

BEFORE THE
STATE WATER RESOURCES CONTROL BOARD

In the matter of)
)
Proposed Policy on the use of)
Coastal and Estuarine)
Waters for Power Plant)
Cooling _____)

CA EPA BUILDING, 2nd Floor
COASTAL HEARING ROOM
1001 I Street
Sacramento, California

TUESDAY, DECEMBER 1, 2009

9:00 A.M.

~ITEM 8~

BOARD MEMBERS PRESENT

Charles R. Hoppin, Chair
Tam M. Doduc
Frances Spivey Weber, Vice Chair
Arthur G Baggett
Walter G. Pettit

Staff Present

Dorothy Rice, Executive Director
Jonathan Bishop, Chief Deputy Director
Michael Lauffer, Chief Counsel
Marleigh Wood, Senior Staff Counsel
Dominic Gregorio, Division of Water Quality
Joanna Jensen, Division of Water Quality

Public Comment

Laura Hunter, Environmental Health Coalition
Mike Hertell, Southern California Edison (SCE)
Paul Singarella, Attorney, SCE
Susan Damron, Los Angeles Department of Water and Power
(LADWP)
Katherine Rubin, LADWP
Francisco Estrada, Chief of Staff for
Assembly Member Mary Salas
Rob Dunlan, Counsel, RRI Energy
Audra Hartman, Dynergy
Chris Ellison, Ellison, Schneider & Harris, representing
Dynergy
Dennis Peters, California Independent System Operator
(CAISO)
Rory Cox, Pacific Environment
Noah Long, Natural Resources Defense Council (NRDC)
Steve Fleischli, Santa Monica BayKeeper
Mark Gold, Heal the Bay
Sarah Sikich, Heal the Bay
Tom Ford, Santa Monica BayKeeper
Joe Geever, Surfrider Foundation
Bob Lucas, California Council for Environmental and Economic
Balance (CCEEB)
Mark Krausse, Pacific Gas and Electric Company (PG&E)
Angela Kelley, California Coastkeeper Alliance
Joseph Dillon, National Marine Fisheries Service
Mike Jaske, California Energy Commission (CEC)

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1

P R O C E E D I N G S

2 DECEMBER 1, 2009

9:00 a.m.

3 Item 8.

4 CHAIR HOPPIN: We will go on to Item 8, a workshop
5 for proposed water quality control policy on the use of
6 coastal and estuarine waters for power plant cooling. I
7 will introduce myself again since we are going from a
8 regular board meeting to a workshop. We would like to
9 welcome you to the proposed statewide water quality control
10 policy on the use of coastal and estuarine waters for power
11 plant cooling. I am officially closing the board meeting
12 and will reopen the board meeting at the end of this item 8.
13 Please let me introduce staff who will present here today.
14 Chief Deputy Director Jonathan Bishop, from the Ocean Unit
15 in the Division of Water Quality, Dominic Gregorio, and
16 Joanna Jensen, from the Office of Chief Counsel, Marleigh
17 Wood.

18 MS. RICE: And Jonathan has gone in search of our
19 staff, I believe, Mr. Chairman.

20 CHAIR HOPPIN: Did you get him out of the bar,
21 Jonathan?

22 MR. BISHOP: He was trying to escape the building.

23 CHAIR HOPPIN: Yes, that is why we have guards
24 downstairs.

25 MS. RICE: We will have a staff presentation in a
26 moment.

1 CHAIR HOPPIN: With that, I would like you to --
2 is that you, Jeanine? All I saw was fingernail polish and
3 blue cards. If you intend to speak today, if you would
4 please fill out a blue speaker card and give them to Ms.
5 Townsend, I believe that was Ms. Townsend I just saw in the
6 front of the room. If you are not sure you want to speak,
7 fill out a card and mark it "if necessary." If you have
8 written comments to submit on this issue, please give them
9 to Ms. Townsend at this time. And it is my understanding
10 that we will be having a PowerPoint presentation from --
11 refresh me -- okay, she does not know either.

12 The State Water Resources Control Board will not
13 take action on this issue today, but will consider the
14 approval of the proposed policy at a later board meeting.
15 This hearing is being recorded. There will be no sworn
16 testimony. I will call the speakers in the order I have
17 received blue cards. When you come to the podium, please
18 state your name and identify yourself slowly and state the
19 organization which you are representing, or, if you are
20 representing yourself, I would appreciate that. With that,
21 Mr. Gregorio, if you would proceed.

22 MR. GREGORIO: Good morning, Chair Hoppin and
23 members of the Board. Again, my name is Dominic Gregorio.
24 I manage the Ocean Unit in the Division of Water Quality.
25 And we have a brief PowerPoint presentation that I am going
26 to start here in a second, but I did want to make one quick

1 recommendation before I get into the PowerPoint
2 presentation. As you know, there have been revisions to the
3 policy and, just from the initial feedback that I am
4 getting, I think it would be really good if I recommended
5 about a one week comment period, where folks could submit
6 written comments just on the revisions themselves. I did
7 not build that into the PowerPoint presentation, but I
8 thought I would just make that suggestion now.

