

COMMISSIONERS PRESENT

Robert B. Weisenmiller, Chairperson

James D. Boyd

Karen Douglas

Carla Peterman

STAFF AND CONTRACTORS PRESENT

Melissa Jones, Executive Director

Michael Levy, General Counsel

Jennifer Jennings, Public Adviser

Mark Hutchison, CEC, Deputy Director of Administration

Veronica Rodriguez, Manager, Human Resources

Aniss Bahreinian, CEC

Sylvia Bender, CEC

David Michel, CEC

Paul Roggensack, CEC

Steve Ghadiri, CEC

Prab Sethi, CEC

Rizaldo Aldas, CEC

Michael Simon, CEO, Transportation Power, Inc.

Melanie Moultrie, Staff Attorney

Jim Blatchford, California ISO

Tom Hoff, President, Clean Power Research

Joe O'Hagan, CEC

Kris Vyverberg, Senior Engineering Geologist, California
Department of Fish and Game

STAFF AND CONTRACTORS PRESENT

Bradley Meister, CEC

Avtar Bining, CEC

Tom Stepien, Primus Power Corporation

Pablo Guitierrez, CEC

John McKinsey, Counsel, Carlsbad Energy Center, LLC

Steve Hoffmann, President, Western Region, NRG

Richard Ratliff, Staff Counsel

Ron Ball, City Attorney, City of Carlsbad and General Counsel, Redevelopment Agency

Allan Thompson, Special Counsel, City of Carlsbad

Lisa Hildebrand, City Manager, City of Carlsbad and Executive Director, Redevelopment Agency

Debbie Fountain, Director, Housing and Community Development, City of Carlsbad, Redevelopment Agency

Joe Garuba, Property Manager, Team Leader, City of Carlsbad

Bob Therkelsen, Special Consultant, City of Carlsbad

William Rostov, Center for Biological Diversity

Gina Barkalow, CEC

Paul Kramer, Hearing Officer

Kerry Sickmann, Terramar Associates

Julie Baker, Power of Vision

April Summer, Counsel for Rob Simpson

Joseph Garuba, City of Carlsbad

Alvin Greenberg, CEC Consultant

Rick Tyler, CEC

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

2 9:07 A.M.

3 CHAIRPERSON WEISENMILLER: Good morning. Let's
4 start the Business Meeting with the Pledge of Allegiance.

5 (Whereupon the Pledge of Allegiance was
6 recited in unison.)

7 CHAIRPERSON WEISENMILLER: Good morning. Welcome.
8 We started earlier today at 9:00 and we'll continue that
9 through at least the rest of the month.

10 In terms of today's agenda, first on the Consent
11 Calendar Item 1.d will be moved to the 20th.

12 And on Item Number 4 will be continued to the 20th.

13 And, finally, Item Number 10 will be held to the
14 20th.

15 And so with that we're ready to start with the
16 Consent Calendar, with those three corrections.

17 COMMISSIONER BOYD: I'll move the Consent Calendar
18 with the comment; again, we've got a couple cities here,
19 within the Consent Calendar, who have gone the extra mile
20 with regard to greater energy efficiency standards than the
21 building standards require.

22 We use to call those up as special items just to
23 give credits to the city. We're seeing so much of it, now;
24 we move the item to consent. But I want to just mention
25 that there are three cities, Petaluma, Fremont, and Mt.

1 View, who deserve a pat on the back. Excuse me, oh, I --
2 yes, you just held Mt. View. Two cities, Petaluma and
3 Fremont.

4 So, my motion will be to approve the Consent
5 Calendar, less Item d, which has been moved to the June 20th
6 meeting.

7 COMMISSIONER DOUGLAS: I'll join Commissioner Boyd
8 in congratulating these two cities and looking forward to
9 giving Mt. View their congratulations and approval at a
10 future date, to second the motion.

11 CHAIRPERSON WEISENMILLER: Okay, all in favor?

12 (Ayes)

13 CHAIRPERSON WEISENMILLER: It passed unanimously.

14 Certainly, is anyone here from the City of
15 Petaluma or Fremont?

16 Well, again, we certainly thank you for your
17 efforts in this area.

18 Item 2, CPS Human Resources Services, Veronica?

19 MR. HUTCHISON: Good morning, Commissioners, Mark
20 Hutchison, Deputy Director of Administration.

21 Joining me today is Veronica Rodrigues, Manager of
22 Human Resources.

23 The contract before you is with the CPS Human
24 Resource Services for \$100,000 to provide technical
25 expertise, with job classification and pay issues, and other

1 job-related analyses.

2 The term of the agreement would go through March
3 31st, 2013.

4 There are a number of areas where the consultant
5 will assist staff with technical classification and pay
6 analyses, such as the Energy Facility Siting Planner Series,
7 Electricity Generation Systems Program Specialist Series,
8 and Office Manager Series.

9 Additionally, the consultant will assist staff
10 with analysis related to the Statewide Human Resources
11 Modernization Study for Scientist classifications.

12 Your approval of this agreement is requested and
13 we are available to answer questions.

14 CHAIRPERSON WEISENMILLER: Commissioners, any
15 questions or comments?

16 COMMISSIONER BOYD: No questions. I move
17 approval.

18 CHAIRPERSON WEISENMILLER: All right.

19 COMMISSIONER DOUGLAS: I'll second.

20 CHAIRPERSON WEISENMILLER: Okay, all in favor?

21 (Ayes)

22 CHAIRPERSON WEISENMILLER: This passes
23 unanimously.

24 Item 3, ICF Macro, Inc. Ms. Aniss

25 MS. BAHREINIAN: Good morning, Chairman,

1 Commissioners. I am Aniss Bahreinian, in the Fuels and
2 Transportation Division, and we are here to seek approval of
3 our contract with ICF Macro, Inc.

4 Periodically, the CEC conducts a vehicle survey of
5 both California household and commercial sector owners of
6 light-duty vehicles to assess demand for light-duty
7 vehicles.

8 The vehicle survey integrates revealed and stated
9 preferences of survey participants who plan to buy a vehicle
10 in the near term future.

11 Caltrans conducts a household travel study every
12 ten years and this time around they plan to include 60,000
13 household, with over \$10 million committed to this project.

14 We have been collaborating with Caltrans and their
15 travel survey through a steering committee composed of ARB,
16 and local and regional government transportation agencies,
17 California Department of Health, as well as other agencies
18 in this process.

19 This collaboration has already generated improved
20 quantity and quality of travel and transportation data,
21 which is going to be accessible to all agencies.

22 As it relates to our current vehicle survey, for
23 which we're here today, our two plus years of collaboration
24 has also created the opportunity for coordinating our
25 household vehicle survey efforts with Caltrans' household

1 travel survey efforts in order to integrate survey data from
2 these two surveys for the households that participate in
3 both surveys.

4 Coincidence of survey timing, the timing of the
5 two surveys has coincided, as well as agency management and
6 staff commitment on both agencies to this collaborative
7 effort has made this survey coordination and integration
8 possible.

9 The integrated household travel -- household
10 survey data can be used by researchers to identify potential
11 links between travel and vehicle choices of California
12 household, as well as between these choices, and land use
13 and build environment.

14 This vehicle survey is a CEC contract, however,
15 with separate contractor and funding. But the RFP had built
16 in survey coordination requirements. We used the
17 competitive bid process to solicit bidders, which resulted
18 in four bidders competing for the project.

19 Of the two bidders with passing scores, ICF Macro,
20 Inc. was the lowest cost bidder at \$673,930, which was well
21 below the maximum funding of \$800,000.

22 So, we are seeking your approval for this
23 contract.

24 CHAIRPERSON WEISENMILLER: Commissioners, any
25 questions or comments?

1 COMMISSIONER BOYD: If no questions, I'll move
2 approval of the item and note that, one, I want to commend
3 Aniss for the work that she's done in this whole general
4 area. You may remember at the last meeting we had another
5 contract, another project in cooperation with Caltrans.
6 She's done a wonderful job, and the staff has, with regard
7 to coordination and piggy-backing on other activities.

8 This was reviewed and approved by the
9 Transportation and Fuels Committee, consisting of
10 Commissioners Peterman and myself.

11 So, again, I'll move approval of the item.

12 COMMISSIONER PETERMAN: I'll second.

13 CHAIRPERSON WEISENMILLER: All in favor?

14 (Ayes)

15 CHAIRPERSON WEISENMILLER: This passes
16 unanimously. Thank you.

17 MS. BAHREINIAN: Thank you.

18 CHAIRPERSON WEISENMILLER: Okay. And again, Item
19 4, Aspen Environmental Group, is being continued.

20 So, we're now at Item 5, Jones and Stokes
21 Associates. David?

22 MR. MICHEL: Good morning, Commissioners. I'm
23 Dave Michel, from the Local Energy Land Use Assistance Unit,
24 from the Fuels and Transportation Division.

25 I'm here today to request a possible approval of a

1 competitively selected contract with Jones and Stokes for
2 \$2,968,130, to assist local governments in developing local
3 government energy assurance plans.

4 On August 14th, 2009 the U.S. Department of Energy
5 awarded California \$3,572,526 for energy assurance planning
6 efforts.

7 Earlier this year Anco Technologies, Inc. was
8 awarded a contract for \$249,525 to develop a statewide
9 energy assurance plan and other related work.

10 Today this -- today I'm taking you this project
11 with Jones and Stokes will first develop a California
12 methodology and then an interactive web application that
13 will serve as a guide to local government in developing
14 their local government energy assurance plans for major
15 energy emergencies and supply disruptions.

16 The methodology will be based on federal, state,
17 and local guidelines. This work will identify and
18 prioritize energy vulnerabilities and risks to local and
19 regional jurisdictions through the development of these
20 energy assurance plans that serve to protect the public's
21 health, safety, property, and minimize economic disruption.

22 Each key task will solicit local government and
23 stakeholder input. Each plan will consider new energy
24 technologies and strategies.

25 This project will assist local agencies in

1 utilizing this web-based tool through individual assistance
2 and centralized training.

3 This project will provide each selected government
4 with an energy assurance plan tailored to that jurisdiction.

5 Local governments will have the option to select
6 recommendations that work best in their community during the
7 development of each plan.

8 Thank you. Any questions?

9 CHAIRPERSON WEISENMILLER: Commissioners, any
10 questions or comments?

11 COMMISSIONER DOUGLAS: This is funded with
12 Recovery Act funding that is specifically designated for
13 this purpose by the federal government. And it's a -- I
14 think it's a sound approach. Local governments have a
15 critical role in responding to energy shortages and
16 emergencies, so anything we can do to facilitate their
17 response is a good thing.

18 CHAIRPERSON WEISENMILLER: Okay.

19 COMMISSIONER DOUGLAS: I'll move approval of this
20 item.

21 COMMISSIONER BOYD: Second.

22 CHAIRPERSON WEISENMILLER: Okay, all in favor?

23 (Ayes)

24 CHAIRPERSON WEISENMILLER: This passes
25 unanimously.

1 Item 6.

2 MR. MICHEL: Thank you.

3 CHAIRPERSON WEISENMILLER: Thank you.

4 Sacramento Municipal Utility District, Michael.

5 MR. ALDAS: Good morning, Commissioners. My name
6 is Rizaldo Aldas and I am stepping in here, at the last
7 minute, for Mr. Sokol, who is unable to be here due to
8 unexpected circumstances.

9 And the project that we have before us with SMUD
10 will conduct a demonstration that adds distributed energy
11 storage to a residential community that has a PV penetration
12 of about 20 percent of peak, of the load.

13 The primary objective of the project is to examine
14 how the integration of energy storage can be used to enhance
15 the value of distributed PV resources.

16 This community is part of the SMUD's Solar Homes
17 Program and it's made up of new, energy-efficient homes,
18 with two kilo up -- rooftop PV systems installed during the
19 selection.

20 The energy storage will be deployed in two
21 configurations. First, residential energy storage systems
22 will be connected behind the meter at customer homes and
23 sized to integrate with the homes PV output and load.

24 And, second, community energy storage systems will
25 be connected to transformers on distribution feeders and

1 will be sized to work with the group of homes fed by each
2 transformer.

3 This pilot will allow monitoring of PV systems,
4 along with the energy storage, to give SMUD a better picture
5 of the potential value of distributed energy resources from
6 a utility stand point.

7 And once completed, their pilot, they are expected
8 to take another important step by contributing significantly
9 to developing ways to address technical issues that
10 currently limit the integration of PV and high penetration.

11 With that, I seek your approval for this project.
12 Thank you.

13 CHAIRPERSON WEISENMILLER: Commissioners, any
14 questions or comments?

15 COMMISSIONER PETERMAN: I think this project is
16 particular interesting because it's showing how we can
17 deploy a number of different types of technologies to meet
18 our needs, and so I like that we're looking at not only PV,
19 but that in complement with storage, and AMI.

20 And so those are my comments and I'm happy to
21 offer the motion unless anyone else has any --

22 COMMISSIONER BOYD: I'll second your motion and
23 just comment, for the Research Committee, that we reviewed
24 and certainly recommended that this item be brought forth to
25 the entire Commission. I'll join Commissioner Peterman in

1 her comments about the positive aspects of this project and
2 note that this is a cost share involving American Recovery
3 and Reinvestment Act funds, ARRA funds as well.

4 It is a municipal utility, however, sharing in
5 some PIER funds, however, this is a very cutting edge
6 proposal, a very cutting edge type of project, the kind that
7 one would expect from a State R&D program as we try to
8 further advance the concept of smart grid and moving into
9 two-way communications with regard to electrons, let's just
10 say.

11 And, furthermore, this is the kind of thing we
12 need to see if we're going to realize our distributed
13 generation goals. And the Governor has certainly laid out a
14 challenge to all of us with respect to distributed
15 generation. So, this is the type of activity that is
16 definitely need to demonstrate, to research and demonstrate
17 the feasibility of these technologies.

18 And I comment the staff and SMUD, and I thank the
19 fact that this is a PIER program activity.

20 So, with that I affirm my second for this project.

21 CHAIRPERSON WEISENMILLER: Okay, all in favor?

22 (Ayes)

23 CHAIRPERSON WEISENMILLER: It's passed

24 unanimously. Thank you, Michael [sic]

25 Number 7, Water Research Foundation, Paul.

1 MR. ROGGENSACK: Good morning, Commissioners. My
2 name is Paul Roggensack, with the Public Energy Research
3 Program.

4 I'm hearing asking approval of a \$425,000 contract
5 for 48 months with the Water Research Foundation. The
6 Foundation is a nonprofit, national organization with a
7 program similar to the PIER program, which is to fund
8 research and development using their own solicitation and
9 contracting process.

10 It has over 900 members, approximately 150 from
11 California, and the research and development funding comes
12 through subscriber dues and federal and state grants.

13 The purpose of this contract is to utilize the
14 Foundation's existing solicitation contracting program to
15 fund two projects.

16 The first is to advance process optimizing in the
17 water industry to include energy efficiency and control of
18 greenhouse gas emissions.

19 The second is to develop a roadmap that will
20 identify and prioritize the research and development needs
21 for the energy efficiency in the water and wastewater
22 industries.

23 Now, this is a sole source contract that was
24 approved by the Legislative Analyst's Office. And the
25 reasons why we're doing a sole source with this is -- rather

1 than doing our own competitive solicitation is that the PIER
2 funds are matched, which means that we have double the
3 amount of money for the projects and the Foundation
4 specializes in the research and development needs for the
5 water industry, and there's no overhead costs for the PIER
6 program in this contract. All the administrative costs are
7 paid by the Foundation.

8 So, for these reasons, we are requesting consent
9 for this project and I'd be happy to answer any questions.

10 CHAIRPERSON WEISENMILLER: Commissioners, any
11 questions or comments?

12 COMMISSIONER BOYD: Again, no questions on my
13 part. Again, this was reviewed by the Research Committee
14 and recommended by that Committee, which is myself and our
15 Chair, recommended to be brought to the full Commission
16 today.

17 This is another recognition of the amount of work
18 underway and, frankly, the early work recognized by this
19 agency in the water energy nexus arena. And the need to
20 address that, that's become well known now, and spoken of in
21 many quarters and I'm glad to see this activity underway
22 because this is an area that offers a quite a bit of
23 possibility in terms of improving our efficiency and
24 reducing our demand on our fragile grid and generating
25 system. So, I'd move approval.

1 COMMISSIONER DOUGLAS: Second Commissioner Boyd's
2 motion. I'm also very pleased to see this work in the area
3 of water and energy efficiency.

4 CHAIRPERSON WEISENMILLER: Okay, all in favor?

5 (Ayes)

6 CHAIRPERSON WEISENMILLER: This passes
7 unanimously.

8 Thank you, Paul.

9 CHAIRPERSON WEISENMILLER: Number 8, Sacramento
10 Municipal Utility District, Steve.

11 Mr. GHADIRI: Good morning, Commissioners and
12 attendees. I'm Steve Ghadiri, I'm a professional electrical
13 engineer working as a staff in the PIER RD&D Electrical
14 System Integration.

15 I'm here to request the approval of CEQA documents
16 project as required by contract 500-08-009, to continue this
17 project.

18 This SMUD Microgrid Field Demonstration project is
19 innovative in that it will link natural gas fueled internal
20 combustion engines with a PV system and also a battery
21 system.

22 The direct current output from the PV system will
23 be interconnected directly into the DC box of the Tico Gen
24 units. This work has not ever been done in California and
25 it affords the opportunity to understand how intermittent

1 renewable DG can be integrated with non-renewable DG and how
2 invertor-based DG can be integrated with a machine base or
3 rotating DG.

4 CEQA documents are required for the Tico Gen units
5 installations. This project was originally conducted in two
6 phases in the -- stipulated in the contract originally in
7 two phases.

8 The first phase involved the design, the test, the
9 test plant development and outreach activities, as well as
10 administrative activities.

11 The second phase involves construction and
12 demonstration of this microgrid project.

13 The work in phase one needed to be completed in
14 order to provide sufficient information to comply with CEQA
15 documents in phase two.

16 Because of this neither contractor, nor its subs,
17 are authorized to work until the Commission approves this
18 project.

19 Any further questions?

20 CHAIRPERSON WEISENMILLER: Commissioners --

21 MS. MOULTRIE: Melanie Moultrie --

22 CHAIRPERSON WEISENMILLER: Oh, excuse me. Go
23 ahead, please.

24 MS. MOULTRIE: Melanie Moultrie, staff attorney.

25 With regard to the California Environmental Quality Act the

1 Sacramento Municipal Utility District adopted and mitigated
2 a negative declaration in October 2010 that considers the
3 activities the Energy Commission is considering for funding
4 under this contract.

5 Staff has reviewed the mitigated negative
6 declaration, agrees that the project would not cause a
7 significant inverse environmental impact and recommends
8 funding approval.

9 CHAIRPERSON WEISENMILLER: Thank you. I'd note,
10 Commissioners, that last night one of the newest members of
11 the ISO Board introduced me to the Tico Gen president. And,
12 certainly, we were all very excited about progress on this,
13 in terms of the particularly moving forward on both the
14 combination of air quality emissions in the inverter.

15 And I would note that one of the aspects is that
16 Tico Gen will in fact pay us a royalty on these projects.
17 So, as they move forward this has a lot of potential
18 environmental benefits for the State, but also economic
19 benefits for the State in these tough times. So, it's
20 certainly a very good home run for PIER.

21 MR. GHADIRI: Thank you.

22 COMMISSIONER BOYD: I was looking to our lawyer,
23 perhaps who might want to make a motion on this, since this
24 is a legal issue and not a technical issue.

25 COMMISSIONER DOUGLAS: And thank you, Commissioner

1 Boyd. I would like to move approval.

2 COMMISSIONER BOYD: I'll second the motion.

3 CHAIRPERSON WEISENMILLER: All in favor?

4 (Ayes)

5 CHAIRPERSON WEISENMILLER: Thank you, this has
6 been approved unanimously.

7 MR. GHADIRI: Thank you, Commissioners.

8 CHAIRPERSON WEISENMILLER: Number 9, KEMA, Inc.
9 Prab?

10 MR. SETHI: Thank you. My name is Prab Sethi and
11 I work as a senior mechanical engineer in the PIER
12 Renewables Group.

13 A utility scale renewable energy solar station was
14 released on November 2nd, 2010 for a total PIER funding of
15 about \$7.4 million. And the funding came from the
16 Renewables as well as the Environmental groups.

17 The goal of this RFP was to support increased
18 market penetration of renewable energy technologies,
19 mitigation of technical and economic barriers to the
20 increased injection of renewable energy sources into the
21 transmission system, and reduction of environmental impacts.

22 The proposal requested in four different
23 categories, which are category A, renewable hybridation and
24 energy storage integration demonstration projects.

25 Category B was monitoring and forecasting

1 analysis.

2 Category C was thermal energy storage modeling.

3 And the last, Category D, was environmental
4 mitigation for utility scale solar energy technologies.

5 Energy Commission received 28 proposal by the
6 proposal submission deadline of December 21st, 2010. Ten
7 proposals were disqualified under administrative screening
8 process because they did provide us the required
9 documentation.

10 The Technical Advisory Committee reviewed,
11 evaluated and scored 18 projects. The Tech recommended
12 eight projects for PIER funding of \$6,904,287 out of a total
13 available funding of \$7.4 million.

14 The matching funding will be about \$3 million.

15 Six winning proposals are presented here and are
16 Agenda Item 9 and Item 11 through 15.

17 I'll provide a brief overview of these six
18 projects.

19 Item Number 9, KEMA, Incorporated is seeking PIER
20 funding in the amount of \$447,642, the match funding will be
21 about \$174,000.

22 This project will perform thermodynamic modeling
23 and evaluation to optimize engineering and economic
24 performance for concentrated solar power coupled with
25 thermal energy storage.

1 This project will identify and evaluation
2 combination of heat transfer fluids, such as molten salt
3 (phonetic), phase change materials, heat storage systems and
4 types of concentrated solar power systems, such as parabolic
5 troughs, power towers. And DOE has been very much
6 interested in this kind of study for a long time.

7 Item Number 11, Transportation Power is for \$2
8 million, with match funding of \$520,000. This project will
9 demonstrate integration of lower cost 5-megawatt lithium
10 ion, cell modular battery, generatomics (phonetic) in water
11 and control system, resulting in the facilitation of
12 integration of utility-scale renewable energy.

13 Item Number 12, that's Clean Power Research, for
14 \$450,000, with matching funds of \$90,000, and will develop a
15 master solar photovoltaic database that includes all grid-
16 connected PV systems in California, and validate the solar
17 power hourly output variability by using new high resolution
18 satellite solar radiance data.

19 California Independent System Operator will
20 participate in this project and will integrate the results
21 into its planning process.

22 Item 13, Enerex, for \$450,000, with \$140,217 in
23 matching funds, will use satellite and ground sensors to
24 collect and analyze forecast data for solar PV reduction in
25 the Inland Empire Region. The data will be used to analyze

1 impacts of adding 500 megawatt of PV capacity to the grid.

2 This project will provide forecasting and
3 monitoring of variable renewable energy output to help grid
4 accommodate variable output.

5 Item 14, Project Navigator, for \$120,000, with
6 matching funds of \$40,000. This project will install two
7 2.5 kilowatt solar PV units on a landfill to determine the
8 very -- to determine the viability of installing PV solar
9 systems on closed landfills.

10 The project will develop a manual to guide
11 development of landfill-based PV systems.

12 Item 15, Combined Power Cooperative, for \$1
13 million, with matching funds of \$514,965, will demonstrate
14 cost reduction using plastic components to replace glass and
15 steel components in development of concentrated solar
16 thermal power technology.

17 This project will also reduce water consumption,
18 power megawatt-generated compared to traditional utility-
19 scale solar generation and reduce environmental impacts.

20 It is requested that these six projects be
21 approved for funding as recommended by the Technical
22 Advisory Committee. Thank you very much.

23 CHAIRPERSON WEISENMILLER: Thank you. First is, I
24 believe, Mr. Michael Simon would like to speak about Item
25 11.

1 MR. SIMON: Yes, this is Mike Simon, can you hear
2 me?

3 CHAIRPERSON WEISENMILLER: Yes, we can.

4 MR. SIMON: Okay, great. I'm the CEO of
5 Transportation Power, Inc., I'm here with our VP for
6 Advanced Technologies, Dr. Paul Scott, and we both want to
7 express our gratitude to the Commission for its support of
8 the Grid-Saver Energy Storage System.

9 We know you have a busy agenda, so we'll just add
10 one -- we just wanted to share some information to
11 illustrate the timeliness of this support from the Energy
12 Commission.

13 As we speak, we are responding to funding
14 opportunities from two other sources, the U.S. Department of
15 Energy has a solicitation out right now for systems that can
16 improve the effectiveness of solar photovoltaic power
17 generation and high-capacity battery energy storage is an
18 area of key interest to them.

19 And because of that we were selected, on the basis
20 of a preliminary proposal that we submitted last month, to
21 submit a full proposal, which will be submitted next week.
22 And if that proposal is funded, it will result in another
23 \$5.3 million of funding from the federal government to build
24 on the grant funding that the Energy Commission has already
25 committed.

