8 City north of the Martin substation in the
9 industrial zoned areas where the necessary
10 infrastructure is located.

11 The sites considered for siting the
12 three turbines included the Muni site, Mirant
13 site, Western Pacific site, Pier 70, Caesar Chavez
14 and Illinois Street.

15 The final project site selection of the
16 four-acre parcel owned by the City located at 25th
17 and Maryland meet the principal siting
18 requirements which are proximity to the existing
19 115 kV transmission network; availability of land;
20 sufficient parcel size; proximity to fuel gas
21 supply; and consistency with the general plan,
22 zoning and height requirements.

23 The other sites were rejected based on
24 failure to meet one or more of the principal
25 siting requirements, competing uses or lack of

1 ability to obtain site control.

2 The City has conducted an extensive
3 public process where siting was a major topic of
4 discussion in the last panel on this. Those
5 numerous meetings were listed in one of the
6 exhibits.

7 The City does not presently have an
8 agreement with Mirant regarding the closure of the
9 Potrero Power Plant. But is actively working
10 towards insuring that after the RMR agreement with
11 the Cal-ISO expires, the Potrero Power Plant will
12 close down.

13 For example, the City, working with the
14 community, convinced the Regional Water Quality
15 Control Board to restrict the Mirant cooling water
16 permit to expire in 2008 unless Mirant can show
17 that the once-through cooling process using Bay
18 water has no impact on the Bay.

19 The City is also continuing to seek a
20 written agreement with Mirant for closure of the
21 Potrero Power Plant.

22 In conclusion, the City's interest in
23 this project is completing the Cal-ISO action plan
24 steps required to facilitate the closure of
25 Potrero Power Plant. And to realize the benefits

1 of environmental justice, improved environmental
2 conditions and a reliable power supply for the
3 City.

4 We've completed an extensive process to
5 site the project, considering many factors, and we
6 feel the optimal site has been selected.

7 Thank you.

8 MS. SOL : I'd like to move for the
9 exhibits to be entered into the record.

10 HEARING OFFICER FAY: Is there
11 objection? I hear no objection, so the exhibits
12 noted by Ms. Sol, will be entered into the record
13 at this point.

14 MS. SOL : Okay, and now the witnesses
15 are available for cross-examination.

16 HEARING OFFICER FAY: Mr. Ratliff, does
17 the staff have any questions?

18 MR. RATLIFF: No.

19 HEARING OFFICER FAY: Okay. Mr. Boyd,
20 does CARE have any questions?

21 MR. BOYD: I would rather have Mr.
22 Sarvey go first if that's okay.

23 HEARING OFFICER FAY: All right. Mr.
24 Sarvey, are you prepared to go ahead?

25 MR. SARVEY: I'm prepared.

1 CROSS-EXAMINATION

2 BY MR. SARVEY:

3 Q On page 9-3 of your testimony it states
4 that the Hunter's Point substation was eliminated
5 from the analysis due to environmental justice
6 concerns. Specifically communities in the
7 vicinity of Hunter's Point substation have borne
8 and continue to bear the impacts of substantial
9 industrial activity. And it goes on and on and
10 finally says, City policymakers are determined to
11 avoid siting any new City-sponsored generation in
12 the Hunter's Point area.

13 If the City policymakers are determined
14 to do this, why are all six of your alternatives
15 within the southeast community of Potrero and
16 Bayview?

17 MS. KUBICK: This is specific to the
18 Hunter's Point substation. There were other
19 alternatives evaluated in addition to this. But
20 our turbine project will tie into the Potrero
21 substation, which is north of Islas Creek.

22 MR. SARVEY: I don't believe you
23 answered my question. Why are all six of the
24 projects located within the Bayview and the
25 Potrero Hunter's Point area if City policymakers

1 are determined to avoid any inCity-sponsored
2 generation in the Hunter's Point area?

3 MS. SOL : I believe that was asked and
4 answered.

5 HEARING OFFICER FAY: But is the
6 answer -- well, I'm not sure it was. Ms. Kubick,
7 is the answer that it's because they had to tie
8 into the Potrero substation?

9 MS. KUBICK: Hunter's Point is
10 essentially south of the Islas Creek corridor. We
11 evaluated the sites we did because of the reasons
12 I stated in my opening statement, the proximity to
13 the Potrero substation, the ability to tie into
14 the substation, the 115 kV network, the gasline.
15 So we stayed north of Islas Creek because we
16 wanted to not be in the Hunter's Point area.

17 There are the various neighborhoods that
18 Mr. Sarvey's mentioning, but the focus of this
19 paragraph in the testimony is Hunter's Point
20 neighborhood.

21 HEARING OFFICER FAY: Thank you.

22 MR. SARVEY: On page 9-6 of your
23 testimony you eliminate the Western Pacific site,
24 which is adjacent to the project site as an
25 alternative because the parcel is subject to the

1 state land trust.

2 The SFERP is also subject to the state
3 land trust mandate to use the public trust
4 property to promote waterborne commerce,
5 navigation and fisheries, restricting the site to
6 maritime use, is it not?

7 MS. KUBICK: No, it is not.

8 MR. SARVEY: Is it true that the Port
9 and the Real Estate Division, Department of
10 Administrative Services disagree with that
11 conclusion, since the first ten years of power
12 generation cannot be allocated for marine uses?

13 MS. SOL : Your Honor, I believe our
14 witness testified that this property is not
15 subject to the public trust.

16 HEARING OFFICER FAY: Yes, she did. He
17 then asked a question about her awareness of
18 disagreement with that position, which I believe
19 is a different question. Can you answer the
20 question, Ms. Kubick?

21 MS. KUBICK: The parcel that we're
22 discussing, the Muni property, is not under State
23 Lands. The ten-year PPA has nothing to do with
24 the State Lands issue or maritime use.

25 MR. SARVEY: Offer of proof, Mr. Fay.

1 HEARING OFFICER FAY: All right.

2 (Pause.)

3 (Parties speaking simultaneously.)

4 MR. SARVEY: That's all the copies I
5 have.

6 MR. BOYD: Wasn't that part of one of
7 the exhibits?

8 MS. SOL : Well, we could use a
9 second --

10 MR. SARVEY: This document's from the
11 Budget Analyst Office. And on page 92 it states
12 that the Board and the Real Estate Division of the
13 Department of Administrative Services did not
14 assist. The Port Commission resisted the use of
15 Port land near Pier 80, arguing that this property
16 had recently been placed in the state land trust
17 assigned for maritime use.