9 CHAIR HOPPIN: Dominic, for the public's
10 information, a week around here is not what it used to be.
11 What would we consider the dates?

12 MR. GREGORIO: So, that would be --
13 CHAIR HOPPIN: That would be Friday or the close
14 of business Monday?

15 MR. GREGORIO: I would say close of business next
16 Thursday, let's give a little bit more than a week.

17 CHAIR HOPPIN: A week from this Thursday.

18 MR. GREGORIO: Yeah.

19 CHAIR HOPPIN: I have no objections to that.

20 MR. BAGETT: Will that give staff -- my only
21 concern is this was tentatively scheduled for the first week
22 in January. Does that give you enough time to actually
23 evaluate and get something out before, say, December 25th? I
24 mean, I can see the challenge here if you release a final
25 draft during the holidays, between the 26th and the 1st,
26 nobody is --

1 MS. DODUC: I concur with Mr. Baggett on that
2 concern.

3 MR. GREGORIO: If we suggest a week from today on
4 the 8th, close of business on the 8th, that gives --

5 MR. BAGGETT: Then we would have the rest of that
6 week to evaluate and hope we get something out by the end of
7 that week.

8 CHAIR HOPPIN: Or the beginning of the following
9 week, yes.

10 MR. GREGORIO: It is still cutting it really
11 close, but that would be fine.

12 CHAIR HOPPIN: A week from today, a week from
13 Tuesday.

14 MR. GREGORIO: Okay, a week from Tuesday, close of
15 business. And just on the revisions. I think I just want
16 to make that really clear.

17 Okay, so I guess we could have the next slide. So
18 I want to go over some of the major portions of the policy
19 one more time. Our goal is to develop a policy to protect
20 marine life and in compliance with Clean Water Act Section
21 316(b), while at the same time ensuring the continuity of
22 the state's electrical grid. The proposed policy would
23 apply to the 19 power plants with the capacity to withdraw
24 over 15 billion gallons a day of water from our coastal and
25 estuarine waters through a process referred to as Once-
26 Through Cooling, or OTC. There are substantial impacts to

1 marine life. The impingement mortality for fish only is
2 over 2.6 million fish a year, based on a five-year period,
3 2000 to 2005, so these are estimates that I am giving you,
4 but they are pretty well established estimates. The
5 entrainment mortality for that same period is 19 billion
6 fish larvae a year, and that does not count the benthic
7 invertebrate larvae that are also entrained.

8 So one of the new pieces of information that we
9 received after we completed the draft substitute
10 environmental document was some information on the Delta
11 plants and we did some quick estimates on the annual
12 entrainment, and it came out to about 62,000 Delta smelt
13 larvae a year. And then, in terms of marine wildlife, about
14 57 -- and when I say "marine wildlife" -- seals, sea lions,
15 and sea turtles -- about 57 were annually impinged up until
16 about a couple years ago, I think Scattergood put on some
17 exclusion devices, so that number may have dropped now.

18 So in staff's mind, once-through cooling has the
19 largest impact to marine life of any activity regulated by
20 the Water Boards. The cumulative entrainment for all 12 of
21 the Southern California plants causes mortality of about 0.8
22 to 1.4 percent of all the fish larvae in the Southern
23 California Bay. We do not have cumulative figures on the
24 Central Coast, but just looking at the largest plant on the
25 Central Coast, Diablo Canyon, it impacts the source area of
26 about 93 square miles and, in that 93 square miles,

1 approximately 10.8 percent of the larvae are killed for nine
2 rock fish species. And to put that in terms of habitat
3 through the habitat production forgone methodology. That
4 comes out to about 296 to 593 acres of rocky reef that would
5 be needed to replace the larvae lost as a result of the
6 entrainment from that one plant.

7 As you know, Marine Life Protection Act process,
8 an initiative that is going on now, the Southern California
9 portion of that just was completed and there is a science
10 advisory team that advises that group, made up of 20
11 scientists. In 2009, the SAT identified three major water
12 quality threats in the Southern California Bay with regard
13 to placement of marine protected areas. And in order of
14 priority, those were intakes from power generating
15 facilities, followed by storm drains, and then wastewater
16 effluents. So just to read from the SAT's Water Quality
17 Recommendations, "The intakes from power generating
18 facilities are the greatest threat because they operate
19 year-round, or over many months, and there is virtually
20 complete mortality for any larvae entrained through the
21 cooling water system."

22 And, of course, as I mentioned earlier, we are
23 recommending as policy to comply with Clean Water Act
24 Section 316(b), which essentially requires the best
25 technology available be applied for minimizing adverse
26 impacts from once-through cooling systems. And that is our

1 main focus with the policy is to comply with the Federal
2 law, but it is worth mentioning that we also have a
3 California Water Code Section that relates to new or
4 expanded coastal power plants, with a very similar
5 requirement.

