JOINT COMMITTEE STATUS CONFERENCE

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:	)	
	)	
Petition to Amend the Commission Decision Approving the Application for Certification for the Russell City Energy Center	)	Docket No. 01-AFC-7C
-and-	)	
Application for Certification for the Eastshore Energy Center in Hayward by Tierra Energy of Texas	)	Docket No. 06-AFC-6

DOCKET
01-AFC-7C
DATE JUN 06 2007
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HAYWARD CITY HALL

COUNCIL CHAMBERS

777 B STREET

HAYWARD, CALIFORNIA 94541

WEDNESDAY, JUNE 6, 2007

3:02 p.m.

ORIGINAL

Reported by:
Richard A. Friant
Contract No. 170-04-001

COMMITTEE MEMBERS PRESENT

John L. Geesman, Presiding/Associate Member

Jeffrey D. Byron, Presiding/Associate Member

HEARING OFFICER AND ADVISORS

Susan F. Gefter, Hearing Officer

Paul Kramer, Hearing Officer

Gabriel Taylor, Advisor

Raoul A. Renaud

STAFF AND CONSULTANTS PRESENT

Caryn J. Holmes, Staff Counsel

Eileen Allen

William Pfanner

Lance Shaw

Dale Edwards

PUBLIC ADVISER

J. Mike Monasmith
Associate Public Adviser

APPLICANT

Greggory Wheatland, Attorney
Ellison, Schneider and Harris

Mike Argentine
Calpine, Inc.

Jane E. Luckhardt, Attorney
Downey Brand Attorneys, LLP

Gregory Trewitt, Vice President
Tierra Energy

APPLICANT

David A Stein, Vice President
Douglas M. Davy
CH2M HILL

INTERVENORS

Paul N. Haavik, Property Manager
Checkaboard Square Rentals, Inc.

ALSO PRESENT

Scott Galati, Attorney
Galati Blek, LLP

John Crosson
Marino Monardi
Pacific Gas and Electric Company

Chris Parman, District Director
on behalf of Assemblymember Mary Hayashi

Jesus Armas, City Manager
City of Hayward

Barbara Halliday
Hayward City Council

Scott Raty, President/CEO
Hayward Chamber of Commerce

Joanne Gardiner

Harry Deane

Michael Toth

Rachel Henderson

Chris Lam

Delores Fontenberry

Barbara Vierra

Juanita McDonald

ALSO PRESENT

Bob McDonald

Shirley Bos

Linda McDaid

Charlie Cameron

Melinda Alfaro

Connie Jordan

John Kyle

Steve Bristow

Bob Williams
Williams Electric

Kevin Gillan

John McCarthy

Brian Frank

Teresa Frank

Adaberto Ramirez

Pete Quevedo

Juanita Gutierrez

John Sullivan

Jack Wu

Allen Bertillion

Han Lukito

Ocha Kelete

Hermes Aleman

Karen Kramer

ALSO PRESENT

Ernest Pacheco

Albert Jordan

Myrna Marquez

Robert Riendeau

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P R O C E E D I N G S

3:02 p.m.

PRESIDING/ASSOCIATE MEMBER GEESMAN: I'd like to welcome you all to this joint status conference of the California Energy Commission's two siting proceedings in Hayward. The projects are known as Russell City and Eastshore Power Plant.

I'm John Geesman, a Member of the Commission, and the Presiding Member of the Russell City siting case. Two, actually three seats to my right is my colleague, Commissioner Jeffrey Byron; he's the Associate Member on the Russell City proceeding, and the Presiding Member on the Eastshore proceeding. I am the Eastshore Associate Member.

To my immediate right is Paul Kramer, the Hearing Officer on the Russell City proceeding. To his immediate right, Susan Gefter, the Hearing Officer on the Eastshore Power Plant proceeding.

It's a little bit cumbersome because we don't ordinarily have two proceedings pending at the same time in the same locality. But because of the interconnection of the issues in these two

proceedings, we are going to try and deal with them both today in this status conference.

I'm going to turn the proceeding over to Mr. Kramer initially, as the Hearing Officer in the Russell City proceeding. Paul.

HEARING OFFICER KRAMER: The first order of business is to introduce the various parties and Members of the Committee. One person up here with the Committee we haven't introduced yet is Mr. Gabe Taylor, who is an Advisor to Commissioner Byron.

And then as an observer we have a new member of our Hearing Office, Raoul Renaud, who is sitting at my left end of the dais. He's here today merely as an observer.

Now we'd like to ask the parties to introduce themselves. We'll begin with the staff. Ms. Holmes.

MS. HOLMES: Thank you, Mr. Kramer. My name is Caryn Holmes. I'm --

HEARING OFFICER KRAMER: Your mike?

MS. HOLMES: Pardon me? My name is Caryn Holmes and I'm the Staff Counsel assigned to the Eastshore project; I'm also sitting in today for Dick Ratliff who is the Staff Counsel assigned

to the Russell City project.

To my left is Lance Shaw, who is the Project Manager for the Russell City project; and to my right is Bill Pfanner, who is the Project Manager for the Eastshore project.

We also have other members of staff who may participate if necessary later on.

HEARING OFFICER KRAMER: Thank you. Mr. Wheatland for Russell City project.

MR. WHEATLAND: Yes, I'm Gregg Wheatland; I'm counsel for the Russell City Energy Center. And sitting behind me is Mike Argentine, who is the Project Manager for this project.

HEARING OFFICER KRAMER: And Ms. Luckhardt for Eastshore.

MS. LUCKHARDT: I think someone turned my mike on for me, which was very nice. My name is Jane Luckhardt and I am Project Counsel for Eastshore. Sitting behind me is Greg Trewitt who is the Project Manager for the Eastshore Energy Center; as well as David Stein, who is our Project Manager from CH2M HILL.

HEARING OFFICER KRAMER: Okay, we have a representative here from the Public Adviser's Office at the Commission. That's Mr. Mike

Monasmith. He's in the back raising his hand.

If any members of the public want some information about how to participate in either of these proceedings, please see him as your first resource in that regard.

Let's see, is Mr. Haavik -- I'm sorry if I've mispronounced your name. He's an intervenor in the Eastshore case.

MR. HAAVIK: Yes. Paul Haavik; I'm the intervenor for the Eastshore Energy project.

HEARING OFFICER KRAMER: And then we also have several representatives from PG&E in the audience since they have an interest in this case and the Committee asked that they be present to help resolve some issues. Mr. Galati, could you introduce yourself.

MR. GALATI: My name is Scott Galati representing PG&E. And with me I have John Crosson and Marino Monardi.

HEARING OFFICER KRAMER: Thank you. And I see in the audience City Manager Jesus Armas is here with us. I want to thank you for providing this really wonderful facility for our use today.

The format of today's proceedings will be from 3:00 to 5:00 p.m. the Commissioners,

parties and the agencies will discuss technical issues to identify the information that's necessary for further review, and the timelines for providing the information.

During this portion of the meeting the Committee will ask -- we're asking members of the public to write down any questions that you have that you want to ask later. You can use the blue cards that Mr. Monasmith has provided as a place to do that.

Later we'll be asking you to turn those in. And we're hoping that if you identify subject areas that you're interested in talking about on those cards, then we can organize the public comment that will come later by subject. I think it will help things go more smoothly when we get to that point.

We will be opening the floor for public comments beginning at 6:00 p.m. If for some reason you can't stick around until then, you could submit a written statement to Mr. Monasmith, and then we will take that into the record later.

Regarding the Eastshore project we've received nearly 1500 letters already opposing it, including some letters from your elected officials

and legislators.

Commissioner Byron, did you want to make a statement about one of those communications?

PRESIDING/ASSOCIATE MEMBER BYRON: Yes, I'd be glad to. I'd also like to welcome everyone that's here today and to thank the City, as well, for providing the facility for us to meet in.

My notes that I wanted to make sure that I included, so I thank you, Mr. Kramer. I was asked by Assemblymember Hayashi if I would meet with her. And I did yesterday. I will be disclosing that in a public document that we'll docket here shortly.

But basically the gist of the meeting was she wanted to express to me her interests and concerns about the siting of the Eastshore Power Plant, and also I would say that she was primarily looking out for the interests of her constituents in our meeting.

I expressed to her our concern, as well, about all the issues that have been raised by the public; and assured her about the process at the Energy Commission that we'll be pursuing. And I think I'll defer what that process is until the staff is talking, and they can describe that in

more detail.

But that we will be considering all information and input from the parties and the public; and that that's primarily why we're holding this hearing here today is to make sure that everyone's voice is heard.

HEARING OFFICER KRAMER: Thank you. Where we stand in the process for these two cases is that we are still -- we're aware of public concerns regarding the environmental and economic effects of the two power plants proposed to be located in Hayward.

We are still reviewing all the information and at a later time we'll be conducting public evidentiary hearings, most likely later this year, to consider the evidence on those issues.

The decisions in the two cases will be based solely on the evidence presented in those future evidentiary hearings.

Our task is to review the evidence so we can determine whether the proposed power plants comply with the applicable laws. And the evidence submitted by the parties will consist of technical and scientific studies, expert testimony and

government agency recommendations.

The most recent status reports the parties have filed in the two cases are available on the table outside the room. And our intent today is to focus the discussion on the issues that are raised in those reports.

At this time, to more fully educate the public about the process, Mr. Pfanner is going to make a presentation outlining the review process that's gone to this point, and that will proceed beyond today.

MR. PFANNER: Thank you, Mr. Kramer. My name is Bill Pfanner and I'm the Project Manager for the Eastshore project. And we've had introductions, but just briefly, again, we have Caryn Holmes, who is staff counsel; Mike Monasmith with the Public Adviser's Office; and Susan Gefter, who's the Hearing Officer, who are all critical components of the process.

Typically when an application for certification comes in there is a site visit and information hearing where a detailed presentation is made explaining the siting process. We have subsequently made a similar presentation at the March 19th data response workshop, and at the May

23rd workshop. So, for those of you who have seen it before, bear with me, I've done an abbreviated version for those people that might be hearing it for the first time. It's important to understand the Energy Commission's process.

So the Energy Commission permits thermal power plants of 50 megawatts or greater and related facilities. So, such things as electronic transmission lines, water supply pipelines, natural gas pipelines, access roads, waste disposal facilities, all come under the umbrella of the analysis of the Energy Commission.

And the Energy Commission is the lead agency for the California Environmental Quality Act. Now, many of you may not be familiar with the Energy Commission's process, but you are familiar with CEQA. So we do a CEQA-equivalent process. And we are the lead agency.

It's a three-step licensing process at the Energy Commission. The first step involves data adequacy, where staff reviews the application for certification to determine if there is a minimum requirement to accept the application. And the Eastshore project was accepted as data adequate.

And that puts us to where we are now, which is the staff discovery and analysis phase. And in this phase staff conducts data requests of the applicant and agencies. We conduct issue identification workshops. We have public workshops. And the product of that is a preliminary and a final staff assessment, which the terms we use are a PSA and an FSA.

So, if you're familiar with CEQA language, it's similar to an EIR and a final EIR.

The third step which we'll be transitioning into in the future will be the Committee evidentiary hearing and decision. And under that step in the licensing process the evidentiary hearing is held based on the final staff assessment and other information.

The Committee produces the Presiding Member's Proposed Decision, which is the PMPD. And the PMPD goes before the full Commission for decision.

So, in graphic terms where we are right now in the process you can see the center of this wheel is the California Energy Commission Staff. And the staff is advisory; we are gathering information at this phase. And the spokes of the

process, what feeds into staff's analysis are the public, the intervenors and the interface that is provided by the Public Adviser's Office, the applicant, local, state and federal agencies. And this information feeds into staff's analysis of the environmental impacts of a project.

During this phase staff determines if a proposal complies with laws, ordinances, regulations and standards, which is LORS, another term that we use.

We conduct engineering and environmental analysis to identify issues, evaluate alternatives, identify mitigation measures and recommend conditions of certification.

During this phase we facilitate the public and agency participation; and staff produces the preliminary staff assessment and the final staff assessment. And we are at that phase now where staff is in the process of gathering information for the preliminary staff assessment.

With the preliminary staff assessment staff will make a recommendation to the Committee. Staff does not make a decision; staff is the objective environmental review gathering technical information to present to the decisionmakers.

When the evidentiary hearings occur it's a different graphic picture where you see the center is the Committee and the proposed decision, with the full Commission making the final decision.

The spokes feeding into their decision are the staff with their testimony, the intervenors and the public, again, with interface with the Public Adviser's Office, the applicant and local, state and federal agencies.

The evidentiary hearing and decision process, the Committee conducts hearings on all information; issues the Presiding Member's Proposed Decision. And that will contain findings relating to environmental impacts, public health, engineering, project's compliance with LORS, and recommended conditions of certification; and a final recommendation of whether or not to approve the project.

It is ultimately a full Commission making a decision. And then after the decision is made, the Energy Commission monitors compliance with all conditions of certification for the life of the project, including facility closure.

Important to the process is

participation. Ways that people can participate is to submit written comments -- and if you pick up a handout of this presentation in the back, it gives the detailed information of how to submit information -- provide oral comments at public meetings, and to become a formal intervenor. And that can be done through contacting Mike Monasmith at the Public Adviser's Office. Or you can provide written comments on the PSA, the FSA and the PMPD.

So, specific contacts. I am the Project Manager for the Eastshore project, so communication should go through me directly. I have asked staff at workshops and events not to be discussing substantive issues in the hallway; that communications should go through the project manager so that it gets into the formal record.

For the Commission hearings, Susan Gefter is the contact person. And for all, the Public Adviser's information, Mike Monasmith.

I've also provided contact information for Tierra Energy, who's the applicant on this, where Greg Trewitt, the Vice President, or David Stein, the AFC Project Manager, will be available to answer questions, also.

I'd be happy to answer any questions you might have.

PRESIDING/ASSOCIATE MEMBER GEESMAN: Are we still on track to get your staff assessment June 8th?

HEARING OFFICER KRAMER: You're talking about Russell City now?

PRESIDING/ASSOCIATE MEMBER GEESMAN: Yes.

HEARING OFFICER KRAMER: First, let me clarify what Mr. Shaw -- as I understand it, Russell City will not involve a preliminary and final analysis. You will just be issuing a final analysis, is that correct?

MR. SHAW: That is correct.

HEARING OFFICER KRAMER: And Commissioner Geesman wants to know if you're -- I think we'll get to that in a minute --

PRESIDING/ASSOCIATE MEMBER GEESMAN: Okay.

HEARING OFFICER KRAMER: -- when they report their status.

Okay, so now we will go on to consider -- first, let me tell you what we're going to be doing between 3:00 and 5:00 in a little more

detail.

We're going to begin with a discussion of the Russell City case, specifically the Russell City applicant's concerns about the speed at which the staff analysis is being completed.

They, in their recent status report, were concerned that there was danger if the report and Commission decision isn't released fairly soon that they will have a difficult time coming online in June of 2010 when they are required to do so under their contract with PG&E.

Then I'll let Ms. Gefter explain the issues to be discussed for the Eastshore case, since that's hers.

HEARING OFFICER GEFTER: Okay. Well, the Eastshore issues that we'll discuss today are those regarding the site's incompatibility with the City's general plan and zoning ordinance. And we're going to hear from Jesus Armas and the parties regarding that particular issue.

We'll also talk about the status of an alternatives analysis and the feasibility of the Eastshore facility sharing a site with the Russell City facility.

And that's the reason why we are

actually having a joint status conference today, since both projects being proposed in the City of Hayward has raised a lot of questions in the community. And so we thought it would be really more efficient to have the parties here together with the Commissioners.

But we'll go on with the Russell City issues right now.

HEARING OFFICER KRAMER: Okay, so let me ask staff and Mr. Wheatland, would it be better for staff to go first? I know that there was a workshop held down here on Monday, and we've received no reports about what happened there yet, or how that may affect --

MR. WHEATLAND: I'd be pleased to start out.

HEARING OFFICER KRAMER: Okay. Mr. Wheatland, then go ahead.

MR. WHEATLAND: Okay. Well, I mentioned, I'm Gregg Wheatland, counsel for Russell City. There's good news and bad news, I think, that we have for you today.

The good news is that part one of the staff assessment has been issued. We have had workshops on the issues that'll be contained in

part two of the staff assessment. And we, in these workshops, are working with the staff toward resolution of these issues.

In each staff assessment there are 20 technical areas that are analyzed by the staff. There is general agreement between the staff and the applicant on 16 of the 20 technical areas. And we're working toward resolution of the others.

There hasn't been any comment from public agencies or from the public that would contest those 17 areas where there's general agreement. So there is a pretty good consensus on a majority of the issues that would affect the Russell City amendment.

The bad news though is that we are in the seventh month of a process that we had hoped would be a six-month licensing process. And so we are very anxious to have a timely decision that would allow us to begin construction of the project and to bring it online in the summer of 2010.

Rather than going back over the reasons why there have been delays, I'd like to consider that as water under the bridge and try to focus on a resolution of this issue that I think both the

applicant and the staff would agree to.

At the workshop on Monday the applicant provided the staff with some additional new information regarding modeling issues. And this information has the potential for changing, we believe in a positive way, one of the important findings that the staff is making in their staff assessment.

The staff has asked us to provide additional supporting documentation with respect to the information that we provided to them. We've agreed to do so, and we will be providing that information to them this Friday.

It's my understanding, in discussing with staff counsel, that the staff would like three additional weeks to, after receipt of this information on June 8th, in which to issue complete their staff assessment as a final staff assessment on all of the issues in this case.

And we would be able to agree to that extension if we can work out a schedule with the staff and the Committee to move forward in a timely way then to bring this case to resolution.

And what I believe that the staff would be willing to jointly recommend with me, and

certainly they'll correct me if I'm wrong, but is that we would recommend that the staff assessment could be issued on June 29th. That the public comment period would close on July 13th; that is the 14-day public comment period that has been provided in the previous scheduling orders of the Russell City Committee, and that's also the typical comment period in a six-month AFC.

And then we would jointly recommend to the Committee that it would schedule an evidentiary hearing and prehearing conference for the week of July 16th, hopefully July 16, 17 or 18.

And if we could move forward on that schedule we believe that would be a timely processing and it is a schedule that we could support.

MS. HOLMES: We concur with that proposal.

HEARING OFFICER KRAMER: If you have the prehearing conference on the same day as the evidentiary hearings, is that going to present any problems with getting witnesses to attend or in other words, have you cleared those dates?

MS. HOLMES: Has staff cleared the date

of the 16th, 17th and 18th?

HEARING OFFICER KRAMER: Right. Because normally the prehearing conference is supposed to be in advance of a hearing that's somewhat later. And the purpose of the conference is to decide who the witnesses are going to be, when they're going to come and that sort of thing.

MR. WHEATLAND: Right. While that is true there have been a number of cases in which both the prehearing conference and evidentiary hearing have been jointly conducted, including the original Russell City proceeding.

There may be a need for a telephonic scheduling conference in advance of that date, perhaps, but the applicant is available with its witnesses on whatever date the Committee would set.

PRESIDING/ASSOCIATE MEMBER GEESMAN: Sounds to me like you may have made some assessment as to the number of contested issues between the staff and the applicant in suggesting this schedule?

MR. WHEATLAND: That's right. We believe there's only really two outstanding issues that haven't been resolved. One is the air

quality area, and we have been making good progress toward resolution of that. There may be some minor differences, but we don't believe they would be substantive.

And this new additional information we've provided the staff we're hoping will resolve the last outstanding issue in a way that both parties will be able to support.

PRESIDING/ASSOCIATE MEMBER GEESMAN: And that relates to air quality. Does the issue touch on the FAA plume analysis that --

MR. WHEATLAND: Yes, it does.

PRESIDING/ASSOCIATE MEMBER GEESMAN: Okay.

MR. WHEATLAND: And we have provided the staff with a new plume analysis, and we'll be providing them with the backup documentation of that on Friday.

HEARING OFFICER KRAMER: What would be the point at which you would know whether you had a major disagreement about some issue, or whether things seem to be worked out between the two of you? Would it be some point prior to that week of July 16th?

MR. WHEATLAND: We should know

immediately upon issuance. As soon as we've received and had an opportunity to read the staff assessment we should know if there's any substantive areas of disagreement.

MR. EDWARDS: I can provide a little more detail on that. We have a staff consultant that works with us --

HEARING OFFICER GEFTER: Identify yourself for the record, please.

MR. EDWARDS: Dale Edwards, Staff with the CEC, Compliance Program Manager. I work with Lance Shaw.

I would believe that as far as once we receive the document that's been proposed be submitted to us this Friday, that approximately one week after that we should have enough information from our consultant who specialized in plumes to know whether we have an issue or not, or disagree or agree. And so we can start talking or providing information at that point to the applicant, as well as others, about what we find in that particular document.

So it doesn't have to wait until we issue on 6/29.

HEARING OFFICER KRAMER: Thank you. And

do you have any estimate as to the maximum amount of time you would need for a hearing? Are you talking about a day, a half a day?

MR. WHEATLAND: If, as we hope and expect, there are very few contested issues, the format we've used in previous proceedings has allowed us to complete the evidentiary hearing in much less than one day.

Generally we go through a process of marking and identifying the testimony, stipulating to its admission, and making witnesses in certain key areas available to questions from the Committee or the public.

And generally that process for projects such as Los Esteros or the original Russell City project has taken less than a day.

HEARING OFFICER KRAMER: Okay. We will take your comments under advisement. We'd, of course, want to hear from the public this evening before we made any decision.