18 Since the first ten years of power
19 generation are already allocated elsewhere, under
20 the power purchase agreement, the proposed power
21 plant could not provide free power to the Port in
22 an attempt to qualify as a maritime use.

23 MR. RATLIFF: What page have you been
24 reading from?

25 MR. SARVEY: Page 92.

1 MS. KUBICK: I'm not certain the source
2 of this, but the reference is in regards to the
3 Western Pacific property, which is under the State
4 Lands Trust.

5 HEARING OFFICER FAY: And how do you
6 know that, Ms. Kubick?

7 MS. KUBICK: From the Port, from working
8 with the Port and the lands attorneys. It's just
9 adjacent to the Muni property. The Muni property
10 is not under State Lands; Western Pacific property
11 to the east of it is under State Lands.

12 HEARING OFFICER FAY: Okay.

13 (Pause.)

14 MR. SARVEY: You stick with that as your
15 testimony?

16 MS. KUBICK: Yes, and it's --

17 MR. SARVEY: Okay.

18 MS. KUBICK: -- in testimony on page 9-
19 6, as well.

20 MR. SARVEY: Okay. That's all I have.

21 HEARING OFFICER FAY: Okay, thank you.
22 Mr. Boyd, do you have any questions of the panel?

23 MR. BOYD: Yeah, I just have a couple.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MR. BOYD:

3 Q First, Mr. Flynn, didn't you testify as
4 a witness for the City and the PG&E Jefferson-
5 Martin 230 kV transmission line project?

6 MR. FLYNN: Yes, I recall I did.

7 MR. BOYD: During that hearing did you
8 hear any of the testimony of PG&E --9 MS. SOL : Your Honor, if he's going to
10 be asking Mr. Flynn to testify about what he heard
11 a witness for PG&E testify --12 HEARING OFFICER FAY: I understand that
13 that will be objectionable.

14 MR. BOYD: Okay.

15 HEARING OFFICER FAY: It's not an
16 opportunity to ask this witness what another
17 witness said in another hearing.

18 MR. BOYD: Okay, I understand.

19 HEARING OFFICER FAY: Okay? So.

20 MR. BOYD: I understand.

21 Could you state what the purpose of your
22 testimony was in that proceeding? If it had
23 anything to do, or if you mentioned the San
24 Francisco Electric Reliability project as part of
25 your testimony? And the need for it.

1 MR. FLYNN: It was some time ago that I
2 prepared and gave my testimony. The general tenor
3 of my testimony was to support the project because
4 the project was one of a group of eight projects
5 made in conjunction with the San Francisco
6 Electric Reliability project, would allow the City
7 to achieve its goals, which is to shut down
8 existing generation.

9 So I remember that as being the reason
10 the City was involved, and why I was involved in
11 testifying, was generally to support the
12 Jefferson-Martin project.

13 But that's about as much as I can even
14 recall about it.

15 MR. BOYD: That's fine. This is more
16 general to all the witnesses. Could any of you
17 tell me why the transbay cable project wouldn't
18 meet the goals of this project, to eliminate the
19 need for additional generation being sited in
20 southeast San Francisco?

21 MR. FLYNN: I believe the best answer to
22 that is to refer to the testimony of Larry Tobias
23 in this particular proceeding, when he was asked
24 specifically would the transbay cable project
25 allow you to shut down generation without the San

1 Francisco Electric Reliability project. And his
2 answer was no.

3 MR. BOYD: Okay. Was it your
4 understanding that Mr. Tobias' testimony required
5 that all the generation, three turbines, at the
6 current site and one at the airport? Or did he
7 leave open the option of siting all four turbines
8 at the San Francisco Airport?

9 MR. FLYNN: I believe the question to
10 Mr. Tobias was whether the existing, whether the
11 transbay cable project would allow the shutdown of
12 Potrero without the San Francisco Electric
13 Reliability project being built. I don't believe
14 any more detail was included. But we could look
15 it up in the --

16 MR. BOYD: Transcript.

17 MR. FLYNN: -- in the transcript.

18 MR. BOYD: Okay, so what's your opinion?
19 Is there any reason why -- what's the reason why
20 we couldn't site all four turbines at the airport?
21 And in your opinion, why isn't that
22 environmentally preferred to the proposed project
23 site?

24 MR. FLYNN: Well, I believe the second
25 part of your question goes beyond my expertise.

1 But the first part of your question, again, was?

2 MR. BOYD: Was what the reason is why
3 they couldn't site all four turbines at the
4 airport as opposed to three at the proposed site
5 and one at the airport.

6 MR. FLYNN: The short answer is that the
7 action plan, both the action plan and the revised
8 action plan that was obtained with much effort
9 from the California ISO first indicated that at
10 least four turbines would need to be sited within
11 the City. And then through a second effort, they
12 allowed one of them to be moved to the San
13 Francisco Airport.

14 I can give you a longer answer, if you
15 want it.

16 MR. BOYD: That sounds like an ISO goal,
17 not a City goal, to me.

18 MR. FLYNN: Well, let me give you the
19 longer answer. And first to sort of set up my
20 opinion, let me just say I did transmission
21 planning for PG&E in the late '60s and early '70s,
22 and have followed all the grid planning processes
23 since the beginning of the ISO.

24 And what you have to understand that
25 ever since those power plants were built, and

1 PG&E's philosophy is to minimize the investment,
2 to obtain a certain level of reliability.

3 So as they designed the 115 kV network
4 they took into account, I mean automatically taken
5 into account, is the specific locations of
6 electrical generation within the City.

7 And so you run all your load flow
8 studies with those generation existing and you see
9 what the minimum number of, in this case, 115
10 underground cables need to be constructed.

11 When we were dealing with the ISO I had
12 been involved in all those negotiations on behalf
13 of the City, we were trying to get a commitment to
14 get them to terminate the RMR agreements for the
15 existing generation.

16 It was clear in my mind that in order to
17 do that we had to serve all the reliability needs.
18 And there are needs that need to be met in San
19 Francisco that had nothing to do with generation
20 at the airport; they have everything to do with
21 the ability of the generation that exists within
22 the City connected to the 115 kV network, and the
23 capability of that existing network to be able to
24 serve the load.

25 So, yes, I believe that the Cal-ISO's

1 requirement was justified, and was the minimum
2 that we could possibly obtain in order to achieve
3 our goals.

4 MR. BOYD: Can you tell me what
5 generation the San Francisco ERP will be
6 replacing?

7 MR. FLYNN: There is, in the revised
8 action plan there's a whole series of projects;
9 some of them on the Peninsula, including the
10 Jefferson-Martin project. Some of them on the 115
11 kV network within the City. Some reconductored,--
12 as I recall, there's a series of eight projects
13 that, in conjunction with the siting of three
14 turbines at the proposed site on the 115 kV
15 network, and one turbine in San Francisco where
16 the Cal-ISO says that we will terminate all the
17 remaining RMR agreements at Potrero -- line.

