

Commissioners Present

Robert B. Weisenmiller, Chair
Karen Douglas
Carla J. Peterman
Andrew McAllister

Staff Present

Rob Oglesby
Jennifer Jennings
Harriet Kallemeyn
Caryn Holmes

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Also Present

Interested Parties (*on phone)

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P R O C E E D I N G S

JULY 24, 2011 1:15 p.m.

CHAIRMAN WEISENMILLER: Good afternoon.

Let's start the Business Meeting with the Pledge of Allegiance.

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

CHAIRMAN WEISENMILLER: Good afternoon.

We're going to consider today the – several petitions for reconsideration, the Commissioner's decision, on the Carlsbad Project. Let's start out with presentation of the proposed decision. Paul Kramer.

MR. KRAMER: Good afternoon, Chairman

Weisenmiller and fellow Commissioners. It appears to be. Okay. The cord is stretched out to the max so I'll just hunch over.

On May 31, 2012 your Commission unanimously approved the Carlsbad Energy Center Application for Certification by way of an Order that was docketed the following day on June 1. And that became, by virtue of that docketing, the final date of your decision.

Petitions for reconsideration were filed by the City of Carlsbad on June 26, Power of Vision on June 28, Terramar Association on June 29 and Rob Simpson on July 3. Although, actually, his was

1 emailed to the parties on July 2 at 9:11 p.m. but
2 because that was after the close of business it was
3 treated as filed on the following day. Now,
4 unfortunately for Mr. Simpson the deadline to file
5 petitions was the close of business on July 2 so one
6 of the proposed findings in here is that he filed his
7 petition late. And it actually would have been July 1
8 except that was a Sunday. So everybody got an extra
9 day and Mr. Simpson was beyond that.

10 We Noticed this hearing that you're holding
11 right now today. And the relevant standards to apply
12 to petitions for reconsideration are contained in
13 Section 25530 of the Warren-Alquist Act and Section
14 1720 of the Commission's Regulations. In the order,
15 I'm not going to read it all, but there's an excerpt
16 from Section 1720. The jist of what is required for
17 you to act to reconsider is or what is required of the
18 petitions is that they must describe new evidence that
19 could not have been discovered and produced during the
20 evidentiary hearings on the case or an error in fact
21 or change or an error of law. And, in either case,
22 the petition needs to explain why those matters could
23 not have been considered during the evidentiary
24 hearings. And, also, what effect the failure to
25 consider those matters would have on a substant

1 development of the decision.

2 In this case after analyzing them, and I'm
3 basically speaking on behalf of myself as staff to
4 your Commission now at this point; formerly the
5 Hearing Officer advising the Committee and now an
6 Adviser to your Commission. None of the petitions set
7 forth any new evidence to speak of. And the errors in
8 fact were errors of law are all – have all been
9 discussed before in this case. For instance, the City
10 spent most of its time discussing the – what it feels
11 is a need to more explicitly account for City
12 development fees. They proposed that a new condition,
13 Socio 1 be inserted to require that fees that are
14 adopted by ordinance by the City be paid by the
15 Applicant.

16 There was actually a condition, Socio 1, in
17 the decision that you adopted though. And what it
18 does though is reflects the language of the
19 Commission's – what was the provision in the Warren-
20 Alquist Act. That's Section 25538 and in a
21 corresponding provision in the Regulations that's
22 Section 1715. And they use the phrase – they describe
23 the fees that can be reimbursed as – they have to be
24 for cost and are actually incurred by the local agency
25 for services provided at a local agency. So at this

1 point the condition reflects that standard. And at
2 this point without knowing specifically what services
3 the City has provided it seems premature to try to
4 adjudicate which of the City's development fees might
5 apply.

6 I'll point out that there's a process for
7 resolution of that in Section 1715. Basically the
8 City proposes a budget and then they invoice for
9 reimbursement and there's a period of time in which
10 the Applicant or, in this case, the project committee
11 can agree or object to those invoices. And, if
12 necessary, if there's disagreement the disagreement
13 can be resolved by the Commission. So I guess my –
14 the point I'm trying to make is that it's premature to
15 decide exactly how much of which City fees would be
16 applicable to this project at this point.

17 And, anyway, that's all been discussed
18 before. We're really just rehashing issues that
19 you've talked about. And in the proposed order, I
20 have citations to the reporter's transcripts of
21 various hearings that occurred, for the most part,
22 earlier this year and perhaps one or two cases in
23 previous years.

24 And the same goes for the City's request
25 that the Applicant be required to construct a

1 temporary segment of the Coastal Rail Trail on its
2 property until at the point that it starts
3 construction. And then they also asked for some
4 changes in condition Land 2. As I understand them
5 they want the Applicant to have to go ahead and begin
6 to demolish the Encina Project as soon as they planned
7 for that – or within 2 years of the City’s approval of
8 the plan for the demolish – demolition of the site and
9 plans for a replacement project to go on that site.

10 That was rejected by the Committee and then
11 the Commission because what it would do is force this
12 project to pay those costs without necessarily having
13 a viable substitute project, which would take care of
14 those demolition costs. And it would put the power
15 plant project at a serious economic disadvantage,
16 which vis-à-vis other projects which might make it
17 difficult for the project to go forward. The
18 underlying premise is that it’s fairer for the new
19 project that’s gonna go on the Encina site to pay for
20 the cost of cleaning it up. And that’s a policy
21 decision that was discussed previously and made
22 previously. It doesn’t seem to be anything new here
23 that needs to be rediscussed.

24 Power of Vision and Terramar Association ask
25 in different ways that you revisit your decision to

1 adopt a road width / fire safety standard that is
2 different from that that was recommended by the City's
3 Fire Marshall. That was certainly discussed
4 extensively in past hearings before the Committee and
5 again at your adoption hearing. Actually, your 2
6 adoption hearings. The one a year ago where you
7 decided to send it back for more testimony and
8 evidence and then again last month – no, two months
9 ago.

10 Mr. Simpson, besides being late, is
11 basically just rearguing or actually is not rearguing.
12 He's arguing for the first time with the Committee's
13 responses to comments that he made on the revised
14 Presiding Member's Proposed Decision. And I say it's
15 for the first time because the obvious time for him to
16 do so if he didn't like the responses would have been
17 at your adoption hearing at the end of May. He was
18 not present, either in person or on the telephone and
19 that's not justification to have another round of, in
20 effect, an adoption hearing before you just because he
21 was unable to make that meeting.

22 So the – you have the proposed findings
23 before you. You also have several public comments
24 that came in yesterday, basically, that I printed off
25 of my docket's feed this morning and reproduced for

1 you. I think they're all from citizens in the area
2 who are against the power plant.

3 So the Order is before you. It was
4 distributed to the parties just to give them a head's
5 up last week. And my recommendation, at least, that
6 you adopt the proposed order, which is denial of the
7 petitions for reconsideration.

8 CHAIRMAN WEISENMILLER: Okay. Thank you.
9 Commissioners, let's now hear from the petitioners in
10 terms of their petition and give some opportunity to
11 respond to the proposed decision. City of Carlsbad?
12 Please.

13 MR. BALL: Okay. Good afternoon, Chairman
14 Weisenmiller, Commissioners Douglas, McAllister and
15 Peterman. How are you this afternoon? My name is Ron
16 Ball and I'm the City Attorney for the City of
17 Carlsbad and the General Counsel for the City of
18 Carlsbad as successor agency to the Redevelopment -
19 the former Redevelopment Agency.