1 In addition to that, the South Coast Air Quality
2 Management District is right now, as we speak, soliciting
3 proposals for projects in the South Coast Air Basin here, in
4 Southern California, that combine renewable energy with
5 energy storage, as well. And we have several companies that
6 are leading solar photovoltaic providers, world-renowned
7 companies that have already contacted us to ask us about
8 whether we can bring our Grid-Saver up to the L.A. area and
9 integrate it with their solar systems to help them qualify
10 for the A 2 MD funding.

11 So, that's -- there's another five or ten million
12 dollars of potential funding to not only perfect, but also
13 to commercialize the Grid-Saver system.

14 And the big benefit is that if the systems perform
15 as we expect, they will make it -- they will smooth out the
16 energy output of renewable energy systems and help stabilize
17 the grid, and really pave the way for helping California to
18 meet its renewable energy, you know, portfolio commitments,
19 as well as being a product that we can export to other
20 states.

21 And we estimate this project is going to create a
22 minimum of -- if we get the DOE funding, a minimum of 40 new
23 jobs, just at Trans Power by the end of next year, and
24 potentially hundreds of jobs if these other projects get
25 funded.

1 So, it's a very timely commitment from the Energy
2 Commission. Once again, the Energy Commission is the
3 leader; it is the first entity to fund us, as you also were
4 for some of our transportation work earlier this year. And
5 we just wanted to let you know how quickly it's already
6 being built upon.

7 CHAIRPERSON WEISENMILLER: Thank you.
8 Commissioners, any other questions -- any questions for Mr.
9 Simon? Well, we certainly thank you for your comments on
10 today's item.

11 Is there any of the other proponents in the
12 audience?

13 Fine. Okay, so Commissioners, any questions or
14 comments on these items?

15 COMMISSIONER PETERMAN: I'll just make a comment.
16 A number of these items and I think there's one or two other
17 ones on the agenda today relate to research related to solar
18 power, aspects that I find important, such as forecasting,
19 production, alternative sites.

20 I hope there's an opportunity, however, going
21 forward, as these projects, if they are approved, are done
22 to look at the results across the projects and to get a real
23 sense of where do we see the solar power industry, now, in
24 terms of potential for forecasting production, contributing
25 to our system.

1 I've done work on the economics of solar power,
2 particularly for grid-connected in California, and I'm
3 interested in how the cost data we're finding ties to what
4 we find here regarding production and forecast.

5 So, I look forward to hearing more about these
6 projects going forward.

7 MR. SETHI: We will provide that information.

8 COMMISSIONER BOYD: Mr. Chairman, I would just
9 concur with Commissioner Peterman with regard to the items
10 she brought forward, and the questions, and I join in the
11 positive comments about this.

12 Prab has presented us, rather atypically, a batch
13 of six projects all, as indicated, relating to solar power
14 in California. They, each and every one of them, are quite
15 fascinating as I believe the Chairman and I have learned
16 through our work on the Research Committee and have, of
17 course, recommended these to the full Commission for
18 Commission approval as a result of that review.

19 But this constitute a very significant additional
20 investment in this area. This is an area, that we've
21 indicated before, is incredibly important to California's
22 energy future and advancing technology there is going to
23 certainly contribute to economies of scale, efficiencies,
24 cost reductions associated. And we look forward to that,
25 particularly my fellow Commissioners, who will be here a lot

1 long than I, will see the results of this and, hopefully, it
2 makes a very positive contribution to the very ambitious
3 goals of the State of California in this arena.

4 As indicated, these projects were all reviewed in
5 the Research Committee, not necessarily in the same meeting,
6 but definitely brought forward and recommended to the
7 Commission. So, I'd move approval of the batch of Items, 9,
8 11, 12, 13, 14 and 15, if our counsel says that's
9 appropriate, which I believe he does.

10 GENERAL COUNSEL LEVY: Yes, Chairman and
11 Commissioners, the way the item was presented was somewhat
12 of a batch, if you would just announce to the audience and
13 ask if anybody has any comments on Items 11 through 15, with
14 the full Commission's consent you can take them all as one
15 vote.

16 COMMISSIONER BOYD: And we'll have to back that up
17 to Item 9 through 15, if I'm not mistaken.

18 GENERAL COUNSEL LEVY: Right, the Item 9 was
19 already called, 11 through 15 weren't technically called.

20 COMMISSIONER BOYD: Gotcha.

21 CHAIRPERSON WEISENMILLER: Got it. Okay, so in
22 terms of are there any comments on Items 10 -- oh, excuse
23 me, 11 through 15, from anyone here or on the phone?

24 MR. BLATCHFORD: Yes, I'm Jim Blatchford, with the
25 California ISO.

1 CHAIRPERSON WEISENMILLER: Great.

2 MR. BLATCHFORD: I'd like to comment on Items 12
3 and 13, if I may.

4 CHAIRPERSON WEISENMILLER: That would be great.

5 MR. BLATCHFORD: Thanks. Like I said, I'm Jim
6 Blatchford, I'm Lead Renewable Integration Specialist at the
7 California ISO.

8 I'm here today to offer the ISO's support and
9 commitment in teaming with Clean Power Research Project, a
10 demonstration and validation of PV output, variability
11 modeling approach, Item Number 12, as I said.

12 The project will enable us to evaluate CPRs
13 methodology for quantifying PV output variability. And this
14 is an important area for the research that addresses ISO's
15 grid operations and planning as it relates to the variable
16 and uncertain renewable energy sources on the State's grid.

17 Under this project we will guide the process to
18 insure that what is produced integrates with the existing
19 ISO studies for renewable integration. We'll provide
20 interface with the regulatory process, addressing renewable
21 integration in California. We'll provide measured non-
22 confidential PV performance data for validation purposes and
23 also ISO will contribute in-kind labor for the portion of
24 work in the amount of \$24,000 on this project.

25 Thank you.

1 Shall I continue on Item 13 or do you need to vote
2 on that?

3 CHAIRPERSON WEISENMILLER: No, you can continue.
4 I was just going to ask the Commissioners if you have any
5 questions for him on the first item?

6 COMMISSIONER PETERMAN: Just that I'm happy to see
7 that the ISO is involved with this because I know that you
8 all are thinking about forecasting and integration. And
9 when I looked at this item, I was happy to see that they
10 were partnering with you all on this, it gives me more
11 confidence in the ability to get reasonable and usable
12 results.

13 MR. BLATCHFORD: We are, too.

14 CHAIRPERSON WEISENMILLER: Okay, continue, please
15 continue.

16 MR. BLATCHFORD: Okay, and the second item, Item
17 13. Again, we're supporting this Enernex, Southern
18 California Edison and University of California, San Diego's
19 proposal before the Energy Commission.

20 And for utility-scale forecasting analysis and
21 modeling, again, and it addresses the forecasting and the
22 monitoring of the variable renewable energy within the
23 State.

24 The proposal addresses solar forecasting in a
25 manner that may help the grid accommodate its variable

1 output through the following means: The first to develop a
2 model with utility-scale PV solar generation designed to
3 analyze the effects of solar variability on the reliability,
4 economics, and operations of the grid.

5 We'll perform system impact studies to assess the
6 details impact of large installation of solar PV, especially
7 in regards to short-term forecasting, along with regulation
8 and ramping needs.

9 Provide specific recommendations which will help
10 the grid accommodate renewable energy's variable output.
11 And then we intend to cooperate, which we have already with
12 Enernex, with SCE and the University of San Diego on these
13 matters.

14 Advancement in these areas will assist the ISO in
15 maintaining its reliability, the grid reliability as a large
16 amount of solar energy is integrated into the control area.

17 So, thank you for your time on this.

18 CHAIRPERSON WEISENMILLER: Karen?

19 COMMISSIONER DOUGLAS: I do have a question for
20 you on that. I see that the focus of the study is on the
21 Inland Empire. Do you have some sense of how you can use
22 the information and data gleaned from that to think about
23 renewable installations throughout other parts of the State?

24 MR. BLATCHFORD: We look at that as large
25 integration behind the meter and so we can see what's going

1 on with the low profiles and the changes in those profiles
2 and, also, how we can get the forecasting information and
3 how it affects that area. And so, we'll integrate that into
4 our load forecasting, also.

5 COMMISSIONER PETERMAN: And then that should make
6 forecasting easier, then, for other parts of the State?

7 MR. BLATCHFORD: We're hoping, yeah, we can apply
8 that to other areas. You know, lessons learned in all of
9 these are being applied throughout our forecasting models,
10 yes.

11 COMMISSIONER PETERMAN: Great, thanks.

12 CHAIRPERSON WEISENMILLER: Thank you. I was going
13 to congratulate the ISO on the new Executive Director.

14 MR. BLATCHFORD: Yes, we're real pleased.

15 CHAIRPERSON WEISENMILLER: Had the announcement
16 yesterday. I had the opportunity to work with him on a
17 couple of occasions the last month and I think it's a very
18 good step for the citizens of California and, certainly for
19 your organization.

20 MR. BLATCHFORD: I think it was a great choice,
21 yes.

22 CHAIRPERSON WEISENMILLER: Yes. The next comment,
23 please?

24 MR. HOFF: Hi, my name's Tom Hoff, I'm President
25 of Clean Power Research and I wanted to make a few comments.

1 First of all, we're very excited to be doing this project
2 under CEC, and we're very thrilled to have ISO -- working
3 with ISO.

4 I wanted to give you a little background that
5 might be useful for you guys. We currently have a software
6 and a consulting division in our company, and on our
7 software products, one of them is called Power Clerk, so we
8 currently have the database that runs all of the CSI program
9 incentives throughout the State of California, as well as
10 many programs throughout the United States.

11 And so in that database, in the process of giving
12 incentives, all of the systems that have been incentivized,
13 we know what systems have been installed, where they're
14 installed, what the ratings are and orientations.

15 Second of all, we won a contract, a CSI contract,
16 in one of the first rounds, where we have taken a satellite
17 database for the entire State of California, where we have
18 now online, for the State of California, high-resolution
19 satellite data which tells you radiance everywhere in
20 California all the way through 2010, and so that's publicly
21 available and it came through the CSI program.

22 The other thing that got built through the CSI
23 program is what we believe is a state-of-the-art methodology
24 to predict output variability for an entire fleet of PV
25 systems. And so where this whole project is heading is the

1 ability to understand, for any set of systems throughout
2 California, what variability looks like at any time frame.

3 And Cal ISO has been an extremely important part
4 of this project, where we're going to start putting actual
5 data versus our simulation methodology on this. And I just
6 wanted to thank the CEC for supporting this and we're
7 thrilled to be moving this forward to be able to answer
8 these questions of high variability for the State of
9 California.

10 COMMISSIONER PETERMAN: I have a question. How
11 will you incorporate grid-connected systems not funded
12 through CSI, particularly through the publicly-owned utility
13 programs.

14 MR. HOFF: That's a great question. There's two
15 things. We also run SMUD's program. We work with LADWP,
16 Anaheim, Palo Alto, as well as many of the other ones. And
17 one of the tasks that's being funded under this contract is
18 we're going to fill out the database for the rest of the
19 systems that are not covered under these, the utility-owned
20 systems, the large systems.

21 And so we'll create, out of this project, a
22 unified database for the State of California for -- there's
23 a few that we don't have, and some of the munis, but a
24 fairly well attached database for the State of California.

25 COMMISSIONER PETERMAN: Great, glad to hear.

1 Thank you.

2 MR. HOFF: Thank you.

3 CHAIRPERSON WEISENMILLER: Commissioners, any
4 questions or comments on Items 9, 11, 12, 13, 14, 15?

5 Do I have a motion pending?

6 COMMISSIONER BOYD: Yes, there is a motion
7 pending. I have no further questions. And if we've heard
8 from everybody --

9 COMMISSIONER DOUGLAS: I will enthusiastically
10 second Commissioner Boyd's motion, these sound like great
11 projects.

12 CHAIRPERSON WEISENMILLER: Okay, all in favor?

13 (Ayes)

14 CHAIRPERSON WEISENMILLER: These projects passed
15 unanimously.

16 Thank you, Prab.

17 Item 16, California State University Fresno
18 Foundation. Joe?

19 MR. O'HAGAN: Good morning. Thank you,
20 Commissioner.

21 My name is Joe, O'Hagan; I'm in the Public
22 Interest Energy Research Program, in the Environmental Area.
23 And to my right is Kris Vyverberg, a senior engineering
24 geologist with the California Department of Fish and Game.

25 The proposed project before you is to develop a

1 standardized methodology to assess the biological values of
2 intermittent streams in arid environments. As you
3 appreciate, large-scale renewable energy development in the
4 desert requires either the obliteration or alteration of
5 miles and miles of these intermittent streams, which support
6 a diverse biological -- a diverse number of biological
7 communities and have a greater biological value than
8 adjacent upland areas.

9 These are very dynamic environments, changing
10 course, you know, with each rainfall. The standardized
11 methodologies to assess the biological value of these stream
12 waves were all developed in wetter areas and are really not
13 applicable to our deserts.

14 So, the idea is to develop a standardized
15 methodology that all stakeholders in these renewable energy
16 projects being developed in the desert could use to assess
17 what the biological values of these waterways are, the value
18 of mitigation measures to assess these, to offset these
19 impacts.

20 The methodology will be developed and then it will
21 be tested at the four Department of Energy's Solar Study
22 sites in the California desert.

23 The project was developed with input from the
24 Siting Division staff, as well as the California Department
25 of Fish and Game.

1 The Department of Fish and Game is supportive of
2 this project and they've pledged that Kris would work on the
3 project for one-third of the time, and it's a 26-month
4 project.

5 And so both Kris and I are available if you have
6 any questions.

7 CHAIRPERSON WEISENMILLER: Great, thank you.

8 Kris, do you want to say anything or just hold it
9 for the comments?

10 MS. VYVERBERG: Well, I guess I would submit this
11 comment that the Department, as the supporting agency,
12 through our Lake and Streambed Alteration Agreement Program,
13 has been informing the siting of solar projects. We're also
14 involved in the smaller scale photovoltaic siting,
15 specifically looking at streams, and stream processes. And
16 it's been impressed upon us that we don't really have the
17 tools that we need to make assessments and, as a
18 consequence, we find that we're revisiting the topic of what
19 is a stream and where is it, where does it begin and end,
20 and what are the ecosystem values associated with it?

21 And it's become a major point of contention
22 through the review of these projects and refining their
23 project footprint.

24 So, my goal through this would be that we end up
25 facilitating the permitting process, and facilitating the

1 design and project footprint by giving folks a tool that is
2 science based, that can be used by the consulting community,
3 our own staff. And that, hopefully, we'll end up in a
4 facilitated process because we're not arguing over where the
5 streams are or are not.

6 Prior to the -- the emphasis on utilizing public
7 lands in the Mojave and Sonora Desert we've been dealing
8 with these projects on a one-at-a-time basis. And as the
9 sole geologist for the Department of Fish and Game that's
10 been something that I could absorb within my workload.

11 But what we're finding now is that there are too
12 many projects, they're too big, they can't be done by one
13 person at a time and we simply don't have a consistent
14 methodology that we could hand off, either to the consulting
15 community, the applicant, other agencies to utilize.

16 So, my hope would be that through this that we
17 could develop that tool and end up with more appropriately
18 sited facilities, and a facilitated process for the
19 permitting in general.

20 CHAIRPERSON WEISENMILLER: Thank you very much.

21 Commissioners, any questions or comments?

22 COMMISSIONER DOUGLAS: On the behalf of the Siting
23 Committee, while I haven't been engaged in the formation of
24 this project in any way, I think that it will be extremely
25 helpful analysis of environmental impacts. Projects prosed

1 in dry desert areas often run into factual questions over
2 desert washes and identifying them, and identifying and
3 assess their value.

4 So, as I -- as I reviewed the materials for this
5 and hear the presentation, I'm very pleased to see this work
6 will be done.

7 What is the timeframe for this project?

8 MR. O'HAGAN: It will be, assuming it's approved,
9 and the startup in a month to six weeks, then it will be 26
10 months to complete.

11 But there should be intermittent intervals,
12 deliverables provided that we could certainly share with
13 people.

14 COMMISSIONER DOUGLAS: Well, that would be great.

15 MR. O'HAGAN: Much sooner than that.

16 COMMISSIONER DOUGLAS: I'm quite interested in the
17 results of the project. So, thank you.

18 COMMISSIONER BOYD: Well, let me join Commissioner
19 Douglas in saying this is a project that is interesting and
20 will be beneficial. Those of us who have studied the
21 project know its relationship to and importance to DRECP.

22 Those of us up here who have spent a fair amount
23 of time in some siting cases, in the desert, certainly
24 recognize the issues that have been faced.

25 And as our Fish and Game representative indicated,

1 there are a host of issues. This will be incredibly
2 valuable to future siting cases and this is -- this joins a
3 long list of projects we've undertaken in the immediate time
4 frame that are going to be very helpful for future siting
5 cases in the desert areas.

6 So this, hopefully, will add to that body of
7 knowledge. And once again, wasn't there when I needed it,
8 but will be there for you all when you need it in the
9 future.

10 So, if that was a motion, Commissioner Douglas,
11 I'll --

12 COMMISSIONER DOUGLAS: I'll make it an explicit
13 motion. I'll move approval of this item.

14 COMMISSIONER BOYD: Then I'd be glad to second
15 your motion.

16 COMMISSIONER PETERMAN: And let me just offer a
17 comment before we accept that. Everything I wanted to say
18 has already been well said by my fellow Commissioners, and
19 Kris in particular.

20 And I just want to, again, applaud PIER and Fish
21 and Game for being proactive and collaborative in this
22 process. And I hope that we're able to do similar
23 assessments for other issues systematically, instead of
24 dealing with them all on a case-by-case basis and that will
25 help with expediting our siting process and achieving some

1 of these renewable targets we've set.

2 CHAIRPERSON WEISENMILLER: Okay. We have a
3 motion, all in favor?

4 (Ayes)

5 CHAIRPERSON WEISENMILLER: It's passed
6 unanimously.

7 Thank you, Joe.

8 MR. O'HAGAN: Thank you very much.

9 CHAIRPERSON WEISENMILLER: Number 17, which is
10 University of California, Irvine. Bradley?

11 MR. MEISTER: Good morning, Commissioners. I'm
12 Bradley Meister.

13 I'm here, today, to request approval of a contract
14 with the University of California, Irvine for \$1 million.
15 The funding is to support plug load research that could be
16 the foundation of future Title 20 appliance standards.

17 Energy use in the residential and commercial
18 sectors in California for plug loads is growing rapidly. It
19 is a dynamic and trendy area of energy use that has seen
20 explosive growth in the last few years.

21 Currently, residential and commercial plug loads
22 are responsible for about 15 to 20 and 10 to 15 percent,
23 respectively. Some estimates show plug loads being about 30
24 percent of the residential load by 2030.

25 While we have done a great job with lighting, and

1 HVAC, and other areas, plug loads will be one of the most
2 challenging growth loads of the future. In order to achieve
3 zero net energy significant improvements in energy
4 efficiency of plug loads will need to be made and
5 additional, fairly aggressive standards will need to be put
6 in place.

7 This research will help support those future
8 standards. I would request your approval for funding and
9 I'm happy to answer any questions.

10 CHAIRPERSON WEISENMILLER: Thank you.
11 Commissioners, any questions or comments?

12 COMMISSIONER PETERMAN: I have a question. I
13 appreciate that the Center will be looking at a lot of the
14 technical aspects related to plug loads. I was wondering,
15 will they also be considering any of the social behavioral
16 adjustments that will perhaps need to be made, if any, with
17 this technology?

18 MR. MEISTER: Yes, that's a possibility. You
19 know, this is a work authorization contract and we haven't
20 decided on exactly what research we're going to fund, yet,
21 but behavior is one of the items that we can consider. And
22 so, yes, ma'am.

23 COMMISSIONER BOYD: Well, I would just underscore
24 Bradley's indication that plug load demand in California has
25 been unprecedented in its growth. As well all note on the

1 electronic aids assistances and toys that exist in our
2 society, and plug load has gone up unbelievably and, yet,
3 California is still hanging on to its virtually no growth in
4 per capita use of electricity by offsetting that growth with
5 all kinds of other positive measures in efficiency, and
6 generation, and what have you.

7 But, obviously, this is an area that is impacting
8 us and will continue to impact us. So as we, in the
9 Research Committee, heard the staff's presentation, in-
10 depth, of this proposal it became pretty -- pretty obvious
11 that this is certainly a valued piece of research that's
12 going to benefit the Commission and all those who plan for
13 our electricity future in this State.

14 So, on behalf of the Research Committee, I guess
15 I'd move approval of the item.

16 COMMISSIONER PETERMAN: I'll second.

17 CHAIRPERSON WEISENMILLER: Okay, all in favor?

18 (Ayes)

19 CHAIRPERSON WEISENMILLER: This item passes
20 unanimously.

21 Thank you.

22 MR. MEISTER: Thank you.

23 CHAIRPERSON WEISENMILLER: Next is Item 18, Primus
24 Power Corporation. Avtar?

25 MR. BINING: Good morning. My name is Avtar

1 Bining and I manage the Energy Storage Program and the
2 American Recovery and Reinvest Act projects on smart grid
3 and energy storage at the Energy Commission.

4 Also with me, my Deputy Director, Ms. Laurie ten
5 Hope and Mr. Tom Stepien from Primus Power Corporation.

6 Under this agreement Primus Power Corporation will
7 develop, install, field test and monitor a 25-megawatt, 75-
8 megawatt hour grid connector Jink-based (phonetic) flow
9 battery energy storage system to help integrate renewables,
10 such as wind, which is a necessity for achieving 33 percent
11 renewable portfolio standard by 2020 in California.

12 Primus is working with the United States
13 Department of Energy, Sandia National Lab, Pacific Gas &
14 Electric Company, and Modesto Irrigation District to deploy
15 this system on a wind-forming energy farm in Modesto,
16 California and by 2012, and demonstrate primary and
17 secondary applications including renewable farming,
18 strategic local peak shaving, automated load shifting and
19 various ancillary services.

20 This agreement is an essential part of Primus
21 \$46.7 million wind farming energy farm project. For this
22 project, Primus has received \$14 million in American
23 Recovery and Reinvestment Act award from the U.S. Department
24 of Energy.

25 Primus is contributing \$31.7 million as venture

1 capital and other funds for this project.

2 The term of this agreement is about 45 months.

3 Apparently, in 2006, Primus received an award from
4 Energy Commission's Energy Innovation Small Grant Program
5 and since then Primus is moving forward very quickly on this
6 technology and, hopefully, we will see some results, some
7 good results in a very short time frame.

8 I request your approval of this agreement and we
9 will be happy to answer your questions that you might have
10 for me or for Mr. Tom Stepien.

11 CHAIRPERSON WEISENMILLER: Okay. First, do you
12 have anything you want to add for the record?

13 MR. STEPIEN: No. Just, first, thank you for your
14 time and attention, of course. This project is all about
15 the widespread deployment and rapid adoption of storage and
16 I think the Commission certainly understands the value
17 propositions of storage.

18 As Avtar mentioned, it's a wonderful multiplier,
19 \$100,000 five years ago is now matched with \$30 million of
20 public and private funding.

21 We are well into this, we're two years old,
22 formally as a company, have 50 full time and temporary
23 employees. We are located in Hayward and certainly love to
24 have you come down to visit if you're in our neck of the
25 woods.

1 CHAIRPERSON WEISENMILLER: Thank you for being
2 here.

3 Commissioners, any questions or comments?

4 COMMISSIONER PETERMAN: I just want to say I like
5 this project, happy to see the demonstration project in
6 conjunction with the renewable source, and good opportunity
7 to see how storage actually works out there. So, thank you.

8 COMMISSIONER BOYD: I would just comment that
9 we're seeing again in this project, today, and many projects
10 we dealt with today the studies of the expansion of and
11 particularly integration of, and improved efficiency of all
12 of the renewable systems and infrastructure we've
13 established in California.

14 This is all to benefit those projects so; again,
15 this is another very positive step in the direction of our
16 new electricity future in California.

17 This project was, again, presented to the Research
18 Committee and the Research Committee deemed it worthy and
19 for recommendation to this full Commission.

20 So, I would move approval of the item if there are
21 no other questions or comments.

22 COMMISSIONER DOUGLAS: I'll second.

23 CHAIRPERSON WEISENMILLER: Okay. And I just --
24 okay, fine.

25 A motion's been made and seconded. All in favor?

1 (Ayes)

2 CHAIRPERSON WEISENMILLER: It was passed
3 unanimously.

4 Thank you.

5 MR. BINING: Thank you.

6 MR. STEPIEN: Thank you.

7 CHAIRPERSON WEISENMILLER: Okay, Number 20,
8 University of California, Davis. Pablo?

9 MR. BINING: No, my item is Number 19, please.

10 CHAIRPERSON WEISENMILLER: Oh, sorry, 19. Sorry,
11 wow.

12 City of Anaheim, Avtar, again.

13 MR. BINING: Good morning, again. Again, my name
14 is Avtar Bining; I manage the Energy Storage Program and
15 American Recovery and Reinvestment Act projects on smart
16 grid and energy storage at the Energy Commission.