6 So, just a quick overview of what the policy
7 contains. It proposes best technology available, and it
8 embodies an adaptive management strategy by which that
9 technology can be achieved without disrupting the state's
10 electrical grid, and the policy would reduce the permitting
11 burden on regional water boards. And most of the power
12 plants, their NPDES Permits have not been renewed because of
13 a lot of the complexity associated with this issue; most of
14 them are still operating under very old permits, and so this
15 would reduce that backlog tremendously.

16 So specifically on the best technology available,
17 closed cycle wet cooling is a proven technology that reduces
18 flow substantially between 93 to 96 percent, cooling tower
19 retrofits have occurred at various plants around the nation.
20 One of those retrofits has actually occurred in California,
21 it is the Pittsburgh power plant, Unit No. 7. And in terms
22 of nuclear plants, there has been one nuclear plant, it
23 happens to be located in Michigan, and that has been
24 retrofitted with cooling towers. So we are recommending
25 closed cycle wet cooling as best technology available, and
26 that is based on our best professional judgment. That is a

1 picture of that power plant in Michigan, and you can see the
2 cooling towers to the right of the screen.

3 So we have a two-track system that we are
4 proposing. Track 1 involves a reduction of intake flow rate
5 at each unit, each power generating unit, to a level
6 commensurate with that which could be achieved with closed
7 cycle wet cooling, and a minimum of 93 percent reduction is
8 required, compared to the design intake flow rate. So that
9 is Track 1 and it is by unit at the power plants. Track 2
10 is really being proposed to encourage flexibility. If
11 compliance to Track 1 is not feasible, the impingement
12 mortality and entrainment for the facility as a whole must
13 be reduced to a comparable level to Track 1, using
14 operational or structural controls, or both. So what are
15 some of those other technologies? One of the major
16 technologies that can be applied is closed cycle dry
17 cooling, which essentially uses no water, and there would be
18 some plants, for example, that might want to convert to
19 closed cycle dry cooling for some of their system, and then
20 do some other measures for the other part of their plant,
21 maybe a couple units left on once-through cooling, but only
22 operated very sparingly, either through operational
23 controls, or possibly through the insulation of variable
24 frequency drive pumps, that sort of thing. And there are
25 also wedge wire screens. I just wanted to mention them
26 really quickly. They have not been tried on the West Coast

1 at a major power plant; they have been used in estuarine and
2 river systems on the East Coast with success. We do have
3 estuarine power plants here, the Delta plants, so this is
4 always one possibility that is more of a proven use there in
5 that river or estuarine system, but I thought I would
6 mention it as another type of technology that a company
7 might want to investigate.

8 So, in terms of implementation, we have proposed a
9 schedule and a strategy that uses a geographic approach. We
10 are basically concentrating on local reliability areas for
11 the fossil fuel plants, and then, for the nuclear plants, we
12 are recommending linking the implementation with re-
13 licensing at those plants.

14 CHAIR HOPPIN: Jonathan -- or Dominic -- if you
15 could, on the local reliability, just, I mean, when you are
16 looking at the grid, we are really looking at statewide
17 considerations, rather than -- I mean, certainly in some
18 cases, on a case-by-case basis, a local plant supplies local
19 power, but it is not the case in all situations, is it?

20 MR. GREGORIO: There are statewide considerations,
21 that are for sure, but generally when we looked at this,
22 compared to what we had in the scoping document to now, we
23 talked a lot with the energy agencies, and this was the
24 approach that they recommended. They felt that this was a
25 much more amenable approach.

26 MR. BISHOP: Let me jump in and see if I can give

1 it to you in a different way. There are both statewide grid
2 impacts for power plants being offline, but there are also
3 local nodal impacts, areas of the grid that need certain
4 load balancing, so you have both local impacts and grid
5 impacts, you cannot replace necessarily the same amount of
6 megawatts in Northern California if you take it off in
7 Southern California, and keep the grid balanced.

8 CHAIR HOPPIN: That is getting closer. Fran?

9 MS. SPIVY-WEBER: And I would just like to raise
10 an issue that we will deal with, I suspect, when we get
11 comments. But in the City of Los Angeles, you have got
12 three facilities that are not controlled by CPUC and they
13 have their own very regional approach, and so there may need
14 to be -- in fact, I think there will need to be some
15 adjustment in their schedule that they need to be more
16 directly involved in. So, when we get to that part, I will
17 want to -- and we will hear from them -- but I do want to
18 take that into account because we have spent a lot of time
19 with the bigger system, but not so much with the smaller.

20 MR. GREGORIO: That is absolutely correct. And
21 when we put together the schedule, we as staff, together
22 with Mr. Bishop, we did consider the Department of Water and
23 Power three plants, and how those would fit into the
24 schedule.