20 And this is an important moment, of course,
21 for the City and for this Commission I feel. And I
22 think we'll need about 15 minutes to -

23 CHAIRMAN WEISENMILLER: That will be good.
24 Certainly make your case but I would remind you we've
25 gone through 2 extensive hearings and we're focused on

1 your petition today. So let's not reargue outside the
2 scope of petition. Thank you.

3 MR. BALL: Chairman, thank you for your
4 caution. And we don't anticipate we need more than 15
5 minutes to persuade you that you should grant the
6 petition.

7 And so I'm going to introduce my team at
8 this time. With me is Special Counsel Allan Thompson;
9 Project Manager Joe Garuba, who has been critical and
10 an integral part of this proceeding since its
11 inception almost 5 years ago; and our outside Special
12 Consultant Bob Therkelsen, who was the former CEO of
13 this Honorable Commission.

14 So Mr. Garuba is going to address what we
15 consider is an error in, a factual error, in the
16 Commission's view of the facts as announced in its May
17 31 hearing and correct the record in that regard.

18 Mr. Thompson is going to explain the reason
19 why we've requested a Coastal Rail Trail. Again, it's
20 grounds we feel for reconsideration. We don't feel
21 that Mr. Kramer's discussion is exclusive of what the
22 grounds could be and we'll suggest that.

23 And, of course, the very important issue is
24 the Land 2 and 3. And those are new conditions and, I
25 think, Mr. Kramer has misunderstood or miscomprehended

1 but certainly misreported the gravamen of those
2 conditions and I think you'll be persuaded that that
3 condition makes good sense.

4 Finally, I'll return to the microphone to
5 discuss what I consider is a constitutional dilemma
6 created by the Commission's decision and grounds for
7 reconsideration – granting the petition for
8 reconsideration. I don't feel the petition for
9 reconsideration can be denied at this point unless the
10 constitutional infirmities are addressed. Thank you.
11 So, Mr. Garuba?

12 MR. GARUBA: Good afternoon, Commissioners.
13 My name is Joe Garuba. I'm with the City of Carlsbad.
14 I'm the Project Manager for this project on the City's
15 –

16 COURT REPORTER: Can you speak closer to the
17 mike?

18 MR. GARUBA: Yes, sir. My name is Joe
19 Garuba. I'm with the City of Carlsbad. I'm the
20 Project Manager for the City for this project. I'm
21 also the Asset Manager for the City so I oversee all
22 the City's properties and holdings.

23 During our review of the final decision it
24 was, at least apparent to us, that the Commission –
25 during the Commission discussion there was a

1 mischaracterization of the fire department's
2 establishment of the access widths. In light of the
3 other comments you're likely to hear today we think
4 that it's important to take a minute and correct the
5 record.

6 The original CECP Site Plan showed access
7 widths of 20 feet. In a letter dated March 30, 2009
8 the Fire Marshall corrected the Applicant with copies
9 to the CEC Staff and this letter was referenced during
10 Miss Douglas' comments in the final hearing that the
11 minimum emergency access allowed by the City was 24
12 feet. So the minimum access across the City that we
13 allow for emergency access widths that we require is
14 24 feet. The letter went on to state that the City
15 could require greater access widths as provided by the
16 California Fire Code and that additional project
17 information was needed so that the City could make
18 appropriate determinations. Specifically in that
19 letter we state, "Until NRG provides the Carlsbad Fire
20 Department with the necessary depictions of the
21 facility that has been requested, it is impossible for
22 us to evaluate the actual required width of the
23 roadways." Unfortunately, that project detail was
24 never provided to the City.

25 The Fire Chief followed up with a letter to

1 the CEC staff on April 28, 2009, one month later,
2 again requesting project information. Unfortunately,
3 this letter went unanswered by staff. So over the
4 next 9 months the City set about conducting its own
5 project analysis and modeling. On January 4, 2010,
6 the City provided its first written testimony to the
7 Energy Commission. In that testimony, the Fire Chief,
8 the Operations Chief and the Fire Marshall, which have
9 over 75 years of service, state their requirement for
10 a 50 foot access road at the bottom of the bowl and a
11 25 foot access road around the rim.

12 The Fire Chiefs, collectively, explained
13 their rationale for that width during the February 4,
14 2010 evidentiary hearing and that did include a number
15 of things. Including opening up a truck and seeing
16 how much width you need to operate around the truck
17 and the ability to pass by a truck that once it gets
18 set up you have to be able to pass it.

19 So, to be clear, the record should reflect
20 that the Fire Department established its emergency
21 access requirements in the first very piece of
22 testimony the City provided to the Energy Commission
23 and it's remained consistent in its position since.
24 The reason for this is that the Fire Department has
25 been steadfast on their issue - this issue, is that

1 they believe that without adequate access the proposed
2 project poses a serious threat to the health and
3 welfare of first responders, plant workers and the
4 citizens at large in times of emergency.

5 In summary, the City's minimum emergency
6 access width is 24 feet for any project. The City
7 notified the Applicant and the CEC staff in 2009 that
8 it had the authority to require greater access widths,
9 if necessary. The City notified the Applicant and the
10 CEC staff in 2009 that it needed more project
11 information to make access width determinations. And
12 then once the Fire Department had the information it
13 needed it determined that a minimum access width of 50
14 feet in the bowl and 25 feet around the rim was
15 required. And that determination has not changed
16 since.

17 And this is important for issues that I
18 think - for reasons you're going to hear a little bit
19 later.

20 MR. BALL: So, excuse me; we'll change the
21 order a little bit because Mr. - following Mr. Garuba
22 but it will be me and then Mr. Thompson.

23 And I'll refer to the Constitutional dilemma
24 that I think that has been created here. And then
25 that really results from a case that came out after we

1 had submitted our petition for reconsideration. So on
2 July 11, we submitted our petition on June 26 and then
3 on July 11 the Court the appellate court issued its
4 decision in the City of Hayward vs. the Board of
5 Trustees of the California State University. And
6 that's cited for the record as 2012 Westlaw 1943336,
7 it's from the First Division of the Court of Appeal,
8 as modified July 11, 2012. And basically what that
9 decision deals with is a CEQA matter but also fire
10 services and explains the significance of the fire
11 services by primary provider and explains the reason
12 this should be considered in your CEQA review.

13 So the trial court said now a delay in
14 response could literally mean a difference in life and
15 death - decrease the risk of survival, increase the
16 severity and degree of a person's burns or increase
17 the total number and type of injuries. A delay in
18 response also affects the spread of fire, the growth
19 of which is exponential.

20 Now that was a trial court - the trial
21 court's decision. And that was overruled by the
22 appellate court so what the appellate court had to say
23 was, "While this may be true the obligation to provide
24 adequate fire and emergency medical services is the
25 responsibility of the City. The protection of public

1 safety is the first responsibility of local government
2 and local officials have an obligation to give
3 priority to the provisions of adequate public safety,
4 which is exactly what we've done is suggested what
5 conditions would be necessary to provide as a primary
6 responder. Instead, this Commission has taken over
7 the primary responsibility, which creates the
8 constitutional dilemma because it's not empowered to
9 do so.

10 So you have a final decision sitting here
11 that is unconstitutional on its face. And I'm going
12 to suggest 2 ways out of that.