17 Also with me, I think available online, is Mr.
18 Wynn, from the City of Anaheim.

19 Under this agreement the City of Anaheim will
20 install and evaluate advanced smart meters for improving the
21 existing utility service and grid infrastructure. This will
22 insure that Anaheim utility customers receive reliable and
23 high quality power and competitive rates.

24 Also, this will create new options for customers
25 for managing their electricity use and costs.

1 The City provides electric service to
2 approximately 125,000 customers, with a peak load of about
3 600 megawatts.

4 The City of Anaheim is pursuing smart grid
5 investment components, such as smart meter, substation
6 automation, time-based rate options, demand response
7 programs and customer tools to facilitate and promote
8 efficient and effective use of energy.

9 This will empower customers to participate in
10 energy management and conservation programs, experimental
11 pricing programs, and distributed generation programs.

12 The goal of this agreement is to support the City
13 of Anaheim's Smart Grid Enhancement project so that it can
14 serve as a model for other municipal utilities in the State
15 and across the nation.

16 The experience gained and results of this project
17 will be useful for other publicly-owned utilities in
18 California, as well as for establishing a statewide smart
19 grid.

20 This agreement, again, is an essential part of the
21 \$12.2 million Anaheim's Smart Grid Enhancement project, and
22 for this project the City received \$5.9 million in American
23 Recovery and Reinvestment Act award from the U.S. Department
24 of Energy.

25 The City is contributing about \$5.7 million for

1 this project. The term of this agreement is about 36
2 months.

3 And I request your approval of this agreement and
4 we will be happy to answer your questions.

5 CHAIRPERSON WEISENMILLER: Thank you.
6 Commissioners, any questions or comments?

7 COMMISSIONER BOYD: If no questions by my fellow
8 Commissioners then, again, as we've evidenced so much today,
9 this is just another increment in the -- another stepping
10 stone in the pathway to a significantly different energy
11 electricity future in California.

12 And again, this was reviewed in the R&D Committee
13 and I would make a motion to approve the item.

14 COMMISSIONER PETERMAN: I'll second.

15 CHAIRPERSON WEISENMILLER: All in favor?

16 (Ayes)

17 CHAIRPERSON WEISENMILLER: It's passed
18 unanimously.

19 Thank you, Avtar.

20 MR. BINING: Thank you.

21 COMMISSIONER BOYD: And commendations to the City
22 of Anaheim for its active participation in this project.

23 CHAIRPERSON WEISENMILLER: Number 20, University
24 of California at Davis. Pablo?

25 MR. GUITIERREZ: Good morning, Commissioners. My

1 name is Pablo Guitierrez, for the record, I'm with the PIER
2 Renewables Office.

3 I'm here, today, to seek approval of a \$500,000
4 PIER ARRA cost share grant with the University of
5 California, at Davis.

6 This grant supplements at \$2.5 million ARRA grant
7 and a UC cost share of \$1.7 million. This project will
8 consist of the installation of an advanced, on-site waste-
9 to-renewable energy -- essentially, a biodigester within the
10 large-scale mix community.

11 PIER funding would be used for the design,
12 development, and preparation of construction drawings for
13 the biodigester, data collection, data analysis, and
14 reporting on the technical and economic performance of the
15 biodigester.

16 UC Davis has also received a 2009, \$2.0 million
17 PIER RESCO Grant to incorporate an array of on-site
18 renewable energy generation resources and technologies to
19 enable a zero net community.

20 This work, however, will not duplicate the work
21 proposed by the PIER ARRA cost-share grant. The performance
22 and system analysis results of the smaller-scale biodigester
23 funded under the RESCO grant will be used for the -- first,
24 the development and engineering -- of engineering designs of
25 the full-scale facility.

1 And, two, calculate an estimates of capital and
2 operational costs.

3 I want to be real clear that these aforementioned
4 tasks from the RESCO Grant must be completed and determined
5 satisfactory by the Commission project manager before
6 commencement of the previously described tasks for the ARRA
7 PIER cost-share grant.

8 We will work with legal staff and UC Davis to make
9 the necessary modifications to the scope of work.

10 I request this approval for this grant and I would
11 be happy to answer any questions you may have.

12 CHAIRPERSON WEISENMILLER: Thank you.

13 Commissioners, any questions or comments?

14 COMMISSIONER PETERMAN: I'll just make a couple
15 comments. I've had the opportunity to visit the UC Davis
16 West Village and it really is a living laboratory of the
17 many different types of technologies that we are trying to
18 encourage in the State, photovoltaics, energy efficiency,
19 wastewater systems. And this is an additional one, with
20 this digester.

21 And I applaud the PIER program and UC Davis for
22 continuing to work together on defining goals, and meeting
23 those goals, and then supporting new technologies and
24 development. And I look forward to seeing how everything
25 goes. So, thank you very much.

1 And also thank you to Mr. Guitierrez and his staff
2 for keeping my office particularly updated on this issue.

3 MR. GUITIERREZ: Thank you.

4 COMMISSIONER BOYD: I would -- I would comment
5 that, as perhaps my fellow Commissioner knows, projects like
6 this really excite me. This is a visual demonstration of
7 the waste energy opportunities to -- that are available in
8 California and particularly can be integrated into local
9 community efforts. This is a very significant demonstration
10 of that possibility. So, I salute the developers of that
11 project, the University and our staff for engaging so
12 actively in this activity.

13 Hopefully, it will demonstrate to many other
14 people the opportunities that present themselves with regard
15 to the use of California's waste stream for positive
16 purposes, rather than heretofore basically negative
17 purposes.

18 So, I'm very pleased to recommend approval of this
19 item and move approval of this item. It was, of course,
20 reviewed by the R&D Committee, with the staff at length,
21 before recommending it be brought before you today.

22 So, with that background, again I move approval of
23 the item.

24 COMMISSIONER PETERMAN: I'll second -- excuse me,
25 I'll second.

1 CHAIRPERSON WEISENMILLER: Okay, we have a motion
2 that's been made and seconded. All in favor?

3 (Ayes)

4 CHAIRPERSON WEISENMILLER: It passes unanimously.
5 Thanks, Pablo.

6 MR. GUITIERREZ: Thank you.

7 CHAIRPERSON WEISENMILLER: Item 21, Renewables
8 Portfolio Standard 2007 Procurement Verification Report.
9 Gina, Gabe.

10 MS. BARKALOW: Hello, I'm Gina Barkalow and I'm
11 here to request adoption of the 2007 Renewable Portfolio
12 Standard RPS Procurement Verification Report, or the
13 Verification Report.

14 The RPS requires retail sellers of electricity to
15 increase renewable energy procurement to 20 percent of
16 retail sales by 2010. This requirement has been extended to
17 33 percent by 2020, with SBX12, signed by Governor Brown in
18 April of this year.

19 RPS legislation requires the Energy Commission to
20 design and implement a tracking system to verify
21 procurement. While not legally mandated, the Verification
22 Report is prepared as part of the Energy Commission's RPS
23 responsibilities and is used to transmit the verification
24 results to the California Public Utilities Commission, or
25 the CPUC, for use in determining RPS compliance.

1 The findings in this report are based on the
2 interim tracking system which relies on self-reported
3 procurement and generation data, and is verified by staff to
4 the extent possible.

5 This report analyzes RPS procurement data in a
6 variety of ways, most importantly in determining that every
7 eligible claim is made from an RPS-certified facility, that
8 the total amount of energy procured was sufficiently
9 generated by each facility, and that the RPS procurement
10 exclusively serves California's RPS and is not being double
11 counted as part of other energy regulatory or market claims.

12 This Verification Report verifies RPS procurement
13 for the 2007 calendar year, but also includes data updates
14 for years 2004 through 2006. The report verifies claims for
15 reporting retail sellers, which include investor-owned
16 utilities, large, and multi-jurisdictional, and electric
17 service providers.

18 The verified amounts represent the retail seller's
19 procurement that is eligible toward meeting RPS procurement
20 requirements. Fourteen retail sellers are included in this
21 report.

22 The report includes an update to one facility
23 claim made by Pacific Gas & Electric Company's 2000
24 through -- or 2004 through 2006, as well as an update to two
25 facility claims made by PacifiCorp for years 2005 and 2006.

1 Additionally, for three retail sellers reporting
2 for the first time, the Verification Report identifies their
3 initial baseline procurement amounts, which serve as
4 baselines for their RPS targets.

5 Baselines for other reporting entities were
6 included in the 2006 Verification Report.

7 This Verification Report was developed as part of
8 our collaborative process with the CPUC to implement the RPS
9 and it reflects public input.

10 The Energy Commission held a public workshop on
11 January 1st -- or January 31st, sorry, to seek public comment
12 on staff's initial review of the RPS procurement data.

13 Energy Commission staff incorporated public
14 comments from the workshop into the draft staff Verification
15 Report, which was posted for public comment and review on
16 April 15th.

17 The Energy Commission's Renewable Committee
18 considered public comments in preparing the draft Commission
19 Verification Report, which was posted for comment on May
20 27th.

21 The Verification Report lists all of the eligible
22 and ineligible procurement claims made by the various
23 reporting entities. The vast majority of the procurement
24 claims were from RPS-certified facilities with sufficient
25 generation to cover the total procurement amount claimed by

1 reporting retail sellers.

2 All retail sellers found to have ineligible
3 procurement claims revised their RPS filings, with the
4 exception of Southern California Edison Company (SCE)
5 regarding procurement claims from the Mountain View wind
6 facilities, the Colmac Energy Mecca biomass facility, and
7 the Geo East Mesa geothermal facility. The reasons for
8 these determinations are described in detail in the report.
9 Although SCE has provided rationale as to why they believe
10 the claims should be RPS eligible; the determinations in the
11 report are made in accordance with the RPS Eligibility
12 Guidebook and have been maintained to support the integrity
13 of the RPS program.

14 Regarding a PacifiCorp claim that was determined
15 to be ineligible for years 2005 and 2006 because of the
16 concern of double counting, PacifiCorp representatives
17 notified staff on Monday that they believe there is now
18 sufficient support to determine that the claim is eligible
19 for California's RPS.

20 Late yesterday, Tuesday, PacifiCorp submitted
21 comments through the RPS docket, asking that the procurement
22 volumes associated with Hills Air Force Base be included in
23 PacifiCorp's RPS procurement for all years, as contracted.

24 PacifiCorp will continue to work with the Energy
25 Commission staff in appropriately updated the procurement

1 volumes related to this claim.

2 In response to PacifiCorp's request, staff
3 believes we can work with PacifiCorp and if the
4 determination is made that the claims are eligible for the
5 years covered in the 2007 report, staff can update this
6 finding in the 2008 Verification Report.

7 In conclusion, I'm requesting that the Commission
8 adopt the 2007 RPS Procurement Verification Report with
9 minor, nonsubstantive, editorial corrections that staff has
10 identified throughout the report in the latest review.

11 Thank you for your time and Gabe and I are
12 available to answer any questions.

13 CHAIRPERSON WEISENMILLER: Thank you.

14 Commissioners, any questions or comments?

15 COMMISSIONER PETERMAN: I -- does anyone else have
16 any questions; otherwise I'll make a comment or two. I
17 would just say thank you to our staff for working with all
18 the parties on resolving some of the outstanding issues and
19 for the work on this report. And it came before the
20 Renewables Committee, we've had a chance to discuss the
21 issues and the outstanding items, and I'm satisfied with how
22 we're proceeding ahead.

23 MS. BARKALOW: Thank you.

24 CHAIRPERSON WEISENMILLER: Move it.

25 COMMISSIONER PETERMAN: Just seeing if my fellow

1 Commissioner on the Committee had any comments.

2 COMMISSIONER BOYD: Oh, I will just second your
3 comments and anxiously await your motion, which I'm prepared
4 to support.

5 COMMISSIONER PETERMAN: Oh, well, wait no further,
6 I move Item 21.

7 COMMISSIONER BOYD: And I'll second it as the
8 other member of the Committee in question.

9 CHAIRPERSON WEISENMILLER: Thank you. All in
10 favor?

11 (Ayes)

12 MS. BARKALOW: Great, thank you.

13 CHAIRPERSON WEISENMILLER: It was passed
14 unanimously.

15 Thank you, Gina.

16 COMMISSIONER BOYD: Good work by the staff.

17 CHAIRPERSON WEISENMILLER: Yes.

18 COMMISSIONER BOYD: Commendations.

19 CHAIRPERSON WEISENMILLER: Item 22, Carlsbad
20 Energy Center. Yes, so Paul Kramer.

21 MR. KRAMER: Good morning. Paul Kramer from the
22 Hearing Office.

23 We have with us today, in the audience, quite a
24 few of the interveners. And, normally, they'd be used to
25 sitting up here at the table but, obviously, we've run out

1 of room.

2 So, Chair Weisenmiller, I just wanted to clarify
3 for them that we -- I gather it's your intention to call
4 upon each of them to come up to the podium and make comments
5 at the appropriate time.

6 Okay, so, folks that's how --

7 CHAIRPERSON WEISENMILLER: Yes.

8 MR. KRAMER: -- how we'll work that. And I'm also
9 informed that many of them did not fill out blue speaker
10 cards, but we can call their names from the list of parties
11 that I gave you this morning and they will all have their
12 turn to speak.

13 COMMISSIONER BOYD: In light of that, Mr. Kramer,
14 I think you'll have to act as a ringmaster of this.

15 MR. KRAMER: I'll be glad to do that.

16 CHAIRPERSON WEISENMILLER: And I was going to ask
17 anyone who's not a, quote/unquote, not an official
18 intervener on this list that wants to speak, please provide
19 a blue card.

20 MR. KRAMER: Okay, and then the blue cards are on
21 the table in the back and Jennifer Jennings, here, our
22 Public Adviser, can help you fill those out.

23 The Carlsbad Energy Center is a approximately 540
24 megawatt combined cycle fast-start power plant proposed to
25 be located in the City of Carlsbad, on a portion of the

1 power plant site that everyone calls the Encina site.

2 The Committee first held hearings on this back in
3 February of 2010, we had four days of hearings, very long
4 days in fact, in Carlsbad, on the beach but, frankly, we
5 barely noticed because we were indoors a lot.

6 And due to the press of business for the ARRA
7 cases a decision was not produced until approximately a
8 month and a half ago, in May.

9 The Committee held two days or a day and a half of
10 both a PMPD public comment hearing and the Committee
11 reopened the evidentiary record on several topics that, for
12 the most part, were requested by one of the parties.

13 For instance, in the intervening period there were
14 two fires at power plants, one in California and one outside
15 the state that were of interest to many of the parties, so
16 the Committee held basically a lessons-learned kind of
17 hearing on those issues.

18 And the public comment period on the PMPD expired
19 a week ago. We received extensive comments. I don't think
20 we keep records, but the City of Carlsbad provided us with
21 roughly 150 pages of comments.

22 And we, therefore, took a fair amount of time to
23 prepare the errata, which was released last night, and e-
24 mailed to the parties. We have copies on the table outside,
25 for those who want a hard copy of it.

1 Basically, the Committee's recommendation to the
2 Commission is not changed; it's to approve the project. We
3 do note one feature that was -- has been changed during the
4 course of the review of the proposed decision, and that is
5 that the applicant proposed two new land use conditions,
6 which will require it to begin planning for, and obtaining
7 permits for, and then working on the financing of the
8 removal of the existing Encina Power Plant. Which, if
9 you've been down there, you no doubt will have noticed
10 because it contains five boilers in a concrete block
11 structure that is roughly, if I recall correctly, 190 feet
12 high and a 400-foot exhaust stack.

13 And that was one of the concerns of the community
14 was to get that thing removed so that it could be -- the
15 property could be redeveloped or otherwise made a more
16 attractive part of the coast.

17 So, the Committee is, I think, happy to be able to
18 say that we were able to prod the applicant to take a step
19 in that direction. The City, in their comments, indicated
20 that while they didn't see that as solving all of their
21 concerns, they were also in favor of that plan of operation,
22 if you will, for the removal of the Encina plant.

23 The theory there being -- or the Committee's
24 theory being that if that plant is retired and there is no
25 immediate plan to remove it, it could sit there for quite a

1 while, well, sitting. I don't think concrete will rust, but
2 definitely we see it as better that they are moving forward
3 to getting that plant out of there.

4 The proposed plant would be built further inland
5 on the Encino site, between the I-5 freeway and a rail
6 corridor, which has both commuter and freight rail traffic.

7 There are three additional issues that I want to
8 bring to the Commission's attention, that you will need to
9 deal with today, and those are three motions that were filed
10 in the last two weeks.

11 One is from Intervener Rob Simpson, and he has
12 asked that the Committee rescind the PMPD and start over.
13 That, also, is the essence of his comments. And among the
14 reasons he lists are that he doesn't believe there as an
15 adequate analysis of the potential problems with the natural
16 gas pipelines in the area.

17 This, as is already discussed in the decision,
18 this project is connecting to a pipeline that's on the site,
19 itself. It's not proposing any linears that go off-site.
20 And this is the first mention, as I recall, of a concern
21 about natural gas pipelines in the vicinity.

22 So, the Committee recommends that the Commission
23 deny that motion as -- for several reasons. There's been no
24 evidence offered that there is, in fact, a problem that
25 needs to be looked into. It's phrased more in terms of just

1 speculative concern and, also, it was filed very late in the
2 proceeding. We had evidentiary hearings over a year ago; we
3 had various motions that were filed in the time between
4 those hearings and the preparation of the proposed decision.

5 And some of the parties in that interim period did
6 actually make requests that the record be reopened on
7 various topics and, in fact, we did on some of those topics
8 and held that hearing last month in connection with the PMPD
9 comment period.

10 So, on the latest scale this request of Mr.
11 Simpson seems very late.

12 There is an additional motion from the City of
13 Carlsbad and that was to take official notice of a recent
14 filing by the local utility, SDG&E, with the Public
15 Utilities Commission, for approval of three power purchase
16 agreements.

17 And the Committee recommends that we do take
18 official notice of that document, but for a limited purpose,
19 that is to recognize that the utility has requested
20 permission for the approval -- or, rather, has requested
21 approval of those contracts, but the filings make all sorts
22 of assertions about the effect that these projects and their
23 construction would have on the utility infrastructure in the
24 area. You know, that whether this project would be needed,
25 electrically.

1 And because none of the other parties have had the
2 opportunity to do more than glance at that, much less
3 consult their own experts or prepare testimony, it would be
4 inappropriate for the Commission to accept that document
5 for -- as evidence, if you will, on any of the other topics
6 beyond the fact that the utility is proposing to enter into
7 a contract with these other providers. All of them are in
8 the San Diego area.

9 None of them are permitted. One of them is the
10 Pio Pico project that is currently in the discovery phase
11 before this Commission.

12 Another is a 45-megawatt project that would
13 presumably be approved by the local government.

14 And the third is a 100-megawatt project that is
15 not, to my knowledge, yet filed an application with this
16 Commission.

17 So, whether they will -- well, whether their PPAs
18 will be approved, whether their permits as electrical
19 generator projects will be approved, whether they will be
20 financed, whether they will be constructed, that's all very
21 speculative at this point.

22 Finally, there's a motion from the Center for
23 Biological Diversity to -- for us to take official notice of
24 a whole host of documents, mostly relating to the greenhouse
25 gas issue.

1 And the Committee recommends that that be found as
2 untimely because we -- you know, there are a couple
3 documents that are very recent, but most of them predate the
4 publication of the PMPD and a motion could have been made
5 much earlier in the case to bring those to our attention.

6 You know, there is a tension in these cases about
7 when do you quit looking for new information and make a
8 decision and the Committee feels that we have certainly
9 reached that point where it's time to lock down the
10 evidence, if you will, and make a decision based on the best
11 evidence that's been presented to us thus far, and we
12 recommend that you deny that motion as well.

13 So, I think I've talked longer than I normally
14 would at one of these, but it's fair to say that there's
15 quite a bit of public interest in this case and I think you
16 will probably observe that today as you hear from the
17 parties.

18 I would recommend that you begin with the
19 applicant, and then Commission staff, and then go through
20 the list, the City of Carlsbad. I don't know if CURE is
21 still involved, they did not file any briefs leading up to
22 the preparation of the proposed decision.

23 And then I will -- I'll help you identify the
24 other interveners as well, and it's quite possible there
25 will be a significant amount of public comment. I don't

1 know how many people are on the telephone.

2 I would recommend that you begin with the
3 applicant, and then Commission staff, and then go through
4 the list, the City of Carlsbad. I don't know if CURE is
5 still involved, they did not file any briefs leading up to
6 the preparation of the proposed decision.

7 And then I will -- I'll help you identify the
8 other interveners as well, and it's quite possible there
9 will be a significant amount of public comment. I don't
10 know how many people are on the telephone.

11 CHAIRPERSON WEISENMILLER: Thank you, Mr. Kramer.
12 Applicant, you want to start with comments?

13 MR. MC KINSEY: Thank you, Commissioners. My name
14 is John McKinsey, counsel for the applicant, which is
15 Carlsbad Energy Center, LLC; it's a wholly owned subsidiary
16 of NRG Energy.

17 With me today is Mr. Steven Hoffmann, he's the
18 President of the Western Region for NRG, and he's going to
19 make a few remarks.

20 I want to indicate that we have reviewed the
21 errata and find it completely sound and acceptable, and so
22 we have no further comments regarding any other changes or
23 issues with the proposed decision and find it to be a
24 tremendous amount of hard work that has gone into this by
25 the staff and the applicant, and by the Commissioner, and

1 MR. KRAMER, and that we endorse that and are supportive of
2 this proposed decision as modified with the errata.

3 Steve?

4 MR. HOFFMANN: Oh, thank you, John. And
5 Commissioners, I'd like to echo John's gratitude to the
6 Commission and its staff for their hard work, and thorough
7 and professional work on a project that has experienced
8 furloughs, and aggressive schedules to approve renewable
9 projects. I think you perform a great service to
10 California.

11 It was actually almost a year ago to the day that
12 I was here to ask your approval of a project that replaced
13 685 megawatts of ocean cooled, 1950s vintage steam
14 generators that had seen the end of their commercial life.
15 We replaced those units with a fast start combined cycle
16 which had some of the attributes that California needs to
17 integrate renewables.

18 And that project was approved by you, unanimously,
19 and that's the El Segundo project, and we are currently
20 building it, and it will be online 13 years after its
21 initial -- our initial application for the permit. So,
22 nothing happens overnight.

23 And today we are asking your approval for an
24 identical project. The Carlsbad Energy Center project is
25 also an air-cooled, 540 megawatt, fast start combined cycle

1 project that would replace 318 megawatts of 1950s vintage
2 steam generators at the Encina Power Station.

3 The benefits of this project are clear and our
4 commitment to build this project is also certain.

5 This is the right technology for the future
6 California grid and the technology was specifically selected
7 to complement the addition of intermittent renewable
8 resources.

9 Approximately 60 percent of the capacity is online
10 in just ten minutes and within 45 minutes the full capacity
11 of the unit is online at a combined cycle efficiency.

12 The new units are over 33 percent more efficient
13 than the units they replace.

14 The plant is air cooled and eliminates the use of
15 225 million gallons a day of ocean water used in the current
16 plant for cooling.

17 And it makes use of existing transmission and fuel
18 supply infrastructure on an industrial site.

19 The project will lead to the eventual retirement
20 and demolition of the existing 965-megawatt Encina Station.
21 Encina Units 1, 2 and 3 will be retired when this project,
22 the CECP comes online. And the remaining units can be
23 retired when we have satisfied when they are no longer
24 needed for grid reliability.

25 We share the City of Carlsbad's goal to retire the

1 existing plant as soon as possible and this new project
2 moves us closer to that goal.

3 In fact, the location of this project is
4 consistent with the City's coastal redevelopment plan, which
5 cited a goal to repower the Encina station in the exact
6 location proposed for CECP.

7 This is land that has little alternative views.
8 The new plant will be built within a fuel oil storage berm,
9 a railroad track, a freeway. It's next to a utility switch
10 yard, and it's next to a planned City of Carlsbad sewer lift
11 station.

12 The new plant has a significantly lower profile
13 than the existing Encina Station. Where the stack at the
14 Encina Station rises over 200 feet, the two exhaust stacks
15 for this new project rise just 109 feet above the recessed
16 berm.

17 And the generating equipment is only 60 feet
18 higher than the view and will largely be concealed from view
19 by an existing and planned vegetation.

20 The project has considerable regional support.
21 Both the Chamber of Commerce in Carlsbad and the San Diego
22 Regional Chamber of Commerce have endorsed the project. The
23 San Diego Economic Development Corporation, Legislative
24 leaders, like Senator Kehoe, Senator Wyland, Assemblyman
25 Garrick, and environmental groups, like Surf Rider, have

1 found merit in this project and they believe, like us, that
2 it provides the energy efficient -- or efficient energy that
3 California needs to meet its social, environmental and
4 economic goals.

5 It supports grid reliability at a time that we're
6 challenged to replace over 16,000 megawatts of once-through
7 cooled generation, impossibly, two nuclear projects that are
8 threatened in the relicensing process.

9 It eliminates ocean water cooling, makes use of
10 existing infrastructure, transmission and gas supply, and it
11 enables the future development of the existing Encina
12 Station.

13 So, we believe this project is the right
14 technology, in the right place, and we believe it's the
15 right time and ask approval of our permit so we can build
16 it. Thank you.