25 MS. SPIVY-WEBER: Thank you.

26 MR. GREGORIO: So --

1 MS. DODUC: Actually, Dominic, before you get off
2 this topic, since the Chair raised it, I also have a concern
3 regarding the whole regional versus state liability issue,
4 and my concern is directly specific to Dynergy South Bay
5 plan. We heard at the workshop, and also in the written
6 comments, a lot of concerns from the Animal Justice
7 Community, in particular, regarding this plant and the fact
8 that the Draft Policy proposes, I guess, two years beyond
9 the date where the plant is supposedly no longer needed, at
10 least I think from a local reliability issue and, so,
11 actually my first question is do you know -- or I am sure
12 others in the audience would know -- if the Otai plant did
13 come up on line in October, as was projected? Because that
14 was supposed to carry a lot of the demand.

15 MR. GREGORIO: I just spoke to the regional board,
16 and the impression I got, I do not know this for certain,
17 but for my own experience, in talking to the regional board,
18 that it was coming on line, if it is not on line.

19 MS. DODUC: Okay.

20 MR. GREGORIO: But let me just add one other thing
21 to that. So, there is the Otai Mesa Power Plant Project,
22 but there is also a Sunrise Transmission Project, that is
23 not near completion yet.

24 MS. DODUC: But I was told that would be completed
25 next year.

26 MR. GREGORIO: Yeah, that is my understanding, as

1 well, is it should be some time next year.

2 MS. DODUC: Jonathan?

3 MR. BISHOP: I just wanted to remind the Board,
4 the schedule that we received to looking at the grid
5 reliability, local and grid, looked at reduction of three of
6 the units, and maybe one unit still on line until 2012, and
7 that is what we included in our schedule, is the plant would
8 have to operate until that 2012. You can talk to the -- I
9 would suggest you ask the folks from the CAISO who are here
10 today to explain a little more on that.

11 MS. DODUC: I will. Thank you.

12 MR. GREGORIO: Okay, so kind of a logical point
13 here is to discuss this adaptive management strategy. I
14 mentioned that we have been talking to the energy agencies,
15 and they are part of a task force, essentially, at this
16 point, it has not been officially convened by the Board, but
17 they have been very helpful in helping staff to develop the
18 implementation strategy and we are proposing that that group
19 be formalized in an advisory committee that we have an
20 acronym for, SACCWIS, that will be convened to review the
21 implementation progress and report back to the Board, and
22 then the Board, we would envision, would consider the
23 SACCWIS recommendations and make modifications to the
24 policy, as appropriate, because we think that there might be
25 things that come up over time that might need a little bit
26 of adaptation. And then, finally, the regional water boards

1 would re-issue or modify the NPDES Permits to conform with
2 the policy, that would be with the current form of that
3 policy; as things change, we would have some feedback also
4 with the regional boards.

5 MS. DODUC: A question for you, Dominic. When you
6 say that the regional boards will re-issue or modify the
7 NPDES Permit to conform with the policy, I assume you mean
8 that -- you are referring only to the intake component of
9 the NPDES Permit? Because this policy does not address
10 NPDES discharge. And, so, the regional boards would still
11 have their authority and discretion to make any requirements
12 they deem necessary, subject, of course, to petition to the
13 State Board, in terms of regulating the discharge from these
14 plants as part of their NPDES Permits.

15 MR. GREGORIO: That is correct. And there are
16 statewide plans that the regional boards would have to be at
17 least as strict as, for example, the Thermal Plan and the
18 Ocean Plan, but they can be stricter, and so that is
19 absolutely correct.

20 MS. DODUC: So the reason the board has the
21 discretion and the authority to impose more stringent
22 requirements on the plant to protect water quality from its
23 discharges, then perhaps what may be implied in this policy,
24 that only focuses on intake?

25 MR. BISHOP: That is correct. That is totally
26 correct. This is not -- this policy does not interfere in

1 any way with the Regional Board's authority or ability to
2 regulate the discharge from these plants.

3 MS. DODUC: Thank you.

4 CHAIR HOPPIN: Jonathan -- or, Dominic -- I am
5 going to quit calling you Jonathan here pretty quick, okay?
6 When I look at the advisory committee and I look at the
7 acronym, it is easier for me to refer to it as the advisory
8 committee, so if you would humor me along with that, I would
9 appreciate it. But as we go forward on this policy, the
10 input of this advisory committee and the composition of it
11 are very critical to me. I mean, clearly we have expertise
12 in water quality areas, we have got people here that
13 represent a diverse cross-section of the energy regulatory
14 community in the state of California, and I am sure we are
15 going to hear from everyone before we adopt a final policy
16 that is involved in this committee, there are pleasures and
17 displeasures on this, but going forward, the personalities
18 are going to change, this board is going to change, the
19 composition of all of these regulatory bodies is going to
20 change, and it would make sense to me, although probably not
21 legally binding -- Mr. Laufer will correct me if I am wrong
22 -- the idea of having an MOU as we go forward on this would
23 help memorialize the commitment of the various regulatory
24 agencies that are going to play a key role going forward, so
25 it is not something that we are going to have to decide
26 today, but it is something that I would like to have

1 discussed, and unless I am convinced otherwise, I think it
2 will be an important -- maybe not of this document, but
3 something to have in hand as we go forward because this is
4 not just a State Water Board issue, solely .