Does anyone else among the parties wish to provide any additional comment on this topic, the Russell City scheduling?

PRESIDING/ASSOCIATE MEMBER GEESMAN: Are you suggesting that we hold such a hearing here in

Hayward?

MR. WHEATLAND: Yes. All of our previous hearings have been here. But, if there is scheduling constraints from the Committee that may be a factor in the location that's set. But if it's convenient to the Committee's schedule, we would support having it here.

PRESIDING/ASSOCIATE MEMBER GEESMAN: Does staff share that?

MS. HOLMES: Yes.

PRESIDING/ASSOCIATE MEMBER GEESMAN: Do you have a view as to whether it should be a daytime or an evening hearing?

MS. HOLMES: For the --

PRESIDING/ASSOCIATE MEMBER GEESMAN: Without a census to what contested issues there are, it's difficult for us to make --

MS. HOLMES: It is difficult to know. Typically staff recommends that not only the hearing be held in the community for which the project is proposed, but that it be designed to maximize the opportunity for public comment if there is public concern about the project.

So if there were to be public concern about the Russell City project, then I think staff

would recommend that we at least incorporate an opportunity for members of the public to comment in the evening after work hours.

PRESIDING/ASSOCIATE MEMBER GEESMAN: Well, let's wait and see what types of comments we get from the public this evening.

HEARING OFFICER KRAMER: Of course, again, we'll be taking public comment this evening, so I believe that unless the parties tell me otherwise, I think that's all we need to discuss as far as Russell City is concerned.

And we'll turn the hearing over to Ms. Gefter for the Eastshore project.

HEARING OFFICER GEFTER: On the Eastshore project we were focusing on the comments of the parties in the recent status reports. And one of the issues that -- the main issue that we wanted the parties to address was the concept of a common site for Russell City and Eastshore or an alternative site for the Eastshore project.

So, focusing on that particular question, because that seems to be key and the big concern of the local residents here in Hayward, I'll ask the applicant to begin the presentation on those topics.

And if you want to expand with respect to the status report, you know, we have the written status report, so I think it speaks for itself. And let's focus on the site and the location, and the concerns regarding the inconsistency with the City's general plan and zoning ordinance.

MS. LUCKHARDT: We're trying to figure out how to get the mike on. So maybe I'll just speak loudly and hopefully that'll be enough until we figure that out.

I'm not sure exactly what you would like me to go through on this. If you are looking for our position on locating at an alternative site, if that's what you would us to cover initially.

At this point we feel that we have looked at alternative sites and have not found another site that provides -- meets the project objectives and that would have less environmental impacts.

Of course, we don't yet have a staff assessment, and so we are working simply off the assessment provided in the application. But we do not believe that we will have significant environmental impacts from the location of this

project at this site.

And so as far as finding another site that has fewer significant environmental impacts, we're not aware of any other site that would provide that.

We do have concerns about extended delays for this project because there are requirements that this project be online in accordance with the contract with Pacific Gas and Electric Company. And Eastshore is committed to meeting the requirements of that contract and its obligation to PG&E.

And then I'm not sure, there may have been something else that you wanted me to cover. I want to make sure I'm covering everything.

HEARING OFFICER GEFTER: Also, -- well, let's stay on this subject for a moment. The applicant has raised the concern regarding the RFO process and the contract with PG&E, and a particular online date. Can you give us that online date?

MS. LUCKHARDT: I'm looking at PG&E because I'm not sure exactly what portions of the contract are confidential and what portions are not. And I am not comfortable, in my position,

without getting affirmation from PG&E as far as what specific things we can say about that contract.

I think in the context that we were talking about, the contract is that at some point if the project gets moved beyond its ability to support that contract it becomes essentially the no-project alternative because the project will not go forward.

HEARING OFFICER GEFTER: Well, I think we probably, just for purposes of the public understanding this process, we need to back up a little bit and talk about how this site was chosen and there was some information in your alternatives analysis that you filed with the Committee regarding a Black Hills Energy Company that did a lot of the vetting of the site prior to the Tierra Energy taking over this project.

And we were wondering whether -- one of the questions is whether Eastshore has access to the data on site selection that went into the choice of this particular location. Do you have that information from Black Hills Energy?

MS. LUCKHARDT: Yeah, we've received some information from the previous owner of this

project and the previous developer of this project. All the information that we were able to obtain from that entity is in our filings, either in the application or supplemental filings, in response to data requests.

I've also been reminded by my astute colleagues that we have already said that the online date is May 2009. So it's out in the public arena.

HEARING OFFICER GEFTER: Thank you. Now, with respect to the site selection, when you were involved in the RFO process with PG&E, and I don't know whether you personally, but whether the company came to PG&E with this particular site already chosen, or whether you worked with PG&E to find the appropriate site?

MS. LUCKHARDT: No. As part of the RFO each RFO respondent was required to identify a site, a location, a project and various other parameters about their proposal to PG&E. And the site that was proposed was the site on Clawiter from the initial proposal to PG&E in the RFO process.

HEARING OFFICER GEFTER: I'm going to ask you the obvious question because these are the

questions that the local residents have asked, which is why was this site chosen for this particular project in the City of Hayward when there was also Russell City being proposed, and also at that point in time the AFC was pretty much well along before they filed their amendment.

So can you give us information as to why this site was chosen as the best site to meet the RFO requirements?

MS. LUCKHARDT: Well, based upon -- in the application for certification there is included an alternative site analysis. And those were the other sites that the previous developer of this facility looked at and considered in selecting this site.

It's our understanding that this location is considered -- is a good location, and I think this shows up in the interconnection study, from an interconnection standpoint, because there are very few upgrades that are required to connect this facility.

And so that would mean that the facility, this location, this substation can take the power and needs the power, and there isn't a lot of additional cost.

We also believe that that may have been a factor in PG&E's consideration because, of course, PG&E ultimately has to pay those costs back to the project developer. So we believe that that would probably have been a factor for PG&E.

HEARING OFFICER GEFTER: Given that Eastshore Substation was chosen by the developer to be the interconnection point, was there another location in Hayward or near the Eastshore Substation that might work, as well, and then the interconnect at the substation?

MS. LUCKHARDT: At this point or at the time that it was --

HEARING OFFICER GEFTER: At the time that the site selection process was going on.

MS. LUCKHARDT: At the time the site selection process was going on, a variety of sites, like I said initially, all of the alternative sites in the application were considered and evaluated by the original developers of this project.

They looked at the site next to the PG&E Substation and they looked at a variety of other locations and other sites. And decided on the Clawiter site for various reasons that made it

beneficial from a developer's perspective.

It's very close to the gasline; it has a short transmission line; it was an available site, unlike the site next to the PG&E Substation where PG&E was not interested in sharing that. I mean there were various factors that were taken into account in that alternatives analysis.

HEARING OFFICER GEFTER: One of the other questions, an obvious question, again that we keep hearing is if the City has found that this particular site is inconsistent with the general plan, and also, you know, doesn't comply with the zoning ordinance, was the previous developer and was Tierra Energy talking with the City at the time you were choosing this site for this project.

MS. LUCKHARDT: Yeah. I'll let Greg answer that since he was the primary one conducting those.

MR. TREWITT: I can comment from May 2006 on. To my knowledge, and Jesus can probably confirm this, as well, I don't think anybody had contacted the City before June of 2006.

Tierra Energy purchased the project around April of 2006 and I saw down with Jesus -- I came onboard with Tierra in May 22nd of 2006.

And I met with Jesus around April 9th, I believe, the date is, for the first time. And talked to Jesus about the project in detail.

I can look it up; it's in June of 2006.

MS. LUCKHARDT: Yeah; you said April 9.

MR. TREWITT: I'm sorry, June.

HEARING OFFICER GEFTER: June of 2006 is the first time you met with the City regarding the site --

MR. TREWITT: That's correct.

HEARING OFFICER GEFTER: -- and its consistency with the general plan.

But when was the RFO approved by the CPUC?

MR. TREWITT: What was that date, Marino? November of 2005 timeframe.

HEARING OFFICER GEFTER: So, in other words, what you're saying is that the previous developer brought the site to PG&E. They entered into the RFO process prior to vetting whether or not the site was consistent with the City's general plan?

MS. LUCKHARDT: Well, I think there's a little more to it than that at this point, to say whether it's consistent or not, with the general

plan.

And I can't speak for the previous owner because I did not represent them. But I can say that based upon what was done for Russell City, that I would expect a developer would consider this site to be consistent with the Hayward zoning ordinance and general plan based upon the decisions that were made for Russell City, since the zoning for both project is the same.

HEARING OFFICER GEFTER: Okay.

PRESIDING/ASSOCIATE MEMBER BYRON: May I ask a question?

HEARING OFFICER GEFTER: Yes, I was going to ask if the Commissioners had questions.

PRESIDING/ASSOCIATE MEMBER BYRON: I'd like to ask if PG&E could help answer some questions here with regard to why you selected the Eastshore Center facility.

MR. GALATI: Sure. Scott Galati representing PG&E. And I have with me a lot smarter people than me, which is not hard to find. But I found some really smart guys anyway.

Let me first -- I think I have to, at least at this point in time, in addressing you for the first time in a project in which we are not a

party, at least to explain why we're here and why you don't see us a lot participating in this project.

PRESIDING/ASSOCIATE MEMBER BYRON: Right, and thank you for being here, by the way.

MR. GALATI: Thank you very much. We did file a letter in all of the projects, which ar the RFO projects, in which we tried to explain that there's sometimes PG&E wears different hats depending on whether it is -- its level of involvement in a project.

So, again, I'm saying this for the record. I know some of you know this. In the Humboldt project where we are the applicant and are the owner and will be the operator and the developer, we're sitting at the table in the same place that the applicant to this project is. And that's why we may be participating at a different level than you would see in a case like this.

In the Colusa project, that is a project in which the CPUC has allowed us to purchase the plant once it is permitted, built and operational. So we will be the owner and operator. So in that particular case, since we will be the owner and operator, we've petitioned to intervene and we are

sitting at the table participating in that project, as well.

For the other projects located in the Fresno area, in the Bay Area here, these are projects where we merely are the purchaser of electrons. So we are not the applicant, nor are we the developer, nor will we be the owner or the operator of these projects. So that's why we are not participating at the same level.

So I just wanted to make sure that we understood that so it isn't more confusing than I think the projects already are.

In answer to your question about how were these projects selected. As you know, there's a 2004 long-term RFO process. And in that process there are several stages which are vetted, some in public, some that are confidential. Eventually at the California Public Utilities Commission there is a proceeding in which documents are filed, testimony is provided as to why particular projects are chosen.

In this particular case what we can tell you is that there was a need for power to be put into the Bay Area. The Russell City project and the Eastshore project both met that need.

What we have is the pool of offers that are submitted to us to select from. We are not in the business anymore to be able to go out and say this is a good place for a power plant, and this is how the transmission planning will work. There are specific standards of conduct prohibiting that sort of interaction. And most people don't really understand that, but PG&E cannot do that. Nor did we do that for either one of these projects.

But with the pool of projects that were selected we made the determination, and we believe it was supported by an independent auditor at the Public Utilities Commission, that we chose this project because it was, quite frankly, just the best choice for our customers that was provided to us.

I don't think that I can go through and provide you a ranking. And I know that people would love for that to happen. What I can tell you is that when it comes to environmental issues PG&E understood that this project, the Russell City project, would have to come to the California Energy Commission and get a license.

Now, I personally know, and PG&E knew, that's a rigorous process. And not only is it a

rigorous process, the Commission doesn't issue licenses where there's impacts, where there's not compliance with LORS very frequently, if at all.

And so in that case, from our perspective, we felt that the project that we would eventually take power from would meet all the requirements of the California Energy Commission.

So I'm not sure if that answers your question to the detail that you would like, and be more than happy to expand on that if we can.

PRESIDING/ASSOCIATE MEMBER BYRON: Thank you; that's a very good start, and I think that will suffice for now. But we may need to get into this in a little bit more detail.

MR. GALATI: Thank you.

HEARING OFFICER GEFTER: I do have a question.

PRESIDING/ASSOCIATE MEMBER BYRON: Oh, there are some.

HEARING OFFICER GEFTER: We have questions here. Yes.

PRESIDING/ASSOCIATE MEMBER GEESMAN: The statute under which the procurement is conducted speaks to the utility applying a least-cost/best-

fit methodology. Is that what PG&E did with this particular site?

MR. GALATI: Now I'm going to ask for some smart people to help me.

(Laughter.)

MR. CROSSON: John Crosson. Yes, that's the methodology we used in selecting the overall portfolio projects that we selected. And that was decided in the CPUC proceedings approving these projects.

PRESIDING/ASSOCIATE MEMBER GEESMAN: And is there more elaboration of what those criteria mean, or what that methodology contains that could be made available to us?

MR. CROSSON: Sure. I mean essentially we evaluate the projects across using cost, value to customers, as well as a range of other criteria, including the viability of the project, credit. I mean there's a whole range of criteria that are considered in the evaluation of the projects. It's across all that range of criteria we select the projects that provide the best fit.

PRESIDING/ASSOCIATE MEMBER GEESMAN: And you make some form of judgment, no matter how general, as to the likelihood of the project

meeting environmental requirements?

MR. CROSSON: There's a general review of that, yes.

PRESIDING/ASSOCIATE MEMBER GEESMAN: And this project not only survived that competitive process, but somehow emerged near the top of the list; and you elected to enter into a contract with it.

MR. CROSSON: That's correct.

PRESIDING/ASSOCIATE MEMBER GEESMAN: So it conformed to whatever your least-cost/best-fit criteria are?

MR. CROSSON: That's correct.

PRESIDING/ASSOCIATE MEMBER GEESMAN: Thank you.

MR. GALATI: If I may, if I could just expand a little bit on that answer, especially on the environmental side.

During the long-term RFO process we didn't have time to do the type of exhaustive review that would be done at the Energy Commission, but when we say we looked at it from an environmental perspective, we looked at a very high-level, fatal-flaw sort of analysis. And we also rely very much on the information that's

provided by the applicant. So, yeah, that analysis did not show that the project had some fatal flaws.

PRESIDING/ASSOCIATE MEMBER GEESMAN: Well, you said you wanted a project in the Bay Area. I presume your methodology is more fine-grained than simply saying anywhere in the nine-county Bay Area is fine with us.

MR. GALATI: How that works out is once the applicant provides a system impact study to us, and a feasibility study, all of how that affects the transmission system is taken into account.

So we did know that in the Bay Area transmission-constrained grid, putting power outside the Bay Area and bring a transmission line into the Bay Area was probably not going to provide both the cost, or be able to be permittable.

So we were looking for projects in the Bay Area because we thought that that would be the best way to have power injected into that part of the system. We think those are reflected in the system impact study and the feasibility studies and the costs associated with that.

PRESIDING/ASSOCIATE MEMBER GEESMAN: So starting with that consideration that you wanted projects in the Bay Area your least-cost/best-fit methodology narrowed consideration substantially. And somehow you came to the conclusion that a project in Hayward at this site satisfied your least-cost/best-fit criteria?

MR. GALATI: Right, of the projects that were bid in, that's correct.

PRESIDING/ASSOCIATE MEMBER GEESMAN: Thank you.

PRESIDING/ASSOCIATE MEMBER BYRON: We've all, we've heard terms like RFO and PRG and I think we would all benefit from a brief description of the procurement process that PG&E follows.

MR. GALATI: I will do my best. The term RFO is a request for offers; and this is the point in time where we send a general solicitation for people who want to build a power plant and sell us electricity, to be able to bid into a very public process as to how they would do that.

For example, both applicants bid in the projects that you see and where the interjection points were.

Part of what we did was -- and, again, the RFO, itself, the request for offer document, itself, is approved by the California Public Utilities Commission. And then that begins a process -- once we select a project, that begins a process that's public at the Public Utilities Commission.

There is a process where we use a procurement review group and an independent auditor to help with the selection of the process.

I don't know how much more I can provide detail, not being involved in that. And it might be something that I think can probably take a long time to describe. I'll ask my colleagues if they have anything else to add. But I'm not sure that I can explain the whole process. It did take almost two years to go through.

PRESIDING/ASSOCIATE MEMBER GEESMAN: I think there's one thing that you probably can explain, Mr. Galati, and I see on our staff's status report the indication: PG&E notified staff that it declined to participate in the May 23, 2007 workshop."

Now, because of the involvement of PG&E in this project, and the site selection, it's

curious to me as to why you wouldn't participate in one of the siting workshops. Is there some reason for that?

MR. GALATI: Yes, there actually is some reason for it. For the first and foremost, I would have to respectfully disagree that we were involved in any way, shape or form, the site selection process. We selected the project that they bid in.

And so the idea that we selected a site; or that we even selected an interjection point, I think, is confusing. And while it may look like that from the outside, it's not really what happened.

There's a pool of projects. They have different interjection points. We evaluate those and we selected the best. That's how we did. We didn't say, because, again, there is this prohibitation of planning. We didn't say, hey, there's a better site over here and it would be great if you can interconnect there. We are prohibited from doing that.

PRESIDING/ASSOCIATE MEMBER GEESMAN: But from those that were bid in you did make a selection, and you did determine that this

particular project satisfied your least-cost/best-fit criteria?

MR. GALATI: That's correct, Commissioner.

PRESIDING/ASSOCIATE MEMBER GEESMAN: That's not to say that there might not be some other site somewhere in the Bay Area that would have been better, from your standpoint. But you did, nevertheless, of those that you had in front of you, make a selection?

MR. GALATI: That is correct.

PRESIDING/ASSOCIATE MEMBER GEESMAN: Now, in light of that role, why wouldn't you participate in our staff workshop?

MR. GALATI: Well, first and foremost, in participating in the staff workshop we thought it would be confusing to the public. Once again, the public believes that we are somehow an applicant or an owner or developer. We thought -- we first were approached by staff asking for some specific information like this to help them do their alternatives analysis.

We met with staff twice, and then we put a letter together that we thought satisfied those concerns. We thought it also resulted in a status

report by staff that they felt that they had the information necessary to go with an alternatives analysis.

It wasn't something that PG&E thought we could offer to the public. Or, in this setting, anything more than what was in that letter. And so it is with that, maybe reluctance on my part, to participate in a public workshop that involved somebody else's project, of which we buy electrons, and again, we already had the public process on why that project was selected.

So that's why we chose not to participate.

PRESIDING/ASSOCIATE MEMBER GEESMAN: Well, I have considerable respect for your legal judgment. But I would question your public relations judgment. I do think PG&E is a real party-in-interest here. And that the public would benefit by your participation in our process.

I understand the limited nature of the role that the company has played. But I do think it would be better for everyone if you would see to it that the company continuously explains just what that role was, and the limited decisions that you were actually called upon to make in selecting

this project.

MR. GALATI: Understand, and I appreciate that, and I take that responsibility.

PRESIDING/ASSOCIATE MEMBER BYRON: And I share Commissioner Geesman's concern and interest here. Because PG&E is the provider of electricity for this city, of this service territory. I think you do have a role here, and in answering questions; and I do want to say, again, thank you all for being here today. I hope you'll stay for this evening's fireworks.

MR. GALATI: Yes, we certainly will. But if I could just one other thing, too. We intend to continue to purchase power in the same manner. We certainly want to try to make a distinction of when we're responsible for developing the project, and how we do do, versus when we purchase electricity.

Any more, I can take more.

HEARING OFFICER GEFTER: And I want to get back to the details of this particular project with respect to the RFO contract that now has been approved by the PUC; and according to the applicant here, they're concerned about any delay in getting this particular project certified would

affect their online date, and then would affect the agreement with PG&E.

And whether you can answer this question, you know, I don't know, but how would this affect the RFO process? Would you have to start a new one if the Energy Commission recommends to the applicant that they find a different site for building this project?

MR. GALATI: First and foremost, we do have a contract that's approved. I think a change like that would require an amendment to the contract. And whether or not PG&E is willing to even enter into an amendment like that, let me just describe that there clearly would be a PUC approval process.

There's a couple of things that I think are most important to us, and most important to our relationship and how we work with the CPUC, and that is to insure that it's fair.

And so at the time of entering into the contracts and people providing PPAs, it was a requirement that the project needed to show site control. And so if we were to allow this particular applicant to amend -- and I'm not saying that we are or aren't, I'm just telling you

what the consequences would be -- we would have to take a good hard look at whether or not the RFO process was still fair.

And I know that the CPUC would, were there applicants that were not chosen because they didn't have site control. If we would allowed other applicants to move their site, would they have fared better? How would that affect the costs associated with it.

So, it's not a simple answer. We do have this contract. We do expect them to perform under their contract. And we understand you have a CEQA obligation. And we think that you're going to discharge that obligation. And we're going to respond however you discharge that obligation.

HEARING OFFICER GEFTER: Okay. I know that the intervenor, Mr. Haavik, has a question. But let me follow up on this for one minute, and then I'm going to let Mr. Haavik as the question.

Earlier in your discussion with us you mentioned that when the PG&E reviewed this particular project you looked at the fatal flaw analysis and found that basically it was unlikely that this project presented any fatal flaw potential.

But if, in fact, it turns out that that is the case, what happens to your contract?

MR. GALATI: From our perspective that is the developer's risk. We probably are made whole under our contract and we probably would have to contract for some additional power.

HEARING OFFICER GEFTER: And then what about amending your online date with the applicant. Is that a possibility just between PG&E and Tierra Energy, or do you have to go back to PUC to amend the contract to change the online date?