13 The first way is to grant this petition and
14 to modify the condition so that they comport with the
15 Fire Marshall's and the City's Ordinance and that
16 would allow the City to ascend into the primary role
17 of Provisional Fire Services. So then it would become
18 Constitutional.

19 The other way is, as the Commission knows,
20 we filed a petition for review in the California
21 Supreme Court and we've been assigned a number of
22 errors but this is one and I think it's an important
23 constitutional issue that could be resolved. And if
24 the Commission would jointly approach the California
25 Supreme Court with the City of Carlsbad asking for a

1 resolution to this constitutional question it would
2 probably be, if the Court accepted it for review, it
3 would probably be – that question would be answered to
4 the Commission, the City and to all the citizens of
5 California.

6 I think if – if you would agree to that
7 today we could resolve it. If you direct staff to
8 file a – to concur on our petition that would resolve
9 it.

10 So I would be happy to answer any questions
11 but I think Mr. Thompson would like to address this
12 Honorable Commission regarding the Coastal Rail Trail
13 and the land use conditions use 2 and 3.

14 MR. THOMPSON: Let me say – this is Allan
15 Thompson. Let me follow on Mr. Ball's statement with
16 30 brief seconds on the fire issue.

17 I think that the final decision that you've
18 voted out is in violative of the Constitution in 2
19 ways. Number 1, it designates someone other than the
20 City as the primary responsible agency to respond to
21 fires. And California Constitution I think it's
22 Section 13 Article 35 states that the City is the
23 primary local fire department with that
24 responsibility.

25 Number 2, there is no analysis of the impact

1 of having someone other than the local fire department
2 performing these functions. The final decision did
3 not analyze the response times or any of the other
4 impacts that having someone other than the Carlsbad
5 Fire Department perform those first duties would have
6 on the environment and the safety of the citizens of
7 Carlsbad.

8 Let me move on very briefly because I do
9 believe that the more important issues are the fire
10 issues but let me take a minute on the Coastal Rail
11 Trail. The citizens of Carlsbad have been vociferous
12 and extremely involved in this proceeding. They see
13 another power plant on its coast existing for another
14 35, 40, maybe 50 years with little benefit to the
15 City.

16 The Coastal Rail Trail has been in
17 development for 10 years. Your decision puts the
18 northern part of the Coastal Rail Trail on hold,
19 possibly for years. It just stops there. The
20 temporary trail is a very inexpensive way to give
21 North County citizens some small benefit from the
22 power plant from going in on that side. This is not,
23 you know, I'm not assigning error. This and the next
24 thing I want to talk about are asking for
25 reconsideration of these issues.

1 Land 2 and 3. These conditions were
2 developed to offer the City some assurance that the
3 Encina Power Station will be retired, demolished and
4 remediated when no longer needed. As these conditions
5 have changed over the course of this proceeding, this
6 last year or so, the assurance that they would be
7 demolished has been watered down to now it's an
8 attempt to find a partner to see if there's a
9 reasonable way of figuring it out or whatever.
10 There's an awful lot of words in there that take away
11 any definiteness of having the EPS removed.

12 The City has lived with this power plant for
13 over 50 years and has been planning for the
14 redevelopment of that site for at least 10 years. The
15 proposal that we made would inject some certainty into
16 this process. Again, this is asking for
17 reconsideration of this issue. I do not assign error
18 on this issue.

19 Ron?

20 MR. BALL: Thank you. Just one brief moment
21 to follow up to that. If the Commission will look at
22 our page 8 of our petition for reconsideration, the
23 exact wording of the suggested revision is set forth
24 there. I'll give the Commission a - okay. And so
25 that is not without plenty of thought that we

1 suggested that. And it's not arbitrary and it's
2 certainly not putting a burden on this plant entirely.

3 What it is is a series of events that needs
4 to happen and then after those events have happened,
5 within 2 years you can begin dismantling the plant.
6 That's not prejudicial to the Applicant because, first
7 of all, it needs to get permission from the City for
8 redevelopment plans. So we'll propose an alternative
9 redevelopment plan. That's simple.

10 If those conditions are unacceptable it
11 won't be approved and the Applicant will not proceed.
12 So the condition fails in that way and, unfortunately,
13 the plant stays there. But if it is an acceptable
14 alternative use and it is approved then there's still
15 another condition and that is that the permissions for
16 Encina 4 and 5 to be decommissioned occur and those
17 permissions need to be diligently sought.

18 So we have 2 preconditions that are not
19 based on time at all. Then the third condition is
20 that within 2 years, which we feel is reasonable time
21 but the Commission could change that to some other
22 time, then begins the process of dismantling.

23 So I think it's a reasonable condition.
24 It's one that would assist in accomplishing all of the
25 hopes and desires that everyone of these Commissioners

1 explained on May 31. Every Commissioner mentioned
2 that there was a hope and desire that they would drive
3 by I-5 and that this plant would be dismantled. And
4 you have the keys today to make that happen.

5 Any questions, please.

6 CHAIRMAN WEISENMILLER: No, thank you.

7 MR. BALL: Thank you.

8 CHAIRMAN WEISENMILLER: Okay. Let's go to
9 Power of Vision.

10 MS. BAKER: Julia Baker with Power of
11 Vision. And I have nothing further to add that the
12 City of Carlsbad has not addressed this afternoon.

13 CHAIRMAN WEISENMILLER: Okay. Thank you.
14 Terramar Association.

15 MS. SIEKMANN: Hello. This is Kerry
16 Siekmann with Terramar Association. Can you hear me?

17 CHAIRMAN WEISENMILLER: Yes.

18 MS. SIEKMANN: Okay. I had just a few
19 things to say. I just want to reiterate that due to
20 Carlsbad docketing of Ordinance Number CS-184, and
21 that was docketed on May 30, just one day before the
22 final decision came out. So it is new information,
23 new legal information, which the CEC chose not to
24 override so it is part of the LORS of this particular
25 decision.

1 CEC has not replaced the Carlsbad Fire
2 Department in your workers' safety section. And in
3 your findings of facts it says, "The Carlsbad Fire
4 Department will provide fire protection and emergency
5 responses services to the project and will be able to
6 respond to the site within an acceptable time." And
7 since you accepted the ordinance from the City of
8 Carlsbad that may not happen and, due to the Warren-
9 Alquist Act, the CEC has not replaced the who will
10 take place of the Carlsbad Fire Department.

11 So there is no guidance for that in this
12 decision and I'm sure that you, as a Commission, want
13 to follow the Warren-Alquist Act. And you may think
14 this is an irrelevant comment but when an emergency
15 happens and you have not complied with Warren-Alquist
16 Act to provide public health and safety not only for
17 our firefighters, who are supported by the Escondido
18 Fire Chief, but also for our community. Alls I can
19 say is if there's an emergency, "God forgive us."
20 Thank you.

21 CHAIRMAN WEISENMILLER: Thank you. Now I
22 believe on behalf of Rob Simpson we have Gretel smith.

23 MS. SMITH: Yes, that's correct. Can you
24 hear me?

25 CHAIRMAN WEISENMILLER: Yes.

1 MS. SMITH: I just have 2 points to make.
2 The first issue is with the untimeliness of Mr.
3 Simpson's petition. I would like to point out that
4 Title 20 of California Code of Regulations 1720(a)
5 specifically states that it must be – that the
6 petition must be received within 30 days. There is no
7 timeline or time set on that regulation. It just says
8 that it has to be received within 30 days. Mr.
9 Simpson's petition was received within 30 days.