5 MR. BISHOP: Chairman Hoppin, I would suggest that
6 we will put that as a suggestion or a recommendation in the
7 resolution before we bring it to you for a decision,
8 directing staff to develop an MOU between the agencies for
9 your consideration.

10 CHAIR HOPPIN: Thank you, Jonathan.

11 MS. SPIVY-WEBER: I have one -- actually two --
12 things to consider as we look at that idea, which I think is
13 a good one. One is, I think it is something that I
14 mentioned before when we had our hearing, a big decision-
15 maker, particularly in the South Coast area, is the Regional
16 Air Board, not so much the State Air Board, and so it seems
17 to me that somehow we should reference that, when there are
18 decisions being made about regional air decisions, we really
19 should include the Regional Boards that are appropriate, and
20 the same thing would be true for, again, for LAWP, when they
21 are up for, you know, being considered -- their issues are
22 being considered; it just seems that they should be
23 requested to join with this group in the discussion, or
24 somehow be more formally engaged.

25 MR. BISHOP: What I would suggest, or that we can
26 think about in the interim while we are moving forward, is a

1 direction to staff to include the local regional board and
2 local air districts in the discussion when it is appropriate
3 for them to be there, and not make them official members of
4 the group.

5 MS. SPIVY-WEBER: Okay.

6 MS. DODUC: I would agree with that, Jonathan. I
7 think it is important to keep the advisory committee, since
8 I, too, cannot pronounce that acronym, and it reminds me of
9 Big Foot for some reason, it is important to keep the
10 members of this advisory committee as a statewide regulatory
11 kind of representation, so I definitely would agree with
12 Jonathan's recommendation.

13 MR. GREGORIO: And if I could just add really
14 quickly, so up to this point with that task force, that is
15 exactly what we have done, so from a practical level, we
16 have been operating to this point in that way. For example,
17 we did engage the South Coast Air Quality Management
18 District during our discussions about that area's grid
19 issues.

20 MS. DODUC: What does "engage" mean?

21 MR. GREGORIO: "Engage" means that we invited them
22 to give a presentation and we had a question and answer
23 session with them, the members of the task force, along with
24 the district staff.

25 CHAIR HOPPIN: I think you are going to hear more
26 from her at a later date about that engagement.

1 MS. DODUC: You are reading my mind again, Mr.

2 Chairman.

3 CHAIR HOPPIN: Please go ahead, Dominic.

4 MR. GREGORIO: Okay, so we do have in the proposed
5 policy interim requirements. In a year, after the policy's
6 effective date, we are recommending that offshore intakes
7 must install those large organism exclusion devices that
8 would prevent wildlife from entering the system, and also,
9 when a power plant is not generating electricity or
10 performing some sort of critical maintenance, that they
11 should cease their intake flows unless they make a
12 demonstration that a reduced minimum flow is necessary, and
13 that demonstration would be made to the regional boards.
14 And then, five years after the effective date of the policy,
15 and continuing until final compliance, the Permittee would
16 either fund or directly implement mitigation for the interim
17 impingement and entrainment impacts.

18 So, just to kind of go over what has gone on up to
19 this point, recently we released our Draft Policy on June
20 30th, the Substitute Environmental Document was released on
21 July 15th, and we noticed the policy and the document for
22 public comment. A public hearing was held on September 16th.
23 The deadline for submitting comments on the policy and the
24 SED was September 30th, 2009. Staff received 41 comment
25 letters representing an estimated 440 individual comments.
26 We are currently developing responses to those comments, but

1 we have read through all the comments, and have developed
2 many of those responses already, just in a very draft form,
3 and we also have to revise the SED. So, based on the
4 consideration of the comments we received and the direction
5 we received from the Board members, we are recommending some
6 revisions. We can consider these revisions to be minor and
7 intended to clarify the intent of the policy, and I am going
8 to ask Joanna Jensen, who is our lead staff on this issue,
9 to present the remaining of the PowerPoint presentation and
10 what it does is it goes through all of those revisions.

11 MS. DODUC: Could you explain to me the
12 significance of the Vermont Yankee Plant being on this
13 slide?

14 MR. GREGORIO: It is a nuclear power plant that
15 uses cooling towers and it is just there like the sea turtle
16 is, just to provide some colorful relief.

17 MS. DODUC: Thank you.

18 CHAIR HOPPIN: And, Dominic, at some point one of
19 you is going to substantiate the opinion that the changes in
20 the wholly disproportionate component are minor and not
21 substantive. I am sure you will hear more about that as the
22 day goes on.