MR. GALATI: I apologize, I don't know the answer to that question. I'm not sure that we do. I think we're going to have to caucus with the CPUC attorneys to determine whether that is a change that would require -- I know that we would be subject to, at least from PG&E's own perspective of is that fair to the bidders that were not selected.

HEARING OFFICER GEFTER: Could we ask how many bidders there were in the entire process? Can you give us that information?

MR. GALATI: Yeah, 54.

HEARING OFFICER GEFTER: Fifty-four.

And how many were chosen out of the 54?

MR. GALATI: Seven.

HEARING OFFICER GEFTER: Okay, but these are not all just Bay Area. This --

MR. GALATI: No.

HEARING OFFICER GEFTER: -- was 54 in the PG&E service area?

MR. GALATI: Yeah, two in the Bay Area, so that would be three in the Fresno area, the Humboldt Bay Repowering project, and the Colusa project, inclusive.

HEARING OFFICER GEFTER: Thank you. Mr. Haavik.

MR. HAAVIK: Thank you, Susan. Scott, in the least-cost/best-fit scenario that was described earlier, did you apply that also to the other successful bidders? Obviously I've been up and met with you at Humboldt Bay Repowering. I can understand that that is on the same site. I am not familiar with Colusa. I am familiar with a few of the other sites that have been chosen or had successful RFOs.

Was the same least-cost/best-fit scenario applied? The reason being as I've been to a couple of other plants that are now in

operation. They've been in relatively rural areas, number one. Number two, close to a major transmission and gas line. And right near a substation. Very same scenario we have here.

So, again, it looks as though from my perspective, looking at it from a public eye, that it looks like the least-cost/best-fit is certainly applied across the board. I just want to know if you did that.

And I understand that if you're purchasing another one in Colusa, was that fit, also?

MR. GALATI: Probably the better answer is I think we applied the same methodology that we would apply to select projects.

Second of all, there is, at least the best of my ability, be able to direct you to the California Public Utilities Commission record, both with our testimony, independent auditors' report, and there is a lot of information about why projects were selected.

MR. HAAVIK: All right. You didn't answer my question, but I can certainly --

MR. GALATI: No, and --

MR. HAAVIK: -- gain that information --

MR. GALATI: -- I can't, I can't, and --

MR. HAAVIK: Scott, that's all you have to say.

MR. GALATI: Yeah, and so i'm trying to provide you where you can go get that information because that's where I believe it probably will be.

MR. HAAVIK: Thank you.

HEARING OFFICER GEFTER: Anything else for Mr. Galati at this point? Okay, I'm going to ask -- the applicant has a question?

MS. LUCKHARDT: I just would like to clarify some dates. We were kind of shuffling earlier to see if we have the right dates. And in that time we've been able to pull them.

According to the public records, PG&E announced the bid winners on April 11, 2006. The project was sold to Tierra Energy on April 28, 2006. The first meeting with the City of Hayward, with Jesus Armas, our records show June 8, 2006.

The RFO was approved, the RFO bid winners were approved by the California Public Utilities Commission on November 30, 2006.

HEARING OFFICER GEFTER: I think that in order to facilitate the discussion further, unless

staff has something to add at this point, I was going to ask Mr. Armas to come forward and talk to us about the City's process for determining that this project was, in fact, inconsistent with your general plan and your zoning ordinance.

MR. ARMAS: I would like to do that. But before I do that, first let me welcome both Commissioners Byron and Geesman. We appreciate your coming to Hayward to listen not only to the agencies, but later this evening to the public. And to Mr. Kramer and Ms. Gefter, thank you for your assistance in making sure that this works for everyone.

I will also speak to that question. But I think I must first beg your indulgence and participate a bit on the exchange you've had over the last few minutes.

Because from the City's standpoint, we find the remarks offered by PG&E, at the least, disingenuous. We know that the PUC did solicit and did receive -- or authorize, excuse me, the solicitation of request for proposals. And has indicated over 50 were received.

In the May 9, 2007 letter to the Commission from a Les Guliasi, I believe, Director

of State Agency Relations, from PG&E, there's a recital of five projects that PG&E has entered into power purchase agreements. And then, two in which PG&E will be the owner/operator.

The five and the other two were all announced, as indicated by the Tierra Energy representative, in the April 2006 timeframe.

I was listening to the news conference because the Russell City Energy application was before it, and we were taking great pains to understand what was being considered.

I must also say that when the others were announced, the only identification was Black Hills. It did not have a geographic location. The remaining six identified either a city or a county, in most cases Fresno, Humboldt, and of course, with respect to Russell City, Hayward. So it was impossible for is to discern that a second facility was being considered in Hayward.

As indicated, the vetting process, from our perspective, is fatally flawed. Black Hills ownership never contacted the City so far as I'm aware. I do want to acknowledge the point that Mr. Trewitt made that shortly after Tierra Energy became involved, he did come in to talk to me. I

did relate to him that there would be a number of issues and concerns from the City's standpoint, taking into account the land use perspectives.

I do not recall whether at that point Tierra Energy had site control; that is, whether the contract to purchase the property had actually been -- whether the time period had actually concluded. I thought it was a bit later in the summer. But I did understand that they were moving toward acquiring the property.

So, clearly, a number of decisions were made well in advance of understanding whether the land use considerations would be satisfied.

It seems to me that a fatal flaw standard and criteria would examine whether it could otherwise satisfy local land use considerations. That's a fundamental determination and basic to how we transact business in California. To suggest that somehow that was not taken into account, I think, is short-sighted, at best.

PG&E represents that this site was the least costly. But it's my understanding that it's virtually impossible to make that determination because much of that information is confidential.

So to be able to judge whether, in fact, that's a fair determination or whether there were other variables, would suggest that there have to be a more transparent process which, again as I indicated, it's my understanding that that information is not readily available.

In fact, the newspaper that covers Hayward, The Daily Review, reported today that under a variety of public records requests, it did receive documents; much of that information, however, was redacted.

And so we think the questions you were posing, Mr. Geesman, are critical, and yet we're unable to make an independent determination as to the validity of the representation.

I also think it's a bit disingenuous for PG&E to simply say we really have no role in it. I think the fact that it is the party that is ultimately buying the product conveys a critical role to it. And it should have been more actively involved throughout this process.

I appreciate and respect the distinction that PG&E needs to make. That, however, begs the question.

With respect to the question of the

suitability of siting of the Eastshore Energy Center at the 25101 Clawiter property that it has acquired, we went through an extensive process of valuing it, as we would any application before, initially through our planning staff; subsequently at a public hearing before the planning commission; and then ultimately on March 6th at a public hearing before the City Council. The staff report is very extensive; has been submitted and has been part of the record.

It's noteworthy that power plants are not listed expressly in our zoning ordinance. There is no entitlement, either as a primary use or a secondary or subsequent uses. When such a situation arises our zoning ordinance indicates that unless a determination can be made, that it is consistent with another use, by definition, it is excluded. And either an amendment to the zoning ordinance has to be pursued, or a judgment has to be made that it is consistent with another use that is otherwise allowed.

As part of the zoning ordinance we must take into account contextual factors, including a variety of surrounding uses and the like, policies that appear in our general plan, because for

certain we are not going to be arbitrary or capricious in making such a determination. It is one that has undergone some extensive analysis.

The City Council was presented as record as thick as this with considerable testimony offered by a variety of interests. And we did present to the Council a number of reasons why we believe it is not consistent with our zoning ordinance and our general plan.

Let me highlight a couple for you. We have a residential use that the closest one is about 1100 feet, a single family home. Within 1800 feet there's a 300-unit apartment complex. Within 3000 feet there's an elementary school and a middle school. Those are not the kind of uses that we would look as being compatible with a more industrial use such as the Eastshore Energy Center.

We also looked at what our general plan speaks to and zoning ordinance speak to with respect to the character and integrity of the zoning district. And we find that it is, given the 70-foot tall, 14 stacks that are proposed, and some of the other characteristics of this plant, that it is not consistent with the underlying

zoning.

In March we also raised issues about public health, safety and general welfare owing to air quality and hazardous material. And, again, owing to proximity to some of the other more sensitive uses nearby, we concluded and the Council concurred, that it is not appropriate for that location.

Now, lastly, in citing some provisions in our general plan, we noted to the Council that we did not find it consistent with a series of policies in the general plan that speak to promoting and protecting the business and technology corridor in which this facility is proposed to be located.

So, on the weight of the various factors considered the Council adopted a resolution determining that it is not consistent with our general plan, that it is not consistent with our zoning ordinance. The resolution was transmitted to the Energy Commission.

With respect to one of the questions that the Commission was also asked to consider, and that is is it feasible to site the Eastshore Energy facility near or adjacent to the Russell

City Energy Facility, we believe not. And we've communicated that point.

I'll be happy to respond to any questions.

HEARING OFFICER GEFTER: The obvious question again is whether Black Hills proponent ever contacted the City about their proposal to site the project at the Clawiter site.

MR. ARMAS: No.

HEARING OFFICER GEFTER: So the first you heard about it was when Tierra Energy contacted you in June of '06?

MR. ARMAS: I'm relying on his comment that it was June, but the first I heard of it was when Mr. Trewitt came in. It's noteworthy that it was reported that the initial decision was made on April 11, and two weeks later it was sold to Tierra Energy.

HEARING OFFICER GEFTER: Is the City aware of any other site that might be a potential site for this project where they could still interconnect at the Eastshore Substation?

MR. ARMAS: Well, I think -- let me borrow the phrase that PG&E used about fatal flaw -- I think to suggest that it has to be

connected to the Eastshore Substation is a fatal flaw. We've heard testimony at the workshops that it is absolutely not necessary that it be there.

In fact, again I'm quoting from the May 9, 2007 letter from PG&E, the PG&E representative expressly says that location was not specified nor a consideration. And that so long as it basically was located anywhere in the Bay Area region, in close proximity to a substation, that was responding to the need which is to provide power to the Bay Area. It is not to provide power to Hayward, per se. It is not to provide power to the 880 corridor, per se.

So we believe that the alternatives analysis first contained in the AFC, and then conducted to date, is wholly inadequate.

HEARING OFFICER GEFTER: And that leads me to a question to PG&E as to whether or not this project has to interconnect at the Eastshore Substation, separate and aside from the RFO contract, which identifies that as part of this particular project.

MR. GALATI: I'm sorry, I lost the last part of your question. Are you saying -- the contract does provide that they have to

interconnect exactly how they said they would. So an amendment would be needed if that interconnection did not occur that way.

HEARING OFFICER GEFTER: Could PG&E tell us now whether or not it's necessary to have the interconnection at the Eastshore Substation, or could there be another substation where interconnection could be held, and you could still use the transmission of electricity, in this case a peaking plant transmission, at a different substation in the Bay Area?

MR. GALATI: I don't think I can answer that question. But I would like to tell you why. I don't think I can say where else it could be. What I can say is there was a locational advantage given to these two projects because they deliver power directly into the Bay Area system. If there were other projects that did the same, thy probably would have enjoyed a similar locational advantage.

One thing I will tell you is we did have conversations with staff, and we believe that staff is working with Cal-ISO to determine if there is any local system benefits and effects. And we think that that's the appropriate way to

get the information because then we don't run afoul of what we consider for 2004 issues.

I see Commissioner Geesman moving to his microphone and I'm terrified.

(Laughter.)

PRESIDING/ASSOCIATE MEMBER GEESMAN: If I understand your earlier answers, though, at some point if the configuration of this project changes it becomes a different project. And then from PG&E's perspective there's a question of whether you could simply amend the contract with this project and still have treated the other applicants in your RFO fairly?

MR. GALATI: That is one part of it. And the other part of it is whether the CPUC would see it the same way. So there might be a long process, a short process, I really can't tell you.

PRESIDING/ASSOCIATE MEMBER GEESMAN: Understood.

MS. HOLMES: Ms. Gefter, at this point, I'd just like to make one follow-on comment to what Mr. Galati had to say. Staff is performing a local system effects analysis. And that will provide some information about whether or not there are local benefits.

Staff will not, because it cannot, be assessing whether or not it would be equally beneficial to interconnect at other substations. My understanding from our transmission staff is that that requires a level of transmission information that takes a great deal of time and money to develop, and we don't have that information.

So we cannot be providing an assessment that would indicate whether it would be equally beneficial or have the same type of effect for a project of this size to be interconnecting at another substation. That's an analysis we cannot do.

HEARING OFFICER GEFTER: Could you explain why the staff can't do that analysis?

MS. HOLMES: Again, this is my understanding, is that it requires a very high level of detail about power flows and other things that are going on at each individual substation. A lot of information about how a specific project would interconnect.

An we don't -- those are the types of studies that they do, the system impact study and the facility interconnection study, that take

months to develop and cost a great deal of money. And we don't do those for alternative sites for projects. We don't have the information, and it would be extremely time consuming to do that.

HEARING OFFICER GEFTER: Is that information that PG&E has, or that Cal-ISO has?

MR. GALATI: I apologize, I wasn't listening to that last part. Information about what would be the system effects at other locations?

Once again, can't do that. What happens is somebody has to file a system impact study and coordinate with the Cal-ISO to determine what the effects would be interconnecting anywhere else. One thing we can tell you is at this location there were no upgrades necessary. We don't know if there's other locations where there's no upgrades necessary, and there's no way for us to sort of plan that.

HEARING OFFICER GEFTER: So what both PG&E and our staff are saying is that it has to come from a project developer to contract out for a system impact study from Cal-ISO and PG&E.

MS. LUCKHARDT: These are extremely expensive, time-consuming studies that are done

for specific locations. It is a requirement of the bidding process that it be to a certain point before you submit.

And that's the kind of study that Ms. Holmes has been discussing here, and Mr. Galati, as well. These are the typical interconnection studies that the Cal-ISO performs where they do all the different N-1, N-2 criteria. And these are not inexpensive efforts, nor are they something that can be done in a short period of time.

HEARING OFFICER GEFTER: I think what this -- actually this is a good segue into the next topic.

PRESIDING/ASSOCIATE MEMBER BYRON: If I may, however.

HEARING OFFICER GEFTER: Okay. Commissioner Byron.

PRESIDING/ASSOCIATE MEMBER BYRON: Mr. Armas, I'd like to acknowledge your excellent presentation, but I also have a question for you. I'm trying to understand these two power plants inject power into the same substation for different purposes, one's baseloaded and one's a peaking unit essentially.

And I've been to both sites. And I understand that they're not that far apart. I would like to just understand better if you could explain why one is acceptable to -- forgive me, I may not use the correct terminology -- but one is acceptable with your city plan, general plan, and one is not.

MR. ARMAS: And it's a question that the CEC Staff has also submitted to us, and we provided an extensive letter for the record responding to that point.

Let me try to expand on my earlier remarks. The Russell City facility is next door, adjacent to our wastewater treatment plant. The wastewater treatment plant is on the east, some oxidation ponds are on the west, radio towers are on the south and wrecking yards are on the north. It's traditionally a heavy industrial use without any residential uses or other sensitive activity nearby.

That's not the case as it regards to Eastshore Energy Facility. We believe that it is substantially closer to some of the other uses that are of greater concern, and some of the conflicts that arise when you have uses,

potentially incompatible uses in that close distance to one another.

So we went through a process of making an assessment of the pluses and minuses associated with location because that becomes a critical part when an item is not otherwise enumerated in our zoning ordinance.

And so weighing those factors we reached a conclusion that the Russell City facility was more consistent with our zoning ordinance, in light of the fact that it's not an enumerated use.

The second thing that I think is important is we are now dealing with some cumulative effects of another facility. That was not the case when the Russell City was first considered.

And I should note that we believe that from the standpoint of responding to the energy needs in our region, Hayward has done more than its share. In fact, when the Russell City plant was first being considered, my understanding was that the ownership of Russell City was looking at other locations and was not successful in working with that community to have it sited.

Hayward took a different position and

took a look at how we might be able to contribute in a positive way to addressing energy needs. And so we think we've done more than our share.

To then say, not only have you done your share, but you have to do more, in light of our zoning and our general plan and our whole economic development strategy seem, to us, to be inappropriate.

PRESIDING/ASSOCIATE MEMBER BYRON: Thank you.

HEARING OFFICER GEFTER: Mr. Galati.

MR. GALATI: I apologize, I just have to address something, okay. I understand, very much, Commissioner Geesman, that you think public relations-wise we should have done something different. And I also understand that there may be disputes about how the CPUC process works.

But I must tell you I got to take exception to PG&E being called disingenuous, okay. We are here; we used a PRG, a procurement review group; we had an independent auditor; and yes, there is information that's confidential. But that doesn't mean we're disingenuous.

And I don't think I can stand here and allow my client to take that hit. I do apologize

if that seems confrontational, but I don't think PG&E has been disingenuous.

PRESIDING/ASSOCIATE MEMBER GEESMAN: Well, I think just so everybody has the opportunity to say what's on their minds, you're well aware, PG&E is, I think, even more aware of the long-standing concerns that the Energy Commission has expressed in its Integrated Energy Policy Report with the PRGs and with the entire way in which procurement has been conducted in this state for the last several years.

I don't think any of those issues really touch upon our jurisdictional responsibility here in determining whether a particular application satisfies the various environmental, public health and safety requirements. But as long as these bigger-picture issues have come into play, I think that the company is well advised to take the concerns that this Commission has expressed in past years about the inadvisability of relying on the PRGs and the undue opaqueness of relying on confidential information to make these types of procurement decisions.

It's just not a good idea. And I think it's one of the reasons why this community appears

to be so aroused about the decisions that were made in this case.

MR. GALATI: And I understand that, and I believe that is for another forum. And, you know, I know the company's going to continue to work on along those lines.

But to bring it back to this case, once again this case is about, we believe, the project that is proposed to you by Tierra Energy. And our decision to come to -- to enter into a contract, in my opinion, should have no bearing on your decision to discharge your CEQA obligations.

And I think there is a cross-over here that gets us into forums where we can't have the dialogue we need to. So, I do appreciate, and thank you very much, Commissioner Geesman. I will certainly make sure the company hears that.

MR. HAAVIK: Ms. Gefter, I'd like to ask a question of Scott, again, please. Sorry, Scott. Tried to catch you.

Ms. Luckhardt, please refresh me on the dates. Tierra procured from Black Hills on 4/28, is that correct?

MS. LUCKHARDT: Yes, that is correct.

MR. HAAVIK: And the award was made on

May 11, is that correct?

MS. LUCKHARDT: The announcement was made on April 11th.

MR. HAAVIK: Oh, April, I'm sorry, April 11. Okay. Not May 11. Is it customary with this that -- it looks as though the award of the RFO was made under the name Black Hills. And I do know, I reviewed the 70- or 80-page RFO that was provided by your website and others.

And then it's customary that I assume there's some approvals for the sale? And do you go through the same evaluation process as you might have done with Black Hills with Tierra? Or is that just a very opaque issue, also?

MR. GALATI: I don't know of any approval of the sale that's required, PG&E approval or CPUC approval. I think that's private.

MR. MONARDI: Prior to filing the --

HEARING OFFICER GEFTER: Please identify yourself.

MR. MONARDI: My name is Marino Monardi; I'm with PG&E. Prior to filing the application to the CPUC for approval of our contracts Black Hills notified us that they were working on an

arrangement to actually sell the power plant. And they asked us to keep that information confidential for a certain number of days.

We understood that. We had a need to get the application filed because the application triggered the obligation of the various other counterparties that we signed contracts with.

We went ahead; we filed it; we identified this as -- they asked us to maintain confidentiality. Once Tierra came forward and signed and took over the obligations, they basically signed the same contract that Black Hills did.

And once they took over that obligation they were basically the assignee to the project. Therefor, they were on the hook to provide that power plant in the same timeline, in the same manner with the exact same characteristics. And therefore, that satisfied our need.

At the point of signing we made it public that Tierra Energy was the actual counterparty to that site.

MR. HAAVIK: So if I understand correctly, then, the award was made on, again, 4/11, Jane?

MS. LUCKHARDT: Yes. It was announced on 4/11.

MR. MONARDI: Let me be clear --

MR. HAAVIK: It was announced on 4/11 --

MR. MONARDI: We filed with the CPUC on April 11th.

MS. LUCKHARDT: Okay.

MR. MONARDI: That's the date we filed. And that was the day it was made public.

MR. HAAVIK: What I'm actually trying to get to or ask, and try to have PG&E answer, is, in fact, in reviewing the RFO as a layperson, there's several questions about the company and about the history and what goes on in a normal application.

And I assume during the review process with a third party, that was done, is that correct, gentlemen?

MR. MONARDI: Third party? You mean the independent --

MR. HAAVIK: Your third party --

MR. MONARDI: -- you mean the independent --

MR. HAAVIK: -- auditor, your --

MR. MONARDI: -- you mean the independent evaluator?

MR. HAAVIK: The independent evaluator.

MR. MONARDI: He, the independent --

MR. HAAVIK: Okay.

MR. MONARDI: -- saw all our data; did his own evaluation. He examined our evaluation; reviewed all the contracts we signed; partook in a number of meetings -- partook in all the meetings with the PRG; sat through the CPUC hearings, as well as actually met with many of the developers, also.

And he ended up validating our decision. He basically did his own analysis and came up with the same set of conclusions.

MR. HAAVIK: All right. Then simply said, if this review process took, you said, what, two years, Scott?

MR. MONARDI: The solicitation process had a lengthy process. We actually had to put it on hold for awhile until we got some direction from the CPUC. It started in late 2004. We notified the bidders we were going to have a solicitation. We had to put it on hold until we got some direction from the CPUC. Well, until the -- after the CPUC came out with a decision we had to readjust the process, I should say.