17 CHAIRPERSON WEISENMILLER: Thank you.

18 Staff?

19 STAFF COUNSEL RATLIFF: Commissioners, Richard
20 Ratliff, Staff Counsel. Staff is in support of the errata
21 that you have before you today, to the decision.

22 I would add that I believe all of the significant
23 environmental issues, the real or imagined that pertain to
24 this project have been discussed and discussed repeatedly.
25 With the possible exception of the one that Mr. Kramer

1 mentioned concerning that was raised very late by Mr.
2 Simpson regarding the safety of the gas pipeline.

3 Because that issue has never been discussed other
4 than in the documents, and was never raised before as a
5 significant issue, staff is prepared today, if the
6 Commission wishes, and at a time which you would choose, to
7 address that issue further to make sure that that public
8 comment on the decision does not go unanswered.

9 CHAIRPERSON WEISENMILLER: Thank you for that
10 officer. Let's, at this point, just go to the City of
11 Carlsbad and give all the parties a chance to comment.

12 MR. BALL: Good morning, Chairman Weisenmiller and
13 members of the Commission. My name is Ron Ball; I'm the
14 City Attorney for the City of Carlsbad, and General Counsel
15 for the Redevelopment Agency, both interveners in this
16 proceeding.

17 With me this morning is Attorney Allan Thompson,
18 who is our Special Counsel in this proceeding, and I believe
19 well-known to the Commission over the many, many years that
20 he's appeared before you.

21 Also with me this morning is our City Manager and
22 Executive Director of the City of Carlsbad and the
23 Redevelopment Agency, respectively, Lisa Hildebrand.

24 Also present is our Housing and Community
25 Development Director for the City and for the Redevelopment

1 Agency, Debbie Fountain.

2 Also present is Mr. Joe Garuba, who is a Property
3 Manager and the Team Leader for this project.

4 And also present is Special Consultant, Bob
5 Therkelsen, who was the former CEO of this honorable
6 Commission.

7 And so I will open my remarks, Commissioner Boyd,
8 it's nice to see you again, I feel like we're old friends,
9 now, having worked on this project for four years.

10 COMMISSIONER BOYD: I appreciate the friend
11 component of your comment.

12 MR. BALL: But my -- with all due respect, my
13 remarks primarily will be addressed to your colleagues, who
14 I will urge not to accept the PMPD, including the PMPD with
15 the errata. And the reasons for that will be explained,
16 now, and also addressed by my colleague, Allan Thompson.

17 I'm sorry, I missed the first part of the meeting
18 and we're not going to have Commissioner Eggerts here this
19 morning?

20 CHAIRPERSON WEISENMILLER: He has not yet been
21 sworn in, so he's not a Commissioner at this moment.

22 MR. BALL: Okay. He was sworn in at the time we
23 started these proceedings years ago, so I'm sorry that he's
24 not available this morning.

25 CHAIRPERSON WEISENMILLER: We certainly eagerly

1 await his return.

2 MR. BALL: Thank you. And any one of our -- any
3 members of our team are here to answer any questions that
4 the Commission would have.

5 And we're okay with the first two lines of the
6 PMPD, but then we fall apart with the parts that say there's
7 no significant impacts on the environment and my colleague,
8 Mr. Thompson, will address that.

9 And that the proposal complies with all the local
10 laws; and that is not so. I can't emphasize enough that our
11 local laws are adopted by the City Council for benefit of
12 the local citizens. Not for benefit of the State of
13 California citizens.

14 This honorable Commission has that power to
15 override that when it's weighing the State concerns in this
16 proceeding, but it does not have the power to disregard
17 local ordinances that were designed and intended to benefit
18 the local citizenry.

19 And there is none -- there is not one word in this
20 proposed decision regarding overrides. Instead, the
21 Commission has consistently substituted its judgment for the
22 City Council, the legislative body of the City of Carlsbad,
23 and for the Housing and Redevelopment Commission of the City
24 of Carlsbad, and that's something that this Commission
25 cannot do except by following the process in the Warren

1 Ahlquist Act for overrides.

2 So, we're going to urge, at the conclusion of
3 these remarks, that the PMPD be remanded to Commissioner
4 Boyd to correct those errors and to return with a revised
5 document recommending either overrides and have the
6 appropriate process, or to deny the PMPD altogether.

7 As a corollary position, we're asking that the
8 decision that's before you this morning include a report
9 from the California Coastal Commission. The City and the
10 Redevelopment Agency has been consistent, since 2007, asking
11 the Committee and staff to invite the Commission, the
12 Coastal Commission to file a report. For some reason that
13 hasn't been done and I'm very disappointed that it's not
14 been addressed, nor has it been really sought.

15 What happened -- by this Commission. What
16 happened is a few letters from the Executive Director came
17 to this Commission, begging off from its statutory duties.
18 And the applicant and, to a certain extent, the PMPD has
19 apologized for that and really said that the form of the
20 application controls over the substance of the law, because
21 this is an AFC application, we don't have to comply with the
22 law that requires the Coastal Commission's comments.

23 So, I think before this -- before this PMPD can be
24 certified and the plant licensed there must be a report by
25 the Coastal Commission and then the Commission can engage in

1 its overriding findings because it has paramount
2 jurisdiction. We understand that.

3 And that brings me to the inconsistency with the
4 local act, the local Coastal Act, and the Coast Act, the
5 State of California Coastal Act.

6 And the last time I was before this Commission was
7 in 1990 and we had, at that time, a proposed combined cycle
8 plant at this very location, at this very location in which
9 there was a Coastal Commission report and that Coastal
10 Commission report found it was inconsistent with the local
11 coast program and with the Coastal Act.

12 Now, I know 20 years have expired, they've passed,
13 but that's the best evidence we have in this proceeding.
14 The Coast Commission report is part of this proceeding and
15 concludes, in 1990, that it was inconsistent with the
16 Coastal Act.

17 That has not really changed. The applicant and
18 the PMPD has quarreled with whether or not those are
19 identical plants, and that's nice to know, but it doesn't
20 substitute for a report. And the fact that it might be
21 distinguishable doesn't substitute, doesn't create a new
22 report.

23 So, what's the next best evidence? The next best
24 evidence is from the local agency charged with the
25 administration of the local coastal program, and that's the

1 City of Carlsbad.

2 There is a report, a thorough report prepared by
3 the staff of the City of Carlsbad that finds that this
4 proposed power plant is inconsistent with the local coastal
5 program.

6 The local coastal program has been certified by
7 the Coastal Commission and the staff has literally processed
8 hundreds of coastal development permits. This Commission
9 should acknowledge and honor that report as the next best
10 evidence.

11 Now, let me spend a minute on two -- two other
12 important things that we consider fatal, I guess you would
13 say at this point.

14 One is the lack of compliance with the local law
15 that was enacted by the City of Carlsbad, enacting a
16 moratorium on power plants, the location, and development
17 and construction of power plants in the local coastal zone
18 in the City of Carlsbad.

19 And that moratorium applies to power plants. It
20 does not apply to this Commission, of course. This
21 Commission has the authority to license plants. We're not
22 trying to override that jurisdiction, at all. But the local
23 authority has said you can't build, operate, or process a
24 development application for a power plant in the coastal
25 zone in the City of Carlsbad, and that's a moratorium.

1 It's allowed by the California Constitution, it's
2 allowed by the statutes of the State of California. And
3 instead of honoring that and perhaps overriding it because
4 of the statewide interest, the errata says, well, it doesn't
5 really apply. It doesn't really apply.

6 Well, nothing could be further from the truth, it
7 does apply. There are no vested rights in this, yet, in
8 this proceeding. So, the applicant has no vested rights to
9 quarrel with a local law. This Commission can override it,
10 but it cannot substitute its judgment for the City Council.

11 So, what has happened is we have a local law, it's
12 not been overridden by this Commission, nor has it been
13 recommended to the Commission, and so we're left with a
14 local law that needs to be observed and may not be observed
15 if this plant is constructed.

16 The moratorium applies until sometime this fall,
17 October or November, at which time it would be replaced by a
18 permanent law. But at this time it's entitled to
19 acknowledgement, it's entitled to be observed, it's required
20 to be observed until it expires.

21 And I think that, unfortunately, the errata sheet
22 is very insufficient in that regard.

23 The final thing, I think, is the extraordinary
24 benefits. The extraordinary benefits are -- well, actually,
25 there are two final things. But the second-to-the-last

1 final thing are extraordinary benefits. Which are what?
2 Extraordinary benefits are those found by the City Council
3 to redound to the benefits of the citizens of Carlsbad.

4 It has only found extraordinary benefits in the
5 entire history of the City twice. Once was for the
6 desalination plant, the extraordinary benefits were a number
7 of them, they're in the record. But, basically, that
8 project proposed a safe, secure, and reliable source of
9 water at a known price. It provided additional fees, and
10 additional enhancements, and additional dedications.

11 LEGOLAND was similar, although not in the coastal
12 zone, but it was subject to a finding of extraordinary
13 benefits through the development agreement. And in that
14 case we had enhanced fees, we had enhanced dedication, we
15 had enhanced standards.

16 None of those would have been provided but for the
17 extraordinary finding.

18 In this case what's the extraordinary finding?
19 There is none. There is a possibility that the plant, units
20 1 through 3, and then 4 and 5 will close down sometime in
21 the future. They would probably close anyway because of the
22 once-through cooling policy of the State. So, we don't
23 consider those extraordinary.

24 We are, as Hearing Officer Kramer said, we do
25 concur in those findings, we think it's a good thing, it

1 goes a way toward finding a certainty and a solution to the
2 citizens of Carlsbad that have had to live for over 50 years
3 with the plant. But it doesn't provide extraordinary
4 benefits. In fact, it does just the opposite.

5 At the most, our expert testified in the
6 redevelopment law, that this extends the period of blight,
7 the blighting influence on the coast and it places into
8 jeopardy our coastal rail trail system, our proposed coastal
9 rail trail system, which is part of a 43-mile trail going
10 from Oceanside to San Diego. That now is placed in jeopardy
11 of this property, if this project is approved.

12 It places into jeopardy our sewer line and
13 pipeline station that has been criticized and delayed.

14 It forever diminishes the views in the City of
15 Carlsbad and it disregards our local land use laws. And it
16 disregards our local land use laws because basically this,
17 the PMPD is recommending that this Commission substitute its
18 judgment for the City Council in a number of ways.

19 And we've set forth hundreds and hundreds of pages
20 of arguments. So, for me to summarize these in a few words,
21 probably can't do justice to that.

22 But although the land use laws have been
23 categorized fairly unkindly by the staff and the applicant,
24 they do exist and the City Council has found that this
25 proposal's inconsistent with them.

1 So, it's very difficult for me to understand or
2 for the City to understand why this Committee would
3 substitute its judgment for that of the legislative body.

4 The legislative body requires a specific plan
5 amendment, that's not be provided.

6 The legislative body requires a precise
7 development plan, that's not being provided.

8 It is inconsistent with the Agua Hedionda Land Use
9 Plan, which requires a height limit of 35 feet. It's
10 inconstant with the Local Coastal Plan.

11 So, for all of those reasons we feel that this is
12 the wrong place, at the wrong time to approve this plan.

13 So, I'm going to turn my time over to Attorney
14 Thompson, and then I will conclude by urging the Commission
15 to the proper remedy is to remand this case to Commissioner
16 Boyd, to remand it to the staff or to deny the PMPD. Thank
17 you very much.

18 CHAIRPERSON WEISENMILLER: Well, thank you for
19 your comments. Allan, could you be brief?

20 MR. BALL: And my colleague also reminded me, the
21 errata sheet and the PMPD does not deal with the most
22 fundamental issue of whether or not this proposed plan is
23 coastal dependent. The plain meaning of Public Resources
24 Code 30101 says that a coastal-dependent use must be located
25 adjacent to the sea to function at all. That's not the case

1 here. This plan can function in somewhere else not adjacent
2 to the sea.

3 And the fact that the PARE filed an amendment to
4 the plan that said, well, now we need a desalination
5 component didn't change it. In fact, that probably made it
6 worse as far as environmentally destructive influence,
7 again, of the impingement and entrainment. That's something
8 that wasn't brought to the attention of the Coastal
9 Commission. Their Executive Director's letters were without
10 the benefit of that knowledge.

11 So, the PMPD has argued around the 30101
12 definition, but has not squarely addressed it. And the
13 plain meaning of the law says this plant is not coastally
14 dependent. Thank you.

15 CHAIRPERSON WEISENMILLER: Thank you.

16 MR. THOMPSON: Thank you, Mr. Chairman, Allan
17 Thompson, let me try and be brief here. There's just a
18 couple issues I'd like to highlight.

19 The first is the fire code issue, Section 503.2.2
20 gives the local fire chief the authority to make
21 requirements on road access widths greater than that
22 contained in the code.

23 Now, I think this makes a lot of sense. The local
24 fire chief, as they testified, have local knowledge, they
25 know the fire department, they know the capabilities.

1 In our particular case we put on three witnesses,
2 the fire chief, the fire marshal and the operations chief
3 with over a hundred years of fire-fighting and code
4 experience.

5 Their concern with the access roads went to the
6 location, the depth, they looked at operational concerns,
7 how you fight the fire, how you plan to fight the fire.
8 They were concerned about the safety of their fire-fighting
9 personnel, any employees that may be on site and the public.

10 They looked at the threat, is what they call the
11 fires. They believe that the 28-foot emergency access is
12 too narrow. A ladder truck is ten feet wide, the
13 operational width is 20 feet when doors are out and they're
14 pulling ladders and hose.

15 Twenty-eight feet does not allow for the passage
16 of two vehicles, they believe that that is crucial.

17 The staff witness Greenberg testified to a couple
18 of things. With regard to that particular code section he
19 said that he does not believe that the chief has carte
20 blanche under that section and he needed stated reasons.
21 And he arrived at the 28-foot level by looking at the design
22 drawings and then comparing them to the code and the design
23 drawings could show that a 28-foot road could be in there.

24 The chief, on the other hand, considered all of
25 the local knowledge, as I said, and the fire department's

1 ability to fight these fires in a safe manner.

2 When Mr. Kramer was describing the site,
3 contiguous to a rail line, a freeway, a lagoon and an
4 electric substation, those are probably attributes to locate
5 a power plant. Those four surrounding uses, when the plant
6 is in a pit, make it a nightmare for fire-fighting
7 personnel.

8 So, I would -- I would request that you reconsider
9 your re-interpretation of Section 503.2.2.

10 I will say that the one thing that we found, that
11 we approve of in the errata, is that you finally make it
12 clear the Committee is asking the Commission to substitute
13 its judgment for that of the local fire chief.

14 One of the lessons learned in our recent hearings
15 was that the fire in Connecticut resulted in deaths and the
16 State's Attorney General is holding hearings to investigate
17 the reasons for that.

18 I think that the errata makes it clear the
19 Commission's responsibility in overriding the local fire
20 chief and where future responsibility may lie.

21 The next issue and I'll try and be very brief
22 here, is the -- is our belief that the no-project
23 alternative is the favored alternative.

24 The SDG&E material that was filed at the Public
25 Utilities Commission, I believe the day after our hearings

1 closed so, unfortunately, it wasn't available at the time,
2 is an application and testimony under oath, three signed
3 power purchase agreements that they're seeking CPUC approval
4 of.

5 We do note that one of those projects is included
6 in the greenhouse gas discussion in the errata, so it
7 appears that the Committee is picking and choosing these
8 projects.

9 Why do I believe that these -- that we should take
10 the time and consider this testimony and application?
11 Because it goes to the heart of the no-project alternatives.
12 There are five, six different reasons why the no-project
13 alternative doesn't work. We've talked about retiring the
14 EPS. We believe that will happen, anyway. SDG&E says that
15 that will happen.

16 Generation sufficiency, SDG&E says that up until
17 2018 that the three projects that they're advocating will
18 satisfy generation sufficiency.

19 The need for new, highly efficient, reliable CAISO
20 dispatch in the San Diego load center, again, I don't want
21 to belabor this but that application and testimony go to the
22 heart of the no-project alternative. It seems to me that we
23 could take a little more time and fully investigate whether
24 or not this is needed.

25 The next to the last, the override, Mr. Ball has

1 talked about this a bit and I think it's a dangerous course
2 to stray too far from either requiring conformance to LORS
3 or overriding.

4 I think that the legislative construct was that
5 laws, ordinances, regulations and standards are to be
6 adhered to or, in the alternative, when the best interests
7 of the State of California as you interpret it define it,
8 those laws, ordinances, regulations and standards should be
9 overridden.

10 I do not believe that the Warren-Ahlquist Act
11 contemplated that this Agency would reinterpret local laws
12 and the State fire code, and I think that that's a dangerous
13 precedent.

14 Finally, with regard to the timing of all this, we
15 do not know why after 14 months waiting for a PFPD, we are
16 in a rush to get this out the door. We would note that as
17 of last week we were unaware of any filings that have been
18 made by the applicant to satisfy the verifications of the
19 conditions of certification, the 30, 60, 45, 90, whatever
20 days those are.

21 It came to our attention because there are three
22 or four of them that go directly to the City of Carlsbad,
23 documents that need to be submitted to the City, and the
24 fire department, and those had not been done.

25 So, it strikes us that if construction is not

1 going to begin any time in the future, you could take the
2 time and look at certain of these issues. Thank you.

3 CHAIRPERSON WEISENMILLER: Thank you.

4 CURE; is anyone on the phone or here?

5 MR. KRAMER: Next might be the Center for
6 Biological Diversity, then.

7 MR. ROSTOV: Thank you. My name is William
8 Rostov, I work for justice and I represent the Center For
9 Biological Diversity in this proceeding.

10 First, I wanted to say in this process I've also
11 gained a great deal of respect for Commissioner Boyd. I've
12 had encounters with him over the years. And I disagree with
13 the PMPD, but nothing here is personal and I'm mostly
14 addressing the other Commissioners, so please don't take
15 anything person.

16 I thought I'd briefly address some of the
17 procedural issues Mr. Kramer raised and then I want to focus
18 my time on the substance.

19 First, with respect to the Rob Simpson motion, we
20 support it. But Mr. Kramer did not discuss one of the key
21 aspects of it. That motion talked about rescission of the
22 PMPD based on 1749.a, which essentially requires your rules
23 require that the hearings be closed before a PMPD can occur.

24 What occurred here is a PMPD was issued and then
25 there were evidentiary hearings. It's in direct conflict

1 with 1749.a, and I believe that motion is correct.

2 Second, on the City of Carlsbad, where they only
3 want to do official notice of a part of that document, our
4 motion also asks to reopen the record and that would take
5 care of the issue of the other parties not having the
6 opportunity to respond to the SDG&E application.

7 So, you could reopen the record and notice the
8 whole document.

9 And finally, with respect to our motion, Mr.
10 Kramer said a lot of the documents predated the PMPD, but
11 the point is that the -- we didn't know what the PMPD was
12 going to say. There's a 30-day comment period for the PMPD
13 and once we found out what the PMPD was saying, we found
14 evidence that showed that the PMPD was factually inaccurate.

15 So, what is the purpose of a public comment period
16 if you cannot take new evidence to explain the problems with
17 your document?

18 And I would also just like to say that CEQA
19 requires it. I've testified on CEQA matters amongst
20 planning commissions, city councils, I've argued in court
21 and when -- while the record is still open, which it is here
22 because you're still making a decision on this, that the
23 Agency needs to take -- there's a case, Valente Vineyards,
24 needs to take the evidence. And I think due process also
25 requires you to have a full factual record that is accurate.

1 So, now I'd like to just really pose questions for
2 consideration, for the Commission, before you make your
3 decision.

4 So, what is the rush? The errata came out at 7:24
5 p.m. last night, before the hearing. The hearing today was
6 at 10:00 a.m. Is this routine practice?

7 Why are you disregarding your own rules? As I
8 already said, 1749.a clearly says the evidentiary hearings
9 had to be closed before there is a PMPD.

10 1753 says a revised PMPD requires a 15-day comment
11 period. You issued an errata that, from my brief review,
12 seems to have substantive changes that would require at
13 least a 15-day comment period.

14 So, why was the run-must-run status misrepresented
15 throughout the process? We didn't know until one of the
16 other interveners raised, in the evidentiary hearings in
17 May, that the RMR status for Encina had been terminated.
18 And at that time the evidence said that the RMR status had
19 been terminated in 2010.

20 Some of the documents that we've now put in the
21 record say the RMR status was really terminated in 2007.
22 And I wonder why the staff would oppose something they
23 should have known, that there wasn't this RMR status,
24 putting in documents that correct that record.

25 I would refer you to Mr. Ratliff's opposition to

1 our motion, on page 5, where he actually misstates the
2 record again, where he says the RMR status was terminated in
3 2010, even though our new documents show it was terminated
4 in 2007.

5 And then why wouldn't you provide new time to
6 address this change in facts that everybody was under the
7 misimpression of?

8 So, why have you created a greenhouse gas analysis
9 that effectively allows for the approval of all new natural
10 gas power plants, especially ones that are not needed.

11 You set standards in the Avenal case that
12 guarantee pre-approval, so why are we really even bothering
13 with doing greenhouse gases?

14 Well, I know why I'm here; I'm really concerned
15 about the serious damage from global warming and the
16 emission of greenhouse gases.

17 And I know we need to move to a system where we
18 de-carbonize our energy system. This decision goes in the
19 wrong direction.

20 This is a new generator of greenhouse gas
21 emissions and you're saying it's not a significant impact
22 under CEQA. It's just hard to believe.

23 But the legal analysis supports that. What is
24 your cumulative impacts analysis for greenhouse gases? It
25 doesn't consider other power plants that have been licensed

1 by this Commission. It doesn't even consider Mariposa,
2 Oakley, or Pio Pico, three of the recent licensing.

3 There's no list of all the power plants that
4 you're considering, no -- we just don't know what you're
5 considering when you did your cumulative impacts analysis.
6 Apparently, you said you had this one plant routing to the
7 grid, and everything else is reduced, assuming that there's
8 no other plants being licensed or have been licensed. Your
9 accumulative impacts analysis just doesn't confirm with
10 CEQA.

11 So, the other thing you need to do is assess your
12 analysis against the project baseline. And we've argued
13 about the project baseline, but even assuming a baseline
14 that the CEC is intent on pushing, which is the Western
15 Electric grid, that baseline is unclear and un-variable.

16 What's included in it? There's no definition,
17 there's no list of power plants in the western grid, there's
18 no quantification of the amount of emissions from the
19 western grid.

20 So, if you don't know what the baseline is, what
21 the greenhouse emissions are from your baseline, how do you
22 know when you're adding other plants if you're having a
23 reduction or not? No calculations whatsoever.

24 So, I would just like to point out a case that we
25 didn't point out in our papers, which was last year, a case

1 I'm very familiar with. And, essentially, one of the
2 holdings of that is you have to have a clear baseline, you
3 can't just have some tables that do what you guys did, which
4 is essentially say, well, we're using the western grid as
5 the baseline. You have to have more of quantification. And
6 I think that case is very on point.

7 So, my next question is why didn't the Energy
8 Commission, the Committee take judicial notice of the
9 California Energy Future Implementation Plan?

10 This is a document that says, and I'm going to
11 quote it, it's on page 68. I'm sure you're all familiar
12 with it because your Agency produced it.

13 "In support of tracking progress towards AB 32
14 goals, the Energy Commission also intends to estimate GHG
15 emissions, greenhouse gas emissions resulting from the power
16 system, using analytic methods to convert resource planning
17 assumptions into greenhouse gas emissions."

18 Yet -- yet, in the PMPD, the PMPD argues that it's
19 too complicated to figure out how -- what reductions will
20 occur from this specific plant.

21 So, you have a document, an official document of
22 the Agency that says we can do planning assumptions and
23 figure out these greenhouse gas stuff, and then in this
24 analysis you say it's too complicated to figure out the
25 actuals.

1 Well, what's CEQA's about is looking at the models
2 and CEQA requires you to use the best available models.
3 Your own document, which is not in the record right now
4 because judicial notice of it was denied, which I still
5 don't understand why, and I think due process allows me to
6 argue about it, and I think you should re-notice it.

7 Anyway, it conflicts with the analysis in your
8 PMPD.

9 The basic argument I think the PMPD puts forth is
10 trust us, the market will work. And the staffer -- one of
11 the staffers who testified to this dispatch theory, he also
12 testified to the idea that liquefied natural gas would be a
13 speculative use in Carlsbad, in San Diego County. And we
14 know, now know less than a year and a half later that LNG is
15 being used in Carlsbad and San Diego County. And those are
16 some of the documents we've also put in our motion.

17 So, we were asked to trust and the PMPD relies on
18 that testimony, saying that the LNG use is speculative, and
19 we're asked to trust them on that, and the PMPD does, and
20 now we're asked to trust them on his greenhouse gas analysis
21 as well.

22 Why does the PMPD have inaccurate information
23 about solar cost? We put in the record evidence about, you
24 know, Southern California Edison's new 250 megawatts of
25 solar where they're getting a much better price point. And

1 why does the PNPD downplay the potential use of solar in San
2 Diego County?