23 MR. GREGORIO: We will attempt to do that.

24 CHAIR HOPPIN: Thank you.

25 MS. JENSEN: Good morning. Thank you for the
26 introduction, Dominic. Before I start, I would like to also

1 thank the people who took the time to study policy and the
2 SED, and write us letters explaining what their comments
3 were. We spent some time going over those comments and, as
4 Dominic said, in the end we ended up making what we feel are
5 fairly minor corrections to the policy. And I would like to
6 point out that --

7 MS. DODUC: Would you get a little bit closer to
8 the microphone?

9 MS. JENSEN: Sure. Is that better?

10 MS. DODUC: Yes.

11 MS. JENSEN: You cannot quite hear it from where I
12 sit. In the back of the room, we have a summary of the
13 revisions to the proposed policy, I hope everybody picked up
14 a copy, as well as the policy showing strikeout and
15 underlined revisions. And I will refer to those sections
16 that were revised in a minute. Again, those are categories
17 of revisions we made, fairly minor. Obviously, staff cannot
18 count because there are actually eight categories of
19 changes.

20 As far as the issues we looked at, there were
21 quite a few comments related to the SACCWIS, this is the
22 Statewide Advisory Committee on Cooling Water Intake
23 Structures, nobody mentioned different names for this
24 committee, so we are sticking with SACCWIS. People asked to
25 have the membership, the structure, the function, the
26 meeting schedule, the public involvement, clarified, and we

1 feel we did that and those revisions are found in Sections
2 1(i), 2(b)(2), 3(b), and 3(c)(1). And also, to clarify how
3 the SACCWIS and the adaptive management approach would work,
4 what would the role of the SACCWIS be in this, so those were
5 the types of changes we made. We just clarified what was
6 always our intent of how SACCWIS would function.

7 Likewise, a lot of people wanted some more
8 clarification on the meeting schedule of the review
9 committee and how the public could get involved in this, and
10 so we had the Bagley King Act public meeting requirements
11 that we need to meet, and it certainly was always our intent
12 to meet those. And we just kind of made a point of
13 clarifying that these meetings will be open to the public.

14 There was some confusion about the role of the
15 regional boards under the adaptive management strategy and
16 permitting the power plants, and so we added some language
17 that would clarify what the roles would be, and this can be
18 found in Section 3(c)(1). And likewise, we also clarified
19 that the State Board has the final authority in changing the
20 policy under the adaptive management approach, and those
21 changes can be found in Sections 1(g), 1(i), and 2(b)(2).

22 And probably one of the issues we had most
23 comments on was the wholly disproportionate determination.
24 It used to be the previous Section 4. After chewing over
25 the comments, it was decided that we were better off
26 deleting the entire section because there was a lot of non-

1 clarity as far as this section would be implemented and we
2 could foresee that just leaving it in would place a great
3 implementation burden on the regional boards, and that was
4 not the intent of the policy.

5 MR. BISHOP: Joanna, I would just like to take
6 this opportunity to clarify for Charlie your question about
7 how wholly disproportionate -- why we do not consider it a
8 major change in the policy. Essentially, what we did is,
9 taking a look at the concerns and the comments, we decided
10 to satisfy the intent of the wholly disproportionate, which
11 was to allow those facilities, the nuclear plants, and the
12 facilities that had already invested money into upgrading
13 their plants to be more efficient, and that is the combined
14 cycle plants, to provide them credit for that in another
15 way, so that they did not have to go through the paperwork
16 of developing a cost benefit analysis, and that we did not
17 have to go through the analysis of reviewing that, we just
18 assumed that we would give the credits to the combined
19 cycles, as if they had done a cost benefit analysis, and
20 shown that there was cost, so we are giving them credit for
21 the reduction in entrainment and impingement that they did
22 by upgrading their plant, so that takes care of the combined
23 cycle, in our opinion. For the nuclear plants, we --

24 CHAIR HOPPIN: Jonathan, before you go on to the
25 nukes, from comments that I have received in the last week
26 or so, it seemed at least at one point, and yesterday and

1 the day before I was preoccupied with issues and I did not
2 really receive any comments, but there was some concern or
3 lack of clarity on the minds of some, certainly, as to how
4 that credit would be determined. And are you comfortable --
5 I am sure we are going to hear from folks, looking at the
6 cards, their view of that -- but certainly the clarity of
7 that issue is important. I have read what you had written
8 down, but I was still getting questions from those that
9 would be affected, so --

10 MR. BISHOP: So we will listen to their comments
11 and see if there is some additional clarification that would
12 be useful on that point.

13 CHAIR HOPPIN: Thank you.

14 MR. BISHOP: And then, on the two nuclear fuel
15 plants, we inserted cost and feasibility into the study that
16 we were requiring from them, that we will be bringing back
17 to this Board in three years. That study would allow them
18 to look at the cost and feasibility of all options coming
19 into compliance and bringing that information back to you,
20 without requiring them to go through the paperwork of doing
21 a cost benefit analysis and having us review that. That
22 really leaves it open for us to look at all the options at
23 that point. So we believe we have satisfied the intent of
24 the wholly disproportionate without having to put us and the
25 applicants through a series of paperwork exercises on cost
26 benefits.

1 CHAIR HOPPIN: Thank you.

2 MS. JENSEN: Again, those changes can be found in
3 section 2(A)(2)(D) and 3(D)(7), and the handout in the back
4 explains a little about these changes because it does look
5 like major changes, but, really, we do feel they are not
6 that major.