So we put the process on hold. We readjusted it. We re-sent out our bid package. Asked the parties to submit, and they started submitting in 2005, I think it was starting -- in April of 2005.

So that was the original 54 counterparties. And then we went through our decisionmaking process. Short-listed. And then we actually began negotiations and we filed with the CPUC in April.

So it actually really, I would say it probably took closer to a year.

MR. HAAVIK: Okay, and so within the year there was many evaluations done. And then within a month Black Hills notified you or notified the -- someone that Tierra would come in.

It just seems, again I'll use the word, and I apologize, Scott, disingenuous of whoever is running this that you have one applicant that goes through the entire process and then within a few weeks or months another applicant, or a purchaser slips in.

I don't see how that really is appropriate in the entire process.

MR. GALATI: I can see --

(Applause.)

MR. GALATI: -- how you might think that. But let me ask you something, though. It's the same site, the same power, the same price and they signed all the terms of the same contract. So, one way is the commercial transactions get developed is different parties take risk and different parties put up either money or security or other things associated with risk.

So, are you asking us whether we made a determination that Tierra had the capability of carrying out the obligations of Black Hills?

MR. HAAVIK: Absolutely.

MR. GALATI: And we had no reason to believe they did not or do not. And we expect them to continue to carry out the responsibility of Black Hills.

MR. HAAVIK: Thanks, Scott.

HEARING OFFICER GEFTER: Any more comments on that topic? Any other parties?

Okay, I want to move on then to the next issue, which, regarding the noncompliance with local LORS. It's a big issue in this case.

And typically the Energy Commission will defer to the local authorities; our regulations

require us to give due deference to local agency determinations. And in this case we have a situation where the local agency, the City of Hayward, has found so far that this project is inconsistent with its general plan, and therefore would be in violation of local LORS.

However, the Energy Commission has the authority to override the findings of the local agencies. And the override process is long and complicated and requires a heavy burden of proof by the applicant in establishing that the Energy Commission should override the local findings.

And I wanted to address that right here. Obviously this is not the evidentiary hearing, we're not requiring you to put on your case. But I wanted to hear from the applicant as to your overview of whether or not we need to proceed with an override and how we should go about it. What sort of evidence -- you don't have to name it, but what sort of evidence you believe would be necessary to establish an override.

MS. LUCKHARDT: it is our opinion that the project is consistent with the local zoning and general plan. And we would hope to be able to present that evidence in the land use portion of

the evidentiary hearing for this project.

And we have been preparing for that since the City of Hayward City Council acted. We are not unaware of the, you know, issue that's presented before this project.

And we also know that we will not know how this Committee or the Commission will rule on the land use issue for quite some time.

Therefore, it has been our intent the entire time to provide the information that you would need to make a finding of overriding considerations during the hearing process if you decide to act in that direction.

Therefore, based on the information that has been provided in previous cases, such as Metcalf, Los Esteros 2, El Segundo, we noted that in those cases the previous applicants had provided information about environmental impacts. It is our belief that the environmental impact information will already be provided, as is typically provided in any application proceeding.

So we will have an alternatives analysis; staff will have an alternatives analysis. We will analyze every subject area. So we believe that that will be covered.

We are also, as staff is preparing a local system impact analysis, and we plan to present that in the transmission system engineering section of the evidentiary hearing, and in addition, we will be presenting evidence on the consumer benefits associated with that analysis.

So, we are preparing to present all of that information to you in the evidentiary hearing process and do have that analysis underway.

HEARING OFFICER GEFTER: Thank you. And, staff, are you preparing also for that particular possibility?

MS. HOLMES: I don't know that a decision has been made yet by the staff as to whether we would be preparing information on an override. Typically that decision gets made after a PSA comes out and we have a chance to try to resolve certain issues.

I think if there is a possibility that the Committee will be considering an override, certainly the staff would be amenable to preparing evidence with its own recommendations in that regard.

HEARING OFFICER GEFTER: Then, for the

members of the public who aren't familiar with the concept of override, the law, it's Public Resources Code section 25525; it's in the statute that authorizes the Energy Commission to license power plants.

And what that does is provides that the Energy Commission, if we make a finding that there are not more prudent and feasible means of achieving public convenience and necessity regarding the interconnection of this power plant at the Eastshore Substation, if we can't find that there are more prudent and feasible means, then we have the authority to override the local finding that this is an inconsistent land use for siting a power plant at this location.

So, I think we need to start talking about that issue at this point in time, because I know that because of so much local involvement and concern about this project, I want to put you on notice that that is a possibility.

One of the questions I have, though, regarding the local effects analysis that Ms. Holmes referred to earlier, where you indicated that the staff doesn't have the resources or the funding to look at the costs of interconnections

at other substations because of the requirement to work with Cal-ISO for a system impact study at each of those substations, it occurs that -- just another obvious concern is that for us to look at whether or not there is a more prudent and feasible means of achieving the goals of this project, we might need that information to do our override analysis.

And I wanted to know whether staff has any view on that, or whether you've thought about that, or --

MS. HOLMES: Staff has never prepared those kinds of analyses, itself. Typically it's something that an applicant prepares. My understanding is that it takes months to pull together.

And my understanding also is that it's very project-specific. You have to know how a project is going to operate. You have to know exactly what the capacity is. You have to know whether it's baseload or load following or peaking. There's a number of factors that go into that kind of an analysis. Staff has never prepared one; we've never been a project proponent, obviously.

We do review them; and we do consult with the ISO and the ISO reviews them in individual siting cases.

I can't say more than that. I mean I cannot say that staff has the resources to prepare that kind of a study. And I guess the question would come up, how many such studies would be required. It's a difficult question.

PRESIDING/ASSOCIATE MEMBER BYRON: Ms. Gefter, I've not participated in one of these override situations. And the implication is that we're already proceeding down this path. Could you help me understand, isn't it the applicant's responsibility to request or petition for an override?

HEARING OFFICER GEFTER: That's correct.

PRESIDING/ASSOCIATE MEMBER BYRON: Okay. Thank you.

HEARING OFFICER GEFTER: And also I know that staff has never been required to provide a system impact study. I'm just raising that for the benefit of the local community to understand the process. And also to raise a question as to whether or not staff is going to be satisfied with the one system impact study that you do have with

respect to the Eastshore Substation. Or whether staff might request the applicant to provide additional studies at other substations because the applicant, in its alternatives analysis, sort of the initial alternatives analysis that you've already submitted to the record, you list several other substations in the area, and tell us why you can't interconnect at those substations.

MS. LUCKHARDT: I guess I'd just like to make a couple points here. In our review of previous override cases we have not found one where that has been done, where that extensive analysis has been done.

The type of system impact study or local system analysis that we're talking about is looking at the power flows from this project at this interconnection location.

And I would also note that we don't feel at this point that it would be necessary to do that, because changing substation interconnection locations would require a new application to Cal-ISO, would require a new queue position, would require an entire new application. This project would never make the online dates required under the PG&E contract.

And therefore, what we are essentially looking at is the no-project alternative. The project would not go forward. So, we fail really to see why spending the money that it would take to do this would be worthwhile.

PRESIDING/ASSOCIATE MEMBER GEESMAN: I guess, and somebody should correct me if I'm wrong, but my impression is that the queuing process at the Cal-ISO, which is governed by FERC tariff, is designed for what are considered to be real projects, as opposed to hypothetical alternatives.

So I'm not certain that it's necessarily a good fit for our CEQA process to expect that that type of analysis could be done.

HEARING OFFICER GEFTER: Can someone please turn your phone off.

MS. HOLMES: Commissioner Geesman, if I could just make a followup comment on that. I think from the staff's perspective there may be differences in the level of information that's needed for a CEQA alternatives analysis, and for information that's required for an override.

And I think it's fair to say that staff would typically -- would potentially certainly

prepare a more detailed analysis for an override type of situation than it would for a CEQA alternatives analysis, depending in part on whether or not staff had identified significant adverse impacts with the project for which the alternatives were being analyzed.

But in neither situation can I imagine that staff would recommend that a system impact study level of analysis be prepared. I don't think it's something staff has the ability to do.

HEARING OFFICER GEFTER: Does anyone have any other questions, staff, applicant, Mr. Haavik, PG&E or Mr. Armas, of each other at this point?

All right. One of the things that we also are looking at is a schedule. The Eastshore applicant submitted their proposed schedule for the remainder of the proceeding. And staff has also submitted a proposed schedule.

I'm sorry, Mr. Galati.

MR. GALATI: Before you do I want to let you know that PG&E will be available during the public comment session.

HEARING OFFICER GEFTER: This evening. Thank you very much. We really appreciate your

staying because I'm sure there'll be a lot of questions for PG&E later this evening, as well. Thank you very much.

At this point, before we wind down, let's discuss the proposals for the schedule in the Eastshore case. Mr. Pfanner.

MR. PFANNER: Yes. I've requested Eileen Allen, who is the Energy Facility Siting Program Manager, to be here today to discuss our schedule issues.

MS. ALLEN: Good afternoon to the Hearing Officers, and the Commissioners. I need to provide a bit of background on the Energy Commission's siting staff's workload before I discuss the schedule for the Eastshore project that the staff is looking at.

Between August and November of 2006 the energy facility siting staff received applications for certification for six PG&E request for offer projects. Mr. Galati has mentioned several of these projects a few minutes ago.

We also received the Russell City major amendment petition during that time that this group is familiar with. Five of the six RFO projects are still very active, along with the

Russell City amendment.

Three of these proceedings are extremely complicated. Staff is also working on six active southern California AFC projects. It's not a surprise that we're now struggling with multiple overlapping deadlines for publishing the PSAs on the PG&E RFO projects.

Furthermore, I'm expecting two more AFCs for projects in different areas of California to be filed this month, sometime within the next two to three weeks, along with one or two applications for small power plant exemptions. Mid-summer promises to be equally busy.

So, with that background staff is working on publishing an Eastshore PSA in July.

HEARING OFFICER GEFTER: Okay. So, you're proposing about another month beyond the existing schedule that we have already adopted?

MS. ALLEN: Well, I can't commit tonight to July 6th, but --

HEARING OFFICER GEFTER: No, I'm saying that you're asking for another month. And one of the things, too, is that, you know, the schedule that we have adopted for the Eastshore project is a performance schedule.

So, you know, based on the applicant providing information that staff needs, it's no longer just key to particular dates. So at this point it seems that if applicant and staff are working together perhaps you could come up with a mutual date for issuing the PSA. I don't believe that, you know, we are holding you to a particular date.

MS. LUCKHARDT: I think our concern is obviously proceeding in a manner that works from a project perspective for meeting our online date should you decide to certify the project. I think we also are concerned about the impact to everyone in the process should we lose a Committee Member part way through. So, we're trying to take advantage of what time remains to do that. And we are amenable to changing the schedule, but we'd like to, if at all possible, maintain our full Committee.

HEARING OFFICER GEFTER: I'm sorry, say that again? Maintain your full --

MS. LUCKHARDT: Our full Committee.

HEARING OFFICER GEFTER: In other words you want to make sure you want Commissioner Geesman and Commissioner Byron on your Committee

towards the end?

MS. LUCKHARDT: I just think that with a controversial project like this, that it's nice if you can have both Committee Members all the way through the project, as opposed to having Commissioner Byron be left with this project as Commissioner Geesman carries on to other pursuits at the very end of the process when you have, you know, controversial, you have to present it to the full Commission.

PRESIDING/ASSOCIATE MEMBER BYRON: I'd like to assure the applicant that I've been fully involved in this even as the Associate Member. And remind you, of course, that it will be the full Commission that will be making the decision on this.

MS. LUCKHARDT: No, and I'm aware of that. And actually in our case you are the Presiding Member. And Commissioner Geesman is the Second Member, you know, --

PRESIDING/ASSOCIATE MEMBER GEESMAN: But I'm right behind you, Jeff.

(Laughter.)

PRESIDING/ASSOCIATE MEMBER BYRON: And I'm behind you, Commissioner.

PRESIDING/ASSOCIATE MEMBER GEESMAN: I guess the concern I have is that in terms of the proposals that both the applicant and the staff have made, a two-week difference in the release of the PSA turns out to be as much as a two-month difference in the release of the FSA.

And I'm wondering if the two of you can't get together and try and promote a little more convergence between both the timing of the PSA, but more significantly, the timing of the FSA.

And that obviously relates to what issues you think will be contested between you. But I think both Commissioner Byron and I would like to get to evidentiary hearings as soon as we can on those contested issues.

MS. LUCKHARDT: We'd be happy to work with staff on that.

HEARING OFFICER GEFTER: So at this point we'll take your recommendations under advisement. We'll pend hearing from the staff and the applicant. Perhaps you can get together and make a joint proposal to us as to how you see the rest of the schedule in this case.

PRESIDING/ASSOCIATE MEMBER BYRON: Ms.

Allen, if I may ask, has the staff received all the necessary information they need to prepare the preliminary staff assessment?

MS. ALLEN: I'll defer to Mr. Pfanner on that.

MR. PFANNER: Yes, we are still coordinating with the Russell City issues. I will not that on May 23rd staff conducted a very successful data response issues identification workshop here in Hayward, which a number of additional topics were brought up that staff is addressing. And staff has said they will try to make sure that that does not delay the publication of the PSA.

But, as you know, as new topics come up there are more complications. So, yes, we are trying to get it done within the schedule provided, but for new issues coming up.

PRESIDING/ASSOCIATE MEMBER BYRON: Right. And I noted that in your status report that you're, at the public's request, that you're taking on a couple of additional analyses.

MR. PFANNER: Correct.

PRESIDING/ASSOCIATE MEMBER BYRON: And I commend you for that. I think that's very good to

be responsive to the public.

MS. ALLEN: Rest assured, we are interested in getting the PSA out for the public, also.

HEARING OFFICER GEFTER: So we'll be looking for a joint proposed schedule from the parties. And that way I think that if the parties can agree that's probably a much better schedule than having a schedule imposed by the Committee at this point.

Okay, if there are any other further -- does anyone have any further comments or questions? Because we're going to adjourn at 5:00. And then actually we're going to recess at 5:00, because we're going to reconvene at 6:00 to allow public comment.

So, if we have no more questions right this minute, let's adjourn -- or recess. Right. We are still in hearing, but we're recessing.

(Whereupon, at 4:52 p.m., the afternoon session of the Joint Committee Status Conference was adjourned, to reconvene at 6:00 p.m., this same day.)

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EVENING SESSION

6:05 p.m.

PRESIDING/ASSOCIATE MEMBER BYRON: Good evening, everyone, and welcome to a hearing of the -- joint hearing actually of the Eastshore project and the Russell City project.

I'd like to introduce myself. I'm Commissioner Byron and I'm the Presiding Member on the Eastshore siting project for the Energy Commission. And with me this evening is my fellow Commissioner Geesman. John Geesman is the Associate Member on that project. And then he's also the Presiding Member on the Russell City license amendment that's before us, as well.

You may also know that we did meet earlier today from about 3:00 to 5:00, and we took a brief adjournment in anticipation that we'd have some more members of the public here this evening.

I wanted to just begin by welcoming you and letting you know that I've checked with Commissioner Geesman and he tells me he has nothing on his calendar until 9:00 a.m. tomorrow morning --

(Laughter.)

PRESIDING/ASSOCIATE MEMBER BYRON: --

and that being the case, that we are here to hear from you and we will stay as long as we need to this evening.

But I'd also like to introduce just a few other folks on the dais before I turn it over to our Hearing Officers. To my right is my Advisor, Gabriel Taylor. And I think we have a guest here, as well, from the Energy Commission, Raoul, I forget your last name.

MR. RENAUD: Renaud.

PRESIDING/ASSOCIATE MEMBER BYRON: -- Renaud. He's just observing the proceedings this evening. And then we have our two Hearing Officers for each of the two cases, and I think I will turn it over to them, Paul Kramer and Susan Gefter.

HEARING OFFICER GEFTER: We're going to take public comment in just a minute, but I want to welcome everyone. This is a joint status conference on the Russell City and Eastshore proposed power plants that the Energy Commission is now considering. We haven't made a decision on either project yet. What we're waiting for is a staff assessment in both projects. And they will be published in a few weeks.

I'm going to introduce the panel tonight. We have representatives from Russell City, and perhaps you could start, and introduce you and your group.

MR. WHEATLAND: Well, good evening. I'm Gregg Wheatland; I'm the attorney for the Russell City Energy Center.

HEARING OFFICER GEFTER: And then Ms. Luckhardt for Eastshore.

MS. LUCKHARDT: Yes, my name is Jane Luckhardt, and I'm the attorney for the Eastshore Energy Center.

HEARING OFFICER GEFTER: And for staff.

MS. HOLMES: Thank you. My name is Caryn Holmes; I'm the staff counsel assigned to the Eastshore project, and I'm also sitting in for Dick Ratliff, who is the staff counsel for the Russell City amendment.

To my right is Bill Pfanner; he's the project manager for Eastshore. And to my left is Lance Shaw, who is the project manager for Russell City.

HEARING OFFICER GEFTER: And also we have an intervenor in the Eastshore project, Mr. Haavik.

MR. HAAVIK: Yes, Paul Haavik, intervenor for the Eastshore Energy project.

HEARING OFFICER GEFTER: Thank you. Okay, I wanted to quickly go over the difference between the Commissioners who are sitting here, and the Commission Staff.

The two Commissioners here are assigned to the Committee. There are five Commissioners appointed by the Governor who are working Commissioners at the California Energy Commission.

We have authority to site power plants in the State of California. Generally we defer to local agency determinations. However, there is a provision in our statute that allows us to override local determinations if we find that it means a necessity for the State of California.

However, in this case we haven't decided anything because we're still waiting for the Commission Staff to do their analysis. And that's the difference. We're the fact finders. We want to hear from everybody and we're going to look at the evidence presented by everybody who's concerned about this case.

The staff is going to write up a staff assessment based on the information they get from

the application, information they get from the expert agencies including the City of Hayward, and all the other state and local agencies involved in an environmental and engineering analysis.

Staff will also be responding to public comment. And I know that many of you have attended the workshops and the other meetings that staff has conducted. And we know that you have a lot of questions which you feel have not been answered yet.

What happens is in a CEQA process, an environmental review process, the staff answers those questions in their assessment. So a lot of the questions that have been raised on this project regarding air quality, transportation, impacts on aviation, land use issues, all of those issues are going to be addressed in the staff assessment.

That document will be made available to the public; it will be on our website. It will be sent to the local libraries. The City of Hayward will have copies. If you want copies you can contact our staff and they'll tell you how to reach them.

But this document will not be published

now, probably not till maybe July. We haven't even determined the date for that yet.

In the meantime today we're here to hear from you, members of the public. We've got quite a few of these blue cards that people have filled out. And what I've done is kind of organized them by topic.

Right now it seems like I have a lot of cards dealing with air quality, so I'll call the names of the people who are interested in that topic. And perhaps among several of you, you can pick one or two people who can make the presentation. Because in order to save time we don't need to hear the same thing over and over.

But before I do that we have representatives from your elected officials here. We have a representative from Assemblymember Hayashi present, Mr. Chris Parman. And he has indicated he'd like to address the Committee and the public.

So, Chris, if you'd like to come forward now, we'd like to hear from you. Thank you.

PRESIDING/ASSOCIATE MEMBER BYRON: Mr. Parman, before you begin, I would like everyone else that's here this evening to know that I did

receive a call, I think on Friday, from Assemblymember Hayashi. And I did meet with her on Monday, and Chris was in that meeting with me and my staff, as well.

And she obviously expressed a great deal of concern about this. And I have a feeling that's what you're going to talk about here.

MR. PARMAN: Correct, and thank you. Thank you, Officer Gefter, for allowing me to speak tonight. My name is Chris Parman; I'm the District Director for Assemblymember Mary Hayashi. And she has a public statement that she would like for me to read:

Dear Commissioners Byron and Geesman, Mr. Pfanner, CEC Staff, Intervenor Haavik, Mayor Sweeney and the City of Hayward, and residents of Hayward.

It was my hope to be with you today in person at this very important hearing to discuss the construction of another power plant being built in Hayward. Unfortunately I remain in Sacramento in order to meet a constitutional deadline and move legislation from the Assembly on to the Senate.

I have written to you urging the

California Energy Commission to reject Tierra Energy of Texas' application to build the Eastshore Energy plant for many reasons.

Most important is the plant's close proximity to homes, schools and business districts. It will create enormous environmental problems and adversely impact the region's air quality, resulting in higher rates of respiratory illness, such as asthma, among our seniors and children.

According to the California Department of Health Services more than 37,000 Californians sought hospital care due to asthma in 2000. Those most affected were children under five, women and seniors.

Although African-Americans represent only about 10 percent of the state's population, they represent 40 percent of the state asthma deaths and 30 percent of the state hospitalizations.

The 2007 Asthma Disparity Summit, held in Berkeley, reported that low-income communities and communities of color experience disparities in asthma prevalence, hospitalization and deaths. Reasons given were access to health care,

differences in asthma medication and environmental injustice their communities face.

The Eastshore Power Plant is particularly problematic due to its lower elevated emission stack design which will create low-level air pollution directly affecting those who live nearest to the plant.

In addition, the Eastshore project will be the second power plant sited for Hayward. The residents of Hayward and the surrounding communities have done their fair share in shouldering the burden of local power plants.

Finally, the City of Hayward tried to reach an agreement with Tierra Energy of Texas on a site for the proposed plant that made sense to the community as well as the residents of Hayward. Unfortunately, the company decided to go to the CEC rather than continue to find a solution with the City.