10 Additionally, Public Resource Code 25530
11 also says that it has to be received within 30 days
12 and Mr. Simpson did have his petition submitted on
13 July 2, on the 30th day. There was nothing that said
14 in any of the orders that it needed to receive by the
15 close of business. And I do not know and he has not
16 been able to find any rules that state otherwise.
17 That it must be received by the close of business.

18 As to the actual information contained in
19 his petition. He, Mr. Simpson, is basing his petition
20 on 17(a)2 that the Commission did make errors in fact
21 and, in fact, relied upon – made errors in law when
22 they were making their final decision. And so he is –
23 we're respectfully requesting that his petition is
24 considered and the petition for reconsideration is
25 granted.

1 CHAIRMAN WEISENMILLER: Thank you. Any
2 comment from the Center for Biological Diversity?
3 CURE? Any brief comment from the Applicant?

4 MR. NESE: Good afternoon, Commissioners.
5 My name is Brian Nese, N-E-S-E, from Stoel Rives, LLP,
6 counsel for the Applicant. John McKinsey is unable to
7 attend and asked me to appear in his place. I have
8 here with me George Pianka, who's the project manager
9 for the Carlsbad Energy Center.

10 In general, all our arguments are set forth
11 in our papers and so I'll be brief here. We believe
12 that none of the petitions have met the burden to show
13 error in the decision. There's no new evidence or
14 error in fact or law set forth.

15 I will respond briefly to the individual
16 point raised here today. Mr. Garuba discussed the
17 fire access roads. That issue was not raised in their
18 petition and waived. Beyond that it was thoroughly
19 discussed throughout the many proceedings, evidentiary
20 hearings, written papers and Commission hearings. It
21 was considered and an override was made on that
22 specific point. There's no need to revisit that here
23 today.

24 As for the Constitutional issues that Mr.
25 Ball raised, those too were not raised in their

1 petition. The legal affect of the trial court opinion
2 in a different proceeding has – is ambiguous and was
3 not considered in the papers here today.

4 But, in any event, as was stated at the
5 adoption hearing, there will be personnel on site that
6 will be functioning in the primary responder role in
7 the event of fire emergency.

8 With respect to the Coastal Rail Trail, as
9 Mr. Thompson pointed out, the citizens have been very
10 active in this proceeding and these issues have been
11 considered time and time again. But we're here today
12 to consider the petition for rehearing. There's a
13 higher burden. They need to show new facts or errors
14 and, in fact, while we're on that has simply not been
15 met with respect to the Coastal Rail Trail or with
16 respect to Land 2 and Land 3.

17 Land 2 and Land 3 have been thoroughly
18 discussed time and time again and they do not meet the
19 burden that you need to show on a petition for
20 rehearing. With respect to the fire ordinance, the
21 fire ordinance was considered at the adoption hearing.
22 Commissioners took judicial notice of the ordinance
23 and found that the project was in compliance. And,
24 therefore, it also does not meet the standard for the
25 petition for rehearing.

1 In closing, we support the proposed order
2 and urge the Commission to adopt it as drafted. Thank
3 you.

4 CHAIRMAN WEISENMILLER: Thank you. Staff?

5 MR. OGATA: Good afternoon, Chair
6 Weisenmiller. Commissioners. My name is Jeff Ogata.
7 I'm Assistant Chief Counsel and I'm sitting in for
8 Dick Ratliff who is on a well deserved vacation. He
9 took a good time.

10 Staff filed its responses to the petitions
11 for reconsideration on July 2. We really don't
12 believe that any new information has been added that
13 would merit reconsideration by this Commission.

14 In response to the City of Carlsbad, again,
15 as I think was stated at the last hearing, I'm happy
16 to restate that we will work with the City of Carlsbad
17 with respect to the fees to ensure that they get the
18 fees that they're entitled to get. As Mr. Kramer
19 indicated there's a process for that. Staff has
20 experience in working through this in other cases so
21 this is not an unusual situation. There is a remedy
22 if the City of Carlsbad believes that they are not
23 receiving the fees that they are entitled to by coming
24 back to the Committee or back to the Commission. So
25 we don't really have that as a basis to change the final

1 decision.

2 With respect to the fire issue, we are aware
3 of the City of Hayward case. I don't know if Mr. Ball
4 was bringing that up acknowledging that the ordinance
5 the City passed may be unconstitutional as a result of
6 that case or not. I'm not sure. But with respect to
7 the assertion that Commission staff did not analyze
8 the impacts of the primary responder with respect to
9 fires that's incorrect. The FSA, as we typically do
10 in these kinds of situations, we do the analysis about
11 the fire safety issues. So since all these issues
12 about whether or not the City was going to be the
13 primary responder came up sort of near the end of this
14 5 year period of time. We don't believe that the
15 assertion that the analysis was not done is correct.
16 Staff has done that analysis and Mr. Monosmith, who's
17 a project manager who's sitting to my right, obviously
18 is much more aware of these issues than I am since I
19 was not the primary staff counsel. So if you have any
20 questions about that please ask Mr. Monosmith to go
21 into further detail on that.

22 With respect to the other petitions, we also
23 believe that most or all of the petitions are
24 basically rearguing issues that were already resolved
25 by the Commission. And so, again, it does not meet the

1 standard for reconsideration. Thank you.

2 CHAIRMAN WEISENMILLER: Thank you. Any
3 public comment? Again public comment either in the
4 room or on the phone.

5 COMMISSIONER DOUGLAS: So Commissioners I'll
6 make a few brief comments and then see what questions
7 or comments you might have. Unless Paul, is there
8 anything that you want to respond to?

9 MR. KRAMER: No. No, I'm good.

10 COMMISSIONER DOUGLAS: All right. I think
11 that I can be really pretty brief and I want to say
12 that I appreciated the briefing and the responses in
13 the briefing that did come in on this.

14 I agree with staff that the fee issue is one
15 that we retain jurisdiction over and that we will
16 ensure appropriate fees are paid and we have a process
17 for doing that and we have a way – we encourage, I
18 would encourage Applicant and the City to work
19 together to ensure that the appropriate fees are paid.
20 But we certainly have a process for ensuring that
21 occurs. The fee issue was raised multiple times in
22 the proceeding and it's something that we had an
23 opportunity to hear about as well in our final
24 adoption hearing.

25 The Coastal Rail Trail issue was, of course,

1 raised substantially throughout the proceeding. But,
2 in particular, in an evidentiary hearing that I
3 presided over, the City raised, for the first time,
4 the question of whether we would consider a temporary
5 Coastal Rail Trail through the project boundaries.
6 And we discussed it and we got a response from the
7 Applicant and we – that issue was raised again in the
8 adoption hearing and I really think that the
9 Commission has thoroughly considered that issue and
10 for reasons of practicality really it ultimately just
11 didn't make sense to go that direction.

12 There is, of course, in Land 1 a requirement
13 for Applicant to pay for a Rail Trail easement off of
14 the project site at a mutually agreeable location. So
15 that's important and that's an aspect of the decision.
16 This is an issue that was resolved. It was presented
17 in evidentiary hearings and it was resolved already by
18 the Commission.

19 The Land 2 condition is another one related
20 to demolition and the removal of the Encina Power
21 Station is another one that has been discussed very
22 substantially throughout this case. The language that
23 is currently in Land 2 was originally negotiated by
24 the City and the Applicant with some strong
25 encouragement by the Committee overseeing the project

1 or overseeing the process.