7 There were some changes made to the best available
8 technology specified in Track 1 and 2. The changes were
9 made to Track 2. We had requested to define "feasible," we
10 defined "not feasible," and we also clarified what a
11 comparable level was. We provided some additional detail on
12 compliance determination and monitoring under Track 2, and
13 as Jonathan explained, we allowed some credit for the
14 combined cycle units due to the reductions in entrainment
15 and impingement impacts, which results when you replace a
16 steam turbine with a combined cycle unit. And we also
17 defined "combined cycle power generating unit," rather than
18 rely on the "85 btu heat rates" that was used previously.
19 And those changes can be found in Section 2(A)(2) of the
20 policy and Section 5 which are the definitions.

21 Some minor changes to the section related to the
22 nuclear power plants. We emphasized that the State Water
23 Board shall consider cost and feasibility when considering
24 the results of the Special Studies, this was always the
25 intent, but we just placed a little more emphasis on it.
26 And this is in Section 3(D)(7).

1 Finally, we changed the compliance date for the
2 Diablo Canyon Power Plant. Our intent was that the nuclear
3 plants would need to comply by the earliest relicensing
4 dates, and we received some information that the final
5 compliance date for the Diablo Canyon Power Plant Unit 1 had
6 changed to November 2nd, 2024, so we changed the final
7 compliance date for Diablo Canyon to December 31st, 2024.
8 And that is in Section 3(E).

9 There were some changes related to the immediate
10 and interim requirements. We just clarified that an
11 owner/operator could comply by providing funding to a third
12 party. And we also added that the habitat and area used to
13 determine for mitigation projects, the amount of habitat and
14 area needed, you would rely on the habitat for production
15 foregone method or a comparable method, and that is found in
16 Section 2(C)(3).

17 Regarding our Track 2 monitoring provisions, we
18 changed the definition of zooplankton and meroplankton so it
19 was clear that it would only be the fish larvae and pelagic
20 larvae of benthic invertebrates, crabs, lobsters, abalone,
21 sea urchins, etc., that would require monitoring. So we
22 removed eggs from the definition.

23 MS. SPIVY-WEBER: Could I ask a question there? I
24 think I see where you have made those changes, but is
25 zooplankton even in the policy anymore?

26 MR. GREGORIO: I will try and answer that. So the

1 shellfish larvae are zooplankton, but they are a form of
2 zooplankton that we refer to as meroplankton, that is the
3 official oceanographic term because they are only in the
4 plankton for a portion of their lifetime, and so it applies
5 to those zooplankton that are meroplankton.

6 MS. SPIVY-WEBER: Okay.

7 MR. GREGORIO: Crabs and lobster and abalone and
8 other kinds of shellfish.

9 MS. SPIVEY WEBBER: My reason for asking is that,
10 in the definition of zooplankton, you have kept it there as
11 a 200 micron size, which I understand is -- mesh does not
12 come that small, and so I did not know if by moving to the
13 other two areas to focus on, the ichthyoplankton and the
14 meroplankton, that you were acknowledging that, in fact, you
15 would not be able to have mesh sized so small.

16 MR. GREGORIO: Well, the mesh size refers to the
17 nets that are used in the sampling and not necessarily the
18 screen size.

19 MS. SPIVY-WEBER: Ah, okay.

20 MR. GREGORIO: And so it is an important
21 distinction.

22 MS. SPIVY-WEBER: It is.

23 MR. GREGORIO: What we are talking about is
24 monitoring for Track 2, we are not necessarily specifying a
25 certain mesh for the control technology.

26 MS. SPIVY-WEBER: Okay.

1 MR. GREGORIO: And the reason why zooplankton as a
2 definition was left in was because, in the definition of
3 meroplankton, we refer to that component of zooplankton, so
4 it is sort of a connected definition.

5 MS. SPIVY-WEBER: Thank you.

6 MS. JENSEN: And that concludes our presentation.

7 Thank you.

8 CHAIR HOPPIN: I am sure we will have more
9 questions for all of you. With that, I noticed that we did
10 not specify the amount of time the speakers have. We have
11 gotten requests all the way from 10 minutes to three. I am
12 going to try and limit you all, in the interest of time, to
13 five minutes. My colleagues realize that I am generally a
14 bit lax on that; today, I am not going to be horribly lax,
15 but just because you have put down three minutes and I said
16 you could have five does not mean you need to stand there
17 and yodel about nothing if you do not have anything
18 additional to say. So if you would try and keep your
19 comments as concise as you possibly can. With that, Laura
20 Hunter. You are the first one, Laura, to try out my time
21 directive here.

22 MS. DODUC: Do you yodel, Laura?

23 CHAIR HOPPIN: Actually, she requested 10 minutes,
24 so she is the only one.

25 MS. HUNTER: That was early in the morning, my
26 yodeling is decidedly off. I had some handouts that I hope

1 that you have received. The top one should be a letter from
2 the ISO, do you have that packet of handouts? Okay. To try
3 to stay to my five minutes, I think I would just like to
4 walk you through our packet, so that would help, so if you
5 could not start my clock until you get the fascinating
6 information I am delivering to you right now?