18 MR. BOYD: At Potrero, you're saying --
19 so is your answer that it will replace the
20 generation at Potrero? Once the RMR contract has
21 been canceled by the ISO.

22 MR. FLYNN: My testimony is that the
23 projects, the transmission projects listed in the
24 revised action plan, in conjunction with the
25 installation of the three turbines at Potrero, the

1 three new turbines at Potrero and the one in San
2 Francisco, will allow the Cal-ISO, and the Cal-
3 ISO's made a commitment through the revised action
4 plan to cancel the RMR agreements.

5 MR. BOYD: For?

6 MR. FLYNN: For Potrero.

7 MR. BOYD: To your knowledge has Mirant
8 indicated that they wish to cancel their RMR
9 agreement with the ISO?

10 MR. FLYNN: I have no such knowledge.

11 MR. BOYD: Have you any information that
12 would lead you to indicate that there's any
13 intention for Mirant to discontinue their RMR
14 contract or shut down the Mirant Power Plant?

15 MS. KUBICK: The objective of the City
16 is to obtain this agreement that you're
17 mentioning. At this time we do not have an
18 agreement with Mirant for closure or shutdown.

19 MR. BOYD: So would I be wrong in
20 interpreting that to mean that you're speculating
21 on whether or not this project will shut down
22 Potrero?

23 MS. KUBICK: No. I'm actually quite
24 certain that our project will not be able to
25 obtain the approval of the board of supervisors

1 and the other City leaders unless we are able to
2 have something more firm to demonstrate Mirant's
3 seriousness about closing after RMR status has
4 been released.

5 MR. BOYD: But you don't have any
6 indication from Mirant to that effect at this
7 time, correct?

8 MS. KUBICK: Not at this time, no.

9 MR. BOYD: Okay, thank you; that's all
10 my questions.

11 HEARING OFFICER FAY: Okay, thank you.
12 Anything further, Ms. Sol,?

13 MS. SOL : No.

14 HEARING OFFICER FAY: All right, we
15 thank you for your panel's testimony.

16 Now we'll move to the staff witness.

17 MR. RATLIFF: Staff witness is Susan
18 Lee.

19 HEARING OFFICER FAY: Would the court
20 reporter please swear the witness.

21 Whereupon,

22 SUSAN LEE
23 was called as a witness herein, and after first
24 having been duly sworn, was examined and testified
25 as follows:

1 THE REPORTER: Please state and spell
2 your full name for the record.

3 MS. LEE: Susan Lee, L-e-e. First name
4 is Susan, S-u-s-a-n.

5 DIRECT EXAMINATION

6 BY MR. RATLIFF:

7 Q Ms. Lee, did you prepare the portion of
8 the final staff assessment which is exhibit 46,
9 which is titled alternatives?

10 A Yes, I did.

11 Q And is that testimony true and correct
12 to the best of your knowledge and belief?

13 A I have two corrections to the testimony.

14 Q Could you tell us what those corrections
15 are at this time?

16 A The first one is the first nine figures
17 in the alternatives section are, in some cases,
18 out of order and confusing. They're not
19 substantive errors in the figures that were
20 presented in the preliminary staff assessment, in
21 fact, are correct. So, the errors have no effect
22 on the conclusions of the section, but they're a
23 little confusing. If you'd like us to submit the
24 corrected figures, we'd be happy to.

25 HEARING OFFICER FAY: And what pages do

1 these occur on?

2 MS. LEE: Well, they're scattered
3 throughout -- figures 1 and 2 are correct. And
4 then 2 through 9 are, in some cases, old early
5 drafts of figures that shouldn't have been
6 published in this case.

7 So they're scattered between about the
8 first 10 and 50 pages of the testimony.

9 HEARING OFFICER FAY: And can you
10 characterize the type of change proposed?

11 MS. LEE: Yeah, actually the one that's
12 probably the most confusing is the one that's
13 presented as figure 3, shouldn't have been
14 presented at all. It's a very early draft when
15 the proposed project was still located at the
16 Potrero site. So it was basically an assembly
17 error during the last days of the assembly of the
18 final staff assessment.

19 And, again, the preliminary staff
20 assessment did present the right figures in every
21 case. So if you look at the final and see the
22 reference to figure 3 and look at the preliminary
23 staff assessment figure 3 is the one that should
24 be seen at that point.

25 HEARING OFFICER FAY: Okay. And so all

1 the corrections relate to that problem?

2 MS. LEE: Right.

3 HEARING OFFICER FAY: All right. And
4 counsel will --

5 MS. LEE: Oh, I'm sorry, there was one
6 other correction that doesn't relate to figures.

7 MR. RATLIFF: Before we leave that,
8 though, Mr. Fay just reiterating what she said,
9 the PSA was accurate in this regard. Somehow when
10 we published the FSA we mis-identified or
11 misplaced some of the figures.

12 BY MR. RATLIFF:

13 Q And I would ask the witness, when did
14 you become aware of this problem with your
15 testimony?

16 A Just yesterday as I was preparing for
17 the hearings.

18 Q And that was because you were working
19 off the electronic version which you --

20 A Right, I was using my electronic version
21 and not the published version, which I looked at
22 it last night.

23 HEARING OFFICER FAY: Okay. Then we'll
24 direct counsel to prepare a packet of corrections
25 and serve to all the parties.

1 MR. RATLIFF: I will do that.

2 HEARING OFFICER FAY: Thank you.

3 BY MR. RATLIFF:

4 Q And with that could you go ahead to the
5 next change you had to make in your testimony.

6 A The second correction is with respect to
7 the land use impacts for the San Francisco
8 International Airport alternative, which on page
9 31, 6-31 of the FSA, states that there are no
10 permanent residences within a mile of that site,
11 of the alternative site.

12 And we verified just again recently, and
13 want to correct that to a statement that the
14 nearest residences are 4000 feet, or about .8 mile
15 from the San Francisco Airport alternative site.

16 Q With those changes is your testimony
17 correct and true to the best of your knowledge and
18 belief?

19 A Yes.

20 Q Could you summarize it briefly?

21 A The alternatives analysis that I
22 prepared is guided by the requirements of CEQA
23 which sets out a specific process for the
24 identification and assessment of alternatives.