2 The City's latest proposal is the sort of
3 thing and could have been and, in fact, was raised in
4 our process so I don't see that issue as an issue that
5 meets the requirements for us to consider the petition
6 for reconsideration either. The fire ordinance is
7 something that we really only knew about at the
8 adoption hearing because, of course, it was enacted
9 something like 2 days before the adoption hearing. We
10 took judicial notice of that ordinance and we looked
11 at it and we ultimately determined that it was not
12 inconsistent with the decision as written and we moved
13 forward.

14 I think that's a correct interpretation. I
15 think that Mr. Ogata and his description of this issue
16 also really hit the nail on the head. So I don't -
17 the City itself in adopting the ordinance provided
18 that it was not subject to CEQA. Did not qualify as a
19 subject under CEQA. Would not have any impact on the
20 environment, direct or indirect or otherwise. These
21 are - these are the sorts of findings that would tend
22 to, very strongly, support the decision that the
23 Commission reached. That this ordinance did not, in
24 any substantive way, change the environmental analysis
25 that we under took.

1 So I think that I have covered all the
2 issues that I wrote down as I listened to the
3 speakers, the petitioners, today. I do not see any
4 new issues raised. I could ask, and I probably should
5 ask, staff to the extent that you want to add
6 anything.

7 Mr. Ogata, you've already commented on the
8 question of whether or not there is a constitutional
9 issue. We can ask the Hearing Officer if he's
10 interested in doing that. From my own view, I do not
11 see a constitutional issue raised in our decision. I
12 think that the environmental analysis fully
13 contemplated, first of all, the sorts of measures that
14 are taken on site to reduce the risk of fire and to
15 respond if there is an incident being the first layer
16 of response, that there would be for any incident in
17 the Carlsbad Fire Department, which we thoroughly
18 analyzed in terms of response times and otherwise,
19 going forward and implementing its constitutional duty
20 to protect health and safety and property should that
21 first line of defense not prove sufficient.

22 So I don't see the case as particularly
23 affecting the decision but I'd be interested to hear
24 if, Mr. Ogata, if you want to say anything more about
25 it or the Hearing Officer.

1 COMMISSIONER PETERMAN: And, Mr. Ogata,
2 before you respond. Commissioner Douglas, that was a
3 particular topic that I just wanted to hear a bit more
4 about, being less familiar with the Hayward decision
5 and wanted to understand just what the – fully
6 understand the concerns.

7 If you could just repeat what you said
8 earlier, Mr. Ogata, I'd appreciate that as well.

9 MR. OGATA: Commissioner, I'm happy to
10 repeat what I said but with respect to Commissioner
11 Douglas' question I'm going to differ response to that
12 to Ms. Holmes because, frankly, she is much better
13 prepared to respond to that having read that case, I
14 think, more thoroughly than I have.

15 So, I mean, but what I said was that I think
16 the main issue that I heard the City raising was
17 somehow this case affected whether or not staff did an
18 appropriate CEQA analysis because we didn't analyze
19 whether first responders would be able to respond to
20 the fire. And my belief is, and my understanding is,
21 is that we did do that and the issue of who is going
22 to be the first responder didn't actually appear until
23 later in the case. So it wasn't like we knew
24 initially that the City was going to decline to be the
25 first responder and therefore we did a CEQA analysis

1 based on somebody else doing it. I don't believe
2 that's true. I believe we've always done the analysis
3 based upon the assumption that the City was going to
4 be the primary responder. So that hasn't really
5 changed in terms of the CEQA analysis. Whether or not
6 there's another issue that the City is raising, again,
7 I don't know but from I think the pertinent issue that
8 I got out of what they said was whether or not we did
9 the appropriate analysis and I believe we have.

10 MR. KRAMER: What I heard to be the
11 constitutional crisis is the City is between a rock
12 and a hard place. The rock being the Constitution
13 that says they have to provide service. The hard
14 place being that they believe that we're allowing the
15 Applicant to design a power plant, which would be
16 unsafe for them to go in and perform their
17 constitutional duty. Of course, the decision doesn't
18 agree that the lower standards that the Commission
19 decided to set are unsafe. So we don't accept one of
20 the premises of the City's constitutional dilemma that
21 - and the decision says that. We disagree with them.
22 It doesn't - but it also said that we're not saying
23 that this is unsafe. There was a clash of experts
24 and, as the Committee is duty bound to do, it resolved
25 the evidence in what it thought was the appropriate

1 way and found that it could be safe with less than the
2 50 feet that the City asked for.

3 And I guess that's it. Ms. Holmes, I think,
4 with Mr. Ogata's invitation wants to address that
5 case.

6 MS. HOLMES: I'm thinking I should. First
7 of all I want to point out that although the decision
8 may have been amended in July it was first published
9 in May, on May 30, and so the language that the City
10 is citing was published on May 30. So I see no reason
11 why that information couldn't have been included in
12 the petition for reconsideration. Raising it now
13 seems to me to be a bit late.

14 But, nonetheless, since we are discussing
15 it. I like to look at it in this way. That the
16 Commission's got 2 basic sets of responsibilities when
17 it issues a decision on a project. It has to determine
18 whether or not the project's going to create any
19 potential adverse environmental impacts and, if so,
20 must provide mitigation unless it makes an override
21 finding. And it has to determine whether or not a
22 project complies with applicable LORS.

23 With respect to the CEQA issue my
24 understanding of the record is that, in fact, both the
25 staff assessment and other findings as well as the

1 Commission decision do contain a thorough discussion
2 of potential CEQA impacts associated with fire
3 service. Notwithstanding that, the case that's cited
4 by the City does imply that those types of things are
5 not necessarily CEQA impacts and that we as a lead
6 agency couldn't require mitigation for those types of
7 CEQA impacts.

8 So there is no inconsistency with the Energy
9 Commission CEQA findings and, in fact, it appears that
10 if the principal of this case turns out to be what it
11 appears to be at first blush we've gone beyond what
12 CEQA requires in addressing potential impacts.

13 Secondly, with respect to the LORS issue,
14 the Committee did find – the Commission did find that
15 the project does comply with all applicable LORS,
16 including the City's ordinance, which as you now
17 learned, may be unconstitutional itself. The point
18 that I would make is that although the City's
19 ordinance may be unconstitutional there's nothing
20 unconstitutional about an Energy Commission decision
21 that says that the primary response is going to come
22 from the project developer, the project owner, and
23 allow the City to provide secondary response as they
24 believe is appropriate. There's no constitutional
25 violation there so, frankly, I don't see that the case

1 raises anything new that the Commission would need to
2 further address.

3 COMMISSIONER PETERMAN: Thank you. That was
4 very helpful for me. I have another question. Could
5 staff respond to Ms. Simpson's comment – Ms. Smith's
6 comment that Mr. Simpson's comments were – I'm just
7 not being very clear. Ms. Smith's comment that Mr.
8 Simpson's comments were filed at the time in a timely
9 manner.

10 MS. HOLMES: The Energy Commission's
11 regulations in Section 1209 require that everything be
12 filed with a docket unit and the docket unit closes at
13 5. Standard close of business for every governmental
14 agency.