Subsequently the Hayward City Council voted unanimously against the issuance of a permit, determining that the plant is not consistent with the City's general plan and zoning ordinances.

Once again, I urge you to reject Tierra

Energy of Texas' application to build the Eastshore Energy Plant in Hayward.

I thank you for you consideration. Assemblymember Mary Hayashi.

(Applause.)

MR. PARMAN: And I have --

HEARING OFFICER GEFTER: If you have a copy of that statement could you leave it with our reporter so --

MR. PARMAN: And I have copies for the audience, as well.

HEARING OFFICER GEFTER: Okay, thank you. Also, I want to mention that a representative from Senator Ellen Corbett's Office is here, Kathleen DeJong-Wilson. Kathleen, do you want to just stand up and wave and show everyone where you -- okay. Kathleen indicates she doesn't have a statement, but she's here to listen. And if anyone wants to speak to her, she's available.

Also I wanted to ask if the Mayor of Hayward is here? Mayor Sweeney, are you here? Not. Okay. But we do note Jesus Armas is here, the City Manager. And I don't know if you have any comments to make before we get started.

MR. ARMAS: I'll be brief because I did

have an opportunity this afternoon to convey to the Commission and others the remarks.

We simply want to first welcome you to Hayward, and once again reiterate our appreciation to the Committee for convening this session so that you can hear firsthand the remarks that the staff has heard over the last number of weeks.

And want to encourage you to give careful consideration and thought to what the residents will have to say this evening.

And look forward to future hearings that you can conduct here in our community so the public has an opportunity to express its sentiments at that time.

HEARING OFFICER GEFTER: Thank you, Mr. Armas. Also I wanted to let everyone know that representatives from PG&E are also here. Mr. Galati, sitting in the front row; he's the attorney for PG&E. And some representatives also from PG&E, Mr. Marino Monardi, and also Mr. John -- I forgot your last name, sorry.

MR. CROSSON: Crosson.

HEARING OFFICER GEFTER: John Crosson. And if anyone has questions for PG&E you can talk to them privately; or we'll see if we get to a

point where they have to answer questions as you bring them up.

But I think the best thing is for us to take the comments. And if you want to speak to any of the parties separately you can do that off the record.

I also wanted to introduce Scott Raty, who is from the Hayward Chamber of Commerce. I got a blue card from you. I don't know where you are. Over there. Do you have a comment that you'd like to make to the Committee?

MR. RATY: Sure.

HEARING OFFICER GEFTER: Thank you.

MR. RATY: I, too, would like to be very brief. And I welcome you here to Hayward, as well. And on behalf of our Board of Directors we just wanted to reiterate our support for this project today, because of our concern to help provide energy that fuels industry, lights homes and drives the local economy.

This 115 megawatt station would directly support PG&E's substation here; put state-of-the art, rapid-fire technologies to work to benefit the community, itself, here for improved reliability, added safeguards against blackouts

and brownouts. And by contract, be limited to a backup energy role only.

And we appreciate the very comprehensive job that you, as the CEC, and the Bay Area Air Quality Management District, are doing to insure that the project meets or exceeds all air quality standards.

And with that conclusion, we believe the location, near the center of Hayward's industrial district, is appropriate and consistent with the manufacturing uses in the area. And, in fact, the City of Hayward reached that very same conclusion in 2001 with Russell City, with a determination that energy production is a manufacturing use and appropriate for the area. And to this day we remain puzzled by the City's about-face with its own zoning conclusions.

So we again just thank you for the opportunity, and with your blessings to the air quality and the health safety issues, we think this makes good sense. Thank you.

HEARING OFFICER GEFTER: Thank you. I think it's time to open the floor to public comment. Several people have indicated their concern about air quality. I'm going to list the

names I have, and then perhaps one or two of you can come forward and summarize what your colleagues are concerned about.

Jeanne Gardiner from Advantage Realty; Michael Toth; Rachel Henderson; I have somebody from Richard Promotional Products, but they didn't put their name down; Harvey Dean and Charlie Cameron. And those are folks who indicated they're very concerned about air quality here.

You know, maybe you all can line up and you can talk among yourselves for a minute and decide, you know, whether you all have something different to say, or you want to try to combine your comments. But go ahead and tell me your name when you come up to the podium.

MS. GARDINER: I'm Joanne Gardiner.

HEARING OFFICER GEFTER: Okay.

MS. GARDINER: I'm a real estate broker here in Hayward, a resident for over 40 years. I do not believe that these power plants, either one of them, should be approved for Hayward.

Earlier today when PG&E stressed that they looked at the least-cost/best-fit methodology in selecting which company they would buy their power from, both of which were -- I believe there

was two that were -- had sites here in Hayward.

And PG&E, nor anyone so far, has taken into consideration the 200,000 residents who densely populate Hayward and around Hayward where this westerly prevailing wind and southeasterly is going to carry this discharge, this 55 tons of ammonia and however many other contaminants.

I happen to be asthmatic which is incidental, but when I mentioned this to my asthma doctor he said, how soon are you moving. He said asthma people should never be breathing that.

Another thing that I find it so contra-productive is the City of Hayward has a brand new residential development up in the Hayward Hills. It's a huge development. They have a country club coming there. The air that's coming off of these plants is going to be carried right up to these new developments.

So we're creating on one -- trying to create a better economic environment for Hayward. And on the other hand we're quickly destroying it. And I think the only reason that the Russell City Power Plant was approved without any fanfare -- without all these people being told --

(Applause.)

MS. GARDINER: -- what, because of --

HEARING OFFICER GEFTER: I'm going to ask the audience to refrain from clapping, cheering or booing. It takes up a lot of time and it's not productive. And please refrain. Thank you.

MS. GARDINER: Anyway, I think the reason that the Russell City Plant was approved was because of a $10 million donation to the library system of Hayward; not because anybody took into consideration the myriad of people and disease and ailments that are going to be bestowed upon Hayward people.

If you're only looking at what is most profitable for PG&E, what is most profitable for Tierra, what is most profitable, and yet it's the people that they're contaminating that are going to be paying the bill for them to be most profitable. Does it make any sense?

Does it make sense that Tierra will get credits to go and clean up other air in other communities when it already contaminated air, because they get approved to be here in Hayward and contaminate our air. Where is the sense in that? I don't see it. And I don't think the

residents of Hayward see it.

And that's about all I have to say. I truly beg you all to reconsider and withdraw any approval for either one of the plants in Hayward. Thank you very much.

HEARING OFFICER GEFTER: Thank you, Ms. Gardiner. Okay, now, does anyone have anything in addition to add to Ms. Gardiner's comments on air? Okay, sir, please come forward; tell me your name.

MR. DEANE: My name is Harry Deane. I'm a former state employee on disability, retired. I was a heavy equipment mechanic and I reached a lead worker position when I got injured.

I started at the Bay Bridge and after I was doing smogs there and getting 16 parts per million of hydrocarbons, they put a ventilation system in to save mechanics. Okay.

Of six of my fellow workers, we were lead workers, in this district for Caltrans, two of them died in 2003 and '4. So they saw that I was sick from taking medication and my injuries. And the state retired me, I feel because they were afraid of cancer. One of my colleagues is buried up here in Hayward. And I just don't see any reason to have, build this new generation of

hydrocarbons and all the other pollutants right in my front yard.

Because we are right next to the Bay and personally, you know, one of our most qualified mechanics, he was a lead worker, Pat Reno; he lived in San Leandro, and he lost his life to liver cancer. Struggled, but that's the reason that I, in their names, I'm trying to keep our air as clean as we can.

And I think this thing belongs -- like you wouldn't put a runway pointed at a school, you wouldn't take and put a power plant pointed at a city, especially of working class people that have poor health from the pollution they work in.

Thank you.

HEARING OFFICER GEFTER: Thank you, Mr. Deane. Does anyone else have something in addition to add on air quality? Okay, come on forward please, and tell me your name.

MR. TOTH: Hi, my name's Michael Toth; I live in the Eden Garden section of Hayward, about a half-mile downwind from the plant.

Just a couple of specific things regarding air quality that I want to mention. One is more related to public health; it's kind of a

cross-over. And it's more related to things that we don't know.

The health risk analysis that both the Air District does and the CEC does, is basically it's based on data that gets plugged into a model. And the output of the model gives you a certain indication of what the health risk is.

I took the liberty of -- basically the Air District, Bay Area Air Quality District, has issued a preliminary determination of compliance in which they run a model. And I took the liberty of going through this model and looking at the data source from the California Air Resources Board. They have a database which includes engines and the emission factors of those engines.

To be brief, for this particular engine, in the Air Resources database there's only two sources. The data involved in the health risk analysis is based on two measurements. Now, in other cases it's based on five or six. The Air Resources Board rates these numbers.

And so I would like to suggest that regardless of what actual numbers the model turns out, that the Commission understand that the base data for this model is very sparse. We have a

very limited indication of whether the engines actually tested in the class of 650 horsepower and above are actually relevant to the 11,000 horsepower engines that they're putting in this plant.

And in the case where there is insufficient data to really make a strong conclusion, that that not be taken with a bias towards approval of the plant.

HEARING OFFICER GEFTER: Well, I appreciate your comments on the preliminary determination of compliance, the PDOC, issued by the Air District. It's still in the comment period on the PDOC, and you're welcome to file your comments with the Air District, as well as put your comments in with our staff regarding that particular document.

Because again, the expert agency in this case is the Air District. And so if you have comments and you have questions I would recommend that you file your comments right now during the comment period on the PDOC.

MR. TOTH: Right, I have, I --

HEARING OFFICER GEFTER: Okay, and also with --

MR. TOTH: -- have sent in my comment on that.

HEARING OFFICER GEFTER: -- our staff.

MR. TOTH: Another topic related --

HEARING OFFICER GEFTER: Thank you.

MR. TOTH: -- related to air quality is there was a study done in 2002, published in the Journal of the American Medical Association, that strongly linked particulate matter, not specific to diesel, just ambient particulate matter with a cancer risk.

And I am told that this study has not been factored into a health risk analysis because possibly it was too new for the existing regulations to take into account. And so I would urge the Commission to actually figure out a way to consider this in a health risk analysis to some extent.

I mean as we move on we learn more. And hopefully we won't take an excessive risk just because the law has lagged several years behind where research is.

HEARING OFFICER GEFTER: Are you including that in your comments on the PDOC?

MR. TOTH: Yes, I did.

HEARING OFFICER GEFTER: Yes. And also you're aware of the ARB's new regulations on diesel emissions?

MR. TOTH: This is not related to diesel. This is related to particulate matter from all sources.

HEARING OFFICER GEFTER: All right, so if your comments have been filed more specifically with the Air District, and also you've talked with our staff or written your comments to our staff?

MR. TOTH: Yes, I've talked with Dr. Greenberg.

HEARING OFFICER GEFTER: So those -- your questions, which are very good, your comments excellent. I think they'll be addressed both by the Air District and by our staff.

MR. TOTH: Thanks. I do have a comment on land use. Should I wait, or should I --

HEARING OFFICER GEFTER: No, now that you're here tell me your comment on land use.

MR. TOTH: Okay. So, you know, it seems that this is a situation where a company bought a piece of land without doing adequate diligence to determine that there would be issues regarding land use and the public with regard to the

application they wanted to use that land for.

They've entered into contracts; they've set deadlines for themselves. Now they would come to the Commission asking that the proceedings be expedited even though that the information from PG&E and other cases is not available, or is supposedly prohibitively expensive to obtain, or time-expensive to obtain based on the alternate siting.

And I would just hope that the fact that we cannot do a complete alternatives analysis because this information is confidential and cost prohibitive or time prohibitive to obtain would not in any way prejudice the Commission towards approval of this project. Or towards the granting of a override in terms of the land use decision by the city council.

And that's all I have to say; thank you very much.

HEARING OFFICER GEFTER: Thank you, Mr. Toth. Does anyone else have comments on air quality that we haven't heard already? Okay, tell us your name, please.

DR. HENDERSON: My name is Rachel Henderson. I know you've heard a lot already.

There's many many issues with this, as you're well aware of.

I'm a resident of the Eden Gardens neighborhood. I'm also a scientist; I'm a biologist. So I've been looking at the data and going to the workshops. And I'm just very concerned with the Eastshore project, how many issues there are, particularly with air quality.

One of the things that hasn't been brought up yet was a discussion in the workshops about particulate matter and the fact that Tierra said they were going to be emitting X amount of particulate matter. And then they had to lower it. So, they said, no, we'll lower that.

And it hasn't been any change in the technology, but it's been based on a guarantee from Wardsilla (phonetic) who's the manufacturer of the engines.

And so I've been told at these meetings, you know, if they exceed their warranty, you know, what they're guaranteeing as their particulate matter emissions, they'll be taken offline.

But the question is, how do we know that they're exceeding it. And the Bay Area Air Quality Management District hasn't been able to

tell us how often they're going to monitor. You know, they say, well, we do it maybe once a year, once every three years. But we haven't gotten a real answer on how often.

So, to me, you know, if the manufacturer's guaranteeing that doesn't give me a whole lot of faith that that's really what's going to be happening. And since --

HEARING OFFICER GEFTER: Let me interject.

DR. HENDERSON: Yeah.

HEARING OFFICER GEFTER: Of course, that is a concern that you have and I'm sure the residents have. A mitigation condition can be included in the, you know, in the decision in staff's assessment, in which we can identify how often the emissions will be inspected. And, you know, that can be certainly -- you know, you don't have to rely on what the Bay Area says; we can include a condition if that -- and you can participate in helping to draft that condition with staff and with the applicant.

DR. HENDERSON: That's great; that's very reassuring. That's a concern that many residents have, is the adequate monitoring of PM

and also of the toxic air contaminants.

Other issues I guess have been brought up are the credits, the use of credits. The Bay Area -- Hayward is already in excess of amounts of certain air contaminants and pollutants already. So we know that. We're getting Russell City and we're getting Eastshore on top of that. It doesn't make us feel any safer that credits for, you know, these plants that have been offline for 20 years, or these different industries in different areas, not even in Hayward, where these credits are being purchased for. You know, that doesn't make us feel any better about our health.

Some of the mitigation methods are, you know, I mean credits are paper mitigation. The fireplace retrofit, I really think is not a good method, to put in gas inserts in people's fireplaces. People are going to use them. I have one of those in my house. We use the gas to light the wood and then we turn it off, because we're not going to be paying PG&E to be burning gas in our fireplaces. So I think that's just silly.

And there's no, I mean, the CEC Staff, themselves, have said, you know, there's really no way to monitor are people really using wood or

what are they using.

So, you know, listening to the discussion earlier this afternoon with, you know, what's the benefit of putting this plant here. Why do we need it in Hayward, why do we need it to connect to the substation.

And what I heard is that the benefit is to Tierra because they save costs. And that cost benefit is then passed on to PG&E. They do a cost analysis. And, you know, to me, I know that real estate is cheaper in Hayward than it is on the Peninsula. I also know that I believe there are no power plants on the Peninsula.

So, to me it seems an issue of, you know, it's cheap in Hayward. Maybe the people won't protest. You know, we have this other power plant going, and let's see how many other power plants we can stick in there and save money.

And you don't get anything for free. And so I think Tierra and PG&E want to save money, as they should, you know, they're companies, that's what they do. But we don't want to pay for it with our health. And I'm just concerned about all these issues. If there weren't any health concerns I wouldn't be concerned about it. But

there are a lot of health concerns. So I ask you to really very carefully look at this data that they're presenting to you.

HEARING OFFICER GEFTER: Thank you very much.

DR. HENDERSON: Thanks.

HEARING OFFICER GEFTER: Anything -- I see a lot of people on air quality still. And you haven't -- is this going to be a new issue that hasn't been raised before?

MR. LAM: No, actually I put in a card, but might as well, if I may.

HEARING OFFICER GEFTER: Okay, and what is your name, please?

MR. LAM: Chris Lam.

HEARING OFFICER GEFTER: Okay. Go ahead, Mr. Lam. Thank you.

MR. LAM: Good evening, Commissioners. Thank you for your time that you spend for listening to us regarding this project.

I'm the President and CEO of Pucci Foods. We have about 15 employees. I'm a Member of the Chamber of Commerce, as well as Board of Directors. But I'm not attempting to speak for the Chamber, as well as the Board of Directors. I

speak as a business owner in Hayward, as well as for my employees.

We operate 24 hours a day; we have 15 employees; and we process food. And our major concern is we spend more than eight hours a day working at our company, which is downwind from the plant. We share a parking space with Life Chiropractor, and our major concern is air quality of the plant.

We ask if there's a guarantee that is not going to affect our health by this plant being put in, and there's yet to be a guarantee that it's not going to happen.

So therefore, until I get that guarantee I recommend -- or I urge that you vote against having the plant. And that's our position. And I will send you a letter reinforcing our position. Thank you very much.

HEARING OFFICER GEFTER: Thank you, Mr. Lam. Thanks for your comments.

Okay, we're still on the air quality topic, yes? Okay. And tell us your name, please.

MS. FONTENBERRY: My name is Delores Fontenberry. I'm just a regular old citizen, a homeowner. And I'd like to ask a couple of

questions, if I may.

First of all, whether any other sites besides Hayward that were looked at?

HEARING OFFICER GEFTER: And that is a question that we have also asked the applicant. And they say they have. And I'm sure you -- have you been to the workshops where you can also --

MS. FONTENBERRY: No.

HEARING OFFICER GEFTER: Okay.

MS. FONTENBERRY: The second question is where is the nearest air monitoring station located?

HEARING OFFICER GEFTER: Those are good questions, and I can't answer those questions right now because I don't have all the information before me. But the staff and the applicant can answer your questions. And I think we'll do that off the record, so I would ask you at some point you could go over and talk to them while people are, you know, --

MS. FONTENBERRY: Okay.

HEARING OFFICER GEFTER: -- coming up and making comments.

MS. FONTENBERRY: One more.

(Audience members speaking

simultaneously.

HEARING OFFICER GEFTER: People want those questions answered?

(Audience members speaking simultaneously.)

HEARING OFFICER GEFTER: Okay. All right. Okay. All right. Because I don't want to, you know, spend a lot of time. But I'll ask the applicant, if you could answer the question very succinctly as to whether other sites were looked at before this site was chosen.

And then if we have anybody on air quality who can answer where an air monitor is. I don't think we have our air quality expert here. But perhaps the applicant can answer the question about the sites in a very succinct answer.

MS. LUCKHARDT: We're checking on the monitoring station right now. The --

HEARING OFFICER GEFTER: In the meantime, I believe our staff can get back to you on that question, because we don't have the air quality expert here tonight. But they can get that information and publish it --

MS. LUCKHARDT: Okay. Ozone is monitored in Hayward and other pollutants are

monitored in Fremont?

MR. TREWITT: Mostly Fremont.

MS. LUCKHARDT: Fremont.

HEARING OFFICER GEFTER: Okay, so they have the information for you.

And what about the site, whether there were other sites looked at before this site was chosen.

MS. LUCKHARDT: There were seven other sites looked at before this was chosen.

MS. FONTENBERRY: I'd like to know what sites they were. Certainly not in Concord or Walnut Creek or Orinda.

MS. LUCKHARDT: They're in the application.

HEARING OFFICER GEFTER: They are listed in the application for certification. In the big document that the applicant filed.

MR. HAAVIK: Excuse me, Ms. Gefter, --

HEARING OFFICER GEFTER: Do you have the answers?

MR. HAAVIK: I might shed a little light on that.

HEARING OFFICER GEFTER: Okay.

MR. HAAVIK: I believe she's asking the

question were there any sites looked at outside of the City of Hayward.

MS. FONTENBERRY: Yes.

HEARING OFFICER GEFTER: That's your question? Does anyone on applicant's side can answer that question right now, or --

MS. LUCKHARDT: The initial sites that were evaluated before the project were proposed were all in Hayward.

HEARING OFFICER GEFTER: They were all in Hayward.

(Audience Members speaking simultaneously.)

HEARING OFFICER GEFTER: Okay, please don't make a lot of noise because we have one person speaking at a time. Okay. Thank you.

MS. FONTENBERRY: Okay, one more question.

HEARING OFFICER GEFTER: Yes.

MS. FONTENBERRY: I'm reading here that these two companies are concerned that they won't be able to meet their purchasing power agreement with PG&E. What kind of business plan is it that you have an agreement with PG&E but don't have a site for the plants?

HEARING OFFICER GEFTER: Well, that's one of the things that we're looking at, as we're looking at all the facts that they are presenting to us. We haven't come to any conclusion. We're just looking at what they're presenting. So I can't answer that question.

MS. FONTENBERRY: Yeah. Well, if you have a business -- okay. As the representative from Mary Hayashi's Office stated, I'm African-American; I'm a senior citizen; and I have asthma. I oppose the building of these plants. Thank you.

HEARING OFFICER GEFTER: Thank you for coming and speaking to us this evening. Anyone else on the air quality? Please tell us your name.

MS. VIERRA: Barbara Vierra. Okay, I just have a few things to say. Mrs. Gardiner said that it would affect 200,000 people. It would actually affect 500,000 people, because you're going to put this in where five major cities are. You've got Hayward, Union City, Fremont, Castro Valley, San Leandro and Dublin. And CalState Hayward has 13,000 students, okay.

And so we're looking at something like a huge population. We're not just a little tiny

Texas town, okay. And our medium home prices are $600,000. This isn't small potatoes, okay. This is like the Bay Area. You just can't plop down this environmental disaster thing here, okay.

And also the Alameda County Health Department said that Alameda County has the highest rate of breast cancer. And we don't need any more discharge in our air because of that.