25 In doing this alternatives analysis I

1 also reviewed two previous staff assessments that
2 were done for power plants in the San Francisco
3 area, which include the San Francisco Energy
4 Corporation, which was a submittal to the Energy
5 Commission in 1994, and Potrero Unit 7, which was
6 proposed in 2000.

7 This also incorporated some information
8 from the Jefferson-Martin transmission line EIR.

9 The key steps for alternatives analysis
10 that we went through in this project were first to
11 define the applicant's project objectives, because
12 CEQA requires that the objectives be -- some or
13 all of the objectives be met for all the
14 alternatives that are analyzed.

15 So the three objectives, and these have
16 been summarized by the applicant already, but the
17 first is improve electric reliability within the
18 City and County of San Francisco. Second is to
19 facilitate the shutdown of older inCity
20 generation. Again, since that was written Potrero
21 Units 3 through 6 are the units that are focused
22 on here, since Hunter's Point is now closed. And
23 the third is to minimize the impacts of local
24 generation.

25 The next step that we did was to, again,

1 under CEQA requirements, look at the environmental
2 impacts of the proposed project. The final staff
3 assessment, the complete staff assessment, looks
4 at these impacts and does not actually identify
5 any significant impacts that can't be mitigated
6 for the proposed project.

7 So in this case we focused on the
8 impacts that are the most common for power plant
9 projects. These include air quality impacts,
10 cultural resources, hazardous materials, land use,
11 noise and public health.

12 The third thing we looked at was to make
13 sure each alternative was feasible, because this
14 was another alternative requirement of CEQA. We
15 worked with an engineer in looking at the
16 alternative sites to make sure that each site
17 actually could hold the project as proposed, three
18 combustion turbines.

19 After we went through those steps we
20 identified a very large range of potential
21 alternative sites. And this is, again, going back
22 to the San Francisco Energy Corporation and the
23 Potrero. We looked at all the alternatives that
24 had been raised in earlier proceedings.

25 And looked at 24 alternatives that were

1 evaluated but eliminated from detailed
2 consideration based on either feasibility issues
3 or the fact that they didn't reduce the impacts
4 with respect to the proposed project.

5 And we ended up with six alternatives
6 that are evaluated in detail in this staff
7 assessment, including the no-project alternative,
8 which is required by CEQA.

9 Another note with respect to the
10 alternatives analysis is that we rely on other
11 staff members who are preparing the other staff
12 assessment sections, for example land use,
13 biology, as input for their technical opinions as
14 we look at various alternative sites.

15 The conclusion of the alternatives
16 analysis was that none of the six alternatives
17 that were analyzed in detail would reduce impacts
18 in comparison with the proposed project. And also
19 meet the project objectives.

20 That's it.

21 Q That completes your summary then, thank
22 you.

23 As a courtesy to the Committee could you
24 also answer the question posed by Mr. Sarvey as to
25 what the nature of the demographics was in the

1 area of the Jesse Street alternative location that
2 the City had decided was not an appropriate
3 location for any of the turbines.

4 A This is one of the alternatives that we
5 looked at because it had been specifically
6 requested by the public. And the analysis that we
7 did is presented in the staff assessment on pages
8 100, 101.

9 In particular, alternatives table 6
10 presents the population and demographics around
11 the Jesse Street alternative. And it identifies
12 the percentage of nonwhite population within the
13 census tracts in the immediate area around Jesse
14 Street.

15 As the earlier witness mentioned,
16 directly in the center of downtown San Francisco
17 with a lot of single-room occupancy units that
18 basically ring the project site. So the nonwhite
19 population in those areas ranges from 58 percent
20 to a high of 90 percent on the census tracts, just
21 within a block or two of the site, itself. With
22 an average of about 73 percent nonwhite
23 population.

24 MR. RATLIFF: Ms. Lee is available for
25 cross-examination.

1 HEARING OFFICER FAY: Would you like to
2 move her testimony at this time?

3 MR. RATLIFF: Oh, yes. At this time,
4 yes, I move it.

5 HEARING OFFICER FAY: Is there objection
6 to staff's motion to submit exhibit 46, as
7 corrected?

8 MR. BOYD: With the changes. As
9 corrected. No objection.

10 HEARING OFFICER FAY: Okay, we'll
11 receive that into evidence.

12 Ms. Sol,, any questions of the staff
13 witness?

14 MS. SOL : I don't have any questions.

15 HEARING OFFICER FAY: Okay. Any cross-
16 examination by Mr. Boyd?

17 MR. BOYD: No, I don't think so.

18 HEARING OFFICER FAY: Okay. Mr. Sarvey?

19 MR. SARVEY: Yes.

20 CROSS-EXAMINATION

21 BY MR. SARVEY:

22 Q On page 6.1 of your testimony you state
23 that the transbay cable project would likely have
24 the least environmental impacts of the
25 alternatives, but would fail to meet a major

1 project objective of closing the Potrero Units 3
2 to 6.

3 The project, the SFERP is not supposed
4 to close the Potrero Units 4 through 6 according
5 to the action plan, is it?

6 A The action plan looks to the -- as Mr.
7 Flynn was testifying earlier, the presentation of
8 three combustion turbines north of Martin
9 substation. The revised action plan would allow
10 the removal of the RMR contract at Potrero.

11 Q But the applicant here is proposing to
12 close Potrero 3, not 4 through 6, is that correct,
13 with the SFERP?

14 A That's a question to the applicant?

15 Q That's to you.

16 A My understanding was 3 through 6.

17 Q So it's not your understanding that
18 there are other planned transmission projects that
19 will close the Potrero Units 4 through 6?

20 A Okay, that's correct. The action plan
21 includes, again as Mr. Flynn summarized earlier, a
22 long list of transmission projects as well as this
23 project. So it is not this project alone that
24 would allow the removal of the RMR contract.

25 That's one component.

1 Q Okay. And you're aware -- I'm sure
2 you're aware the Hunter's Point Power Plant has
3 already been closed, correct?

4 A Yes.

5 Q And you're also aware that the siting of
6 the SFERP does not guarantee the closure of the
7 Potrero 3 Unit?

8 A The action plan states that the --
9 again, this, as a component of the action plan,
10 would allow removal of the RMR contract alone. So
11 further actions, I think the City's already
12 addressed.

13 Q And the fourth turbine at the airport is
14 also needed for reliability in San Francisco,
15 isn't it?

16 A That's also a component of the revised
17 action plan, correct.

18 Q And so without the additional
19 transmission projects and the fourth turbine at
20 the airport, the SFERP will also not allow for the
21 closure of Potrero Units 3 through 6, and may not
22 even close Potrero 3 Unit, is that correct?