15 COMMISSIONER PETERMAN: Okay. Seemed like
16 that – can we make that clearer somehow in the
17 writing? I mean I know that's the practice but –

18 MS. HOLMES: I think that's part of the OII
19 process that's –

20 COMMISSIONER PETERMAN: Okay.

21 MS. HOLMES: going on because of the concern
22 about the fact that people who may be filing
23 electronically may be under the impression that they
24 can file – have a longer window in which to file than
25 somebody who's filing a paper copy. I think Mr.

1 Kramer wants to add to that.

2 MR. KRAMER: Just that I think that we spend
3 5 minutes trying to figure out how to best describe
4 the concept of daylight savings time so we were
5 working on it.

6 COMMISSIONER PETERMAN: I just - I'll say on
7 the record though that even if late by those standards
8 I still accept and reviewed those comments from Mr.
9 Simpson.

10 MR. KRAMER: And the order does deal with
11 them on their merits, as well.

12 COMMISSIONER DOUGLAS: I reviewed the
13 comments as well and I reviewed the responses of staff
14 and the Applicant to Mr. Simpson's petition. Both of
15 which responded, although briefly in staff's case, on
16 the substance as well as the timing. And found, as I
17 have, that Mr. Simpson's petition did not raise any
18 new issues of, that either could not or certainly did
19 not, get raised in the proceeding.

20 COMMISSIONER MCALLISTER: So I just wanted
21 to comment briefly on the - the desire of, to see down
22 the road the Encina Power Plant go away and, you know,
23 personally each of us have expressed in different ways
24 that desire. But requiring it in a decision is
25 different. And there's lots of ways that that can

1 happen and my understanding and having reviewed the
2 record is that those discussions happened and that
3 they're - that the requirement to link it to this
4 plant - it's a new plant. It's a different plant and
5 the decision was or has been - the discussion has been
6 that and the decision says that we're not going to
7 link it explicitly. And I agree with that. And so I
8 don't see a conflict there with the decision and our
9 expressed desires.

10 My desire actually continues there so, but
11 we went through that in the record and the record
12 shows that very clearly. And it's a big lift for the
13 City and all the stakeholders there, working with the
14 Encina owner to come up with the resources and make
15 that happen. But I'm hopeful that can happen, even
16 though it's not hardwired to this plant. So, anyway,
17 I felt like I needed to make that comment.

18 But I don't agree - I agree with
19 Commissioner Douglas that it's not a new issue - that
20 it's been resolved for purposes of this proceeding and
21 this hearing. And that we don't need to bring it up
22 again.

23 CHAIRMAN WEISENMILLER: Thank you. I think
24 as this point we are - the Commission is deliberating.
25 We may have questions for parties but certainly the

1 time for argument has passed or for more argument.

2 In terms of my comments is that, again, I
3 think as we struggled with this issue before I made
4 the observation that for a worst case planning basis
5 we were assuming that San Onofre 2 and 3 would not be
6 available this summer. That turned out to be correct.
7 At this point, frankly, we were starting the worst
8 cast planning assumptions if San Onofre 2 and 3 would
9 not be available the next couple of summers. And that
10 certainly has implications. And in that context, in
11 fact, frankly I don't expect San Onofre 3 to be back
12 for several years. That has implications for the
13 reliability of service in Southern California and,
14 again, we get into a lot of timing questions but
15 certainly it's very important to have resources,
16 generation resources, in Orange County, in northern
17 San Diego County. So that going forward, again, as we
18 look at the range of options – certainly the San
19 Onofre situation is sort of the elephant in the room.
20 That sort of influences all of our thinking and the
21 need to look at a – I think I've certainly been
22 quoted, a wide range of options. And we will come up
23 with a wide range of options both generation, energy
24 efficiency and other options to ensure reliable
25 service in Southern California.

1 COMMISSIONER PETERMAN: Let me just offer a
2 couple of comments as well. This is Commissioner
3 Peterman.

4 I appreciate all the concerns that had been
5 raised for reconsideration. I don't think there's
6 been new evidence presented that the findings that the
7 Committee and then ultimately the Commission adopted
8 are incorrect. Although, all the issues raised are
9 things that were discussed at length and I know they
10 are sensitive issues. And I'm still supportive of the
11 findings.

12 We've got here, just in front of us today, 7
13 emails from members of the public. Obviously, not in
14 support of this project. If you all are listening we
15 have read them and it's, frankly, oftentimes your
16 emails and letters that I have the most reaction to
17 because I can feel your concern and your interest and
18 your worry. And I sincerely hope that us approving
19 this permit does not compromise the quality of life
20 you have in Carlsbad. That is never the intention.
21 It is really to maintain a quality of life for all of
22 us with a mixture of both electricity that is reliable
23 and available as well as maintaining our scenic vistas
24 and everything else we appreciate about living in
25 California.

1 And I think that the Applicant hopefully has
2 heard all of the issues raised, particularly around
3 fire. The Commission has as well. With the fullest
4 intent of not having an incident happen. And so,
5 again, we've considered this. I've considered this
6 and I'm still of the same opinion but appreciate the
7 amount of effort you have put into bringing these
8 issues to us and asking us again and again to reflect
9 upon the decision made, which has not been made
10 lightly.

11 COMMISSIONER DOUGLAS: I do not have
12 anything to add substantively. I was going to ask if
13 we're ready for a motion. Okay. So. Oh, go ahead.

14 COMMISSIONER MCALLISTER: The - I want to
15 sort of back up a little bit and put some additional
16 context on this. So what Commissioner Weisenmiller
17 said is absolutely true. This - we don't only need
18 this plant for the stability and the sort of reliable
19 and cost effective production of energy in the state.
20 We also need lots of other solutions. Both in that
21 particular region in Southern California, in
22 particular coming up probably next summer even more
23 than this summer. We need lots of different options.
24 I mean those are the Faustian bargains. Those are the
25 tradeoffs that we're forced to make. And so demand

1 response, energy efficiency, any dispatchable, any
2 load manipulation as well as generation we need to get
3 over the hump and if we do have a kind of worst case
4 scenario, we have a big transmission line that goes
5 out or we have a power plant that goes out then we're
6 going to have to draw on all the resources that we
7 possibly can.

8 So, again, to agree with all the other
9 Commissioners that this is not a decision that we take
10 lightly. This is not – there's definitely an
11 acknowledgement at – I'm a local in San Diego and
12 spend a decent amount of time in North County and
13 really appreciate the coast there. And there are –
14 we're dealing with legacy issues with this decision
15 and the fact that we – we do have existing
16 infrastructure that does constrain what we do.
17 Carlsbad has been the site of the Encina Power Plant,
18 which is why that infrastructure partially at least
19 exists there and what makes it a key node for the
20 Southern California transmission grid and
21 subtransmission.

22 So I think those are just factual – the
23 factual basis for the – that justifies the need for
24 this plant in the context that we have today. But it
25 in no way – in fact it emboldens I think me, as the

1 Lead Commissioner on Energy Efficiency and related
2 issues, to go out and push even harder on those issues
3 because we don't like to be in the situation of having
4 to approve a plant. These are tradeoffs that we live
5 with everyday and so it's all part of the same system.
6 So we really appreciate you bringing up all these
7 issues and I think that staff has done an excellent
8 job in working through all the issues. I know the
9 answer isn't what you would like but I think that's
10 part of the reason why the Commission is here having
11 these deliberations - to make sure that all
12 Californians benefit from reliable energy.