3 You know that was one of the alternatives we were
4 pushing. And I find this particularly dumbfounding because
5 the Governor and this Agency, I've even sat in on some of
6 these workshops, are trying to put forward 12,000 megawatts
7 of new solar.

8 Why didn't you change the new project alternative
9 based on the new facts? I think the City covered that, so
10 I'm not going to say any more.

11 I just want to make a couple more points. I also
12 think LNG, the use of liquefied natural gas should be
13 included in the project description because its use is
14 foreseeable, it's actually happening. And your PMPD -- in
15 contrast, your PMPD says it's speculative. But for the
16 foreseeability, I would refer you to Exhibit G of my motion.

17 There's also an argument in the PMPD that it goes
18 to other places in San Diego. In other words, it's going to
19 be used not just at the power plant, it's going to be used
20 at other places so we don't need to calculate the emissions.

21 But that's not the purpose of a siting proceeding.
22 You calculate what the fuel is and get a number.

23 And the other argument is, well, it's more
24 efficient, so whatever it puts out, it's going to be put out
25 less.

1 But my point is, and CEQA requires, actually, so
2 it's a good point, I think, that you have to calculate what
3 the emissions of the project are. And part of those
4 emissions should be reasonably foreseeable. You calculate
5 the natural gas, you should calculate the emissions of LNG.

6 Okay. I'm nearing my conclusion.

7 So, why is your CEQA analysis based on an estimate
8 of what actually occur versus a disclosure of what can
9 occur?

10 CEQA requires an agency to analyze what are the
11 potential environmental effects and what can occur? If you
12 read closely through this PMPD, this is about, well, we
13 disregard this argument, we disregard that argument because
14 we don't think it's really, actually going to occur.

15 But there's enough evidence showing that these
16 projects can occur, such as the SDG&E projects that the City
17 talked about. That deserves analysis under CEQA. You have
18 to analyze the potential environmental effects.

19 So, finally, what is the purpose of CEQA and what
20 is the purpose of your rules?

21 If the purpose is to insure the integrity of the
22 process and that the public is adequately informed, which I
23 think it is, I would urge you to follow your own procedural
24 rules and follow CEQA, and I would urge you to reject this
25 PMPD and require its factual and legal deficiencies to be

1 corrected.

2 And if it's too late to change the PMPD, I
3 respectfully submit that you should reject the project.

4 Thank you for your time and indulgence.

5 CHAIRPERSON WEISENMILLER: Thank you.

6 Is Terramar here, Associates?

7 MS. SICKMANN: My name is Kerry Sickmann, and I
8 represent the neighborhood called Terramar. That's the
9 neighborhood that sits south of the project.

10 Terramar, the neighborhood directly south of
11 Encina property, respectfully requests that the Commission
12 comply with the Warren-Ahlquist Act.

13 So far the attempts by the City of Carlsbad, Power
14 of Vision, and Terramar to inform the Energy Commission that
15 local state -- local and state LORS will be violated by
16 certifying the CECP had fallen on deaf ears.

17 As you are in a quasi-judicial role, you can
18 disregard us, but you cannot disregard LORS. And though, in
19 your quasi-judicial role you must bite your tongue sometimes
20 so as not to seem prejudicing your words in favor of one
21 party or another, we know this project is a little bit of a
22 poster child to Commissioner Boyd.

23 The Governor of the State of California has
24 appointed you to uphold the Warren-Ahlquist Act, and in the
25 Warren-Ahlquist Act it states, in Section 25525: "The

1 Commission may not certify a facility contained in the
2 application when it finds, pursuant to subdivision d of
3 Section 25523, that the facility does not conform with any
4 applicable state, local, or regional standards, ordinances
5 or laws unless the Commission determines that the facility
6 is required for public convenience and necessity."

7 You must either uphold your prescribed laws or I
8 will use my unending energy to pursue and investigation of
9 the Commission as to why state, local, and regional
10 standards, ordinances or laws have been disregarded.

11 The LORS of concern include local land use LORS,
12 as covered by the City of Carlsbad and Power of Vision will,
13 also.

14 The California Fire Code, Section 503.2.2 states:
15 "The fire code official shall have the authority to require
16 an increase in the minimum access widths where they are
17 inadequate for fire or rescue operations."

18 Whereas the California -- the Carlsbad Fire
19 Department asked for a 50-foot fire road in the pit and a
20 25-foot upper ring road, but has only been given a 25 -- a
21 28-foot fire road in the pit and an upper ring road that
22 will be partially eliminated during the I-5 widening, which
23 is a foreseeable event, per CEQA.

24 Yet, we see in the errata, on page 16 it says,
25 "Given the Energy Commission's exclusive jurisdiction over

1 the permitting and regulation of thermal power plants, we
2 feel the role falls to us as we must both set the
3 development standards for the project and then enforce
4 them."

5 That may be so, but you still must comply with
6 LORS.

7 Number three, the California Coastal Act, the
8 Public Resources Code defines coastal-dependent development
9 or use as "any development or use which requires a site on
10 or adjacent to the sea to be able to function at all."

11 Yet, with the proposed shutdown of Encina, through
12 the end of once-through cooling in 2017, a foreseeable event
13 per CEQA, and land use number two and three from this
14 project, the desalination unit would no longer have a source
15 of water, requiring a new water permit for a use that will
16 result in impingement and entrainment impacts, the same
17 impacts that are scheduled to end as of 2017.

18 The PMPD and the errata do not take into account
19 that by shutting down Encina 4 and 5 the Coastal-Dependent
20 Act disappears, the coastal-dependent argument completely
21 disappears.

22 We understand that if the Commission acknowledges
23 that these LORS are being violated, then overrides must be
24 made. And according to Public Resources Code Section 25525,
25 which I read before, and as docketed proof from the City of

1 Carlsbad, there is no necessity for this facility as shown
2 by the local utility, SDG&E.

3 So, whether this facility is the poster child of
4 Commissioner Boyd or not, the Commission must follow their
5 rules and deny the certification of the CECP.

6 Throughout this process, since the FSA was
7 published, the Energy Commission staff, Commissioner Boyd,
8 Hearing Officer Kramer, and Cal ISO Director, Mr. McIntosh,
9 have all pushed the issue of how Encina is important to
10 maintain grid reliability.

11 Each that I just listed have all testified or
12 documented information confirming Encina units were on RMR
13 status. Either this was a deception by CEC staff, Cal ISO,
14 Hearing Officer Kramer, and Commissioner Boyd, or they were
15 all solely misinformed.

16 Terramar discovered and document Exhibits 377
17 through 379 showing that Cal ISO has no RMR status on Encina
18 units, except for their 14-megawatt combustion turbine,
19 since 12/31/07, and the applicant never came forward to
20 inform all parties on this RMR status, either.

21 Currently, there is only a tolling agreement with
22 SDG&E for Encina units 1 through 5 and is currently
23 scheduled to expire 12/31 of '11.

24 CEC has stressed with -- has stressed that
25 contracts with SDG&E are a non-issue in these proceedings as

1 need is a non-issue.

2 So, if these tolling agreements confirm the need
3 for Encina grid reliability, then the fact that SDG&E has
4 offered no contract to the CECP confirms the fact that the
5 CECP is not necessary for SDG&E load pocket grid
6 reliability.

7 The CEC must follow their own guidelines and deny
8 certification of the CECP. Thank you.

9 CHAIRPERSON WEISENMILLER: Thank you.

10 Power of Vision?

11 MS. BAKER: Thank you. My name is Julie Baker and
12 I represent Power of Vision. And I'd like to thank you for
13 the opportunity to be involved in these proceedings.

14 I think it was two and a half, three years ago Dr.
15 Roe and I registered as interveners, at his suggestion, and
16 I had absolutely no idea at the time what that meant.

17 And it has been a very long processing; it's been
18 an interesting process. I have come to learn much more
19 about the power business and industry than I ever knew
20 before.

21 I would start off by saying that I've lived in
22 Carlsbad for 26 years. I served on the Planning Commission
23 for over 12 years, so I do understand about reading staff
24 reports, trusting your staff, making decisions in the
25 public, and listening to what the public has to say.

1 And I applaud you for doing all that, especially
2 in the public, and especially when you have lots of people
3 standing before you with emotional pleas, to please don't
4 ruin my town with a power plant. So, I do appreciate what
5 you all do.

6 But one of the things that I would like to correct
7 is that over this time we have spent hours talking to people
8 who live in Carlsbad, and gathering signatures, and over
9 2,300 people in Carlsbad and in the region have signed a
10 petition saying they are not interested in having a second
11 power plant on the beach.

12 While it is true that there is a desire to remove
13 Encina, those signature gatherers are really opposed to the
14 idea of a second power plant on the beach.

15 And I think it's important to realize that the
16 proposed CECP is going to be sandwiched between one of the
17 busiest freeways in the country, a railroad line that is
18 constantly busy. The Pacific Ocean, a lagoon to the north,
19 as well as a neighborhood.

20 When Encina was first built, in the early fifties,
21 hardly anybody lived in Carlsbad. Well, in the intervening
22 years the City has filled up. And while there are no
23 sensitive within a thousand feet, that's something that I
24 learned that's important, 1,200 feet. People do live very
25 close to this power plant. It's -- the new plant, the noise

1 of it, the sight of it, the smell of it, the sound of it are
2 going to have a direct impact on beachgoers, as well as
3 people who live in our community.

4 And I think we've discussed a lot today about
5 overriding LORS. And as a Planning Commissioner I'm very
6 familiar with the myriad of land use regulations that govern
7 the City of Carlsbad. Those have been put in place over the
8 years by the various city councils to protect the citizens
9 and to make sure that Carlsbad enjoys the orderly growth
10 that makes it one of the most beautiful cities in the coast
11 today -- or in the State of California, rather, today.

12 And I think it's very important that seriousness
13 be given to these land use regulations.

14 And while it is true that the Energy Commission
15 has the ability to set their own rules, it is my
16 understanding that you need to issue overrides for any rules
17 that exist that the CECP does violate.

18 And I seriously doubt that an emotional appeal is
19 going to work here today, so maybe we should talk about some
20 of the facts.

21 Some of those land use violations that CECP will
22 violate are, and we've covered these extensively in the
23 evidentiary hearings, in the almost four feet of documents
24 that I have sitting in my office, around this case, are the
25 Agua Hedionda Land Use Plan, the Zone Code, the Local

1 Coastal Program and the requirement for an updated specific
2 Plan 144.

3 The proposed CECP violates the extraordinary
4 public benefit requirement of the South Coast Carlsbad
5 Redevelopment Area in that it provides not benefit at all to
6 any of the citizens of Carlsbad.

7 It violates the requirement of the Carlsbad Fire
8 Chief for a 50-foot safety road in the pit. It is -- it
9 fails to consider the cumulative effects of I-5 widening.

10 The proposed decision fails to consider the viable
11 alternatives, as well as the no-project alternatives, and it
12 failed to provide public benefit, as required in the Warren-
13 Ahlquist Act.

14 Power Vision also has some concerns about the
15 proposed conditions land 2 and land 3. It seems to me that
16 there is nothing really date certain about any of those
17 conditions. It does not guarantee the citizens of Carlsbad
18 a specific time that Encina will be dismantled. I do
19 understand that that's difficult to tell right now because
20 we don't know when it will be released from its obligations
21 to grid reliability if those, indeed, are accurate.

22 But it does seem like all land 2 and land 3 is
23 that we commit to doing a plan. And who's going to pay for
24 it?

25 And I don't know that that gives the citizens of

1 Carlsbad any assurances whatsoever that Encina will come
2 down.

3 And then as far as the errata sheet goes, it came
4 out at 8:40 last night and I had left my office and turned
5 off the computer and so I didn't see it until this morning,
6 so it's very difficult in this short amount of time to
7 determine whether we agree with the errata sheet or not.

8 I suspect that there are many things in there that
9 we don't, but in a quick reading of it there's some
10 assumptions that we need to correct. And that is that the
11 CECP is a smaller power plant. While it is 550-megawatts
12 compared to the 900 plus that are in the Encina units, it is
13 a wider footprint in terms of width. And even though the
14 smokestacks are going to be smaller than the current Encina
15 stack, they will still be visible to most of the people who
16 live in Carlsbad. Certainly, the beachgoers and definitely
17 anyone who is driving down I-5.

18 You can't ignore that Agua Hedionda Land Use Plan
19 has requirements as far as height goes. We can't ignore
20 that the -- the proposed CECP is not consistent with the
21 Carlsbad general plan.

22 And then just a couple things I'd like to wrap up
23 with. Mr. Hoffman made some remarks, in his opening, about
24 the benefits that the proposed plant would bring to Carlsbad
25 and the fact that so many people in the region are in

1 support of it.

2 Well, I would dispute that. Quite frankly, just
3 the fact that the Carlsbad Chamber of Commerce is in support
4 of it pales significantly to the fact that over 2,300 people
5 have signed petitions saying that they are against it.

6 It is a bigger footprint; it does not eliminate
7 the use of ocean water because it will still require 3.4
8 million gallons a day for the heat recovery systems.

9 And there's some debate over, as you've heard from
10 both Terramar and the City, about grid reliability and
11 whether Encina is currently needed for that.

12 So, I would definitely implore the Committee to
13 reconsider the Presiding Member's preliminary decision and
14 deny the project or at least send it back for corrections.

15 Thank you.

16 CHAIRPERSON WEISENMILLER: Thank you.

17 Rob Simpson, are you on the line?

18 MS. SUMMER: Good afternoon. April Summer,
19 Counsel for Rob Simpson.

20 CHAIRPERSON WEISENMILLER: Okay.

21 MS. SUMMER: The PMPD is procedurally and
22 substantively flawed and cannot be the basis for approval of
23 this project without violating the Public Resources Code,
24 the Warren-Ahlquist Act, the Clean Air Act, and numerous
25 other laws.

1 These proceedings demonstrate a blatant disregard
2 for laws governing Commission action. The Commission has
3 taken interpretation of its jurisdiction over permitting and
4 regulation of thermal power plants far beyond what is
5 legally permissible.

6 A most striking example of this can be found on
7 page 16, of the errata, where the Commission is granted the
8 title of "Fire Code Official," because the Committee didn't
9 like the actual "Fire Code Official's" conclusions.

10 I'll read from that.

11 "The City insists that the Commission must adopt
12 the access standards set by its Fire Official,
13 citing provisions of the Fire Code, allowing the
14 Fire Code Official to require an increase in the
15 minimum access widths. Fire Code Official is
16 defined as the Fire Chief or other designated
17 authority charged with the administration and
18 enforcement of the Code or duly authorized
19 representative. Given the Energy Commission's
20 jurisdiction over the permitting and regulation of
21 thermo power plants, such as the CECP, we believe
22 the role of Fire Official falls to us as we must
23 both set the development standards for the project
24 and then enforcement. While the opinions of the
25 Local Fire Officials, who will provide the fire

1 Protection services are an important
2 consideration, they are not dispositive. After
3 Considering those opinions, along with other
4 experts we decide that a 28-foot minimum road
5 width is appropriate for this project.”

6 This results-oriented conclusion is not only
7 ludicrous, but is in violation of the requirements that the
8 decision comply with LORS, as addressed in detail by many of
9 the other interveners.

10 The Commission has taken the position that it can
11 approve this project based on expired and otherwise unlawful
12 determinations issued by other bodies and totally ignore the
13 statutory mandated timelines, procedures, and substantive
14 requirements for its written order.

15 Mr. Simpson has submitted a motion addressing some
16 of the recent egregious violations. The hearing officer
17 wrongly described the basis of this motion. This motion is
18 based on procedural and substantive violations of the Public
19 Resources Code and Commission regulations, not pipeline
20 safety.

21 That said, this Commission has specifically
22 instructed staff to address pipeline safety in all pending
23 applications, and this has not been addressed. And, of
24 course, it should be.

25 Any argument that Mr. Simpson’s motion for a

1 rescission of the PMPD is untimely is immaterial as the
2 Commission has created last-minute problems in an unlawful
3 rush to judgment to approve this project outside of the
4 statutorily mandated timelines.

5 The Commission's current haste is all the more
6 inexplicable as it comes on the heels of years of feet
7 dragging, also in violation of required timelines.

8 The PMPD needs to be rescinded, and redrafted in
9 compliance with the procedural and substantive requirements
10 for written orders on application for certification, with
11 the rescheduled and properly noticed hearings for the
12 following reasons: the Code and Commission regulations are
13 very clear in detailing the required procedures for issuing
14 decisions on applications for certification.

15 First, evidentiary hearings are held. A written
16 decision is prepared only upon the conclusion of the
17 evidentiary hearings.

18 "The Commission shall prepare a written decision
19 after the public hearing on an application." That's
20 California Public Resources Code 25523.

21 "At the conclusion of the hearings the Presiding
22 Member, in consultation with the other Committee members,
23 shall prepare a proposed decision on the application based
24 upon evidence presented in the hearings on the application."
25 That's 20 ccr 1749.

1 The PMPD is to be prepared based exclusively upon
2 the hearing record, including the evidentiary record of the
3 proceedings of the application and shall contain reasons
4 supporting the decisions and references to the bases for
5 each of these findings and conclusions in the decision.

6 In this case the PMPD was drafted in violation of
7 California Public Resources Code 25521 and 25519, and 20 ccr
8 1749, 1751 and 1754, before evidentiary hearings were
9 concluded.

10 The PMPD May 19th evidentiary hearings and
11 Committee and Commission hearings were actually all noticed
12 in the same document.

13 The PMPD is, therefore, invalid as it was not
14 prepared after the public hearings on an application and
15 cannot possibly be based on the evidence presented in the
16 hearings on the application.

17 The PMPD, itself, acknowledges this. This is page
18 21 of the land use section where it says: "During the May
19 2011 PMPD comment hearings we will entertain proposals from
20 the parties and the public as to whether such a process is
21 appropriate, how it might work, and suggested language for a
22 condition to be applied to this Energy Commission permit."

23 This is, of course, referencing the hearings that
24 had not yet occurred.

25 The Commission can in no way argue that the PMPD

1 contains reasons supporting the decisions and references to
2 the bases for each of the findings and conclusions in the
3 decision when it has excluded evidence-based, not upon an
4 analysis of its contents, but solely upon the date the
5 evidence was entered into the record.

6 The errata adds additional -- adds many pages of
7 additional language to the extent that that is a revised
8 proposed decision.

9 Per Commission regulation 1753: "If a revised
10 proposed decision is prepared, it shall be forwarded to the
11 full Commission and distributed to all parties, interested
12 agencies, and to any person who requests a copy for a
13 minimum 15-day comment period before consideration by the
14 full Commission."

15 Not only was there no 15-day comment period, but
16 the parties received the errata not even 15 hours ago, last
17 night at 7:24.

18 To quote from the errata, page 31: "It would be
19 unfair to take notice of these documents at this late point
20 in the proceedings, as the other parties have not had the
21 opportunity to digest this information or prepare any
22 responses."

23 In addition to the myriad of procedural
24 violations, substantive legal issues include the inclusion
25 of expired and otherwise unlawful determinations issued by

1 other bodies.

2 The most glaring example of this amounts to
3 violations of the Clean Air Act.

4 This PMPD states that: "The SDAPCD's permit
5 conditions" -- and that's the Air Pollution Control
6 District -- "for the project are specified in the final
7 determination of compliance and included in this decision as
8 a matter of law."

9 As a matter of law, the Air District's final
10 determination is expired. And even if it were still valid,
11 it is invalid as is premised on an inaccurate baseline and
12 this project cannot be approved on the basis of this final
13 determination of compliance.

14 The final determination of compliance states:
15 "Since the application for certification for the CECP was
16 submitted to the CEC in 2007, the proceeding five years in
17 consideration for actual emission reduction estimates are
18 2002 through 2006."

19 This demonstrates precisely why such
20 determinations expire, because over time this data becomes
21 irrelevant.

22 In this case so much time has passed the data used
23 to calculate the baseline is almost a decade old. All
24 decisions premised on wrongly calculated baselines are
25 invalid. This includes the PSD permit.

1 There is action currently pending in federal court
2 against the PSD permit for the wrongly calculated baseline.

3 Mr. Simpson attempted to appeal the unlawful FDOC
4 to the Air District, but was thwarted by this Commission's
5 declaring to the District that the District did not have any
6 jurisdiction to hear such an appeal.

7 Again, the Commission over-stepped its own
8 jurisdiction, leaving the problems of the final
9 determination of compliance unaddressed.

10 Mr. Simpson requests that the Commission comply
11 with Commission regulation 1716.5 and grant his motion to
12 rescind the unlawful PMPD or ultimately deny approval today.

13 Thank you.

14 CHAIRPERSON WEISENMILLER: Thank you.

15 In terms of is there a representative of the Cal
16 ISO here or on the line?

17 Okay, is there any members of the public either
18 here, or on the line, who want to speak next or comment?

19 Any blue cards?

20 Okay, so, Mr. Kramer, do you want to respond to
21 the comments so far?

22 MR. KRAMER: Well, I'm sure I won't hit them all,
23 but a few stood out. The issue of need is -- I think it's a
24 rhetorical issue, certainly a rhetorical issue and perhaps
25 it relates to policy determinations. But it has been the

1 Commission's practice not consider need in reviewing
2 applications for certification. This is after de-
3 regulation, of course, I'm speaking.

4 If a project satisfies LORS and does not have any
5 significant, unmitigated environmental impacts, then the
6 Commission generally approves it.

7 It does not weigh in and try to decide which power
8 plant is going to be built and which is not.

9 And in fact if you look at our history, many
10 projects that have been permitted are simply thick documents
11 that are sitting on somebody's bookshelf because they've
12 never been financed and, therefore, never constructed.

13 The notion that solar, photovoltaic projects can
14 somehow reduce the need for gas-fired back-up generation is
15 mistaken. In fact, and I think it's rather ironic, but the
16 more solar and wind energy that is approved and built
17 actually generates the need for additional capacity in the
18 form of back-up generation.

19 And so were the -- were the aspirations of the
20 Governor and many of the citizens of San Diego County
21 fulfilled and quite a bit of solar capacity were put online
22 in San Diego County we would still find the need, until at
23 some future point some of the Commissions funded research
24 perhaps bears fruit and there are other forms of energy
25 storage. We still need these plants.

1 Again, you know, which of those that SDG&E has
2 chosen to sign up with or to hitch its transmission lines
3 to, so to speak, which will be approved and built is
4 something we can't say today, that's all very speculative.

5 As far as the greenhouse gas analysis, we
6 basically have a fundamental disagreement and with the
7 methodology that the Center for Biological Diversity would
8 like us to approach.

9 They seem to want the Commission to assume that
10 this power plant, if it's built, will operate as much as it
11 wants to, along with all of the other power plants that
12 are -- have been constructed in the past and, therefore, we
13 need to someone estimate what those total missions are going
14 to be.

15 But if you accept the premise that on the
16 electrical system that demand has to equal supply otherwise,
17 I forget from that class I took, either the frequency of the
18 electricity goes up or the voltage goes up or down and, you
19 know, there are problems. Perhaps TV sets start to blow up,
20 lines melt. Demand must equal supply.

21 And that means, then, that even if there are 50
22 power plants available to produce, only those that are
23 necessary to produce the amount of current and voltage
24 that's required at that time will be operated, otherwise
25 there are problems.

1 And Cal ISO exists to carefully monitor that and
2 make sure that demand is balanced with supply.

3 So, the approach taken by the staff, in their
4 analysis, and the decision is to compare generators and
5 there's a table in the greenhouse gas analysis that shows
6 that per unit of electrical output this project would
7 produce less greenhouse gases than would some of the other
8 projects, the older generators that are in the vicinity.

9 And because it's more efficient, while we can
10 never precisely predict how the market forces are going to
11 operate, there is also a loading order that the ISO has that
12 encourages and perhaps demands that the utilities choose the
13 electricity from sources that are the most efficient, after
14 they give preference to the renewables.

15 So, it is expected, although we cannot precisely
16 say to what degree, that a project like this, with a very
17 high efficiency, will be operated in lieu of older, less-
18 efficient projects and, therefore, at any particular point
19 in the day less greenhouse gases will be emitted in the
20 satisfaction of our power needs than if this project or a
21 project like it were not available.

22 So, again, while we -- it is very difficult to
23 quantify the number of emissions, we also don't think it's
24 necessary because what we can say with a degree of
25 certainty, a substantial degree of certainty is the likely

1 result of putting a project like this online is that system
2 wide emissions will be reduced, not increased.

3 And if you want to consider the current system to
4 be the baseline, we are saying that emissions will go down
5 and that is a perfectly adequate analysis under CEQA.

6 If the Center is desiring to gather public policy,
7 informing information about the amount of emissions from
8 various sectors, this is not the forum for the making of
9 broad-scale public policy and the gathering of data, this is
10 a forum to consider whether or not to approve this power
11 plant based on how it appears relative to the rest of the
12 system.

13 The retirement of the Encina generators means that
14 they may not run and there certainly is -- you know, there
15 is evidence to suggest that they might retire soon, either
16 because the utilities quit calling upon their generation or
17 because they choose, in the face of the once-through cooling
18 regulations, not to revamp their current equipment so they
19 can continue to operate, but that is not certain.