And that's all I have to say.

HEARING OFFICER GEFTER: Thank you for your comments. One minute, Ms. Vierra. The reporter needs your name and how to spell it. You can just go over and tell him.

And the next person please come forward and tell us your name.

MS. McDONALD: This one? Hello.

HEARING OFFICER GEFTER: Yes.

MS. McDONALD: I gave a blue card, so I have a card there. But it was on the air pollution. So, --

HEARING OFFICER GEFTER: Want to tell me your name, please?

MS. McDONALD: Juanita McDonald. M-c-D-o-n-a-l-d.

HEARING OFFICER GEFTER: Right, and also

I have a Bob McDonald. Is that your husband?

MS. McDONALD: Yes, but he's going to talk on another subject.

HEARING OFFICER GEFTER: Okay.

MS. McDONALD: I am a Hayward resident and I am an asthmatic. I raised three asthmatic sons in Hayward. I know asthma. They spent half their life in allergy clinics or in emergency rooms. And this was without any type of proposed energy center.

If you were out today you would know that the closer you get to the Bay, we have strong winds. They were up to 40 miles per hour yesterday. They will blow upon us. And we live close to the Bay.

Someone asked at last Wednesday's meeting why Hayward. My answer, and several other people's answers, were because they thought they could get away with it. We're not a wealthy city like Marin and other people with a lot of money. And we feel they thought they could come here and we wouldn't yell.

Well, we happen to be a minority city, working city. Hayward, according to The Daily Review, has the largest minority or diverse

population -- their quote was "diverse population" -- in California. And according to Ms. Hayashi, our children, especially our minority children are getting more and more asthma. This will simply add to it.

We figure that -- they figure that the wealthy cities would object. Well, as a diverse minority city, so do we.

HEARING OFFICER GEFTER: Thank you, Mrs. McDonald. Anybody else on air quality? Yes, sir, come forward, please. Please tell us your name.

MR. McDONALD: My name is Bob McDonald. And I'm here tonight to talk for myself and also for those who cannot talk. And they may shriek, quack or otherwise vocalize. But no thought in any of the literature that has been handed out do I see any thought has been given to them.

They, of course, reside in the salt water marsh very close to the power plants. And they are in danger, great danger, from the emissions of ammonia. Because the ammonia will attack the small fish; that is what they feed on in the tidal marshes.

And they are several orders of magnitude less that they can stand in ammonia than people.

And nothing has been published about this. There's been no talk about the tidal marshes, which I don't understand, because that's a federal protected for the migratory wild water fowl.

And if the water fowl lose the fish on which they feed, then they will also suffer great damage. So I hope that something can be done to look into this. They are very susceptible to the ammonia. And --

HEARING OFFICER GEFTER: I wanted to tell you, Mr. McDonald, the staff's assessment will include a biology section. In that section they will address most of the biology concerns you might have regarding wildlife --

MR. McDONALD: But the amount of ammonia you're talking about is not just a little bit that is going to be dumped. It's 64 tons. Or to put it into something we more easily understand, that's 128,000 pounds per year that is going to be dumped into the air.

And if it so happens on a rainy day, a lot of that particulates of ammonia will fall down and wash right into the tidal marshes. Something must be done.

I thank you.

HEARING OFFICER GEFTER: Thank you for raising that topic with us. More on air quality? Okay, please come forward. Tell us your name, please.

MS. BOS: Yes, Shirley Bos. This has been addressed a little bit, but I'd like to really emphasize it. I'm a resident of Hayward Mobile Country Club, and as an educator with the San Lorenzo Unified Schools, I represent the voiceless silent citizens, mainly the elderly and children.

My focus point is that school absenteeism is directly connected to the progress that a child makes. Therefore, increased lung, respiratory, breathing and asthmatic problems potentially caused by another power plant in Hayward would rob children of the privilege and necessary skills of education and empowerment for future success as adults.

Thank you.

HEARING OFFICER GEFTER: Thank you for your comments. Comments on air quality? Please come forward. Please tell us your name.

MS. McDAID: Linda McDaid. My question to the Commission here is when you look at peaker

power plants --

HEARING OFFICER GEFTER: Wait, wait one minute, Lynn. Could you spell your last name for me?

MS. McDAID: M-c-D-a-i-d.

HEARING OFFICER GEFTER: McDaid, okay.

MS. McDAID: When you look at peaker power plants what we're talking about when they operate is going to be, let's say it's all spare-the-air-days, is that not correct? I mean for the most part.

So, when we're talking about peak emissions from those plants, it's on a spare-the-air day. So is it a recommendation of this Commission that the people that live in that area, and the schools, should stay inside so that they don't put their health at risk and be susceptible to asthma and things that happen during those days? Is that the recommendation of the Commission?

HEARING OFFICER GEFTER: The Commission doesn't have a recommendation at this time because we haven't adopted any decision. We haven't approved anything, --

MS. McDAID: Okay, I just --

HEARING OFFICER GEFTER: -- we're just --

MS. McDAID: -- want to make that point, because we have to be clear that these are the critical days that those plants will operate at peak capacity, right? So it is a very important point.

HEARING OFFICER GEFTER: That's a very good point. Thank you very much.

MS. McDAID: Thanks.

HEARING OFFICER GEFTER: Anybody else on air quality. We already heard from you; let's give someone else a chance.

Okay, there are other questions I have here, from Mr. Charlie Cameron. Are you here, Mr. Cameron? I don't -- okay. Is that Mr. Cameron over there? Okay, please come on up to the --

MR. CAMERON: Yes, good evening, Commissioners. I brought up under --

THE REPORTER: Your name for the record, please.

MR. CAMERON: Charlie Cameron. I brought up under a number of workshops instructing mostly the Eastshore development applicant, to look at all the delays, mostly A/C Transit

deadheading buses will have in the Hayward yard. They did not even know where the bus yard is and was. They didn't even know where the bus routes run in their neighborhood.

I tried to explain to Mr. Stein, but he just doesn't understand -- the project manager -- just to be constructively helpful. Maybe it is possible to possibly combine the two plants in the west part of the west area of Hayward. Maybe it is possible.

But just have to get the traffic right during construction; it's going to be a bear. But they just don't get it, and they don't know how to understand it. Thank you.

HEARING OFFICER GEFTER: Thank you very much. I also wanted to take a moment. I understand that Council Member Barbara Halliday of the City Council in Hayward is here. Do you have any questions or would you like to make some comments to the audience? Here she is.

And would you spell your name for the reporter.

COUNCIL MEMBER HALLIDAY: Hi, thank you. I hadn't actually planned to make comments, but I was here to listen. And --

HEARING OFFICER GEFTER: Please --

COUNCIL MEMBER HALLIDAY: I'm sorry, my name is Barbara Halliday, H-a-l-l-i-d-a-y. I am a Member of the City Council. We did consider this. I think the thing I would like to say to you is that our City Council looked at this very carefully and we determined that it was not consistent with the zoning for the area.

A power plant requires a use permit; it is not a right under industrial zoning. And when we -- and I, you know, I spent many years on the Planning Commission, and the Council now, looking at these zoning questions very carefully.

And this power plant is in an area that is so close to, you know, several schools. I mean these are our young people. We do not need to be exposing them to this kind of pollution.

And when we looked at Russell City, and I know there are concerns with that, too, and I think Hayward is saying we're willing to do our part to supply the energy to this area, but, you know, we are not willing to be the only ones to do that. When there are cities surrounding us that are not doing anything.

And Russell City is out closer to the

Bay. I do love that Bay shoreline. We have done more than most cities to preserve our shoreline for recreation and for the wildlife that is out there. And we really do enjoy it. And it has issues.

But the Tierra Plant is right in the middle of an area that is changing. It is not your typical industrial area. It has schools; it has homes very close by. And so when we made that determination we made it very seriously and for a very good reason.

And I just would hope that you would respect, you know, the local opinion in this case. So, thank you.

HEARING OFFICER GEFTER: Thank you for being here today. Also, I got blue cards from two people who said they didn't receive notice of this event. Connie Jordan and also Melinda Alfaro, -- pronouncing your names correctly. If you want to come forward, please, and address us.

And I also wanted to tell you to get notice you need to put your name on the list that the Public Adviser has out there by the door. If you write your name and address down then you will receive the notices --

MS. ALFARO: Okay, I did that. Thank you.

HEARING OFFICER GEFTER: Okay, and tell us your name first.

MS. ALFARO: Melinda Alfaro.

HEARING OFFICER GEFTER: Okay, thank you.

MS. ALFARO: And I want to thank you for being here to listen to our concerns. Okay, now this is just partial of a community. Hayward is a very big city with a lot of people from a very diverse communities.

I'm concerned that prior to this, or anything about this whole energy, even the Russell City energy project, I was never aware of that. Nor were some of my neighbors. It wasn't until a friend of mine emailed me and said, do you know about this power plant. I'm like, what are you talking about. I was very concerned about it.

The other thing is that I also am representing the Spanish-speaking community because, you know, adequate information has not been given to them. They are the majority of this City; they are a growing population. And I think that if they were here -- I mean if they would

have gotten notices, they also would have been here to voice their concerns.

I'll put an example to you. This afternoon when we took the break, a lot of you, I saw a lot of you across the street at La Salsa (phonetic) getting a bite to eat. I noticed that the cashier, the waitress, was looking like, what's going on in the corner. She saw the ladies with the signs and everything.

And I told her, I said, do you know what's going on over there. Pretended that I didn't know what was going on. So, she says, no, I don't know, but what's happening. So I told her, did you know about the energy plant -- where do you live? I live in Hayward. Did you know about the power plant? No.

So, that tells us a lot. Okay, so the communities that we should be reaching are not being reached, so that they also can have the same opportunity that we're having right now to be able to voice these things to you.

Now, with some of these people that are coming here, how many of you live in Hayward? No, no, no, no, I know you guys --

(Laughter.)

MS. ALFARO: The gentlemen that are here representing this project for Tierra, do you live in Hayward?

UNIDENTIFIED SPEAKER: We do not represent Tierra.

HEARING OFFICER GEFTER: Okay, well, this is -- these people are from PG&E right here in the first row.

MS. ALFARO: Okay, well, do you? Do you? Any of you live in Hayward?

HEARING OFFICER GEFTER: The company is sitting up there.

MS. ALFARO: So, see, that, you know, like prior comments, like, you know, we're already pulling -- even Russell City should have never been approved. I don't know why it was approved to begin with. Maybe we would not have to be dealing with this second project that we're discussing right now. So that's a very big concern for me.

I would like to also add, when the staff does the assessment, if they can also go out into the communities, different communities in Hayward and also get assessments from those residents, as well, that are not able to be here, or have no

clue about what's going on. That's a fair thing to do.

HEARING OFFICER GEFTER: And that's a very good point. And I would recommend that you speak with Mike Monasmith, who is the Public Adviser for the Energy Commission. And that's his Office's job, is to do outreach.

MS. ALFARO: Great, because --

HEARING OFFICER GEFTER: And he was the one out there who gave you the blue card --

MS. ALFARO: Oh, okay.

HEARING OFFICER GEFTER: -- when you first walked in the door.

MS. ALFARO: Right, okay.

HEARING OFFICER GEFTER: And if you would speak to him and tell him what your concerns are, and maybe work with him to try to identify the community that needs information. That's what his job is, is to reach the community.

MS. ALFARO: Right, because -- okay, because the other thing, too, is that, you know, we have ways of the media letting us know. Never in the news, The Daily Review has been talking about it, and we read about it, but not everybody, mainly the monolingual Spanish-speaking or other

languages, they don't have the same, what is it called, that they cannot read English, let alone speak English.

HEARING OFFICER GEFTER: So you might ask Mike to have notices translated into Spanish and whatever else you would like to share with him. And work together with him and his office.

MS. ALFARO: So I really, you know, want to really plead with you not to accept this project, or even the other Russell City project, because we really don't need these projects. There's so much, you know, pollution in the air and people are already sick. And they could get sicker.

Thank you very much.

HEARING OFFICER GEFTER: Thank you very much for being here tonight. Tell us your name, please.

MS. JORDAN: Hello; my name is Connie Jordan. I agree with the last speaker, also. And I have a question. Your method of notification is troublesome to me. What is the radius that you notify residents and other property owners or businesses? Does anybody have a --

HEARING OFFICER GEFTER: Well,

originally when the application is first served on the local community it is the adjacent landowners to the property, itself; and all the city agencies that might be involved in the review.

And then as time goes by people add their names to the list in the community. And so at this point the Public Adviser is making a list; every time the staff has a workshop they add to the list.

MS. JORDAN: Right, but isn't there a certain amount of feet that you notify residences and businesses? Isn't there a radius?

HEARING OFFICER GEFTER: The adjacent landowners is the first list --

MS. JORDAN: So if your nearest house in Russell City -- to the Russell City Power Plant is one home, Doris, Jim Doris on Depot Road was the only home notified. And unless people hear about your meetings, and I sure as heck don't know how because they're not published in the newspaper under the public meeting section, I had to explain that to Mike Monasmith, how to do his job. That's a free service. Nobody knows about these meetings. It's unfair.

And I don't think Russell City would

have gotten this far. I think everyone would have been here in 2001 had we known.

Thank you.

HEARING OFFICER GEFTER: That's a very good point. Thank you very much. I have -- there are several people who were concerned about the airport and the impacts on the airport. So I would ask those folks, Mr. John Kyle and Mr. Steve Barstow?

MR. KYLE: My name is John Kyle.

HEARING OFFICER GEFTER: Okay, come up here to the --

MR. KYLE: (inaudible) priest, rabbi or --

HEARING OFFICER GEFTER: Okay, Mr. Kyle, thank you.

MR. KYLE: I'm a 46-year resident of the City of Hayward. I was on 16 or 17 ad hoc committees, task force, you name it, for the school district and the City. I'm pretty well informed.

The three air monitors that were questioned here earlier, one of them, the most efficient one technology-wise is five miles east of the airport. There's one in Fremont and one in

Oakland up at the San Leandro/Oakland city line.

Last March, I guess it was, there was a public meeting; and there was a comment made to the effect that the new plant, the Sierra Plant, will not affect the Hayward Executive Airport. And having been picker of nit, working in a bank as a real estate appraiser, you know what an appraiser is, he's the guy who made all the bum loans, and the loan officer on the commission, he only made the good loans.

So I became a picker of nit. And I said to myself why are they concerned with the Hayward Airport when they're not concerned with the Oakland Airport. Because if you pull out any map from AAA or anybody else and draw a straight line down runway 29, you will discover that it flies right over the site, the Sierra site.

And you have not addressed the question of air turbulence. When you turn on 14 engines there's going to be air turbulence. How would an unsuspecting pilot know this, as he made the approach from south of Hayward, highway 92, where he's supposed to be able to maintain 2500 feet and frequently does not. And they descend to about 2000 feet as they pass the golf course at the

northwest end of the Hayward Airport.

So, it's a guess and by-golly. He has no idea when those things turn on. He might fly through that and three minutes later the second flight from Southwest Airline is going to fly through the turbulence and be surprised.

So a suggestion was made to the effect that you inject water into the stacks and create a little steam which would alert the pilots. And then there was another objection to the fact that the chemistry changes and now you got a problem with the pollutants settling down on the cities and is thereby much faster than might thought be the case.

So I wrote a letter to the FAA. And back comes a response: We have examined the Russell City thing and we don't see any problem with it interfering with operations at the Hayward Executive Airport.

And back went my letter, that's not the question I raised. The question I raised was to do with carrier aircraft approaching Oakland International Airport. Would you please address that.

And since then I have not heard a word

from the FAA. Not a single word. No letter of response. But I took the time and trouble to send a copy to the Western Pacific Director whose office is in L.A. And then I sent one to the person in charge of the FAA, as well as the Department of Transportation. No response.

What are you going to do about that? I challenge you to understand what's happening. If you don't inject the water into the stacks when those engines kick in, how is the pilot to understand that there may be air turbulence ahead?

HEARING OFFICER GEFTER: Are you referring to the Russell City Plant, or both plants?

MR. KYLE: Beg your pardon?

HEARING OFFICER GEFTER: Are you referring to the Russell City project or both projects?

MR. KYLE: I just oppose the one that has the 14 stacks with all the accumulated air pressure ascending to god knows how high. It's going to interfere with the approach to runway 29 at the International Airport. Thank you.

HEARING OFFICER GEFTER: Okay, thank you very much. And Steve Barstow, I believe?

MR. BRISTOW: No, it's Bristow.

HEARING OFFICER GEFTER: Bristow, okay.

MR. BRISTOW: Steve Bristow.

HEARING OFFICER GEFTER: Sorry, Bristow.

MR. BRISTOW: I'm also a resident of the City of Hayward.

HEARING OFFICER GEFTER: Thank you.

MR. BRISTOW: Retired union president. Primarily I just babysit these days.

HEARING OFFICER GEFTER: Okay, do you want to spell your name for the reporter so we can get your name spelled right.

MR. BRISTOW: Like it's on the card, B-r-i-s-t-o-w.

HEARING OFFICER GEFTER: Thank you.

MR. BRISTOW: And when I'm not babysitting I get to play golf. I also worked for the City of Oakland for awhile. I was downtown Oakland at 7th and Broadway on the ninth floor looking out the window when the Loma Prieta earthquake hit. There was a pair of binoculars by the window. I reached for them. I don't know why. Looked out from there, from 7th and Broadway you can see the Cypress structure.

At that moment is when the Cypress

structure came down. And it was at that position on the freeway that those 50-some-odd people were killed instantly.

Not too far ago that I was at the golf course at Sky West; fairly safe, you think you're pretty safe on the golf course. It's right next to the airport. And on the 18th fairway, this is at the airport's Lear Jets and small aircraft and helicopters take off. It's not the approach; it's where they take off. You'd think it would be pretty safe there at the airport.

Well, stuff happens. And there I am on the 18th fairway, and I hear this little plane coming up over the fence, which is about this high, and it didn't make it. It cleared the fence and then went right across the fairway and then crashed into a tree. The plane crashed.

I notice in a report, the memo that's dated the first of June 2007, report number 06-AFC-6 status report number 4, not only, as stated earlier by Barbara Halliday from the Council, that they opposed it. The City brings up issues of, as stated in paragraph I think it's five on page 2 --

HEARING OFFICER GEFTER: Are you referring to the staff status report?

MR. BRISTOW: Yes, ma'am. On that paragraph in the last sentence: Aircraft executing a missed approach, helicopters and small general aviation aircraft -- I presume they mean the Lear Jets and the single-prop, double-prop planes that come in -- fly that will potentially fly over the facility and could be exposed to an aviation hazard.

Well, little planes fall down. My concern is, and I speak against the energy plant because of this, is that stuff happens. If a plane goes down because, as was stated by the gentleman that just preceded me, because of the turbulence we're going to be in for some problems.

As I stated earlier, I'm a babysitter. That's basically what I do most of the time. My grandchildren go to school in Hayward. And one of them goes to one of those schools that's close to the energy plant, it's the Eastshore plant.

The second thing that I'd like to bring up is on page 3, same memo. It's a report from the City, first paragraph says: Further, the City expects that any mitigation associated with exhaust plumes identified by the FAA -- blah, blah, blah -- will be funded by the Eastshore

applicant.

I could not find anywhere that that question had been addressed. And I presume it will be. We're to express our concerns, and you're to respond to that, is that correct?

HEARING OFFICER GEFTER: Right. And when the conditions of certification are written up, then staff would most likely propose that the applicant take responsibility for the financial situation.

MR. BRISTOW: Because, as a taxpayer, with a jurisdiction the size of the City of Hayward, that money's going to eventually be coming out of our pockets. So anybody that lives in the City or has business in the City would be concerned about that.

Thank you.

HEARING OFFICER GEFTER: Thank you very much. I have a comment here from Mr. Williams. Mr. Williams, Bob Williams?

MR. WILLIAMS: Hello. My name is Bob Williams. And I live about -- well, I live on Depot Road -- I live about two blocks from the proposed plant, you know, the 14-stack one.

And I can confirm that the Oakland

Airport traffic overhead does go right overhead there, because it goes right over my house, like five planes -- like about every five minutes. It's a big lumbering jet goes flying over. They fly pretty low.

And, you know, maybe they'll change the flight plan if we put this plant in; maybe they won't be flying over my house. They'll be flying over someone else's house, which I don't like, either.

But I've lived in Hayward -- you know, I was born in Hayward; I'm 55; lived in that house; my mom raised me in that house. And I see the neighborhood changing. And I was a kid when Russell City was basically a community of African-Americans and Latinos. And I remember that, you know, every maybe couple weeks someplace would burn down. Eventually, you know, the places would burn down, and they got rid of all the people there and they built this industrial complex out there.

And I always felt pretty privileged being a white person, you know, had some money, you know, that wouldn't happen to me. But I'm getting a sense of this corporate, you know,

power; comes in, doesn't matter if you're white, black, Latino, if you haven't got the bucks the corporation's going to want to make money, come in and just move in and siphon as much money out of a situation as possible.

And PG&E, you know, wants this to happen. It's not good enough for them to have one plant; they want to put two plants in our community, you know. Why are they going to be able to do that? In Hayward? Maybe because, you know, Hayward's not Pleasanton. You know, it's not like an affluent white community where people can really, you know, bring in the kind of power to bear to keep this from happening.

And, you know, this Tierra organization from Texas, you know, they use terms like, well, they're our neighbor, they're going to be good neighbors. Well, they are not good neighbors. It's a corporate entity coming in, you know, it's located in Texas. They don't care about my community or our community.