13 Anyway, I think that's essentially what I
14 wanted to say. Is that there are a lot of pieces to
15 this puzzle. This is one of them but the whole we
16 really have to keep in mind as we make the individual
17 decisions that add up to it. So thank you.

18 CHAIRMAN WEISENMILLER: And, again, this has
19 a certain déjà vu quality to it but that as we
20 struggled with last time, I certainly encourage the
21 City and Applicant to work on the development fee
22 issues and, basically, to work on some of these
23 issues. Obviously, if they can resolve them then
24 certainly the staff will help resolve those. But,
25 again, it would be useful to start developing a more

1 constructive relationship.

2 MR. BALL: Chairman Weisenmiller, having
3 received no questions I just want to thank the
4 Committee then and the Commission for its careful
5 consideration of all the issues that we brought up.
6 Thank you.

7 CHAIRMAN WEISENMILLER: Well, thank you.

8 COMMISSIONER DOUGLAS: So I'm prepared to
9 make a motion. I also want to join my colleagues in
10 expressing appreciation to all of the parties and the
11 City for being here again today and the members of the
12 public who were engaged in this process. Very, very
13 engaged in this process. And also to staff for the
14 work that staff did. And I did not mean my passing
15 reference to a certain brief document to be a
16 criticism in any way. Sometimes a document says what
17 it needs to say in using less trees and less ink and
18 that's fine. So -

19 COMMISSIONER PETERMAN: Commissioner
20 Douglas, I would also think we should extend a thank
21 you to the Public Adviser considering the amount of
22 public involvement there has been. And that Office
23 has been particularly helpful too in allowing the
24 public to engage in the many years of this project.

25 COMMISSIONER DOUGLAS: Thank you,

1 Commissioner Peterman. I think we all strongly agree
2 with that statement.

3 So, with that, I move to adopt the
4 Commission Order, denying the petitions for
5 reconsideration filed by the City of Carlsbad,
6 Terramar Association, Power of Vision and Rob Simpson.

7 COMMISSIONER PETERMAN: I'll second.

8 CHAIRMAN WEISENMILLER: All those in favor?

9 (Ayes.) This Item passed unanimously.

10 Thank you.

11 Commissioners, do we have any Lead or
12 Presiding Member Reports?

13 COMMISSIONER DOUGLAS: There will be a
14 stakeholder meeting for the Desert Renewable Energy
15 Conservation Plan in Ontario, California tomorrow. So
16 we hope to have a very detailed and constructive
17 dialogue with a number of stakeholders who have been
18 active in that process. And there's a Public Comment
19 period as well.

20 And we have also released a very detailed
21 briefing book for the Desert Renewable Energy
22 Conservation Plan. That - these maps and supporting
23 materials were posted in the middle of last week. And
24 so people who are interested can go on the website for
25 the Desert Renewable Energy Conservation plan,

1 download the maps and you'll get a very good picture
2 of what the stakeholders will be talking about
3 tomorrow. We've established a number of alternatives
4 featuring development areas that differ by alternative
5 conservation design or reserve design that differs by
6 alternative and a pretty significant amount of
7 background information to help explain and interpret
8 these documents. So it's been a very busy couple of
9 weeks for the Desert Renewable – for the work on the
10 Desert Renewable Energy Conservation Plan.

11 I also wanted to report that last Friday, or
12 the Friday before last to be more precise, we invited
13 a number of leaders among the developers, the – some
14 environmental nonprofits, some researchers at LBNL and
15 NREL who have done very cutting edge research on
16 renewable energy looking at high renewable energy
17 penetration levels and further in the future than
18 these analyses have tended to go. We had
19 representatives from – well, we had at the Public
20 Utilities Commission Commissioner Florio, who took the
21 day to attend the Energy Panel; Chairman Weisenmiller
22 and I attended the day – attended the Energy Panel for
23 the full day; and Jim Kenna, the California Director
24 of the Bureau of Land Management was here. Again, for
25 a day long discussion of the energy factors and the

1 energy understanding that we need to reach in order to
2 make the Desert Renewable Energy Conservation Plan a
3 really strong infrastructure plan for California. For
4 the state in partnership with the federal government
5 to realize our long-term climate goals and renewable
6 energy goals. And to do that in a way that helps
7 conserve the really unique and remarkable biology and
8 ecology and natural landscapes and natural communities
9 in the desert. It's been a really interesting
10 process. We've had a lot of people come to the table,
11 including certainly local governments, military.
12 There's been a lot of tribal outreach particularly
13 done by the Bureau of Land Management and all of this
14 is starting to come together in a very concrete way in
15 the briefing book that was posted online last week.
16 So I would encourage all of you to take a look at it
17 and certainly to track our activities in the Desert
18 Renewable Energy Conservation Plan because we've
19 really started to move the process along.

20 COMMISSIONER PETERMAN: I don't have an
21 update. I'll just congratulate Commissioner Douglas
22 on getting the briefing book out. The DRECP is a
23 massive undertaking and I've begun to appreciate how
24 much as we've been holding these IEPR workshops on
25 renewables and developing a renewable action plan.

1 And, indeed, I think it is the unparalleled
2 cooperation you have seen as part of the DRECP process
3 that has made folks believe that we can actually
4 coordinate better across industry, different levels of
5 government as well as different stakeholders and so
6 continuing to monitor that process and thank you for
7 continuing to move that ball forward.

8 COMMISSIONER DOUGLAS: Thank you. And I
9 should mention, of course, the Independent System
10 Operator was very well represented in this and the
11 utilities were very well represented in the workshop
12 and it was a really interesting dialogue that, to me,
13 helps us start to ask the next set of questions that
14 we need to ask as a state to reach these long-term
15 renewable energy and climate goals. And these
16 questions very much take many steps beyond the how do
17 we comply with the 33 percent RPS requirements and
18 take us to questions like, "What might the system look
19 like at 40 or 45 percent?" "What portfolio of
20 renewable energy technologies with what attributes
21 makes that more doable versus less doable?" "More
22 expensive versus less expensive?" "Easier to
23 integrate versus harder to integrate." And where do
24 we do that within California in a way that's
25 compatible with our environmental values and how do we

1 do that within California and then what else do we
2 need? What are some of the missing pieces that help
3 this come to fruition? Whether it's storage or the
4 role of certain kinds of gas backup or the role of
5 looking at resources broadly. And the NREL study was
6 very interesting because it looked at the country and
7 it considered an 80 percent renewables future for the
8 country.

9 And so getting some of that input into our
10 process was really helpful to us. And I think that
11 some of the questions that we raised and discussed in
12 that workshop will be questions that we'll be
13 pondering and trying to approach the answers to for
14 some time.

15 COMMISSIONER MCALLISTER: And so I just want
16 to do a couple of things. One, thank - I'll be doing,
17 just by way of background, I'll be doing the IEPR, the
18 2013 IEPR, and staff has been helping getting that
19 process moving. And it turns out that there are lots
20 of statutory requirements for the IEPR.

21 And so starting to play on that there's - I
22 think I'm excited about it and I think this will be a
23 full IEPR update. Although, the 2012 one was,
24 essentially, I think was the same level of effort as a
25 full one.

1 And so there's things that we have to do but
2 there are some topics that I think are really
3 interesting that we want to make sure that we do
4 something substantive and that's helpful for policy
5 going forward. And so I'm excited about that and
6 really looking forward to - well, wanted to thank
7 Commissioner Peterman for her amazing efforts on the
8 IEPR front. It's a real long - I'm providing
9 midcourse encouragement, I guess.