20 And if they retire it, they can let it sit there.
21 They don't have to -- they certainly don't have to tear it
22 down. They may or may not have the incentive to try to
23 develop it for some other purpose and recover some of their
24 investment.

25 But it is true that one set of impacts, and that's

1 the withdrawal of the ocean water for cooling would be
2 reduced and eliminated.

3 What the City didn't tell you, though, is that for
4 their de-salinization plant, which was mentioned is that
5 they are withdrawing water from the ocean using the same
6 intake system. And so to an extent, the use of ocean water
7 will continue.

8 Comparing the two, the de-salinization plant that
9 this project would have, which is separate from the City's
10 plant, to the use of water for once-through cooling, the
11 volumes are very different. De-salinization draws the water
12 in at a much lower flow rate and, therefore, the impacts are
13 also different.

14 There was evidence, provided in the applicant's
15 application, that is described in the PMPD to the effect
16 that drawing water at the rates that the project's de-
17 salinization plant would do, would not cause a significant
18 impact upon the biological resources in the ocean.

19 So, it is not the case, as I think it was implied,
20 that any use of ocean water is necessarily creates
21 environmental problems. At the volumes that the power plant
22 currently uses, it is more likely to do so.

23 And then, also, back to the point of the
24 retirement of EPS, there is the option under the once-
25 through cooling rules that the Water Board has promulgated,

1 to attempt to reconfigure your system so you provide
2 protections, either mechanical protections or by other means
3 you reduce the amount of impingement and entrainment.

4 So, while I have no idea whether the applicant
5 would do so, it is also possible that they might decide
6 if -- for instance, if this project were denied, to continue
7 to operate those boilers and make that investment in that
8 cooling system to enable them to do so.

9 So, there's a lot of speculation that we can
10 conduct and I don't think another month or two is going to
11 cause many of those potential outcomes to become much more
12 predictable.

13 On the subject on the timing and Mr. Simpson's, I
14 do apologize, I forgot to mention the other aspect of his
15 claim.

16 The regulation, to my ears reads more as a
17 description of the process. It does not say that the
18 Commission must close all hearings and never think about
19 reopening hearings before a proposed decision is issued. It
20 is saying that after hearings are ended that then the
21 proposed decision is issued.

22 On the one hand that seems fairly obvious and
23 perhaps I didn't have to say that.

24 But as a practical matter, if the Commission were
25 to interpret that rule to say that once a PMPD is issued it

1 can never reopen evidentiary hearings on a topic, that would
2 create a Catch-22 of sorts because there will be times where
3 it is necessary to gather additional evidence. It's never
4 the bulk of the evidence that comes in on a case and -- and
5 to interpret the rule to say that we must close them and
6 then just never reopen them would -- I think would be a
7 disservice both to the Commission, but also the public that
8 it serves.

9 As far as the need to recirculate the -- the
10 errata as a revised PMPD, that's a decision for the
11 Commission. I would not want to purport to advise you in
12 public session about that, but you always have the option of
13 retiring, temporarily, to a closed session to receive advice
14 from your counsel on that topic.

15 It's a judgment call of at what point is it
16 necessary. And I haven't discussed that specifically with
17 Commissioner Boyd, so I'm not going to put words in either
18 of our mouths at this microphone, at this time.

19 Were there any other specific issues you'd like me
20 to respond to?

21 COMMISSIONER DOUGLAS: I've got a few questions
22 for you, Paul, and maybe, possibly, that might be filled in
23 by others. And before I ask I want to acknowledge
24 Commissioner Boyd. After any number of years on this
25 Commission I think we all get to the point where we have the

1 experience of having person after person stand up and regale
2 our colleagues with all sorts of issues that we clearly got
3 wrong in the PMPD.

4 So, you know, I want to recognize him for digging
5 in on this case and bringing us the PMPD. And I guess it
6 goes to show that no good deed goes unpunished, as he gets
7 to sit here through this today.

8 But that being the case I do have some questions
9 and like I say they may be for you, they may be for staff
10 counsel, or other parties.

11 The City of Carlsbad was kind enough to send me a
12 letter a few days before this hearing detailing some of
13 their concerns as it comes to LORS. I don't think I'm the
14 only one who was privileged to be sent this letter but, in
15 any case, I've got it in front of me.

16 And I wanted to ask you more about how the project
17 is consistent with some of these LORS. And I guess I'm
18 starting from the premise that we -- we would give weight to
19 a local jurisdiction in terms of their explanation to us as
20 to what the LORS means, but if the words on paper read
21 something that we thought were clearly different, you know,
22 we might in fact go to the words on paper.

23 So, if that -- if anyone wants to take issue with
24 that premise, you know, please feel free to do so.

25 But that being the case, you know, I want to start

1 with the Coastal Act. You know, the City says that the
2 facility may be located in the coastal zone only if it's
3 coastal-dependent, if it's a coastal-dependent development
4 or use.

5 How -- you know, how is this clearly a coastal-
6 dependent facility or use?

7 MR. KRAMER: Well, I'll take a stab and then let
8 Mr. Ratliff follow.

9 Early on the proceeding the City wrote to the
10 applicant and told them that they could not provide them
11 with reclaimed water, especially in the summer peak when,
12 you know, there were other users, probably the golf courses
13 and others were also using extensive amounts of that.

14 And that caused the applicant to revise their
15 application to propose this, as separate from the City's de-
16 salinization plant, which would gather their water. And
17 this is make-up water for an air-cooled system. This isn't
18 once-through cooling, so the volumes are quite a bit less
19 than the once-through cooling.

20 But, so the City had to go, basically, to the
21 ocean to find a source of water. Knowing that the
22 Commission was not going to let them, due to our policies,
23 use potable water for this purpose. And there really are --
24 I don't think there are any other sources, there's no rivers
25 to speak of or anything.

1 COMMISSIONER DOUGLAS: All right. And was it the
2 case, just so I understand, that they were unable to
3 unwilling to provide alternate water anywhere or was it
4 alternate water at that site?

5 MR. KRAMER: I'm sorry, my memory's a little bit
6 vague on that point. Mr. Ratliff, do you --

7 MR. RATLIFF: Well, the City, in February 20th,
8 2008, provided a letter to the docket, in which they
9 essentially said that they were going to be running short on
10 reclaimed water and would not be able to promise reliable
11 delivery of reclaimed water for this kind of a project and
12 that that would project into the future through 2000 --
13 well, at that time this was a 2008 letter. They provided
14 tables showing that they would be in deficit for what their
15 expected deliveries would be through 2012.

16 And so the letter, essentially, gives the very
17 strong impression that this project would not be availed
18 reclaimed water, certainly in sufficient supply for to
19 operate as it is planned to operate.

20 COMMISSIONER DOUGLAS: Okay. And does that mean
21 this project in this place, or does this mean this project
22 anywhere? I mean is it -- it's because there's a certain
23 wastewater treatment facility, I assume, that would --

24 MR. RATLIFF: Well, the letter goes into that. It
25 was the City describes three different sources for its

1 reclaimed water, including the contractual relationships it
2 had with other providers, besides -- well, other providers.
3 And it totals them and it then discusses its current
4 shortages and its ongoing shortages.

5 And, frankly, this had come up at a workshop,
6 previously, I had suggested that the City should docket
7 information to that effect and had informed the applicant
8 that if there's no water, there's really no point in going
9 forward with the project that doesn't have water because
10 this came up in the context of whether or not the City would
11 provide the project with a will-serve letter, and it was
12 saying that it would not.

13 COMMISSIONER DOUGLAS: Okay. All right. When we
14 talk about the Fire Code, I understand and I've had the
15 opportunity to look at some of the PMPD and the errata on
16 this topic.

17 But help me understand, the City Code provides
18 specific prescribed requirements for access, and so on, to a
19 site. And then it allows the Fire Official, the Chief
20 Fire -- the Fire Chief to provide a higher requirement. And
21 in stepping in and saying, no, actually, the evidence in the
22 record tells us that we don't need this higher requirement
23 that the Fire Chief suggests that we needed; the argument
24 that this is consistent with LORS is what?

25 MR. RATLIFF: Well, Commissioners, the Fire Code

1 width is provided by the California Fire Code, which is
2 taken from the uniform codes that are adopted nationally,
3 but then California adopts separately with revisions on a
4 tri-annual basis.

5 The California Fire Code, I believe, I could be
6 wrong by a couple of feet required, I think a 22-foot width
7 of road. I think the newest version requires maybe 24 feet
8 or 26 feet, I'm not sure.

9 But at that time, at the time that we originally
10 analyzed the project I think the drawings -- well, I don't
11 to go too far afield of what my recollection of things are.
12 But in any case this was a, as you might expect, a fairly
13 contentious issue at hearings.

14 The City testified to its belief that it needed a
15 much wider access road for the safety of fire-fighters who
16 would be fighting a fire in that locale.

17 Against that, the staff looked at the width of the
18 Fire Code -- of the fire road, the width of fire roads in
19 other comparable locations, such as Palomar, and other
20 places where you have fairly confined power plant sites and
21 you have narrower road widths. Actually, I think Palomar's
22 20 feet.

23 And based on, you know, looking at those and the
24 nature of the kinds of fires that you typically would have,
25 and also their infrequency, came to the conclusion that, you

1 know, having -- well, came to the conclusion that the 28-
2 foot was quite sufficient for public safety.

3 COMMISSIONER DOUGLAS: Right and I understand all
4 of that and I've had the opportunity to look at that. But I
5 guess my question is I think it's both, I think it's staff
6 position that no override is required; is that correct?

7 MR. RATLIFF: That's right. Well, and there is a
8 provision in the Uniform Fire Code which allows the Fire
9 Official to require wider roads. And in this case the City
10 requested a 50-foot wide road. And the staff believes that
11 that's excessive and it would tend to make for a great
12 complication to the project, it would be very difficult to
13 configure a 55-wide road consistent with the space that the
14 project has available.

15 Particularly since staff considered the I-5
16 widening to be a foreseeable future project which, under Cal
17 Trans plans would actually impinge on the existing site to
18 some degree.

19 So, on balance, we had to consider whether or not
20 a 55-foot -- a 50-foot road was reasonable and we concluded
21 it was not.

22 As I think the City Attorney said, or perhaps it
23 was Mr. Thompson, staff testified that they do not believe
24 that the Fire Code provision to provide for a wider road is
25 carte blanche, that it allows the City an unlimited ability

1 to choose whatever width it believes it would have.

2 And, of course, this arises in a proceeding that
3 is heavily contested, where the City is strongly opposed to
4 the project.

5 MR. KRAMER: So, in effect, the Committee grafted
6 or assumed a reasonableness requirement in the ability of a
7 Fire Official to set a different standard, held hearings,
8 heard testimony from staff's expert, the applicant's expert,
9 one of the interveners had an expert testify, briefly, and
10 the fire officials from the city. And after considering all
11 that testimony decided that 28 was the reasonable approach.

12 COMMISSIONER DOUGLAS: So, in my -- you know, I'm
13 still asking for the legal reason why the Fire Code, the
14 Fire Chief's assessment, regardless of whether it's
15 reasonable, is not a LORS? That's what I'm asking for.
16 Because I would totally understand a proposal that says, you
17 know, we think this -- we think 50 feet is unreasonable
18 given the site and we think that a smaller amount is still
19 safe so, you know, we recommend an override.

20 But what I'm trying to understand is, is the Fire
21 Chief's assessment not a LORS, and is that what we're
22 saying?

23 MR. KRAMER: What we said in the errata was
24 because we're now stepping into the shoes of the City that
25 we are -- we are the entity that sets those standards and,

1 in effect, we've -- I suppose you could say we've made the
2 Committee, and now the Commission, and the Fire Official
3 have gone out and solicited expert advice from, basically,
4 anybody who was willing to provide it and then made a
5 decision on that basis.

6 COMMISSIONER DOUGLAS: Okay. So, the argument is
7 that we are the Fire Chief, essentially, and, therefore
8 we're implementing that provision?

9 MR. KRAMER: Right, we -- we are stepping into the
10 shoes of the City and regulating -- we're issuing a permit
11 and then throughout the life of the project we're going to
12 be keeping, you know, an eye on the project and making sure
13 that they comply, we're enforcing compliance with our
14 conditions.

15 Sometimes we delegate that, but ultimately we're
16 responsible for that.

17 COMMISSIONER DOUGLAS: All right, thank you. You
18 know, we traditionally defer heavily to the Committee on
19 questions of fact and the little I have seen from the --
20 well, the opportunity I've had to look at the errata, as
21 well as the PMPD, there are a lot of issues of fact there
22 that I'm not really asking a lot of questions about.

23 But I do, you know, when there are questions of
24 law, I want to know the reason, so that's the articulation
25 of the legal reasoning.

1 Let me ask, and I'm just going through the City's
2 letter, since they took the trouble to identify LORS that
3 they have concerns about.

4 The extraordinary public benefit finding, is there
5 anything in the Carlsbad LORS that says benefit to whom? I
6 heard the City saying that there may be great benefit to the
7 State, but we don't have any benefit here. Is that
8 something that is a part of the City's redevelopment area
9 plan?

10 And this may be a question for the City; this may
11 not be a question that anyone at the table answers off the
12 top of their head.

13 MR. KRAMER: Well, I can tell you that having
14 looked at that, I did not find any definition that described
15 its boundaries one way or another.

16 Obviously, in this case the City is very much
17 asserting a position, you know, that is City-centric, but
18 the Committee did not find that it was necessary to limit
19 benefits to the City.

20 Having said that, I'll point out that one of the
21 chief benefits that we cited is this acceleration of the
22 removal of the Encina project. And while there are no
23 visual barriers at the City limits, I would say that those
24 in the City that want to see that thing torn down are going
25 to benefit most directly as opposed to people -- I mean, you

1 can see this thing for miles down the coast. But they're
2 certainly going to benefit as much as anyone.

3 So, I'm not sure that -- you know, there are some
4 other benefits that are cited that are more regional, I'll
5 leave it at that.

6 COMMISSIONER DOUGLAS: Please?

7 COMMISSIONER PETERMAN: I just want a follow-up
8 question on that. And then regarding when they would be
9 removed, it was the comment that it would be after it was
10 satisfied that they were no longer needed to meet
11 reliability and, if so, can you comment further on that?

12 MR. KRAMER: Well, currently, and Mr. McKinsey can
13 perhaps clarify this, but they have a tolling agreement and
14 my recollection is at the last Committee hearing he said
15 that was for units 4 and 5; is that correct?

16 MR. MC KINSEY: Yes.

17 MR. KRAMER: Okay. So, then all five units are in
18 this big concrete block building, so you can't really tear
19 down anything, and they share the same 400-foot stack. So
20 until they're all not needed, basically, it all has to stay
21 there.

22 MR. MC KINSEY: And let me correct that, it's
23 actually the tolling agreement is for all five units, it's
24 not just 4 and 5.

25 COMMISSIONER PETERMAN: And what year does that

1 tolling agreement expire?

2 MR. MC KINSEY: The current tolling agreement
3 expires at the end of this year. There's also, in the
4 record, and the reason -- there's in the record, ISO has
5 indicated that with this facility, 1, 2 and 3 would be
6 allowed to be removed and then that's why they've been
7 treated differently as a part of this project.

8 MR. KRAMER: And, in fact, they will have to be
9 removed because for air quality purposes they're -- in
10 effect, emissions credits are being given to the new
11 project, so they can't operate once this one goes online.

12 Now, let me ask Mr. McKinsey, though, are these
13 agreements reviewed on a relatively frequent basis, so is it
14 possible that the tolling agreement will be renewed for
15 subsequent years?

16 MR. MC KINSEY: It's an ad hoc process when the --
17 and it goes up, like up and down the State as to this
18 aspect.

19 But one way or another they're going to have to
20 evaluate whether to seek another tolling agreement upon the
21 expiration of this one or not and -- but that's -- it's not
22 like a mandatory process, and so it's a question of
23 uncertainty and all we really have is the testimony in the
24 record from Cal ISO, on a couple of different occasions,
25 regarding -- and there was a lot of scrutiny on the future

1 of units 4 and 5, obviously. And the issue has been that --
2 and California has taken further steps to assure themselves
3 that units can't be taken offline until the State gives
4 permission, the CPUC, under General order 167.

5 And so the issue has been all along that the
6 applicant simply cannot commit to removing 4 and 5 at this
7 time, and hasn't been able to get authority from ISO or the
8 PUC for that, and ISO's indicated just the opposite.

9 COMMISSIONER PETERMAN: Okay.

10 MR. KRAMER: And so even if the new units that
11 SDG&E is proposing to contract with come online, as
12 predicted, that's going to be a couple of years and it may
13 be that not until that point in time can 4 and 5 come
14 offline.

15 Now, as far as the conditions go, they require by
16 January of 2016 submission of a demolition, removal and
17 remediation plan. The City, and the Redevelopment Agency,
18 among others, would get to comment on that.

19 They require by the following January a submission
20 of a study of the costs of implementing that plan and a
21 demonstration of the applicant or the project owner's fiscal
22 capability to do so.

23 And financial plan, deposited funds into a
24 dedicated account for implementation of the project.

25 And then the following condition requires that by

1 the middle of 2016 they start applying for permits that
2 they're going to need for the demolition, removal and
3 remediation of the Encina project.

4 And because the Commission never approved -- well,
5 this thing predates the Commission, we've never approved any
6 of these projects, so all those applications would go to the
7 local jurisdiction, so in this case would be the City.

8 So, the Commission really wouldn't be involved in
9 the details of that, except to make sure, because we
10 required it, that they follow through.

11 COMMISSIONER DOUGLAS: Okay. I had a question
12 about the moratorium on power plant development, I guess by
13 the -- in the coastal zone that the City passed.

14 The City, when they were speaking, were speaking
15 as if it were obvious that the moratorium applied to all
16 power plants. Is that -- I understand that staff has a
17 contrary view and I wanted to ask staff or Hearing Officer
18 to talk about that.

19 MR. RATLIFF: The City, during the proceeding,
20 adopted a what's been called a moratorium provision. The
21 moratorium provision, if I recollect correctly, was one
22 which I believe forbade its own employees from doing
23 anything to further the permitting of the power plant.

24 Adhering we -- during cross-examination the City
25 was asked if that was -- if it was basically a document

1 which was applicable to itself, and they confirmed that it
2 was in their answers.

3 This is consistent, I think, with the nature of
4 the moratorium provision, itself, and with the fact that it
5 had no CEQA document with it, such that it would be more
6 broadly applicable as a planning document which would have
7 forbade, for instance, any additional power plant
8 development at the site. That was our understanding and
9 that was why we felt that there was not an inconsistency
10 caused, or a LORS inconsistency caused by that moratorium
11 enactment.

12 COMMISSIONER DOUGLAS: Okay. And is your
13 understanding then based on their answers to questions in
14 the hearing? So, you're understanding is based on their
15 answers to questions in the hearing?

16 MR. RATLIFF: Well, no, it was based on, I think,
17 the wording of the moratorium, the fact that it had no CEQA
18 document and was described as exempt from CEQA because it
19 was only for planning purposes and because we got
20 confirmation of that in our response to questions that were
21 asked at the hearing.

22 COMMISSIONER DOUGLAS: Okay, great.

23 I just have one or two other questions, actually.
24 Somebody, one of the public commenters, I don't remember
25 who, raised the issue with height limitation?

1 MR. RATLIFF: Yes, this and many other issues
2 concerning conformity. And I -- if I can just back up for
3 the big picture, I think, you know, the City -- the City has
4 been very professional in its dealings with us in this City
5 and we have great respect for them and for their
6 participation, and great respect for the individuals that
7 the City has put forward in the proceeding.

8 And because of that, you know, we're in conflict
9 with the City over the interpretation of the City's
10 ordinance and land use planning provisions.

11 And I guess I would say that in my view this
12 conflict is caused by the different perspectives of City
13 staff, or the City, itself, and of the Energy Commission
14 staff.

15 I think the City staff and the City view the power
16 plant as an obstacle to the vision that they had for the
17 coastline and the development that they would like to have
18 there. They view it as something that is interfering of
19 their redevelopment of that into a commercial area with
20 residential -- with both commercial and residential
21 elements.

22 They have aspirations and I think their
23 participation, in their view, has been aspirational.

24 And, of course that is somewhat different from the
25 staff's perspective. In fact, I think it's critically

1 different because the staff comes along, looking at from the
2 stand point of conformity with the actual hard LORS of the
3 City's land use planning documents.

4 And also, to determine whether or not a new
5 facility would create environmental impacts that are
6 significant when compared to the existing baseline.

7 And what they see is an old facility, with old
8 legacy units that are very inefficient, relying on once-
9 through cooling, the goal of which, obviously, in the State
10 is to close down and replace, and repower in a reliability
11 area where you need new capacity.

12 And given the fact that the staff believes that
13 there are no LOR inconsistencies and no significant impacts
14 that result from this, from the staff perspective this is a
15 good project.

16 And, of course, the staff is not regarding the
17 City's aspirations when it comes to that conclusion. And
18 certainly one may have very strong feelings about whether
19 the best place to place power plants is on the coastline.
20 Certainly, you wouldn't put a new power plant there.

21 It's because there is this large, existing
22 industrial facility there, which has all of the
23 infrastructure, which reduces impacts, that it seemed like
24 the environmentally best place to have that kind of
25 facility.

1 The staff did not disregard the City's views on
2 its own land use ordinances. The staff spent a fair amount
3 of time discussing these ordinances with the City. They're
4 quite complex, they've been addressed in the staff FSA, I
5 think in a fair amount of detail.

6 They've been addressed, again, in the staff's
7 briefing documents to explain why we came to the conclusions
8 that we did about their conformity.

9 There are any number of things that we could
10 discuss and I'm certainly willing to discuss them to the
11 best I can, if you want to raise them in particular.

12 But we, after looking at them individually and
13 including the heighth ordinance, we felt that these
14 provisions were not in conflict with the proposed
15 development. Certain aspects of the City's land use
16 provisions, and staff had to work hard to try to understand
17 them, are essentially permit provisions that are
18 adjudicatory in nature or would be applied so.

19 And I think to some degree the issue over whether
20 the project conforms is one of perspective as to whether the
21 City would permit the project and very clearly they would
22 not.

23 And using their land use devices, were they making
24 this decision, it would clearly be adverse to the project
25 developer.

1 But I think because of these different
2 perspectives you have a conflicting view of land use
3 conformity here.

4 COMMISSIONER DOUGLAS: Thank you. My last LORS
5 question was the height ordinance, so you'll be off the hook
6 on LORS questions after that one.

7 MR. RATLIFF: I'm sorry.

8 COMMISSIONER DOUGLAS: If you could just help fill
9 in, one of the commenters raised the height ordinance and --

10 MR. RATLIFF: Height ordinance. My recollection
11 is that that's -- I can't remember if that's in the -- I'd
12 have to go back and look to answer it, specifically.

13 There is a provision in the City's land use
14 ordinances, and I can't remember which portions it occurs
15 in, of a height restriction.

16 But there are other aspects, other documents, and
17 I can't remember in detail which ones they are, which
18 basically say that the power plant should be no taller or in
19 roughly the same dimensions of the existing facilities and
20 cannot exceed them.

21 We saw the existing profile, since it is much
22 lower than the existing facility, that the proposed profile
23 is much lower than the existing facility, to be in
24 conformity with that requirement and concluded that there is
25 no -- no non-conformity with that requirement.

1 I wish I could give you more detail, I just simply
2 can't remember which documents they come from.

3 COMMISSIONER DOUGLAS: Okay.

4 MR. KRAMER: I can point you to the PMPD land use,
5 at page 19. Basically, and with a bit of background, the
6 City has several layers to its planning regulations, the
7 general plan, which we all know about, and the zoning
8 ordinance, and those are pretty much mandatory.

9 And then in between those two they have several
10 different kinds of -- sometimes they're called specific
11 plans, a land use plan. And for the most part they really
12 are relatively silent on specific development standards.
13 The theme seems to be decide what you want to build, come in
14 and apply for, in essence, a conditional use permit. But it
15 will be called something different, an amendment to a
16 particular plan.

17 And for some projects, in some areas, you may
18 have -- technically, you may be applying for amendments to
19 two or three specific plans. They're labeled as specific
20 plans, but when you look at them, there are no development
21 standards and they basically say come in and get approved
22 for an amendment to that plan which then says, you know, it
23 describes your project as now part of the plan if your
24 amendment is approved.

25 Having said that, the Agua Hedionda Land Use Plan,

1 which I believe is the one they also consider to be the
2 Local Coastal Plan equivalent that says regarding that area
3 that has a height limit of 35 feet.

4 But then there's a specific plan 144, which
5 applies to the -- basically, to the old SDG&E properties,
6 which extend from the coast actually to the east of the
7 freeway, in an area that's now mostly agricultural.

8 That says: "The heights of future power generating
9 buildings and transmission line power structures shall be of
10 heights and of a configuration similar to existing
11 facilities."

12 And as you can guess, that sets a rather high bar,
13 or a low bar, as the case may be. The stacks having been
14 400 -- the existing stack being 400 feet and the concrete
15 block building 190 feet, and this project doesn't even get
16 close to those limits.

17 COMMISSIONER DOUGLAS: Thank you, Mr. Kramer.
18 I've got just a few other questions, none of them now,
19 pertaining to LORS.