And this is just a money-making deal. So if they want to have another power plant, if we really need one, why should Hayward take the brunt of two power plants. I didn't even know about the

first one coming in.

And it is going to be a polluter. And there's a thing called credits, you know, and they're offsetting the pollution by some kind of credit system. Well, that means we're going to be breathing this garbage in our air.

And so we're the only ones here that can seem to stop this thing. And I would like to see it stopped.

HEARING OFFICER GEFTER: Thank you for your comments.

(Applause.)

HEARING OFFICER GEFTER: No, no clapping, please. It takes up too much time. Please. I have another -- we're on another topic. Mr. --

MR. GILLAN: I have an addendum to a card --

HEARING OFFICER GEFTER: I was just going to call you. Are you Mr. Gillan?

MR. GILLAN: I'm --

HEARING OFFICER GEFTER: Just a second, okay, I'm going to call Mr. Gillan who is going to speak on override.

MR. GILLAN: Thank you for the

opportunity, Commissioners. Kevin Gillan is my name; I'm a resident of Hayward. I have a small business in Hayward, as well, so I'm going to be affected 24/7 by these facilities. It's where I work and it's where I live.

Now, we're talking about the local community having made a decision to say no to this plant. That's already on the table; everybody is aware of it. In fact, it was unanimous.

The issue now is what does the Commission do in terms of overriding that local decision. What are the criteria that are used in order to make that decision. Is there specific benchmarks? What is it that you are going to use as a measure that would say, we're not going to pay attention to what the local people say; instead, what we're going to do is pay attention to what the power brokers say.

What are the criteria for an override?

HEARING OFFICER GEFTER: Are you asking us that?

MR. GILLAN: Yes.

HEARING OFFICER GEFTER: The override authority is contained in the law, Public Resources Code section 25525. And the standards

are written down in that particular statute. It's a state statute.

And there have been a number of cases that the Energy Commission has decided on the override issue, particularly the Metcalf case where we overrode the City of San Jose. And all that information is online on our webpage. You can look up Metcalf, and you can go to the override section. And the standards are explained in that decision.

MR. GILLAN: Are the standards consistent with what you saw in Hayward -- pardon me, in San Jose? Are those applicable to Hayward?

HEARING OFFICER GEFTER: The standards would be, but the evidence is different. And so we haven't heard the evidence yet. That's what the applicant is going to present to us at the evidentiary hearings which have not yet been scheduled. We have to look at the facts and see whether the facts actually comply with the standards.

MR. GILLAN: Okay. Thank you.

HEARING OFFICER GEFTER: Thank you very much. Okay, sir, in the back, if you would like to come forward, please. Please tell us your name.

MR. McCARTHY: My name is John McCarthy and I'm retired Army a couple of years ago. I've been living in the area for the last 25 years.

I have worked at the Hayward Air Terminal; I have serviced rotorcraft there. I've flown in military rotorcraft to the Hayward Air Terminal. I have a little over nine years worth of military aviation experience.

And I didn't see any indication regarding the FAA's reply specific to rotorcraft. So I have several questions.

Where does the FAA content reflect thermal plume effect on rotorcraft approach or departure, since they are more sensitive than fixed wing. It throws them into a panic practically.

What about previous info regarding insurance rate issues that I heard at a previous hearing, where it did, in fact, a local airport in a similar circumstance. And I believe the intervenor might recall hearing that. And there was another gentleman, Mr. Williams, I think, who I think may have brought this up at a previous hearing. I don't see any discussion of that in the FAA content here.

Why wouldn't Hayward also be a significant question here where the Hayward Airport is likely to be a major staging site for the next big one on the Hayward fault line, and possibly other events, too?

Anyway, going back to rotorcraft, if you're in a fixed-wing aircraft going over sudden thermal that you're unaware of, in addition to the fact that you're getting a sudden lift, that's one thing. You have some measure of stability with the fact that you have a fixed glide ratio, your wings stay in the same position. If you're in a rotorcraft it could throw your whole wing direction out of synch with your aircraft.

And bear in mind that the lift isn't the direction of the rotor, and not fixed with respect to the rest of the aircraft. So that's something to be considered. I really wish that they would learn to spell rotorcraft in this material here.

So, I have another issue, but it's on a card. Thank you.

HEARING OFFICER GEFTER: Okay. Well, Mr. McCarthy, one minute. I'm sorry I didn't call you before when we were discussing aviation because it didn't say that on your card. But you

said something here about data access for staff. Is that another issue that you have?

MR. McCARTHY: Yes. I was very concerned at the last hearing, which was a staff hearing, will data access from PG&E that apparently has not been available, will that require a subpoena to make it part of this process?

And why would the California State Assembly, or the Legislature, neglect that kind of an issue statutorily? It seems to me that it ought to be legal requirement as part of the process that if the data is not adequate, then the permitting cannot proceed.

And thirdly, on that issue, will the Governor need to respond to a subpoena for this kind of thing?

HEARING OFFICER GEFTER: Thank you. We're going to take a recess for about five minutes so we can stretch and drink some water. And so let us reconvene about let's say 7:30. Thank you.

(Brief recess.)

HEARING OFFICER GEFTER: We'd like to get started so we're not here all night. In the

interim I received a lot more -- several more blue cards from members of the public who would like to address us.

Before we do that I did want to indicate to those speakers who are concerned about the FAA and aviation impacts, that staff is going to follow up on your questions and contact the FAA about those, the Oakland Airport and the Hayward Airport, and the concerns that you raised, and try to get some answers. And indicate those answers in the staff assessment.

Okay, let's get started again. I got another question on air quality from Mr. Brian Frank. Mr. Frank, are you in the room here? Please come up.

MR. FRANK: Hello; my name's Brian Frank; I'm a resident of Hayward. And I've been coaching soccer in Hayward for seven years every Saturday between August and November at Martin Luther King Middle School, which is about a mile from the plant. There'll be between eight and ten games going on simultaneously from 9:00 in the morning until 3:00 in the afternoon; and that's just Saturday.

Monday through Friday there'll be over

60 teams within, you know, several miles of the plant, practicing. And we have teams that go year-round. And that's a lot of running, you know, so we are really concerned about the air quality.

I personally would not have moved into the neighborhood knowing that there was a power plant. So how is it going to be when it's time for us to sell our property. We have to disclose that there's a power plant, you know. Would you want to move into a neighborhood that had a power plant in it?

So I don't know if your kids are playing sports or anything like that, but would you like them playing next to a power plant?

So, that's just how I feel about it.

HEARING OFFICER GEFTER: Thank you, Mr. Frank. Is also Teresa Frank, are you related, Ms. Frank? You have another comment you'd like to add? Okay, please come forward.

MS. FRANK: Good evening, everybody. Thank you. My name's Teresa Frank. I'm also, as a mother I'm speaking; my child has asthma and it's very severe. Also, I am a teacher in the area. I'm speaking on behalf of a lot of

children, that they are really looking up to us.

As a teacher my responsibility is to look out for my students. And to, you know, to provide them with the best. And I surely am very, you know, I mean dismay that this can happen to our neighborhood. A neighborhood that we have worked so hard to keep it together. We're proud of this neighborhood. We're proud of our community. We are proud of our children.

And by putting this plant it's just going to kill us all. And you are in the power to be our hero. Please be our hero. Thank you.

HEARING OFFICER GEFTER: Thank you very much. Also on the same topic of effects on the children and schools, Mr. Ramirez. Please tell us your full name.

MR. RAMIREZ: Adaberto Ramirez.

HEARING OFFICER GEFTER: Thank you.

MR. RAMIREZ: I live in Hayward for about 20 years. About ten years ago we bought a home right behind Chabot College, within a couple miles from one of the plants.

Two of my children have mild asthma. And if I know anything about pollution and contaminants, I know any more pollution will not

make things any better.

To me the big question is, I mean, how can something like this be approved in the middle of neighborhoods. There's new home developments going up; there's a KB Home going up just down the street from there. And schools all around.

I think there's a real problem. I'm an engineer, I'm an electrical engineer. When we have to make decisions we look at all the information and then we try to make the best decision possible. I just don't understand how the planning process allows something like this, not to consider all these other effects.

I mean I understand that one of the reasons these plants are being planned in this area is because there is proximity to gaslines. I know that the developer is going to save millions of dollars. But is that worth at the expense of health of our children?

That's all I have to say.

HEARING OFFICER GEFTER: Thank you very much for your comments. Mr. Quevedo. Please tell us your name.

MR. QUEVEDO: Pete Quevedo. I'm a resident. Just a couple of questions. Welcome,

by the way; it's a little late.

I'd just like to know is who needs this? Does the City of Hayward need this plant? Obviously the area code 94545 doesn't need it. That's where all these people are.

Also, does the Bay Area need this? Probably. But if it really does need it, then I would suggest they refer the energy people to the water suppliers that it's coming from, Hetch Hetchy, to this area. I understand that most of the water comes from Hetch Hetchy. You know, they got a long big pipe I guess, to get that stuff down here. I guess they could just send one long big wire down here. You know, I think a lot of things would be a lot different, and people would probably appreciate it a lot more, be happy to do more business with the PG&E.

I think that's about it.

HEARING OFFICER GEFTER: Thank you very much for your comments. Okay, and also Mrs. Juanita Gutierrez. Hello. Could you please tell us your name.

MS. GUTIERREZ: Yes. I'm Juanita Gutierrez, Chairperson for the Mt. Eden Task Force; also a resident just a couple of blocks

away from the proposed plant.

HEARING OFFICER GEFTER: Could you tell us what the Mt. Eden Task Force is?

MS. GUTIERREZ: Mt. Eden Task Force is an organization that was formed by the City of Hayward to oversee actually the neighborhood plan of the whole area, which is next door where this proposed plant is. All the Mt. Eden neighborhoods comprised.

And your mission, ladies and gentlemen, is to protect us. As you said, we have not made a decision, we are going to look at the evidence. We are the evidence. We live there. Most of the people that you have here do not know, do not live in Hayward. We do, we live here.

And I have, like I said, -- and have you seen this, where this site is? I don't see why, as I said the last time that we had a meeting, we are doing all this, all this meeting, wasting our time, when the place is wrong. That's it. It's too small; it's too close to us; it's surrounded by schools. Why on earth waste so much time on a place that is so small that they would think to have been not, I don't hear that.

Also, I haven't heard also being

addressed the noise pollution. Right across from it is the Chiropractor College; then we have Heald College. We have many schools around. The noise is going to be just too strong. Chances are that this plant comes through the school will close because they won't be able to teach.

So, please do consider that first. Look at the place; it's the wrong place, too small, too close to us. And it will be too noisy. It will be a problem to all of us.

And do your job, protect us. Thank you.

HEARING OFFICER GEFTER: Thank you very much. Mr. Sullivan, John Sullivan. Could you please tell us your name.

MR. SULLIVAN: My name is John Sullivan. Good evening, Commissioners. I've maintained a business license in Hayward for several years. And I've been living and working in the East Bay long enough to know that reliable electrical source is really vital to our economy and, you know, to our general quality of life. None of us really relishes living in the fear of blackouts and brownouts and so forth.

This Eastshore Energy Center, as I understand it, is just a peak plant; and as such,

it's kind of an insurance policy against these blackouts and brownouts. And I think for that reason let's be proactive in safeguarding our access to good reliable energy source. I would encourage you to move forward with this energy center. I thank you.

HEARING OFFICER GEFTER: Thank you for being here. Also, Mr. Jack Wu. Mr. Wu, are you still here? Yes. Thank you. Tell us your name, please.

MR. WU: I am Jack Wu. I'm just here to remind you all of what God says in Leviticus, chapter 17, verses 17 and 18: Thou shalt not hate thy brother in thy heart. Thou shalt in anywise rebuke their neighbor and not suffer sin upon him. Thou shalt not bear any grudge or take vengeance upon the children of thy people. But thou shalt love thy neighbor as thyself."

Tierra Energy isn't loving the neighbors of Hayward, the people of Hayward. What they're doing is sending a curse upon us. And bringing the wrath of God upon us.

Well, actually, if you guys decide to approve this energy plan, then it means God is going to judge Hayward because it's a disaster

waiting to happen.

We have the Hayward faults; an earthquake could hit us at any time. And if the energy center is built, it could strike that and we'll have a big explosion and a lot of people could die.

So I'm also here to remind you that God standeth in the congregation of the mighty and he judgeth among the gods. You people here are the decisionmakers and you have a duty to the Lord, your God, and to the people of Hayward to do what is right and do what is acceptable unto the Lord, your God.

You have -- or else you're going to go to hell. And there's nothing you can do about it.

HEARING OFFICER GEFTER: Thank you. All right, Mr. Allen Bertillior. Please tell us your name.

MR. BERTILLION: Yes. My name is Allen Bertillion. And I'm a resident of the County. And were in an area that's within two blocks of the proposed Eastshore Energy Center.

And first I'd like to thank you, the Commission, for coming; and also PG&E, because PG&E at all of the work sessions, I attended two

of the work sessions and just a word about the work sessions.

There was a lot of questions that were brought up at the work session and it came down to questions that were not answerable because PG&E would not provide information to them. And this was quite a concern and a lot of the people that were asking questions were asking them of the applicant. The applicant didn't know. And so that was a problem.

The other thing was that Mike Mosier (sic), your public relations man, as I understand he has a budget of roughly $10,000. You have currently 17 applicants that are in review. And so during the work sessions a lot of people came in and they had learned from a neighbor or from somebody else that just happened to find out about the work session, and they wanted to know why they weren't notified. And this was brought up earlier.

And so your public relations, here there's means through the newspaper; there's other media that can be notified where people in the area can be notified. But he doesn't have the budget for it. He's overworked, under, you know,

I just feel that your staff needs more assistance.

I was rather taken by your staff because they were very diligent, but they didn't have access to a lot of the questions that were asked of them. And in addition to not having the clients near the people that I think that were interested in attending had they known.

Anyway, so now we're on to -- I've just got a litany of things, and I don't want to spend too much time on them. But my main concern is the quality of our community. Being where I live, this area is being annexed by the City. There's five islands. There's a phase one and a phase two. And the KB Homes, which is there's 140 homes that are going in. That's probably within three blocks of the plant site.

On Depot Road there's an area that is being annexed into the City from the County. This was an area that was to be developed. So the area around the Eastshore Energy Plant, and I guess adjacent to Calpine, is an area that is intended to be developed. And right now it's County, so there's -- the reason I moved where I am is because I'm on a one-acre site. When I move I'm sure there's going to be somebody coming in and

putting in 20 homes, or now the houses are wall-to-wall, but -- so the area's developing and I think that's really important.

On air quality, one of the things that, here again, going over a little bit here on a major access between highway 880 and 92, these intersect between 3:00 and probably like 7:00 you have at least two miles of backup with cars that are just sitting, waiting to get onto Interstate 880. And they're just sitting there idling, and so there's a tremendous amount of emissions.

There's the air traffic that goes over into Oakland, which is about every five minutes. There's corridors where they -- and it's right over this area where this plant is. There's also the local airport in that we're in a traffic pattern for that to come in.

And because of that, the emissions, as I understand, the Eastshore is pumping out over two tons of pollutants on an annual basis.

We have the, here again I'm sort of reiterating some of this other stuff, the population within a half mile, we have over three colleges, two junior colleges -- I mean two grammar schools; there's an intermediary school.

There's 550 units which are within a block of it. Plus the two colleges; there's a chiropractic and Healds College. And then the Chabot.

There's numerous homes that are being developed in the area, which I've already said. Eighty-five -- I'm on a water system; I'm on with Moreland Water on their Board of Directors. And we're concerned about the nitrates that will possibly filter down and over, probably not immediately, but this could go into the groundwater and have an effect on it.

And we use -- there's quite a number of people. It's a mutual water system and we all drink the water from the wells that are within this area of the site.

There's wetlands. There's a sanctuary that's just adjacent that's operated by Hart and East Bay Regional sort of jointly. There's two areas, and that's a wonderful area that's been developed. And the migratory birds are increasing. We're talking about the stacks and currents. That will have an effect. Plus, also the pollutants in the air.

There's hazardous waste. You've got two 10,000-gallon ammonia tanks. And they happen to

be aqueous ammonia, which they've got it set of 19 percent aqueous ammonia. At 20 percent they come under regulation. So they're just right under the bottom of where they're being under-controlled.

Lack of exploring alternative sites. This was in the work session. This was brought up a number of times and there really wasn't any -- there were sites that were proposed within the group that were meeting in the work session.

One was Alameda. There's gas site there; there's the grid that is there. So there's a lot of other sites that could be proposed. But in all fairness, of the woman that was in charge of the alternative sites, she indicated there were three that were outside of Hayward. But for some unknown reason, most of the ones that were being considered were in Hayward.

I don't know if I've already said this, but it was brought up that because of the -- there was no representatives of the City -- of the PG&E that were in any of these workshops. And it would have been extremely helpful if they had been at these workshops, at least one representative. And, of course, your Committee, workshop Committee said that they would be present here to answer any

questions. But --

HEARING OFFICER GEFTER: Okay, and I wanted to stop you right there because I wanted to remind you that we do have representatives of PG&E here tonight. And if you would like to speak with them, or anybody else wants to speak with them off the record, they're available. They've been sitting here all evening. And so, you know, if you want to take a break and meet with the PG&E folks, you're welcome to do that.

MR. BERTILLION: Thank you. I appreciate them being here. I would have appreciated them being represented at the workshop.

HEARING OFFICER GEFTER: Okay, and I think we've discussed that already.

MR. BERTILLION: Okay.

HEARING OFFICER GEFTER: And so we have a number of other people who would like to address us.

MR. BERTILLION: Okay, I have just a few more things. One is the noise of the 14 engines, which has already been brought up.

As I understand, the Eastshore Energy has been given, that they're going to be given --

that they have to account for 150 tons for credits. And in the paper it was indicating that Continental Can, which was shut down in 1986, which is 20 years ago, will be selling 71 tons of credits to this Eastshore. And I don't understand why somebody that has been out of business for 20 years can sell credits to an existing functioning plant that will be up and running.

The one last thing was the -- I've asked for a basic study of the plumes of emissions and the heat and noise that would be generated in the area, and I'm sure it's probably exponential, but what areas are going to be mainly affected as the wind. Because it's a pretty prevailing wind.

And I think that's about it. I'm sure there's probably some other thing -- oh, I didn't know whether the emissions, it's 1.5 MmBtus for thermal units. Does this unit comply with this? I wasn't sure whether they did or not. So that's a question.

HEARING OFFICER GEFTER: I think a lot of your questions, which I'm sure you've already raised to staff and the applicant, are going to be answered in the staff assessment.

MR. BERTILLION: Okay. And, again, I

thank you very much for coming today.

HEARING OFFICER GEFTER: And we appreciate your comments. And thank you very much.

Han Lukito. Mr. Lukito, please come forward. Thank you. I've just been calling the names of the people on the blue cards. I know everyone has -- a lot of people here have comments. And so we're just going card-by-card. But if we can summarize our comments that would be helpful so we don't have to be here all night.

Mr. Lukito, please tell us your name on the record.

MR. LUKITO: Yeah, my name is Han Lukito. I'm a resident; I live in Moore Drive, just a couple of blocks away. We're behind Chabot College from the proposer power plants.

My main concern here is why on earth would you guys choose an urban populated area with residents with kids. You know, if you live in the area, you know, you would know this is not right. That's why we are all here.

And you know there's going to be lawsuits if something wrong is going to happen. You know that, right? There's residents; there's

people around there. Why on earth would you guys put such a power plant, not only one, but two, you know, in a just a large population center?

You know, why couldn't you choose someplace more remote or less densely populated? That's my question. Can you answer that?

HEARING OFFICER GEFTER: We haven't chosen any power plant yet because we haven't made any decisions. And so I, you know, the question is -- I can't answer it.

MR. LUKITO: Yeah, I mean it is very simple --

HEARING OFFICER GEFTER: We haven't decided --

MR. LUKITO: -- yeah, it's really simple, you know. You have, within a block or two you have kids. I have my two children, very small children, attending school there, playing there, breathing this air in and out. Not only the danger of the earthquake like a lot of these people mentioned.

It just doesn't make sense, ma'am, you know. It really doesn't. And if you just put yourself in our shoes, a million of these guys will complain. And I'm going to continue to

spread the word to our neighborhood that this is totally doesn't make sense. Right, guys?

HEARING OFFICER GEFTER: Okay, thank you very much.

MR. LUKITO: Thank you.

HEARING OFFICER GEFTER: We appreciate your comments, and we're listening to what you say. Ocba Kelete. Good evening; please tell us your name.

MR. KELETE: Good evening. My name is Ocba Kelete. I just bought a house in that area about six months ago. And I said, me and my wife, our dream came true because we work hard for this to happen. And now I heard this news there is a power plant next block, the house that I just bought, my dream might become a nightmare.

I have small children, six years old daughter and four years old son. Please, stop this power plant. Thank you.

HEARING OFFICER GEFTER: Thank you for being here tonight. Thank you.

Mr. Hermes Aleman. Please tell us your name.

MR. ALEMAN: Yes. Hermes Aleman. And good evening, ladies and gentlemen and fellow

citizens.

I work in San Francisco as a private banker. I've been a resident of the City of Hayward for the past 24 years. I went to school here; went to CalState when it was CalState. Then I got my MBA from Notre Dame.

Working in private banking opened my eyes, because, like I say, I'm lucky to work with a lot of executives who make six-figure salaries. Average loan, a million and a half; average salary, $250,000. I've been lucky that I've been invited to some of their homes. Beautiful views. Either the house is charming; it's really quiet. The neighborhood is safe. You can leave the door open, nobody will come in. Whatever it is, they achieved the American Dream.