10 But I will definitely be using the fruits of
11 that labor to really be building on next year and look
12 forward to working with her on that. So I want to
13 sort of announce, in other words, starting to get
14 going on that and trying to figure out what the sort
15 of 'key' topics are that we can add the most value to
16 on the discretionary side.

17 And then on Energy Efficiency, that's sort
18 of the other main area that I'm working on, and wanted
19 to thank Commissioner Douglas for all of her
20 leadership in that. I know she's really sad to let
21 that one go. But we're still working together on the
22 transition and I'm really excited about that and,
23 again, the amount of trust across the stakeholder
24 groups, which I think is key for doing the various
25 processes that we do to get the best outcomes we can,

1 is really key. And she set a great tone for that and
2 so I just want to thank her for all her leadership as
3 well. And wish you good luck on the DRECP focus now.

4 So the reason that I bring up both of those
5 things is that I was just able to visit the new Center
6 down in Irvine, which is the CalPlug, the California
7 Plug Load Research Center, which is a PIER funded
8 enterprise. And I really think it shows – it's got a
9 lot of potential to do wonderful things and it shows
10 how important some of the R&D is to enable the work
11 like the Energy Efficiency, various proceedings that
12 we do and Title 20 and 24, and even forecasting as
13 well as the IEPR topics, which I anticipate being able
14 to work on some of those issues of taming the plug
15 load beasts going forward. Next year I think that's
16 something we want to look at in some form. And it's
17 really a great initiative because we know that plug
18 loads, miscellaneous category, which is now, I think,
19 miscellaneous is a little old as a category because
20 now we're starting to break it down and unpack it and
21 it's no longer miscellaneous. It's a bunch of things
22 that we're talking about as – for what they are.

23 They're getting their ducks in a row at the
24 Center. UC Irvine has made a lot of investment.
25 They've got a beautiful facility. They've got a whole

1 bunch of excited and eager students, both at the
2 undergrad level and the graduate level, that are
3 asking some interesting questions and bringing some
4 creativity to this, which is I think what we really
5 need. And they are starting to bring on industry
6 partners and utility partners that are gonna help them
7 identify the most important topics and get results
8 that actually get some traction with industry. And so
9 I think it's exciting sort of synergy and just the
10 fact that this is in Irvine. It's down in Southern
11 California. It's kind of got a different vibe than
12 some of the other centers. And that diversity is a
13 good thing. And so I was heartened to go there and
14 talk with them and I know how dedicated they are now
15 and have a really good feel for it.

16 So wanted to thank Brett Meister and Laurie
17 ten Hope actually who have been really facilitating
18 that quite a bit. Anyway, wanted to sort of bring
19 that to everyone's attention. You can do a search for
20 CalPlug and it'll be up there. And I'm sure the
21 output of that Center's going to be quite nice. I'm
22 sure similar to the CTLC for lighting and the Cooling
23 Center in Davis for HVAC. And I think it's a really
24 good way the Commission supports our overall endeavors
25 from sort of soup to nuts to help achieve our policy

1 goals. So I was really excited to be a part of that.
2 And the PIER program is making it happen. So great.

3 CHAIRMAN WEISENMILLER: Great. I'll hit 3
4 things actually, from last week.

5 One was Thursday we had an event with Pro
6 Tem Senator Pavley for Navy Week or Fleet Week. I
7 thought it was a very successful event. That was the
8 first time that we'd done that. It was a really good
9 opportunity to convey our appreciation to the service
10 people who were there. But also to sort of highlight
11 some of the 118 and PIER entities that we funded that
12 are having real spinoff and helping in the defense
13 area. So, again, it was a pretty good event, I
14 thought. Hopefully, next year's will be stronger.

15 At the same time our YouTube Channel went
16 live and so the - our microgrid video is now online.
17 So that was good. We're obviously looking for more
18 videos. I think Grant has been trying to contact each
19 of you to see if - as oftentimes as we do speeches
20 somewhere we do this video release form. And so the
21 notion is if we have copies of those we can try to
22 reach out to those entities and ask for copies of
23 those videos to post.

24 So, anyway -

25 COMMISSIONER PETERMAN: Have Grant contact

1 our agents.

2 CHAIRMAN WEISENMILLER: Right. Exactly.

3 Exactly. Yes.

4 So, anyway, we're trying really, again, move
5 that forward.

6 I think in terms of the San Onofre front,
7 last Thursday morning the NRC staff put out its
8 assessment of the augmented inspection that it did.
9 And it's something like a 77 page document. They had
10 called the day before to walk through the highlights.
11 Hopefully Jan is - or Joan is checking to make sure
12 that the summary matches. But what I've seen the 2
13 conclusions - the issue really is based upon a MHI
14 computer model. We all work in computer models. And
15 this is a particularly complicated one about
16 hydroflows and stuff, which turns to be off by a
17 factor of 3-5. And that means that the designs of all
18 4 steam generators in the 2 units have problems. That
19 the NRC Staff Report is relatively clear that at Unit
20 3 those problems have manifested themselves in the
21 tube to tube wear. And at this point Unit 3 I would
22 not count on being back for a long time, if ever. For
23 Unit 2 they feel that these problems will manifest
24 themselves at some point and at this point Edison will
25 do a follow up with the NRC, the last time I heard is

1 now into late September, to try to make the case with
2 reasonable assurance that one can safely operate Unit
3 2 under certain conditions. But, again, they have to
4 make the case to the NRC.

5 But as we go forward there will be -
6 however, if it's every 6 months or less frequently
7 over time, checks to see if the wear or what the wear
8 statistics look like and whether things are there or
9 not. The NRC staff is very clear that the 8 tube
10 ruptures that occurred at Unit 3 they consider very,
11 very serious in terms of safety implications.

12 So, in addition, the NRC staff was asked to
13 look at whether or not Edison misled the regulators.
14 They used a particular code section of the NRC, or
15 regulation section, to look at changes. So changeouts
16 is 5055 but, again, won't swear those are the right
17 numbers. And they concluded that, in fact, Edison did
18 comply with the requirements there and fully notified
19 the NRC. That being said, the NRC Commissioners are
20 struggling with the question of given the substantial
21 changes of whether they need to make changes in the
22 regulatory program. So in the future things like this
23 happen at a different level or review than the sort of
24 simple changeout level. But, again, that's - the
25 staff report certainly didn't deal with that but the

1 Commissioners I've talked to have made it pretty clear
2 they're struggling with that question.

3 And, finally, I'll just note that on Friday
4 I was at the PUC for a number of meetings. It was sort
5 of PUC day. And certainly it's always good to reach
6 out to the other agency to spend some time there or
7 for them to spend time here. Sort of, again, make
8 sure where we're heading from both agencies is
9 consistent.

10 So, with that, Chief Counsels' Report.
11 Executive Director's Report.

12 MR. OGELSBY: Just an announcement that the
13 next regular Business Meeting will be Thursday, August
14 9 rather than the 8th, Wednesday. So it'll be
15 Thursday, August 9.

16 CHAIRMAN WEISENMILLER: Public Adviser's
17 Report?

18 MS. JENNINGS: Nothing to report.

19 CHAIRMAN WEISENMILLER: Thank you. Public
20 comment? This meeting is adjourned.

21 (Whereupon, at 2:35 p.m., the business
22 meeting was adjourned.)

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