20 I think it was the attorney to Mr. Simpson,
21 although it may have been somebody else who raised either
22 Public Resources Codes 1753, or 1745a, or both. I had
23 concerns with that and I wanted to ask our Chief Counsel or
24 you, Mr. Kramer, or somebody to speak to those concerns.

25 MR. KRAMER: Okay. Well, I already spoke to 1749,

1 the sort of timing issue. 1753 is the requirement that a
2 revised proposed decision be recirculated for a minimum of a
3 15-day comment period. And I think I spoke to that earlier,
4 it's a judgment call about what -- at what point it's been
5 revised to the extent that recirculation is required.

6 1755 speaks to the contents of a final decision.
7 I don't recall from here statement that there were any
8 particular --

9 COMMISSIONER DOUGLAS: I thought it was 45.

10 MR. KRAMER: 45, I'm sorry.

11 COMMISSIONER DOUGLAS: I thought it was 1745a.

12 When people see me looking down, I might just be taking
13 notes, so --

14 MR. KRAMER: 1745 is a cross-reference to the
15 provision of the Warren-Ahlquist Act about the location of
16 hearings. Well, maybe the -- the title is "Location of
17 Hearings and Conference."

18 COMMISSIONER DOUGLAS: All right, I may have
19 written it down wrong. That's fine.

20 I think that -- I think that I am through my
21 questions, although if any of the interveners who thought
22 the 15-day period applied want to identify what in the
23 errata, or why, I'd be interested. But I'm through my
24 questions.

25 I'd like to thank Mr. Ratliff and Mr. Kramer for

1 their efforts to answer my questions. I think that there
2 may be others who either felt an answer was incomplete who
3 felt an answer was not what they wanted to hear, who might
4 have something to say.

5 MR. RATLIFF: Commissioner, if I may add just one
6 further thing regarding the issue of recirculation, which
7 was raised by the representative from Mr. Simpson.

8 The Commission has, or at least the staff, and I
9 believe the Commission, in its practice, have always
10 interpreted the provision cited in 1753 as being one that
11 applied in the situation where a supplement to an EIR is
12 required. That is where the criteria in Section 15162 of
13 the CEQA guidelines would require a supplemental EIR, which
14 also requires recirculation, and the criteria there are very
15 specific.

16 On the other hand we see this document and
17 documents of this nature in prior proceedings have been
18 viewed as addendum, an addendum to that document, which are
19 not -- contain information of the type which do not trigger
20 the requirements of 15162 or 15 -- or for a recirculated
21 supplemental EIR.

22 So, we believe that that -- the recirculation
23 requirement is simply inapplicable here and the 15-day
24 requirement likewise.

25 MR. BALL: Chairman Weisenmiller and Commissioner

1 Douglas, I mentioned that we had Joe Garuba from our staff
2 in attendance. He has been intimately familiar with the
3 reclaimed and recycled water in this case since the
4 beginning.

5 I would like him to address the fact that
6 reclaimed water is available, but at a price.

7 MR. GARUBA: Thank you Chairman and Commissioners,
8 my name is Joe Garuba, I'm with the City of Carlsbad. I
9 think it's important -- first of all, I'd like to thanks
10 staff through work through this effort. Being part of a
11 staff for another organization, I know you spend many years
12 working on decisions and so it's -- I've appreciated the
13 respectfulness in which we've conducted the relationship
14 over the last four years.

15 The City's -- the question, I believe,
16 Commissioner Douglas was is reclaimed water, recycled water
17 available for this project?

18 The answer is currently the City's recycled water
19 system has some limitations, especially in the summer
20 months, but it is expandable, and so we tried to have -- we
21 tried to have that discussion with the applicant early on,
22 but there was a break down in those conversations.

23 During this AFC process the City actually had the
24 opportunity to go out and solicit and/or partner with
25 another energy provider to try to find an alternative site

1 location inland, in our industrial corridor, where we
2 thought that made some sense to put a new power plant.

3 During that conversation or those negotiations,
4 that provider actually did agree to expand the power plant
5 so recycled water would have been available for an inland
6 power plant.

7 The City's position is we haven't -- we haven't
8 said recycled water's not available at this site, we've just
9 said that the system needs to be modified and there's costs
10 associated that should not be borne by the citizens of
11 Carlsbad, but by the users, by the end-user. And so that's
12 the position that we have.

13 MR. MC KINSEY: Commissioner Douglas, if I might
14 as well, I wanted to correct one aspect of what was stated
15 earlier, and it goes to a question you asked about coastal
16 dependency. And I think there was a presumption in there
17 that the use of de-salinization is a necessary component of
18 this project in order to satisfy the coastal dependency
19 requirement, and that's not correct.

20 The underlying presumption in this project's
21 process, that the coastal dependency question is not how you
22 were articulating it as it absolutely has to be a coastal
23 dependent use to be allowed whatsoever. And this is
24 something else that was briefed very thoroughly and also
25 argued in the evidentiary hearings as to what constitutes

1 coastal dependency and then how would it apply here or how
2 would it not apply here.

3 And to finish that correction, this project has
4 been permitted, and it was at the insistence of the
5 applicant to be either. So, the current way this project is
6 permitted it can use de-sal or it can use reclaimed water,
7 if it is available. And so we have both options available
8 in this project depending on the position the City takes in
9 a much larger scheme of things involving its general
10 opposition to the project versus attempting to try to
11 facilitate the provision of reclaimed water.

12 COMMISSIONER DOUGLAS: All right, let me just make
13 sure I understand. So, your argument on compliance with the
14 Coastal Act is that this is an addition to an existing
15 facility or help me understand what it is?

16 MR. MC KINSEY: And that, you know, we would have
17 to go into the exact language. And I don't think the PMPD
18 reached the position it reached without carefully looking at
19 the arguments made by all the parties.

20 But under the Coastal Act and its implementing
21 regulations, there's a very big difference between going to
22 and citing something anew, and going into an existing
23 industrial area.

24 So, there are many ways in which this project
25 connects to the existing infrastructure and the simplest one

1 we can see is the transmission infrastructure that
2 connections it to this location. And that changes the
3 discussion around coastal dependency significantly, that it
4 is another facility.

5 There are a lot of other explanations, for
6 instance the fact that there are various plan documents that
7 call for a second facility to be placed in this very
8 location, and I mean this very location is in this precise
9 location for this new facility.

10 And what I'm trying to correct is it is not simply
11 an answer, and it can't be an answer in PMPD that because it
12 has de-sal that satisfies the coastal dependency, because
13 the project's been permitted to use both.

14 And I didn't feel the need to correct that earlier
15 because it -- but when you start asking this question about,
16 you know, is reclaimed water available or not, the applicant
17 has -- and had to push the staff a little to maintain this,
18 and we had to write -- there's several conditions in soil
19 and water that deal with this in terms of implementation, so
20 that if reclaimed water is available, the applicant will be
21 able to use reclaimed water, instead.

22 MR. BALL: So, Chairman Weisenmiller, I take that
23 explanation as a concession that this is not coastally
24 dependent. And I direct you to reading the extensive briefs
25 on both sides of the issue.

1 But, clearly, if you read Public Resources Code
2 30101 you will see that this is not a coastally dependent
3 facility because it does not need to be adjacent or located
4 adjacent to the City to function at all, it just does not.

5 So, the plain meaning of the law and with the
6 concession here offered that it doesn't need seawater, de-
7 salination, it just evaporates the argument that this is
8 coastal dependent. There are lots of nuances to that, but
9 that's the black letter law.

10 CHAIRPERSON WEISENMILLER: Well, certainly to the
11 extent this has been thoroughly briefed, we don't need to go
12 into that much detail.

13 MR. BALL: We don't. So, I'd direct you to read
14 those and, hopefully, you'll reach that conclusion.

15 I think as to the Fire Code, unfortunately, the
16 Commission is not overruling State law, it is overruling
17 local law as established by the Fire Marshall and the Fire
18 Chief, as permitted by local law, because we have adopted
19 that, the City's adopted the Uniform Fire Code by reference,
20 and that includes the provision that would allow those
21 heightened and enlarged widths.

22 So the fact that would believes -- that staff
23 believes that the 50 feet is excessive, and believes that
24 it's not reasonable, and it would make it a difficult
25 project does not equate to overruling a local law.

1 It doesn't say we can comply with the local laws
2 that we find are convenient and disregard the ones that are
3 inconvenient, that is -- excuse me -- that is a very
4 difficult rational to accept in that situation.

5 The extraordinary benefits is a local concern and
6 Carlsbad, the City Council realizes its jurisdiction is the
7 City of Carlsbad, it's not the State of California, cannot
8 pass a local law that operates outside of its jurisdiction.
9 But it has found that the local law within this
10 jurisdiction, as this project has been presented to it, does
11 not equate to extraordinary benefits to local citizens.

12 And, indeed, it was in 2005 that the Redevelopment
13 Plan was amended, in 2005, before these proceedings started,
14 that said no other power plant can be located, basically, in
15 the redevelopment area without a finding of extraordinary
16 significance.

17 So, it's not the fact that we are opposed to the
18 project that creates an interpretation of the law that staff
19 doesn't like, it is something that happened before this
20 project was even -- at least that we had any knowledge of
21 it, two years before.

22 The second thing that is so important, and I
23 forgot to mention this earlier, is that this Commission has
24 an MOA with the Coastal Commission that has not been
25 rescinded, and it requires the Coastal Commission's

1 participation in proceedings just as this, in an AFC
2 proceeding.

3 Neither Commission has rescinded that memorandum
4 of agreement and neither could either Commission do that
5 unilaterally, but it would have to be mutually rescinded.

6 So, there is -- there's been no discussion of that
7 and I forgot to bring it up, I apologize, but I can't
8 believe that that should be disregarded; it is a living,
9 viable document that comports and controls this Commission's
10 review.

11 The moratorium is a local law; it applies to power
12 plants in the coastal zone, in the City of Carlsbad
13 anywhere, not just to this site.

14 The reason it did not have CEQA review was it was
15 adopted under the emergency provisions of the CEQA, in which
16 case it's a temporary moratorium, meaning for one year, but
17 it can be extended for up to another year, and CEQA's not
18 necessary.

19 Well, we're doing CEQA now for the follow up
20 because the power that's given to the City under the
21 statutes says that we need to come back with a report that
22 indicates what actions have been taken by the City to remedy
23 the conditions leading to the moratorium, and that's about
24 to happen, sometime in October or November.

25 The final thing is the height limitation's 35

1 feet. What can you say, this is taller than 35 feet and
2 there's been no specific plan amendment.

3 So, while staff or the Hearing Officer, who's
4 apparently advocating in this situation, would -- would
5 indicate that that -- that you can disregard that because
6 other power plants have similar -- existing power plant or
7 other power plants will have similar heights. Well, that
8 has not been a finding by the City Council or the
9 Redevelopment Agency.

10 So, once again, the staff is putting the
11 Commission in the awkward position of stepping into the
12 shoes, as it has done in the Fire Code, to substitute its
13 judgment for the legislative body. Specific plan,
14 specifically is a legislative act under our local code and
15 requires an approval from the City Council.

16 So, if you have any questions, we'd be happy to
17 answer those. We've been looking forward to this day and I
18 appreciate the attention that the Commission has given to
19 us.

20 CHAIRPERSON WEISENMILLER: Thank you. I think at
21 this stage, in terms of the general -- oh, go ahead,
22 comments on Karen's questions. Sure, go ahead.

23 MS. SICKMANN: Yes, I did want to offer, in the
24 PMPD, Local Impacts Assessment, page 7, it says: "In
25 addition, because the City of Carlsbad is unable to supply

1 reclaimed water to the project for cooling and other
2 industrial purposes, it is necessary that CECP use its
3 proposed ocean water purification system. Thus, the
4 proposed project, CECP generating unit 6 and 7 is an
5 expansion of a coastal dependent use and a coastal dependent
6 use in its own right."

7 So, I wanted to offer that information for you,
8 and also to let you know that in the record there is a
9 letter from the Escondido Fire Chief supporting the Carlsbad
10 Fire Marshal and Fire Chief in their testimony regarding the
11 50 feet fire road.

12 Thank you.

13 CHAIRPERSON WEISENMILLER: Okay, thank you.

14 MR. MC KINSEY: I'd like to rebut all those
15 comments, unless you --

16 CHAIRPERSON WEISENMILLER: Oh, sure.

17 MR. MC KINSEY: Oh, I'm sure.

18 CHAIRPERSON WEISENMILLER: In terms of roadmap, I
19 guess I was going to ask people to follow up on Karen's
20 questions, or Commissioner Douglas's questions.

21 We want to also make sure that generally the staff
22 and the applicant have a chance to respond. And, also, I
23 want to get out any other questions for the dais.

24 So, Commissioner Boyd, who I should note has had
25 50 years of public service at about this point so,

1 certainly, I think it's uncalled for to impeach his conduct
2 in this case, it's sort of a remarkable record. But, really
3 look at that balance of 50 years.

4 But in terms of having gone through a chance to
5 get this out, to get the Commissioner comments, we will then
6 recess, we have a number of items to talk about in Executive
7 Session, and then we'll come back, presumably, with some
8 more questions.

9 But, anyway, I just want to make sure we have a
10 chance for everyone to get their comments and questions in
11 now.

12 MS. SUMMER: So, I just wanted to address the
13 specific code sections that Commissioner Douglas was asking
14 about, that I had referenced. And the first one was 20 ccr
15 1749, and just to read, briefly, that says: "At the
16 conclusion of the hearings the Presiding Member, in
17 consultation with the other committee members, shall prepare
18 a proposed decision."

19 And that's a corollary to Public Resources Code
20 25523. And, you know, "shall" is not a mandatory
21 language -- I mean is not a optional language, that is not a
22 "may".

23 As opposed to as the Hearing Officer suggested
24 that these are somehow a guidance. And simply, also, it's
25 common sense that the hearings would be concluded before a

1 proposed decision was issued.

2 And that's not to suggest that the hearings could
3 not be reopened, but if they were then, of course, there
4 would be a revised -- a revised proposed decision.

5 15 -- or 1753 deals with the revised proposed
6 decision. This does not in any way specifically address, I
7 believe it was changes in the IER, it simply says: "If a
8 revised proposed decision is prepared, it shall be forwarded
9 to the full Commission and distributed to the parties with a
10 15-day comment period."

11 And the issue of the testimony of the Fire
12 Marshall is -- you know, perfectly exemplifies why 1753
13 exists. This was released last night. I mean, if you look
14 at page -- it's all over here but, for example, page 30, and
15 page 16 there's completely new information that has been
16 added to this decision that none of the parties have had an
17 opportunity to address.

18 And now we're hearing that the credibility of the
19 Carlsbad Fire Chief is being questioned. And, you know,
20 these are things, these are legal issues that the parties
21 have a right to have notice to be able to respond to.

22 So, to say that this has not been a revised
23 decision and that the requirements for closing evidentiary
24 hearings before issuing a proposed decision is optional
25 simply is a wrong reading of a quite clear law.

1 Thank you.

2 CHAIRPERSON WEISENMILLER: Thank you. Go ahead.

3 MR. MC KINSEY: Mr. Ball raised five things that I
4 wanted just to rebut, briefly.

5 CHAIRPERSON WEISENMILLER: Actually, if you --

6 COMMISSIONER DOUGLAS: I think Mr. Rostov is --

7 CHAIRPERSON WEISENMILLER: Well, if you want him
8 to -- basically, you can save it for a general rebuttal?

9 MR. MC KINSEY: I'm fine with that.

10 MR. ROSTOV: I just want to address Commissioner
11 Douglas's questions, as well.

12 I believe for the first -- I've only had a brief
13 chance to review this because of the timing, and I'm sure
14 after a couple days of reading it and digesting it, I'll
15 have a more extensive answer.

16 But what I noticed, skimming on the way here, was
17 that I think for the first time the errata made an
18 extraordinary benefit finding, which you would think would
19 be subject to public comment.

20 And I noticed in the greenhouse gas section they
21 changed some of the numbers, which I think is good, they
22 updated the numbers for ISO and stuff. But those are new
23 numbers that are just put in for the first time.

24 And if you are inclined to give a new comment
25 period, 15 days is the minimum and I would just say that

1 this has been a rush to judgment, and I would encourage you,
2 if you were inclined to give us some time, you would give us
3 more than 15 days so we could really work out these issues
4 and read through this as well.

5 Thank you.

6 MR. MC KINSEY: Thank you, Commissioners. Mr.
7 Ball raised five things I wanted to very briefly address.
8 One of them is the requirement for a report by the
9 California Coastal Commission under 30143d, and that is,
10 like all these topics, ones that were subject to both
11 briefing and thorough discussion.

12 But the thing that he just raised was the
13 memorandum of understanding. And one of the positions that
14 we've taken and, actually, I dealt with this with the
15 Supreme Court, the appeal of the El Segundo project, as
16 well, is this nuance of, first, whether or not a report is
17 required for a project in the coastal zone that is only an
18 AFC. And that's a legal question that Mr. Ball addressed at
19 the beginning of his comments regarding whether an NOI
20 versus an AFC.

21 But, secondly, there's another legal question of
22 whether an agreement, a document signed by two agencies can
23 purport to modify that authority or that requirement short
24 of actually being adopted as a regulation, and that's the
25 position that we took in that is that an agreement by the

1 Coastal Commission, and it was adopted so the Coastal
2 Commission could understand what their role could be,
3 doesn't in and of itself create a regulation for a report.

4 Second, the particular nuance with the Fire Code I
5 think, and it's one for local jurisdictions, they grapple
6 with, but it is the simple fact that we're not talking about
7 a LORS that says there shall be 50-foot roads.

8 We're talking about the California Building Code,
9 which is adopted in all local jurisdictions in conformity
10 with the way it's adopted in the California Building Code,
11 unless they make special exceptions, has this exact language
12 that we've been talking about.

13 That exact language does not -- I mean on its face
14 does not give carte blanche authority to whoever the local
15 authority is because it actually says where it is necessary
16 for proper fire-fighting.

17 And then, secondly, there is no doubt that the
18 Warren-Ahlquist Act gives the California Energy Commission
19 this exclusive authority, in lieu of all local authority.

20 And as Mr. Kramer indicated, the position that the
21 staff is taking is one that we endorse, which is that they
22 do stand in the shoes by law, and there are cases where they
23 do delegate it. And there's really no authority for them to
24 delegate it, but that's just how we've operated the Energy
25 Commission since its inception.

1 And here they heard the pointed testimony of the
2 Fire Marshall and the Fire Chief. They heard the pointed
3 testimony of other witnesses; it was the subject of an
4 extensive fight over whether or not there was a need for a
5 wider road than the 28 feet that the staff and the applicant
6 had concluded was more than adequate.

7 But all of that was done under the context of
8 trying to make sure we were quite safe in this regard.

9 But the fact is that there is no issue here on
10 jurisdictional authority, the Energy Commission definitely
11 stands in the shoes of the local authority, and that's
12 always a problem in these procedures.

13 The extraordinary public benefit provision has
14 been also vastly over-simplified. And there is testimony in
15 the record, and even at the brief evidentiary hearing we
16 just held on the PMPD, regarding the way in which we got to
17 the point where we're at now. There was a process where the
18 City wanted NRG to cooperate in the development of the de-
19 salinization project that they wanted, and so they agreed to
20 adopt a provision, it's the same one that allows that a
21 power plant to be built in this very precise location.

22 And folded into that document were a whole bunch
23 of extraordinarily public benefits. When Mr. Ball cited the
24 de-salinization plan as proving extraordinarily public
25 benefit, there are other provisions that were required and

1 along with it came the ability to put a power plant where
2 it's being put. And that includes the commitment for the
3 Coastal Rail Trail, which is embodied in Land Use 1, of
4 condition of certification the Energy Commission's
5 requiring.

6 And so there are plenty of ways in which you can
7 conclude that there already is an established extraordinary
8 public benefit.

9 What Commissioner Boyd wanted was to see something
10 be done about a very important issue to the community, and
11 that was the future of the building and the structures.

12 And the applicant and the City met and worked out
13 an agreement on Land Use 2 and 3, and I think they're
14 extraordinary conditions.

15 And I say this because I think it's really
16 important to understand that I think that this is the best
17 opportunity in the near term to remove the existing Encina
18 power station.

19 And if this opportunity gets lost, it could look
20 like some of the structures that may be still sitting
21 around, like Morro Bay, and South Bay, for decades.

22 And so this is a really important component that
23 has been added and it is a benefit, purely, to the project.
24 And it also helps to add another extraordinary public
25 benefit.

1 The moratorium is, on its face, if you just read
2 its face, is simply a prohibition on the City for processing
3 power plant applications. It is not a regulation, it is not
4 a land use adoption, it does not change anything, it is
5 simply a process that says that the City will not process
6 any power plant applications.

7 And it was adopted in the middle of this
8 proceeding, frankly, as a way to try to fight the power
9 point project, itself.

10 And then, finally, I think the height limit
11 characterization is very important to understand and staff
12 and the Committee have worked hard at understanding the
13 layers of requirements.

14 But, again, it's an absolute mischaracterization
15 to say that there is a 35-foot height requirement. And this
16 was something that we vetted very carefully in developing
17 this project. Because, if there was, then obviously it
18 would have required a variance and we would not be
19 comfortable going forward and counsel couldn't recommend to
20 lenders that that requirement applies.

21 I think it goes to the heart of what Mr. Ratliff
22 indicated, that the City is in an advocacy position, pushing
23 for a position, and so they're looking that they can try and
24 say are barriers. But if you look at that very clearly,
25 you'll see that this project doesn't have a 35-foot height

1 requirement.

2 MS. SICKMANN: I just have two more comments. One
3 is after --

4 CHAIRPERSON WEISENMILLER: Some -- you know, at
5 some point we have to be wrapping up and so --

6 MS. SICKMANN: I understand. I understand.

7 CHAIRPERSON WEISENMILLER: -- brief, yeah.

8 MS. SICKMANN: But I flew all the way here from
9 San Diego this morning.

10 CHAIRPERSON WEISENMILLER: Oh, no, we appreciate
11 that.

12 MS. SICKMANN: Okay. Anyway, in response to Mr.
13 McKinsey, the applicant never did go to the City of Carlsbad
14 to find out whether there was water available before they
15 submitted their application. So, it's good information to
16 know that they didn't do that due diligence.

17 And I do want to remind you that in the Warren-
18 Ahlquist Act, as I said before, the Commission may not
19 certify a facility -- may not certify a facility contained
20 in the application when it finds, pursuant to subdivision d
21 of Section 25323, that the facility does not conform with
22 any applicable state, local, or regional standards,
23 ordinances or laws, unless the Commission determines the
24 facility is required for public convenience and necessity.

25 Thank you.

1 CHAIRPERSON WEISENMILLER: Okay, thank you.

2 Applicant, do you have any response to the last
3 comments, or staff?

4 MR. RATLIFF: No.

5 CHAIRPERSON WEISENMILLER: Okay. Commissioners,
6 any other questions or comments?

7 COMMISSIONER BOYD: I'll defer to my fellow
8 Commissioners, first.

9 COMMISSIONER PETERMAN: First of all, I just
10 wanted to say thank you for everyone who's come from San
11 Diego to be here. And also to the staff, and the applicant,
12 and Commissioner Boyd for their tireless work on these
13 issues.

14 Obviously, it's quite complicated and it is good
15 to hear everyone's responses and rebuttals, accordingly.

16 I also particularly want to thank Commissioner
17 Douglas for her line of questioning, she touched upon a lot
18 of the concerns and issues that I have and I found the
19 responses very illuminating, but I still do have some
20 concerns, particularly as it applies to the treatment or
21 overriding, if you may, of the LORS, particularly issues
22 related to the Fire Code. But I did find the last bit of
23 information useful.

24 And I also have some concerns about the
25 alternatives. Admittedly, I -- this project started back in

1 2007 and as a relatively recently appointed Commissioner, I
2 don't have the time series of experience with this project,
3 but I have found the errata and the PMPD to be informative.

4 And so with that, thank you for the information
5 and then I'll pass it along to Commissioner Boyd?

6 CHAIRPERSON WEISENMILLER: Well, actually, let me
7 make a few comments and then you'll go on, Commissioner
8 Boyd.

9 MR. RATLIFF: Commissioner, if I may, I apologize
10 for interrupting, but could I -- I neglected to renew my
11 request that staff be given at least 90 seconds to address
12 the gas -- the comment from Mr. Simpson on the gas line
13 safety issue. I feel like that issue should be addressed,
14 if only for the record, so we can say that we have, in fact,
15 responded to that comment before you guys go to closed.

16 CHAIRPERSON WEISENMILLER: No, that's fine.
17 Again, I think that will be good to get that in. As you
18 know, that's an issue that's certainly of concern to me.
19 And part of it's just the timing, but let's get that in and
20 then move on to questions. Please, go ahead.

21 MR. GREENBERG: It's good afternoon, now. I'm
22 Alvin Greenberg; I've been a consultant to the Energy
23 Commission since 1993. I am the author, the staff author of
24 the hazardous materials management section, as well as the
25 public health section, and the worker safety fire protection

1 section for the FSA.