23 A Well, again, the action plan would
24 require the combination of all those actions in
25 order to allow removal of RMR. But the closure of

1 the power plant is a separate issue, as you
2 pointed out.

3 Q So, have you or staff compared the
4 impacts, the cumulative impacts to the action
5 plan, that includes the Jefferson-Martin project,
6 11 other transmission lines, the airport site and
7 all the things that go with the action plan
8 against the impacts of the transbay cable project?

9 A Not the cumulative impacts, no.

10 Q Okay. So, basically you're comparing
11 the transbay cable project to the entire action
12 plan in the analysis, is that true?

13 A Well, the alternatives analysis looks a
14 the transbay cable as an alternative to the San
15 Francisco Electric Reliability project, which is
16 the three combustion turbines alone.

17 Q Then why are all your references to the
18 transbay cable project not being able to close
19 Hunter's Point 3 through 6 related to the action
20 plan and not just the SFERP related to the
21 transbay cable? That's not a fair comparison, is
22 it?

23 A A comparison would be the transbay cable
24 project as an equivalent to the proposed project
25 that we're looking at now, that's the way the

1 alternatives analysis is presented, is that we're
2 looking at an alternative to this proposed project
3 and how it would relate to future actions.

4 MR. SARVEY: That's all I have.

5 HEARING OFFICER FAY: Okay. Thank you.

6 Anything further, Mr. Ratliff?

7 MR. RATLIFF: No.

8 HEARING OFFICER FAY: Okay. Anything

9 from the Committee? Thank you, Ms. Lee.

10 We'll now move to, I believe it's CARE's
11 witness, Mr. Homec.

12 MR. BOYD: Come on up. Have a seat.

13 Would you please introduce yourself, Martin, and
14 state your name --

15 HEARING OFFICER FAY: Please swear --

16 MR. BOYD: Or could he be sworn first,
17 please?

18 HEARING OFFICER FAY: Yes.

19 Whereupon,

20 MARTIN HOMEK

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

24 THE REPORTER: Please state and spell
25 your full name.

1 MR. HOME: Martin Homec, M-a-r-t-i-n
2 H-o-m-e-c.

3 DIRECT EXAMINATION

4 BY MR. BOYD:

5 Q Did you prepare the testimony docketed
6 April 27 of this year titled, testimony of Martin
7 Homec, City of San Francisco Electric Reliability
8 project, 04-AFC-1?

9 A I did.

10 Q And with your testimony did you include
11 a copy of your r, sum, and two other attachments?
12 And could you describe what those other two
13 attachments were?

14 A Well, the docketed copy just had my
15 r, sum, and my testimony. The copies that we
16 passed out at the May 22nd hearing I had
17 attachments of some of the references that I used,
18 so it could be more easily understood.

19 But the docketed copy only had my
20 testimony and the r, sum, .

21 Q Okay, can you say what those other
22 attachments were?

23 A The other attachments were the portions
24 of the transcript from the California Public
25 Utilities Commission proceeding held on January

1 12, 2004; application 02-09-043; application of
2 PG&E for certification of convenience and
3 necessity authorizing the construction of the
4 Jefferson-Martin 230 kV transmission project.

5 Another attachment was a copy of data
6 requests and responses submitted by CARE to San
7 Francisco and answers of the applicant.

8 And I'm trying to find -- CARE data
9 response set 3, San Francisco Electric Reliability
10 project, dated June 9, 2005. And I submitted a
11 copy of the one I was using as a reference, data
12 request 3.1-2 and the applicant's reply.

13 Q Okay. Do you have any additions,
14 deletions, corrections to your testimony?

15 A Well, the docketed copy I had some
16 errata to, the copies that I passed out on May
17 22nd were corrected. The copies, the docketed
18 copy that would have to be changed where I
19 misspelled Mr. Yeung's name, I put Mr. L-e-u-n-g
20 and it was really Mr. Y-e-u-n-g. And I also
21 changed the formatting to be a space and a half
22 instead of single space.

23 But other than that, the copies that
24 were passed out on May 22nd were the corrected
25 copies.

1 Q And could you summarize your testimony?

2 A My testimony basically reviewed existing
3 documents on the whole project, including the
4 Public Utilities Commission transcripts of
5 proceedings.

6 The testimony in the PUC proceeding of
7 an engineer employed by PG&E stating that
8 generation in the City and County of San Francisco
9 will not be necessary after the Jefferson-Martin
10 transmission project is completed.

11 I included not only the pages of the
12 testimony, but also the complete testimony of Mr.
13 Yeung so that the decisionmakers would have the
14 context of the statements made.

15 I also reviewed the California Energy
16 Commission's final staff assessment, which
17 appendix A to the San Francisco Airport site
18 appeared to be the most appropriate because --
19 appeared to be an appropriate site. And I
20 recommended that it is the most appropriate site,
21 because it's not located near residential housing.

22 Basically I then reviewed the data
23 requests submitted by CARE and replied to by the
24 applicant in which it appeared from the
25 applicant's reply that the applicant never asked

1 the California ISO to review the San Francisco
2 Airport alternative to determine whether
3 sufficient reliability would be attained by
4 locating all four combustion turbines at the
5 airport.

6 And my conclusion was either we should -
7 - the no-project alternative, as testified to by
8 Pacific Gas and Electric Company's expert witness,
9 or we should in the alternative locate the project
10 as far away from occupied residential housing as
11 possible, which would be at the San Francisco
12 Airport.

13 That concludes my summary.

14 MR. BOYD: Okay. I'd like to move that
15 into evidence at this time, if that's okay.

16 HEARING OFFICER FAY: And which document
17 are you moving? The one docketed or the one
18 handed out at the May 22nd hearing?

19 MR. BOYD: Well, I'd like to do the May
20 22nd, but I understand there's an objection to the
21 transcript. So what I would like to do is
22 possible move everything but that CPUC transcript
23 at this time. And then we can discuss that.

24 HEARING OFFICER FAY: Well, first let's
25 determine. Is there objection to the complete

1 packet being moved?

2 MS. SOL : Yes.

3 HEARING OFFICER FAY: Okay. And your
4 objection is to the transcript portion?

5 MS. SOL : Yes.

6 HEARING OFFICER FAY: Okay. So, Mr.
7 Boyd has moved Mr. Homec's testimony and r,sum
8 and all the other portions --

9 MR. BOYD: The response to the City, the
10 data requests.

11 HEARING OFFICER FAY: Was that included
12 in the docketed copy, the response?

13 MR. BOYD: No. It was included in
14 his --

15 HEARING OFFICER FAY: All right. We
16 will mark that as exhibit 97. Is there any other
17 objection to receiving it?

18 MS. SOL : Your Honor, the only thing I
19 would say is that the objection to the transcript
20 extends to the testimony that relies on that
21 transcript, for the same reasons. I mean the
22 transcript, itself, is hearsay. And the testimony
23 that relies on that hearsay to draw a conclusion
24 is equally inappropriate.