Twenty-four years ago my parents came here looking for a better future. Seven years ago my wife and I, just like the gentleman before me, came; we bought our house, and, boy, you know, we scratch, you know, every penny, everything. However, through hard work, through education we moved up. Now we're lucky that my wife is able to stay home and watch over our kid. Seven months ago our son was born and that really changed me.

And now, as we find out that this power plant is going to be built, one thing comes to mind. This is profits versus health. Bottomline is not about colors, it's not about race, religion, no. Profits and health.

Now, if you could tell me that you live five miles away from a power plant, if you could tell me that you don't care about you children breathing that air then I'll believe you that, you know, that you are able to do that. Sleep at night, and you are putting us through the same thing.

But I know is not that case, because you want the best for your families. Same thing us. We want the best thing for our kids.

Now, we already pay the price with one power plant. That's fine, you know, we have to have that burden, that's fine. But a second one? And then I forgot who mentioned here that Hayward was the only site considered. Why?

When I been to Marin, you know, the families are very well organized. When I been to some of the City, in some San Francisco neighborhoods, boy, I mean those people will protest for if the dog is barking, if the house is

the wrong color, if a tree is blocking my view. I mean I had a client that spent over $100,000 trying to remodel the deck; and the neighbor below he don't want it, you know, they didn't want to allow him to do that. That's just in legal fees. Let's not even include that.

Now, we're talking here about health. So, I'm here today, and also on behalf of my neighbors, to plead with you to please don't ruin our American Dream. Everyone wants to have that pursuit of happiness. Thank you.

HEARING OFFICER GEFTER: Thank you very much. Karen Kramer. Good evening; please tell us your name.

MS. KRAMER: Hi. I'm Karen Kramer; I grew up in Hayward, and I currently still live in a house about three blocks from the proposed second power plant.

Last week I came to the meeting and it was brought up that the -- I always gets the names mixed up -- Eastshore, which is the one close, three blocks from my house, of that type of reciprocating engine, there are only two other of those type that they could do any kind of health study about.

So, to me, a study on two plants does not constitute a study when it's regarding my health. So, I don't see how they can determine that it's safe when there are only two other of those types of engines that they can even begin to study, how they can determine that it is safe what they emit.

Because then I was shocked, not to mention that I am a single mom, on disability, with very much noise sensitivity and other central nervous system problems, where I'm already bothered by the airplanes going over. So I'm concerned about the noise, of course, that the power plant might make.

And when I saw the paper today, and saw that they have in here that the Eastshore Energy Center would put out, per hour, almost 30 pounds of carbon monoxide. Well, as I know it, carbon monoxide is a poison. And you have to put up like a fire thing in your house to make sure that your heater isn't leaking any carbon monoxide, because it could kill you in your sleep.

So how can we be living three blocks from something that puts out 30 pounds per hour? That's only the one plant. That doesn't -- the

other one puts out more. Of course, it's a little further away.

And as they've mentioned, we have the highways nearby putting out all the pollution. We have the planes going over putting out the pollution; the Hayward Airport.

And being that my home is my only asset, and I'm ill, and I cannot move, I don't have the ability, I do not appreciate thinking about my only asset being lowered and me having to be stuck there suffering because I'm too ill to move and cannot lose, also, the amount of money.

But mostly I would like to know that there are more plants that they can study than two, to determine the health consequences of that plant.

And I do know that Life Chiropractic College, being right across the street, are very health minded people. And they would not appreciate something of that sort, either.

And as they say, it's probably a big revenue source there. So, please do more studies. Do not put it there until you can provide enough studies to show that it really is not health -- there are not health consequences. Thank you.

HEARING OFFICER GEFTER: Thank you very much. And as we said earlier, staff, who is sitting here, and the applicant have been doing quite a bit of the research and how a lot of the studies that they're going to look at. And staff will be issuing a staff assessment on all that research in a few weeks. I think maybe in July when the staff assessment's going to be published in the Eastshore. I think that's what we talked about earlier today.

I notice that Rachel Henderson wanted to speak to us again, earlier. Do you want to come up and finish what you were going to tell us. Because I don't have any more blue cards, unless anyone else has comments.

But I do want to encourage you to speak with the applicant, with the staff, and with PG&E when we go off the record, and you can ask them your questions directly.

Ms. Henderson.

DR. HENDERSON: Yeah, this is just really brief. I think it was Mr. McDonald brought up the issue of ammonia and the effects on the environment and on the fish.

And I just want to point out, you guys,

you're going to be looking at this, I wanted to point out Tierra didn't even mention the ammonia in their biological analysis. I bugged the CEC about it. I don't know if they caught it on their own or not.

But they've assured me they're going to, you know, address that in the PSA. But I just, I wanted to make that clear to you guys that that's one of the concerns. As a community, we see these big holes in the data. You know, we're not experts on this stuff. But if we catch, we happen to catch these things, it makes us very very nervous about this plant, the data they're producing.

So, double, triple and check everything. And as the woman before me eloquently said, you know, don't put it here unless you can really prove that it's safe. That's all, thanks.

HEARING OFFICER GEFTER: Thank you very much. Is there anyone else who would like to speak? Mr. Galati from PG&E would like to come up and talk to us.

MR. GALATI: This is for those of you that were not here during the earlier portion, Commissioner Geesman made it very clear that he

would like PG&E to participate in this public process. We will be here for every public workshop from here on out. And we'll stay and answer any question we can answer for you for as long as you like, outside.

HEARING OFFICER GEFTER: Thank you very much. And we, again, thank you for being here.

MR. PACHECO: Excuse me, I'm sorry, --

HEARING OFFICER GEFTER: Do you have a blue card? Would you like to come forward?

MR. PACHECO: Yeah, I was just filling it out.

HEARING OFFICER GEFTER: Okay, come on forward.

MR. PACHECO: I have a simple question.

HEARING OFFICER GEFTER: You have to come to the microphone or we can't hear you. And tell me your name and give me the blue card.

MR. PACHECO: My name is Ernest Pacheco.

HEARING OFFICER GEFTER: Spell it at the microphone, please, thank you.

MR. PACHECO: I have a question and I'm sorry --

HEARING OFFICER GEFTER: Please -- okay, spell your name, please.

MR. PACHECO: Ernest Pacheco, P-a-c-h-e-c-o.

HEARING OFFICER GEFTER: P-a-c-h-e-c-o, thank you, Mr. Pacheco.

MR. PACHECO: I'd like to state that neither the City of Hayward, the people in it have a responsibility any more than any other community in California to provide peak power for anyone.

I have a question, though. If the City of Hayward or the people of Hayward were able to come up with a plan that could provide some percentage of peak energy through sustainable means, would that be something that you'd take into consideration when you're deciding whether or not to override and force this upon us, should you do so? Or whether or not you're going to approve it.

If we come up and figure out how to produce 2, 3 megawatts of sustainable power, either through the City or through nonprofit community group, would that be something that you'd take into consideration?

HEARING OFFICER GEFTER: Well, that would be another project, most likely. If you were going to do a renewable project, or a project

based on sustainable energy, that would be a different project than this one.

MR. PACHECO: What I'm asking -- absolutely -- what I'm asking is if that was presented to you before you made your final decision, and you saw, well, we're proposing these two power plants the community doesn't want. We don't want it, period. The City doesn't want it is what it's sounding like.

If we were able to say, hey, you know, talking about we're doing our part, not that we have any more responsibility than anyone else, but we do have responsibility, everyone does, and we could produce 2, 3 megawatts. Would that be something that you would take into consideration when you're deciding whether to force this down our throat, whether or not, hey, you know what, they're going to do their part; produce 2 or 3 megawatts through sustainable energy, which, of course, we would have to develop and present to you in some for. And would it lessen the weight that you would consider to override like you did in San Jose with the Metcalf.

HEARING OFFICER GEFTER: I think that's a very interesting question. However, as I said,

it's a different project. What we have here is a peaking plant that's going to be selling electricity to PG&E. And that's what they're proposing.

And if you're proposing a renewable plant that's based on renewable energy, that's a different kind of project, not necessarily a peaking project, not necessarily selling your electricity to PG&E.

So, it's a different project. And it's a good idea, but it's different.

MR. PACHECO: So it's not something you would take into consideration?

HEARING OFFICER GEFTER: It's not part of this particular process.

MR. PACHECO: Okay. Like I say, I'm sorry, I only know what I read in the article today in the newspaper. And sitting here, I'm way behind the curve on this.

You're trying to decide whether or not, I mean, obviously they haven't even released the study that you're going to study and look at, and there's going to be more meetings.

But when you're looking at the entire state of energy in California -- we're also

connected to the other states -- you're not at all concerned about the needs of the west coast of California. This is just purely a financial contract that they're trying to push through and get a profit going. You don't care about energy in California. You just care about whether or not this business can do its project and make this money.

Or do you care about creating energy for the grid here in California?

HEARING OFFICER GEFTER: Commissioner Geesman.

PRESIDING/ASSOCIATE MEMBER GEESMAN: We have a variety of different responsibilities. One of them is to do every two years an assessment of what the state's energy policies should be. And then every off-year we update that assessment.

And it's in that proceeding where we make recommendations to the Governor, to the Legislature, the Public Utilities Commission and to the utilities as to the appropriate policies they should pursue, the appropriate energy technologies, and other supply sources that they should pursue.

In some instances that leads to changes

of law; new responsibilities for us to enforce upon the utilities; new responsibilities for the PUC to enforce.

Completely separate set of responsibilities we have is in a case like this one, or these two actually; we have two cases in front of us tonight, the Russell City project and the Eastshore project.

In those instances our responsibility is to determine if the applicant has satisfied the various environmental and public health and safety laws. Included in that is a determination of whether the applicant has satisfied local ordinances, regulations and standards.

With regard to the local or state level ordinance, regulations or standards, we have the ability to override if we feel that the project is of public convenience and necessity. And that's a legally defined term. If we get to that point there's going to be a great deal of debate as to what do those words mean; how do you satisfy those standards.

But that siting decision responsibility is separate and apart from our energy policy responsibilities. That's the way the law is

written.

We have a variety of other responsibilities, as well, in terms of setting new efficiency standards for new construction and appliances, conducting R&D on alternative energy sources.

But what we're here tonight to do is to discharge our responsibility in determining if these applicants have satisfied the various environmental and public health and safety requirements.

MR. PACHECO: Okay.

PRESIDING/ASSOCIATE MEMBER GEESMAN: What we're going to do -- tonight is just a status conference. We're trying to determine where are we in the schedule. And I think Commissioner Byron told the tv station we're in the second inning.

And in my judgment we might be in the bottom of the first inning. We're going to have some public hearings to take evidence, as we get further into the process. Those will probably be in the summertime or early fall.

And what Commissioner Byron and I are responsible for doing is in areas where the staff

and the applicant or the intervenor disagree, our responsibility is to conduct a public hearing, go through the evidence, hear everybody's testimony. And then at the end of the process, seventh or eighth inning, we make a decision as to which side do we come down in terms of the evidence. And what is our recommendation to the full Commission as to whether a license should be granted or not.

MR. PACHECO: Okay. I need to do a lot more research to find out how this stuff works. I was listening earlier when you were talking about convenience and necessity and talking about the override with San Jose Metcalf.

That's where it sounds like there's a lot more of your interpretation. And I need to look up what the hell you meant last time in San Jose.

PRESIDING/ASSOCIATE MEMBER GEESMAN: That's correct. And we also did it in Los Esteros in San Jose. We've overridden twice in San Jose.

MR. PACHECO: If I might ask, I don't know if you can answer this, but had a plan, not only about whether or not the corporations that wanted to build the power plants and the City had the right to, whether or not they had due

diligence, whatever, filled out all the forms.

If you had been presented with alternatives that went towards producing energy without the plants, would that be something that at that stage, which that's maybe seven innings from now, but there'd be a lot of work to do to present you an alternative plan, or a supplementary plan. Would that have been something that you would have taken into account with Metcalf?

PRESIDING/ASSOCIATE MEMBER GEESMAN: It potentially could be. I wasn't on the Commission when we decided Metcalf. But I can tell you, in the City of San Francisco, we have spent a lot of time assessing proposed alternatives.

I should say that we sited a power plant in San Francisco last year. But the presentation of alternatives is something that we would consider relevant.

MR. PACHECO: Okay. All right. Thank you.

HEARING OFFICER GEFTER: Do we have any other people who would like to come up? It's 8:15. So, yeah, please come forward. Let's have a couple more comments, and then I think we'll

wind up and give people time to talk with PG&E or staff or the applicant.

Please tell us your name and spell it.

MR. JORDAN: Does anybody want the card?

HEARING OFFICER GEFTER: Yeah. Thank you.

MR. JORDAN: My name is Albert Jordan, J-o-r-d-a-n. My family owns property at 2661 Depot Road. We're about 1100 feet from the proposed site.

I had a hard time getting up here because I get so emotional over some of these issues. But there's something tonight that I just have to get off my chest.

A couple of months ago at a Planning Commissioners meeting, Commissioner Saks commented that people who live in this not even industrial area have chosen to do so. And the implication was that they, in doing so they chose to put their own health at risk. And that raised a lot of eyebrows in the community; and it caused me to draw a line in the sand and say, I'm going to fight this.

The Mount Eden area is rich in the history of Hayward. All one needs to do is go to

the Mount Eden Cemetery and you'll see names like Clawiter, Moore, Peterman, Soto, Brenquits, Liranzo, Mateos. These are the pioneers of the Mount Eden and the Hayward area, and we are their descendants that live in the Mount Eden area.

My father-in-law, Carl Liranzo, farmed the area that the current site is proposed on. Ten years before the building that is now there was built, he was a farmer and he grew tomatoes on this site. My inlaws migrated from Spain in 1911. Interestingly enough, they moved into and settled into Russell City. In the 1950s the City of Hayward condemned Russell City. And those families moved to Depot Road. They were farmers, and they farmed again all the way from West Whitten down to the 92.

And there was no Industrial Boulevard at this time. It is not that we chose to live in this area, but rather that the industrial development has enveloped us slowly over time.

And my message tonight is this, that they slowly took away our rural nature of our life. And now they are proposing to take away the quality of our life by building this power plant.

By building the power plant we will

worry every day about the air quality, the air we breathe. We will worry about potential for accidents that will occur from transporting hazardous waste into and from the site. We'll worry about an earthquake and the potential that that might cause for environmental hazard. And we'll worry about the contamination of the wells and the water that we drink.

Studies have shown that people who live in the shadow of power plants suffer high rates of anxiety and depression. And I think you can see the anxiety, you've heard the anxiety in this room tonight.

And what I would like to say is that anxiety and depression is something we will live with every day. And this is something that Tierra Energy cannot mitigate. Thank you.

HEARING OFFICER GEFTER: Thank you.

(Applause.)

HEARING OFFICER GEFTER: Okay, one more question or comment, please. Please, anybody else? We'll have one final comment. In the back there, yes. If yuo'd like to come forward and then we'll have to wind up; and we'll have time for you to meet with PG&E and the applicant and

the staff.

MS. MARQUEZ: I don't have a blue card.

HEARING OFFICER GEFTER: Okay, just tell us your name and spell it, please.

MS. MARQUEZ: My name is Myrna Marquez, M-y-r-n-a M-a-r-q-u-e-z.

HEARING OFFICER GEFTER: Thank you.

MS. MARQUEZ: I live on Yoshida Drive; and I work for a nonprofit organization that do research on cancer. And I just want to let you know that one of the major cause of cancer is the environment.

And I'm pleading to all of you to please disapprove the construction of this power plants. Thank you.

HEARING OFFICER GEFTER: Thank you very much. I have one last blue card. There was no name on it. It was representing Richards Promotional Products. Is that you?

UNIDENTIFIED SPEAKER: That's me.

HEARING OFFICER GEFTER: Do you want to come forward and --

UNIDENTIFIED SPEAKER: It was already --

HEARING OFFICER GEFTER: Okay, your question was addressed?

UNIDENTIFIED SPEAKER: A couple times.

HEARING OFFICER GEFTER: All right, thank you.

MR. RIENDEAU: May I -- may I make a comment?

HEARING OFFICER GEFTER: One more comment. Okay, sure. And after your comment we're going to close. Please tell us your name and spell it.

MR. RIENDEAU: Robert Riendeau, R-i-e-n-d-e-a-u. Just listening to everything that you're saying, and I realize that you look over all the evidence and the technical paperwork and all the surveys and everything.

But I'd like to ask you to take into account common sense. This is being built right in a residential neighborhood, both these plants, which if you lived there you wouldn't want it. I don't think anybody in this room would like either one of these plants built in their neighborhood.

So I think common sense should also be a big factor in this, and take that into consideration. Thank you.

HEARING OFFICER GEFTER: Thank you for your comments. And we actually want to thank

everybody for being here tonight. It was fantastic to see so many people come out. You have a wonderful community; you've been so welcoming to us and so cooperative. And we really appreciate it very much.

Commissioners, have any more comments before we close?

PRESIDING/ASSOCIATE MEMBER GEESMAN: Just to say in both proceedings we will be back here. We will conduct all of our evidentiary proceedings here in Hayward. We'll try to schedule those in such a way that people are able to come and present your thoughts and opinions to us.

And I think that you're right to expect us to take your viewpoints fully into consideration; and to conduct the evidentiary process that lies at the core of our decision in full public view and subject to your scrutiny.

And I can't tell you in advance that you're going to agree or disagree with the conclusions that we ultimately reach. But you're certainly going to have the right and the opportunity to contribute to them, and to challenge any of the evidence that's presented to

us.

PRESIDING/ASSOCIATE MEMBER BYRON: I'd also like to thank all of you for taking the time to be here this evening. I think your presence demonstrates the importance of this issue to you. And I can tell you that it's also very important to me. We take this very seriously.

I'd also like to assure you that you comments were heard this evening, and will weigh in my decision. But, as Commissioner Geesman said, although we may disagree on which inning we're in in the game, I can tell you the score is still zero/zero.

And perhaps in the words of our Governor, I'll say, we'll be back. Thank you very much.

(Laughter.)

HEARING OFFICER GEFTER: Thank you very much. All right. At this point we're going to --

MR. HAAVIK: Ms. Gefter, pardon me.

HEARING OFFICER GEFTER: Okay, Mr. Haavik.

MR. HAAVIK: I'd like to thank both Commissioners for attending today. As the intervenor, I would like to ask just a point of

clarification.

Over some of the proceedings, especially with Eastshore, we've certainly heard this evening that there's been an enormous amount of not misinformation, but disinformation, where a lot of the people have not been able to get the information.

I was very happy to hear from Mike Monasmith that he's going to be working with me in regards to some more bilingual literature, as well as information being given out to much more of the Hayward general public and residents.

But for this meeting, as well as some of the other meetings that have taken place, some of the information has not been posted to the web. And I did have conversations with Mr. Pfanner, as well as with Gabriel here, Mr. Taylor; and am very satisfied with those procedures.

But I know you guys are still catching up. For this meeting today, how are you going to produce a report or a summary of this report for not only the attendees of this meeting, but also for the general public here in the City of Hayward?

And thank you very much.

HEARING OFFICER GEFTER: Okay. There will be a transcript of this proceeding. Our reporting has been keeping track of every single word that was said today that was on the record. And that transcript will be on the webpage. And you'll be able to access it.

At this point there is not necessarily going to be a report, because we are just listening to what the residents have to say. The next report that we'll see will most likely be the staff assessment.

Before we close, Mr. Kramer, who is the Hearing Officer on Russell City, would like to have a few comments.

HEARING OFFICER KRAMER: Earlier today staff and the applicant proposed a schedule that would have the staff releasing their final assessment on June 29th. And because this is an amendment proceeding, rather than a full-blown new permit, there's normally just one final assessment. They don't have a preliminary and a final.

So they also proposed that public comment end on Friday, July 14th. And then they were asking to hold a prehearing conference. And

if everything is ready to go, an evidentiary hearing on a date the following week.

And we will put out a formal notice with the new schedule in the next few days. But I can tell everyone, just for planning purposes, since we have a lot of people here, that we're looking at either the 18th or the 19th, that's a Wednesday or a Thursday, in July as the likely dates for that prehearing conference and evidentiary hearing.

This is just for Russell City. It's separate from Eastshore. So, again, look to the website or if you're on the mailing list you should get the schedule in the next few days.

But keep in mind that is the likely schedule. Now, if we come to a prehearing conference and we find out there's a lot of issues and a lot of testimony or something didn't happen on time leading up to that, it may very well change. But that will likely be the plan unless there is some change.

HEARING OFFICER GEFTER: Along those lines on the Eastshore project, the revised schedule will also be issued in the next few days based on staff and applicant's agreement in terms

of timing on the Eastshore project.

But, as we mentioned earlier it seems that the staff assessment will likely be issued in July in that case. And that's way before we have any hearings, because then you'll have a chance to look at that. It's a preliminary staff assessment, or as we call it, a PSA. It will be workshops on that document; we will hear comments on that document before we get anywhere close to an evidentiary hearing on the Eastshore project.

Hearing no more questions and no more comments, this status conference on Russell City and Eastshore is adjourned. Everyone is welcome to meet with the applicants, the staff and PG&E representatives. Thank you.

(Whereupon, at 8:25 p.m., the status conference was adjourned.)

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CERTIFICATE OF REPORTER

I, RICHARD A. FRIANT, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status Conference; 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 conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of June, 2007.