2 Our approach for all power plants that use natural
3 gas is to look at the linear new facilities, the gas line up
4 to the point, upstream to the point of interconnection with
5 an existing natural gas line. The concept is that we look
6 at the building of the new linear and address it very
7 specifically, but not look at regulating the upstream
8 components of the gas line, which are under various state
9 and federal regulations.

10 This is very similar -- excuse me -- very similar
11 to how we address hazardous materials transportation, where
12 we do not look at the interstate highway transport of
13 hazardous materials in tanker trucks and, instead, look at
14 when that tanker truck leaves the highway and the
15 interstate, and moves toward the facility.

16 It's very much also akin to how we address public
17 health issues, in that we don't look at the upstream values
18 of a reference exposure level of toxicity to a substance, we
19 rely on Cal EPA, Office of Environmental Health Hazard
20 Assessment, as well as US EPA to develop those regulations.

21 So, the concept that's -- and the procedure that
22 staff follows is very consistent through various sections of
23 the final staff assessment.

24 We rely, in this case, on the state and federal
25 agencies to regulate, and develop standards, and oversight,

1 and testing procedures on the gas lines.

2 However, we also look into the gas line at the
3 point of interconnect, and we have determined at this point
4 that the SDG&E gas line is a 20-inch diameter line. It
5 operates from 450 to 650 psi.

6 SDG&E gives a range of 200 to 800, but the
7 applicant has provided some information that it's more
8 likely to be 450 to 650 psi.

9 It was constructed in 1980. It was hydrostatic
10 tested -- excuse me -- at the time of installation. And we
11 have found, staff has found, through our experiences over
12 the years, that these types of testing and this type of line
13 is, indeed, operated safely at this range of operating
14 pressures.

15 Mr. Tyler, the Senior Engineer that I report to,
16 has some more information on this matter.

17 MR. TYLER: I would like to say, to start with,
18 that I think Mr. Simpson's characterization that no experts
19 were involved in making the determination of the safety of
20 the interconnection is, in fact, wrong.

21 This Commission has held me as an expert in the
22 Mariposa facility, in particular, over the very exact same
23 issues, which Mr. Simpson was involved in.

24 The fact is that we did make a judgment call,
25 which we are completely capable of making, that the facility

1 interconnection would not pose a risk to the public, to the
2 surrounding public.

3 We made that conclusion based on factors such as
4 the size of the line. Generally, the distance to impact is
5 dependent on the types of material that would be released
6 and a loss of containment, and the distance, and the amount
7 of material that would be released, and how quickly it would
8 be released.

9 Based on the size of this pipeline and the
10 distance to public receptors, we concluded that there was no
11 potential for significant impact. We are still of that
12 opinion.

13 Subsequent to the preparation of this testimony we
14 dealt with -- delved into this issue in more depth for
15 downstream impacts on the Mariposa case, and these very same
16 issues were raised there.

17 There were issues about fluctuation of pressure,
18 and so on, that we addressed in that proceeding and found
19 that there was no plausible basis for assuming that an
20 interconnection to this pipe line that the operation of this
21 facility and that interconnection to the pipeline would
22 somehow compromise the safety of the existing pipeline.
23 That is the same conclusion that we reach here.

24 This is a modern pipe line; it's designed to
25 modern codes. It is not comparable to San Bruno.

1 In fact we did further calculations to estimate
2 the distance of impact based on the federal code and found
3 that they would extend to a maximum distance of 390 feet,
4 using the 800 psi, which is the maximum that SDG&E said that
5 it would ever operate.

6 The nearest receptors are approximately 1,400 feet
7 away.

8 So, we conclude and we still conclude, even based
9 on further, looking at this as we did in Mariposa, that
10 there's no basis for assuming that this interconnection
11 would compromise the SDG&E pipe line or cause, precipitate a
12 failure on that pipe line beyond the point of
13 interconnection.

14 CHAIRPERSON WEISENMILLER: Thank you. I would
15 note that the expert panel, that the PUC report that came
16 out last week did note that very major differences between
17 the management and the practices at PG&E and at Sempra, in
18 finding Sempra's -- has a -- seems to have a much better
19 track record on these issues.

20 MS. SUMMER: I'm a little confused right now on
21 what's happening. I read the language of 1754; the
22 Commission shall not consider new or additional evidence at
23 the hearing under this section, unless due process requires
24 or unless the Commission adopts a motion to reopen the
25 evidentiary record.

1 In such a case, the Commission shall afford such
2 notice to the parties as is fair and reasonable under the
3 circumstances.

4 I would have objected to this if I was aware that
5 the staff was planning on having an expert testify, without
6 there being any notice. So, I move that this is stricken
7 from the record and -- and I'm just a little -- a little
8 baffled.

9 CHAIRPERSON WEISENMILLER: Okay, we'll take your
10 motion under advisement. I don't know if the staff wants to
11 respond this second.

12 MR. RATLIFF: Well, Commissioners, this is
13 response to public comment provided by Mr. Simpson extremely
14 late in the proceeding and this is the only opportunity by
15 which we could actually make that response to comment. If
16 we did not make the response to comment, I would anticipate
17 that counsel for Mr. Simpson might be raising that very
18 issue, that there was no response to this public comment, in
19 a petition on this proceeding.

20 So, I think it's actually good that the Commission
21 does it; I think it's appropriate and it's not testimony,
22 it's offered only as a response to an issue that was raised
23 within the last few days.

24 MS. SUMMER: I mean, again, there's -- you just
25 had an expert testify. I don't see how that is not

1 providing additional evidence.

2 Again, there's procedures for this, they -- you
3 know, the evidentiary record could have been reopened and,
4 you know, there's no opportunity here for the parties to --

5 CHAIRPERSON WEISENMILLER: Well, we'll take your
6 comments under advice. We will note that he was not -- that
7 was not sworn testimony, but comment.

8 But, again, we'll consider that under advisement.

9 MS. SUMMER: Okay. There also, you know, of
10 course, was no opportunity for any of the parties to, you
11 know prepare cross-examination or even offer that out for --

12 CHAIRPERSON WEISENMILLER: Well, it was comment.
13 If you want to offer comments, go ahead.

14 MS. SUMMER: I mean, I'm not prepared at this
15 point, obviously, since there was no notice given.

16 MS. BOYLE: Thank you.

17 MR. KRAMER: I want to note for the possible
18 future record that Mr. Simpson's comment was delivered; I
19 believe it was at 5:14 on the last day to comment, so it was
20 14 minutes late, for whatever that's worth.

21 CHAIRPERSON WEISENMILLER: Thank you. Before I go
22 to Commissioner Boyd, I would note that I think, in follow
23 up to Commissioner Peterman's question, there's some
24 discussion of the load resource balance in San Diego, I
25 think that would be useful just to get on the record.

1 And, obviously, I'm qualified in this area; I've
2 been retained by the Bankruptcy Court in New York, on power
3 markets, as an expert for the courts.

4 So, I would note that in terms of San Diego, in
5 terms of recent events that, you know, unfortunately, the
6 Sunrise Power Project is running late, but that because of
7 lower load growth one of the things that Cal ISO was able to
8 do this year was to basically retire South Bay.

9 And so in terms of changing the dynamics there,
10 you know, again, load growth is lower, the major asset has
11 been taken out, but we're waiting for the transmission line.

12 And I think, as it was noted, there seemed to be
13 some confusion that SDG&E is looking at contracts, but at
14 least I think there was some reference earlier that Pio Pico
15 somehow was done. Well, in fact, that's pending before this
16 Commission, now. I think you're the Chair of that
17 Committee.

18 So, it's -- anyway, the resource situation is
19 somewhat in flux.

20 But, anyway, Commissioner Boyd?

21 COMMISSIONER BOYD: Thank you. As you can see,
22 fellow Commissioners, this has been an interesting case and
23 a lengthy case. I appreciate those who testified, who did
24 not make this personal. I have the same feelings. And,
25 obviously, the record on this case is quite lengthy, and it

1 has been fairly emotional for some. I appreciate your kind
2 comments. I did not take the poster child comment as a
3 negative one. In fact, I didn't understand it and probably
4 never will.

5 And if I'm going to choose a case as a poster
6 child, it certainly isn't going to be this; it's going to be
7 some biomass plant somewhere, as my fellow Commissioners
8 know.

9 And as I said, there is a very lengthy record on
10 this case.

11 I would say that, as my fellow Commissioners know,
12 we who engage in siting cases, and who are the Presiding
13 Member, are certainly guided and given very able legal
14 advice by the staff of this Commission on procedurally what
15 we can and can't do, and I think have abided by that
16 throughout this case.

17 And I believe one of the witnesses today or one of
18 the testifiers did reference what I think is a hallmark of
19 the well-known siting procedure and process of this
20 Commission, and that is decisions and recommendations by the
21 Presiding Member, and by any siting committee, by any of
22 you, at any time, is predicated on the record that is
23 developed in the various and lengthy hearings that take
24 place.

25 So, it's upon that record that recommendations

1 that find their way and the decision that finds its way in
2 the Presiding Member's proposed decision is made. I would
3 just repeat that means Siting Committee members don't engage
4 in any dialogue with any of the parties, except in the
5 public hearings that are held, and that includes discussions
6 with our own staff. They're just a party to the case and we
7 do not have side discussions with them or collude in any way
8 on the positions that we take.

9 And, Commissioner Douglas said it early on,
10 something I wrote as almost the top line on my sheet of
11 paper here, earlier this morning, that no good deed goes
12 unpunished.

13 And I think I said that in -- late one night in
14 Carlsbad, as we finished the reopened evidentiary hearing
15 process to give everyone more opportunity to comment on
16 various issues, thinking it was the right thing to do and
17 being advised that legally it was possible, before we closed
18 the record and then moved into a discussion of the Presiding
19 Member's proposed decision.

20 And as you heard today, that hearing and the
21 preface to that hearing afforded the Committee an
22 opportunity to raise issues that it would like to see
23 addressed, and I think that has been brought to your
24 attention today with regard to what the results of that
25 might have been.

1 I think a very telling part of the record is the
2 extensive discussions on whether this project is needed,
3 even though we don't assess need. And the testimony of the
4 ISO representative is very important to us in a knowledge
5 that a project is indeed, in their view, necessary to the
6 stability of the grid and the system, and particularly when
7 it comes to local areas.

8 And those of us who suffered through and survived
9 the electricity crisis, in my case not as a Commissioner,
10 I've always felt I was punished with and the appointment of
11 being a Commissioner, after working on the electricity
12 crisis for several years. But, nonetheless, we know how
13 weak San Diego was and remains to be and we know the
14 importance of integrating the much-desired solar and wind
15 intermittent resources into -- into the system of
16 California. So, that's obviously a major point that's
17 considered, I'm sure by all of us, in siting cases.

18 I would just point out to my fellow Commissioners
19 the extensive conditions that you'll find in this case
20 relative to issues that were discussed today, some of them
21 just very briefly, and other conditions that are very
22 important to us, such as the air quality conditions, and
23 they're quite extensive.

24 I appreciate Dr. Greenberg's testimony on the
25 issue of pipe line safety and I would just refer people to

1 the record of extensive testimony with regard to fire
2 protection involving staff witnesses, and witnesses for the
3 City, and the Fire Department.

4 As I said in the beginning, this is a lengthy
5 process and that the allegations that we're rushing always
6 leave me somewhat puzzled by the fact that, as pointed out
7 by one individual, we have statutory requirements to do
8 these things within a year.

9 Certainly, we feel pressure to finish these things
10 when they've gone on for more than a year and, certainly,
11 everyone at this dais knows that, indeed, the priority that
12 was given to certain types of projects in California, mainly
13 the solar projects that might have qualified for federal
14 financial assistance because a priority for this Agency.

15 This Agency, which is running on about six of its
16 eight cylinders, in terms of authorized resources in the
17 face of the financial crisis facing this State, has done
18 miraculous things.

19 And we've been operating on four out of five
20 cylinders up here for -- i.e., four out of five
21 Commissioners for some time, now.

22 I would have loved to have seen Commissioner
23 Eggert return, but that hasn't happened as of yet.

24 There's just an awful lot of material that is on
25 the record and that we have all dealt with. I stand by my

1 recommendation as the Presiding Member in this case. I know
2 the strong feelings of folks in the community. I'm very
3 cognizant, as a former Deputy Secretary of the Resources
4 Agency, of the role of the Coastal Commission and of the
5 relationships between this Agency and the Commission, and
6 how we're both strained very hard to do our tasks, and how
7 the Commission is invited into any case that involves the
8 coast, and picks and chooses that it feels that it's
9 necessary for them to participate in.

10 And I'll say no more for the role of the Coastal
11 Commission in this particular case.

12 At long last I would just say that there are a lot
13 of heavy issues that I think the staff and the PMPD have
14 addressed to allay folks' concerns and I think the decision
15 that's before the Commission at the present time is a
16 recommendation that takes into account the needs of the
17 local area, as well as the needs of the entire State of
18 California.

19 And I know we're going to recess into a closed
20 session to discuss some of the legal issues that were
21 brought up. And not being a lawyer, I am always guided by
22 the good advice and judgment of both the lawyers sitting on
23 our Commission and our very capable legal staff.

24 So, I'll reserve any concluding remarks until we
25 can finish that process.

1 CHAIRPERSON WEISENMILLER: Michael? Okay, so in
2 terms of the roadmap, again, we're going to go into closed
3 session. We have a number of items we're going to discuss
4 there.

5 In fact, one of the reasons we're going into
6 closed session is to discuss a personnel matter. That
7 closed session is authorized for that under Government Code
8 112026(a)(1).

9 Michael, I think there's other issues, too?

10 CHIEF LEGAL COUNSEL LEVY: Right, there's several
11 others, and the Carlsbad Energy Project that's pursuant to
12 11126(c)(3).

13 Also, we'll be discussing Item 25.f, Latteri, on
14 our agenda, and we also intend to discuss facts and
15 circumstances which constitute a significant exposure to
16 litigation against the Commission. Thank you.

17 CHAIRPERSON WEISENMILLER: Okay. So, at this -- I
18 think this is probably a good time for people to grab
19 something to eat, also. So, I'm assuming we'll be back in
20 an hour.

21 Actually, let's say 2:30, so you can go somewhere
22 and come back.

23 (Thereupon, a Closed Session was held
24 at 1:17 p.m.)

25 (Reconvene Public Session at 3:30 p.m.)

1 CHAIRPERSON WEISENMILLER: Good afternoon, it took
2 longer than anticipated. We'd like to pick up the meeting.

3 We've been in Executive Session and at this point
4 we'd like to move forward.

5 CHIEF LEGAL COUNSEL LEVY: I think Mr. Kramer is
6 going to start by reading some proposed rulings on the
7 motions that are outstanding.

8 CHAIRPERSON WEISENMILLER: Good.

9 MR. KRAMER: Okay, the first motion was from the
10 City of Carlsbad to take official notice of the -- the SDG&E
11 filings with the PUC, requesting approval of power purchase
12 agreements.

13 And the basic text of the ruling is "The City has
14 requested that the Commission take notice of the" -- and I
15 won't read the five lines of the description of the
16 application -- "filed on May 19th, 2011. We take official
17 notice of those documents for the limited purpose of
18 recognizing that SDG&E has proposed to enter into the
19 contracts. We do not take notice of the documents for the
20 broader purposes proposed by the City, such as providing
21 testimony the effects on the electricity system from the
22 operation of those units and the 'need' for CECP. It would
23 be unfair to do so at this late point in this proceeding as
24 the other parties have not had the opportunity to digest
25 this information or prepare any responses."

1 With regard to the motion of Mr. Simpson, "Rob
2 Simpson filed a motion for rescission of the May 9, 2011
3 PMPD pursuant to Section 1716.5 of Title 20. We deny the
4 motion. Such a literal interpretation of the regulations
5 would result in the Commission being prohibited from holding
6 any evidentiary hearing after a PMPD is issued, regardless
7 of the availability of relevant new evidence. Such a result
8 is absurd. We do agree that if a subsequent evidentiary
9 hearing results in a revised proposed decision on an
10 application additional notice may be required pursuant to
11 Section 1753."

12 We have decided to continue the adoption hearing
13 until June 30, 2011 to allow the parties and members of the
14 public to provide comments on the revisions contained in the
15 errata to the PMPD filed yesterday.

16 Regarding the Center For Biological Diversity's
17 motion: "The Center filed a motion to take official notice
18 and reopen the evidentiary record on June 8, 2011, asking
19 that 17 documents, including press reports, be officially
20 noticed. With the exception of one document, all were
21 available prior to the May reopened evidentiary hearings and
22 no basis for the failure to offer them at that time has been
23 provided."

24 Proposed Exhibit J, a CAISO summary of the
25 preliminary results of 33 percent renewable integration

1 study, while potentially relevant, it's preliminary nature
2 and the hardship and delay that would result in re-
3 litigating the issues, once again lead us to conclude that
4 on balance this document should not be considered.

5 At some point the record must close and the
6 parties must move forward.

7 Regarding Mr. Simpson's motion to strike -- in
8 response to Mr. Simpson's comments on gas pipe line safety,
9 siting staff, Dr. Alvin Greenberg and Mr. Rick Tyler spoke
10 about how the staff conducts its pipe line safety analysis
11 in all cases. Mr. Simpson's attorney moved to strike the
12 comments on the purported grounds that they constituted new
13 evidence.

14 That motion is denied. The statements were
15 comments; they were not sworn and were offered solely to
16 respond to Mr. Simpson's comments, which had not been
17 previously raised.

18 Notably, Mr. Simpson's comments consisted of bare
19 assertions that were not supported by any evidence in the
20 record.

21 So, that is the recommendation. Following today's
22 hearing we will reduce this; if you decide to adopt them to
23 a formal order that --

24 CHAIRPERSON WEISENMILLER: Okay. Mr. Kramer,
25 let's go through those one step at a time and have the

1 Commission vote on each of those.

2 MR. KRAMER: Okay.

3 CHAIRPERSON WEISENMILLER: So, let's start out.

4 If you can just not repeat everything, but go through at

5 least the heading or the --

6 MR. KRAMER: The City of Carlsbad's motion to take

7 the SDG&E applications to the PUC for PPA approvals.

8 CHAIRPERSON WEISENMILLER: Commissioners, do I

9 have any comments or questions on that?

10 COMMISSIONER BOYD: Do you need a motion.

11 CHAIRPERSON WEISENMILLER: Do you have a motion?

12 COMMISSIONER BOYD: Move approval.

13 COMMISSIONER PETERMAN: I'll second.

14 CHAIRPERSON WEISENMILLER: All in favor?

15 (Ayes)

16 CHAIRPERSON WEISENMILLER: Thank you. Let's go on

17 to the next one.

18 MR. KRAMER: Rob Simpson's motion to rescind the

19 issuance of the PMPD.

20 CHAIRPERSON WEISENMILLER: Okay, any questions or

21 comments on that, Commissioners?

22 Okay, do I have a motion on that?

23 COMMISSIONER DOUGLAS: Move to deny Mr. Simpson's

24 motion.

25 COMMISSIONER BOYD: Move approval.

1 CHAIRPERSON WEISENMILLER: Are you seconding that?

2 COMMISSIONER BOYD: Oh, I'll second, then, if
3 there was a motion. Pardon me, I was confused.

4 CHAIRPERSON WEISENMILLER: Okay. So, we have a
5 pending motion, all those in favor say aye.

6 (Ayes)

7 MR. KRAMER: The Center for Biological Diversity's
8 motion asking that 17 documents be officially noticed.

9 CHAIRPERSON WEISENMILLER: Commissioners, do you
10 have any questions or comments on that?

11 Do I have a motion?

12 COMMISSIONER PETERMAN: I'll move.

13 COMMISSIONER BOYD: Second.

14 CHAIRPERSON WEISENMILLER: All those in favor?

15 (Aye)

16 CHAIRPERSON WEISENMILLER: That's also passed
17 unanimously.

18 MR. KRAMER: Finally, Mr. Simpson's motion to
19 strike the comments of Dr. Greenberg and Mr. Tyler on pipe
20 line safety.

21 CHAIRPERSON WEISENMILLER: Commissioners, any
22 questions or comments on that?

23 COMMISSIONER DOUGLAS: No, I'll move to deny that
24 motion.

25 COMMISSIONER BOYD: Second.

1 CHAIRPERSON WEISENMILLER: All those in favor?

2 (Ayes)

3 CHAIRPERSON WEISENMILLER: The motion also passes.

4 So, this item will be -- the Carlsbad Energy
5 Center will be continued to a business meeting, which we
6 think will be set on the 30th. Parties are encouraged to
7 submit comments for that proceeding dealing with the
8 conditions -- the findings, the conclusions and the
9 conditions. In the errata, excuse me, but limited to that
10 topic.

11 MR. KRAMER: The noticing of this might be made
12 easier if you take a formal action to continue the hearing
13 on the --

14 CHAIRPERSON WEISENMILLER: No, we plan on
15 continuing it.

16 COMMISSIONER DOUGLAS: I move to continue this
17 hearing to the 30th of June.

18 COMMISSIONER BOYD: Second.

19 CHAIRPERSON WEISENMILLER: All those in favor?

20 (Ayes)

21 CHAIRPERSON WEISENMILLER: Okay. Let's go to Item
22 23, Minutes. Do I have a motion on the Minutes?

23 COMMISSIONER PETERMAN: I can move them, I'll move
24 the Minutes.

25 COMMISSIONER BOYD: Second.

1 CHAIRPERSON WEISENMILLER: All those in favor of
2 the Minutes say aye?

3 (Ayes)

4 COMMISSIONER BOYD: Those are the Minutes of May
5 31st, for the record.

6 CHAIRPERSON WEISENMILLER: Those Minutes are now
7 approved.

8 Commission Committee Presentations and
9 Discussions, Commissioners?

10 COMMISSIONER DOUGLAS: I hate to do this,
11 Commissioners, I have a brief presentation, to an empty
12 room, I'm afraid.

13 Nevertheless, the results are in and I need to
14 report on May Is Bike Month. So, I'm pleased to say that
15 the Energy Commission won the mid-sized employer category.

16 The Energy Commission pledged 15,688 miles and
17 actually rode 13,780 miles, or 88 percent of miles pledged,
18 and it shows that we do not aim low.

19 The Energy Commission came in 15th overall and only
20 large employers logged more miles than we did.

21 Caltrans came in first, with 57,654 miles,
22 followed by CalEPA, at 51,260. In a sign of the times,
23 "Unemployed" logged 28,515 miles.

24 Eighty-four people from the Energy Commission
25 signed up for May is Bike Month. And 17 Energy Commission

1 employees matched or exceeded my total of 250 miles logged.

2 Commissioner Eggert, who I brought in as my ringer
3 to help me weed out some of the more experienced riders,
4 logged 258 miles, so at this point I think that everyone who
5 got over 250 can come to the party.

6 People who logged between 250 and 499 miles are
7 Sherrill Neidich, Sarah Pittiglio, Stephen Adams, Eli
8 Harland, Ted Dang, Raoul Renaud, Clare Gallardo, Pierre
9 DuVair, Gerry Bemis, and Angela Tanghett.

10 Six people broke the 500 mile mark, Steven
11 Martinez, Ken Celi, Tav Commins, Jon Matthews, Erik Jensen,
12 and Caryn Holmes, who broke the 800 mile mark.

13 One person broke the 1,000 mile mark, Don
14 Kondoleon.

15 May Is Bike Month brought a new record for
16 Sacramento area this year, 1,393,844 miles ridden.

17 So, thank you, Energy Commission staff.

18 CHIEF LEGAL COUNSEL LEVY: Commissioner, with all
19 this talk about breaking, do I get any honorable mention,
20 whatsoever, since we were supposed to go on May 31st, and it
21 rained, and so we went June 1st, instead.

22 COMMISSIONER DOUGLAS: So, on June 1st -- June 1st
23 is when we rode?

24 MR. KRAMER: It is.

25 COMMISSIONER DOUGLAS: On June 1st, then, I rode

1 home with Mike Levy, our Chief Counsel, and this is notable
2 because it's 16 miles -- or 16 miles for me, a little less
3 for him, but also notable because it means he's back in the
4 saddle again after his badly broken leg.

5 So, congratulations, Mr. Levy.

6 That's all I have, Chairman.

7 CHAIRPERSON WEISENMILLER: Anything else? Please?

8 COMMISSIONER BOYD: I couldn't top that with any
9 good news.

10 CHAIRPERSON WEISENMILLER: Okay. So, Executive
11 Director's report?

12 EXECUTIVE DIRECTOR JONES: I have nothing to
13 report today, thank you.

14 CHAIRPERSON WEISENMILLER: Thank you.
15 Public Adviser report?

16 PUBLIC ADVISER JENNINGS: I have nothing to
17 report, thank you.

18 CHAIRPERSON WEISENMILLER: Thank you.

19 We are going to go back into --

20 CHIEF LEGAL COUNSEL LEVY: I guess we have one
21 more item for closed session.

22 CHAIRPERSON WEISENMILLER: That's right. So, in
23 my office.

24 Anyway, any public comment?

25 Anyone on the line?

REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF,

I have hereunto set my hand this 28th day of June, 2011.

A handwritten signature in cursive script that reads "Kent Odell". The signature is written in black ink and is positioned above a solid horizontal line.

Kent Odell
CER**00548