25 HEARING OFFICER FAY: Okay. We're going

1 to --

2 MR. BOYD: Could you clarify that for me
3 as a nonlawyer, what that means?

4 HEARING OFFICER FAY: She's asserting
5 that Mr. Homec's testimony is claiming the truth
6 of matters stated outside of this hearing.

7 MR. BOYD: Okay.

8 HEARING OFFICER FAY: And that's
9 hearsay. And hearsay is sometimes excluded,
10 although it's allowable in administrative
11 proceedings. And we're going to overrule the
12 objection as to Mr. Homec's testimony. We note
13 your objection and it'll go to the weight of the
14 evidence, and we will allow Mr. Homec's testimony.

15 But you're going to have to file another
16 copy of the corrected testimony with the allowed
17 attachments --

18 MR. BOYD: Got you.

19 HEARING OFFICER FAY: -- and that
20 excludes, of course, the transcript.

21 MR. BOYD: Okay. Can I ask a question.
22 On the transcript portion I did, if you remember,
23 request a subpoena of Manho Yeung from PG&E. I
24 did that to provide an offer of proof to the
25 validity of the testimony he provided in this, as

1 is reflected in the transcript, which I attempted
2 to include. But the Committee denied my request
3 for the production of Mr. Yeung as a witness.

4 So, it's sort of like I can't prove the
5 validity of the witness in the transcript because
6 I can't produce that witness, isn't that true? I
7 don't have any way of producing the witness short
8 of a subpoena.

9 HEARING OFFICER FAY: Yeah, to prove the
10 truth of the witness' statement you'd need to
11 offer the witness.

12 MR. BOYD: Right. And what I'm hearing
13 is that you're saying a transcript from --

14 HEARING OFFICER FAY: Can't substitute.

15 MR. BOYD: -- can't substitute for the
16 real live person.

17 HEARING OFFICER FAY: Right. However,
18 if you would like, we can, without receiving the
19 transcript into evidence, we can mark the
20 transcript for identification.

21 MR. BOYD: That would be fine.

22 HEARING OFFICER FAY: Okay.

23 MR. BOYD: And then I can refer to it?

24 HEARING OFFICER FAY: Yes.

25 MR. BOYD: Okay, thank you.

1 HEARING OFFICER FAY: And we'll mark the
2 transcript for identification as exhibit 98,
3 identification only. And that is a transcript of
4 a PUC hearing of January 12, 2004, held in San
5 Francisco beginning at 10:05 a.m. Administrative
6 Law Judge Turkerst (phonetic).

7 MR. BOYD: Got it, right.

8 MR. RATLIFF: Mr. Fay, if I may,
9 certainly the statements of Mr. Yeung are hearsay,
10 but frankly staff isn't challenging the truth of
11 the matter asserted here. And we want to cross-
12 examine Mr. Homec on that very transcript, because
13 we don't believe that Mr. Yeung actually says what
14 Mr. Homec states that he says.

15 HEARING OFFICER FAY: That's fine. You
16 can refer to it as exhibit 98. It's marked for
17 identification.

18 MS. SOL : Actually, Your Honor, Mr.
19 Rubenstein just brought to my attention that I
20 believe it had been previously marked as an
21 exhibit 59.

22 HEARING OFFICER FAY: As a separate
23 exhibit?

24 MS. SOL : Yeah.

25 HEARING OFFICER FAY: That's correct.

1 All right, I stand corrected. The transcript will
2 be referred to as exhibit 59.

3 MR. BOYD: For identification only.

4 HEARING OFFICER FAY: Identification
5 only. Is Mr. Homec available?

6 MR. BOYD: Seeing no other objections,
7 the witness is available for cross.

8 HEARING OFFICER FAY: Okay. Ms. Sol,.

9 MS. SOL : I have no cross.

10 HEARING OFFICER FAY: Mr. Ratliff.

11 MR. RATLIFF: Yes, I have some
12 clarifications to make.

13 CROSS-EXAMINATION

14 BY MR. RATLIFF:

15 Q Mr. Homec, I see from your r, sum, that
16 you are part of the Energy Commission diaspora.

17 A Yes.

18 Q And that you've worked there even before
19 I did, which makes us both very old.

20 (Laughter.)

21 MR. HOMEK: I apologize, or condolences
22 are offered, whichever is most appropriate.

23 BY MR. RATLIFF:

24 Q And you worked on the siting staff when
25 you were at the Energy Commission?

1 A Yes, I did. Just seemed appropriate to
2 bring all the materials available in because these
3 are very emotional proceedings.

4 Q Yes. When you worked on the siting
5 staff there, you worked, according to your r, sum,,
6 in the areas of water quality and air quality, but
7 not in the area of transmission engineering, is
8 that correct?

9 A Correct.

10 Q And then the description of your duties
11 at the PUC, your principal position and occupation
12 at the PUC is not to do transmission system
13 engineer, is that correct?

14 A That's correct.

15 Q And perhaps it's for that reason that
16 you rely on the expertise of Mr. Yeung that you've
17 quoted him here, as to the statements in your
18 testimony, is that correct?

19 A That is correct.

20 Q You've had no particular training in the
21 form of classes and transmission system
22 engineering?

23 A I've had lots of experience in it from
24 reviewing proceedings, but I have not ever
25 testified in it, so I'm not an expert in

1 transmission line planning.

2 Q Okay, thank you. Going to the first
3 page of your testimony, you state in the first
4 paragraph that the testimony shows that the
5 project is not necessary. And you mean Mr.
6 Yeung's testimony, is that correct?

7 A Yes.

8 Q And when you make that statement, the
9 question that comes to my mind that I would like
10 to ask you is necessary for what?

11 A For energy reliability in the City of
12 San Francisco.

13 Q Okay, but you are familiar with the San
14 Francisco action plan that's been discussed here
15 today?

16 A Yes.

17 Q And you're familiar with the goals of
18 the San Francisco action plan?

19 A Yes, I am.

20 Q And the goals of the San Francisco
21 action plan, as discussed earlier, includes the
22 shutdown of the Potrero units, is that correct?

23 A That's correct.

24 Q Is your testimony that the project is
25 not necessary for the shutdown of unit 3?

1 A I wasn't specifically referring to any
2 unit.

3 Q So you're saying it's not absolutely
4 necessary for reliability purposes, period?
5 That's what you meant by necessary?

6 A The testimony was that both the
7 Jefferson-Martin line and the City turbines are
8 not necessary. One or the other would suffice,
9 but not both are necessary.

10 Q You're aware that the Cal-ISO in Mr.
11 Tobias' testimony stated that it was necessary to
12 build the SFERP project in order to close unit 3?

13 A I understood he was asked, according to
14 the CARE data requests, for sites located within
15 the City boundaries. He was not asked
16 specifically whether the replacement of the -- or
17 the construction of the Jefferson-Martin
18 transmission line and the inclusion of the
19 turbines were both necessary if located within the
20 site proposed by applicant.

21 The applicant, in other words, did not
22 request the Cal-ISO to list all the alternatives
23 that were available. The applicant only proposed
24 limited alternatives. And that's all the Cal-ISO
25 appeared to address from the written reply to CARE

1 interrogatories.

2 Q So you're basing your answer on the
3 answer to the CARE interrogatories, is that right?

4 A Yes.

5 Q Have you read Mr. Tobias' testimony?

6 A Yes, I have.

7 Q And have you read the transcript of the
8 May 1st hearing at which he testified?

9 A I have not read the transcript.

10 Q Mr. Tobias, subject to check, if you
11 will, testified at those hearings that -- he
12 testified unequivocally that the project would
13 have to be built in order to close the Potrero
14 units. You're not aware of that?

15 A I am aware that he testified that the
16 project had to be built and I was aware that Mr.
17 Yeung testified it did not have to be built. So,
18 I presented the testimony most conducive to --

19 Q Okay, but let's just keep with Mr.
20 Tobias for the moment. Are you familiar with Mr.
21 Tobias' testimony in that regard, that he did
22 testify --

23 A I read his testimony, I didn't read the
24 transcripts.

25 Q And that is the ISO's position, you

1 understand, then?

2 A I understand that.

3 Q And are you familiar with why he stated
4 that it was necessary to build SFERP if you wanted
5 to close down the Potrero units?

6 A I understand that he was replying to a
7 request by the applicant, a written request
8 submitted several years ago.

9 Q I'm talking about are you familiar with
10 the testimony that he gave as to the reasons why
11 it would be necessary to build the SFERP project
12 to close the Potrero units?

13 A I read the testimony; from what I
14 understood he was replying to a specific request
15 by the City of San Francisco's Public Utilities
16 Commission.

17 Q Do you know what the reasons are that
18 Mr. Tobias testified to as to why you would have
19 to have this project in order to close down the
20 Potrero units?

21 A I guess not. I've stated my basis, the
22 interrogatories and written replies. That was all
23 I have. I don't know anything else. I read Mr.
24 Tobias' testimony. Didn't seem to contradict the
25 testimony -- or the interrogatory replies.

1 Q Now when you say, in your testimony you
2 say that generation in the City and County of San
3 Francisco will not be necessary after the
4 Jefferson-Martin 230 kV transmission project is
5 completed, see pages 468 and 469 of the
6 transcript.

7 A Yeah, lines 8 through 11 of page 468.

8 Q Did Mr. Yeung, in giving this testimony,
9 did he refer to a time period for which he was
10 qualifying his answer?

11 A Assuming a five-year planning horizon
12 started in October of 2003 is what he stated.

13 Q Show me that testimony, please.

14 A Lines 8 through 10 of page 468 of the
15 transcript.

16 Q Eight through 10?

17 A Yes.

18 HEARING OFFICER FAY: I believe that's
19 the question asked of the witness.

20 MR. RATLIFF: No, I don't think it is.
21 I don't believe it is.

22 BY MR. RATLIFF:

23 Q When you read page 469, you asked -- or
24 I think actually it was Ms. Palio who asked: So
25 that means the Jefferson-Martin alone would meet

1 the reliability need for the project area, is that
2 correct?" It's page 469.

3 A Okay.

4 Q And the answer is "Right." And then the
5 objection below was vague and ambiguous as to
6 time. Ms. Palio says, "In 2006 when it's built?"
7 And Mr. Yeung says, "I believe that the question
8 was addressing the year 2006?" And the answer is
9 "Yes, for the year 2006."

10 He has stated repeatedly in his
11 testimony, including the portions of the
12 transcript that are not included in these few
13 pages, in response to Mr. Boyd's questions that he
14 was answering for the year 2006. And he limited
15 his response to that.

16 Am I correct? Are you --

17 A Oh, I see that, but I was referring to
18 the section where he was asked directly, the five-
19 year period, and he said he agreed. So I was
20 quoting him.

21 Q When Mr. Yeung made this statement was
22 he talking about reliability or was he talking --
23 without the Potrero unit being on, or was he -- is
24 there anything in his testimony to suggest that he
25 was excluding the running of the Potrero unit that

1 would be offline when he made this statement?

2 A No, he was merely stating that the PG&E
3 wanted to build the Jefferson-Martin line because
4 then it would allow the power plants in San
5 Francisco that were objectionable to the community
6 residing next to them, shut down.

7 In reply to questions he stated that was
8 PG&E's position that these power plants could be
9 shut down once the Jefferson-Martin line was
10 constructed.

11 He didn't cite specific units.

12 Q Where in the testimony did Mr. Yeung say
13 that any power plants could be shut down, other
14 than Hunter's Point?

15 A He just said City turbines, as far as I
16 can see.

17 Q Where is that?

18 A Page 468, lines 8 through 11.

19 Q Well, I don't see any reference there to
20 shutting down Potrero units at all.

21 A No, he doesn't refer to the Potrero
22 units at all.

23 Q Well, does he refer to any other units?

24 A Well, the context of the testimony is
25 the turbine project and siting effort.

1 Q But is there anything in his testimony
2 on any page that indicates that he was saying that
3 you could shut down the Potrero project simply by
4 building the Jefferson-Martin?

5 A He did not make that specific statement.

6 Q Did he make that general statement?

7 A Yes.

8 Q Where did he make it?

9 A Same quotation that I gave you before.

10 Q You're talking about the language at the
11 bottom of page 469?

12 A Well, 468 and 469.

13 Q Can you tell me more specifically where?

14 MR. BOYD: If I could have a minute I
15 could show him where it is.

16 MR. HOMEK: Lines on -- well, most of
17 the page. I could read it to you. But, line 13:
18 "You said earlier the Jefferson-Martin alone would
19 meet the reliability need in the project area,
20 correct?" Line 15, answer: "That's correct."

21 Line 16, "So assuming Jefferson-Martin's
22 built, assuming the turbines come online, would
23 you agree the supply would be more than what was
24 needed for the area reliability-wise?"

25 Line 20, Mr. Yeung, "If I understand the

1 question correctly you're asking me if both the
2 transmission project and the four new combustion
3 turbines are constructed, would the system be
4 capable of planing requirements. The obvious
5 answer is yes. As I stated before, that even with
6 the Jefferson-Martin line alone, the answer is
7 yes."

8 BY MR. RATLIFF:

9 Q And you're saying that that portion of
10 the transcript that you just read said that you
11 could shut down the turbines at the Potrero site
12 by building Jefferson-Martin?

13 A That's what he said in reply to the
14 questions --

15 Q Okay.

16 MR. RATLIFF: Thank you very much. I
17 have no other questions.

18 HEARING OFFICER FAY: Okay, thank you.
19 Anything further, Mr. Boyd?

20 MR. BOYD: No. That's fine.

21 HEARING OFFICER FAY: Okay, Mr. Sarvey,
22 did you have any -- no questions?

23 MR. SARVEY: No questions.

24 HEARING OFFICER FAY: Okay. Thank you,
25 Mr. Homec for your testimony. And, Mr. Boyd, you

1 will follow up by filing a proper copy of that?

2 MR. BOYD: Give you, docketing his
3 corrected copy, the data response and his r, sum,,
4 correct?

5 HEARING OFFICER FAY: All right, yes.
6 As one attachment. And you might, please, with a
7 cover letter to note that that's exhibit 97.

8 Okay, any other matters before we go off
9 the record to discuss the briefing schedule for a
10 moment?

11 MR. SARVEY: Are we going to have
12 closing statements?

13 HEARING OFFICER FAY: Well, I didn't
14 anticipate it. Do you plan on making one?

15 MR. SARVEY: Thirty seconds.

16 HEARING OFFICER FAY: All right, we can
17 allow brief closing statements. Let me first have
18 the court reporter, we'll go off the record and
19 we'll just review the calendar.

20 (Off the record.)

21 HEARING OFFICER FAY: We've had a
22 discussion with the parties and opening briefs
23 will be due on June 26th by close of business,
24 filed with the Commission, served on all parties.

25 And reply briefs will be due July 10th.

1 And, in addition, Mr. Ratliff, you
2 wanted to, in the event that exhibit 48 has not
3 been accepted in the record you want to move that
4 in at this time?

5 MR. RATLIFF: Yes.

6 HEARING OFFICER FAY: Is there
7 objection? All right, that is in.

8 Anything further before we adjourn?

9 MR. BOYD: Could you --

10 HEARING OFFICER FAY: Mr. Boyd.

11 MR. BOYD: Could you clarify for the
12 record what exhibit 48 is?

13 HEARING OFFICER FAY: Exhibit 48,
14 according to the exhibit list, page 5, is the
15 errata to the final staff assessment, air quality
16 and cultural resources sections. They were both
17 attached together, and they were revisions. You
18 have it.

19 MR. BOYD: Thank you.

20 HEARING OFFICER FAY: Okay. Any other
21 closing statements besides Mr. Sarvey's that
22 people would like to make?

23 MR. BOYD: I'll give a --

24 HEARING OFFICER FAY: You would, also?
25 Okay. All right, briefly then.

1 MR. SARVEY: Yeah, I just wanted to urge
2 the Committee to understand that the only impact
3 that all the parties agree on is the 2.5 impact.
4 And I submitted AQSC-11. And the applicant's
5 going to spend \$2.75 million on their community
6 benefits program, which I don't begrudge, but I'd
7 like the Committee to encourage them to mitigate
8 this PM2.5 through AQSC-11. Because providing SO2
9 credits for mitigation of local PM2.5 is just not
10 going to work. SO2 is a regional precursor. So
11 that's the only thing I really want out of this
12 project. I want to make sure that the proper
13 amount of money is allocated to mitigate this
14 PM2.5 impact.

15 And the applicant's already committed
16 the resources, so I think they just need a little
17 direction on reallocation, or perhaps a few more
18 resources added to this project for it.

19 So, thank you.

20 HEARING OFFICER FAY: Thank you. Mr.
21 Boyd.

22 MR. BOYD: Well, CARE does not believe
23 that the record is yet complete because of the
24 absence of the Regional Water Quality Control
25 Board-approved remedial investigation and a

1 remedial action plan.

2 We believe it's inappropriate for the
3 Commission to defer its CEQA duty to another
4 agency to identify mitigation. And we believe
5 that under CEQA it's the Commission's duty to
6 adopt all feasible mitigation identified to make
7 the project have no significant impacts.

8 Without the plan, without an approved
9 plan and investigated by the Regional Board we
10 believe that the testimony provided to date in
11 regards to all the associated topics, including
12 public health, air quality, water, soil,
13 biological resources, that without identifying all
14 that feasible mitigation and adopting it, that
15 it's premature to approve the permit for this
16 project.

17 We believe that what has been done also
18 precludes meaningful and informed public
19 participation on that mitigation, as is required
20 by CEQA. And as a result it makes the project
21 fatally flawed at this time.

22 CARE does believe that the applicant has
23 had more than enough opportunity to work with the
24 Regional Board, to utilize the Regional Board's
25 existing processes in a way that would incorporate

1 meaningful and informed public participation, and
2 has failed to do so.

3 CARE also believes that the applicant
4 hasn't provided all the information, all the
5 disclosures that it should have. And by waiting
6 till the very end of the process to finally
7 disclose that, for example, that suit that Mr.
8 Sarvey made part of record at the last hearing,
9 the applicant's showing bad faith towards the
10 community.

11 Because of that we believe that the fact
12 that this project is being sited where it is, in
13 what they recognize as an adversely impacted
14 community, as opposed to the airport which is
15 available to them, that they're discriminating
16 with intent against the residents of Bayview
17 Hunter's Point.

18 And we made that part of our original
19 civil rights complaint back in June 2003. And
20 their continuing actions to this effect, to
21 disenfranchise these people, we believe, is an act
22 of retaliation by the City for bringing that
23 complaint with the U.S. Department of Energy and
24 Department of Justice.

25 Thank you.

1 HEARING OFFICER FAY: Okay. Anything
2 from the Committee?

3 All right. I want to thank you all.
4 And that concludes our hearing process. We are
5 adjourned.

6 (Whereupon, at 4:05 p.m., the hearing
7 was adjourned.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of June, 2006.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345