7 CHAIR HOPPIN: No short jokes, huh, Jeanine?

8 Okay.

9 MS. HUNTER: Great. Thank you very much for the
10 opportunity to be here today. I am Laura Hunter from the
11 Environmental Health Coalition in San Diego, and we have
12 come up because this is a very important policy for us. We
13 strongly want to support the removal of the WDD, which we
14 think is very appropriate, but there is one change that
15 actually did not get made that I really want to speak to
16 primarily today, and that is the deadline compliance date
17 for the South Bay Power Plant. I want to thank Board Member
18 Doduc for raising that. We are very concerned that, if that
19 does not get shortened, you may inadvertently be extending
20 the life of this plant further than it needs to be, and I
21 brought you some new evidence that we did not have last time
22 we presented in front of you. The first is a letter from
23 the ISO removing Units 3 and 4, there is no RMR, there is no
24 need for them, and they are off line. The second letter is
25 permit modifications that have been passed by the State, or
26 that have been issued by the Regional Board staff. They are

1 having a ratification hearing later, but if you look, the
2 most important parts of this are the date, December 31,
3 2009, for half of the plant, and December 31, 2010, for the
4 rest of the plant, so here you have got the Regional Board's
5 actions saying this plant is done at the end of 2010,
6 another reason why we think you should shorten that
7 compliance deadline shorter than that. Otai Mesa is on
8 line, to answer your question, it is on line, it is hooked
9 up, and it is operating. Another bigger plant that is under
10 construction, more contracts have been issued, and we have
11 more than enough energy which I will show you in a minute.
12 We also have -- this is a page from the Dynergy FERC filing
13 -- I do not know if it shows up really well -- but, in
14 yellow, they are reporting to the FERC that ISO said we may
15 even shut down Units 1 and 2, which is the remaining half,
16 before the end of the contract year based on new generation
17 coming on line. All of that, which we think they are
18 talking about, is on schedule again. They are not very
19 transparent in terms of what they mean, but that, we think,
20 is all on track. I am so glad you raised the issue about
21 the discharge impacts because, even if we can all agree that
22 the intake impacts are all terrible in all the plants, but
23 the discharge impacts, we think there is a big difference.
24 And ours is particularly bad, and ours is a major
25 environmental justice issue. I have done the *Tale of Two*
26 *Power Plants*, these are two OTC plants in California and you

1 can see that one impacts a low income community of color
2 with twice as many people in it, a fraction of the public
3 access, much worse swimming water quality, not to mention
4 very few areas to swim, and the fishing impacts -- we have
5 subsistence fishers from low income communities, communities
6 of color, and it is posted against that. I am also done.
7 The last handout demonstrates that the ISO, they are a
8 moving target in terms of their analysis, and we really want
9 you to preserve your own chance to look at these issues
10 because, in this case, here is what they presented to the
11 Water Board in September, different things changed like how
12 much they thought the peak would be, the need for the whole
13 plant has been wiped out, and yet it is still going to
14 operate for one more year. But we really hope that you will
15 move that deadline and recognize that we have a very serious
16 condition in San Diego. Thank you.

17 CHAIR HOPPIN: Questions of Laura?

18 MS. DODUC: Actually, if I might have the Chair's
19 indulgence, if there is a member or someone from CAISO, or
20 any of the energy members of the task force here to provide
21 some clarification as to why you recommended 2012 for this
22 plant? Pardon me? And if you still do, yes.

23 MR. PETERS: Good morning, Chair Hoppin and members
24 of the Board, Dennis Peters. I am the External Affairs
25 Manager for the California ISO, and I do have separate
26 comments that I can provide later, but Board member Doduc, I

1 will respond to your questions, as Ms. Hunter had raised
2 some concerns about South Bay's dates. And I will just
3 validate some of the facts as she indicated that are true.
4 Otai Mesa is on line, we have designated Units 3 and 4 are
5 no longer designated as what is called "reliability must-
6 run" for the year 2009. We also indicated that we would
7 need Units 1 and 2 at South Bay for the year 2010, as
8 reliability must-run units. With regard to beyond 2010,
9 what we will do is do further studies in 2010 to determine
10 the need for those plants in the future, or those units in
11 the future. A key component of that study is our 2011 local
12 capacity requirement study, the L.A. Basin and, sorry, the
13 San Diego area in which the South Bay units are in, is a
14 local reliability area, it is transmission constrained, and
15 we do have an open and transparent stakeholder process which
16 we will conduct in 2010. Any member of the public is
17 invited to participate in that open process, and at that
18 point, we will receive key information through the studies
19 as to the further need for Units 1 and 2.

20 MS. DODUC: That is a pretty open-ended answer,
21 okay.

22 MR. PETERS: Do you have any other questions
23 regarding that?

24 MS. DODUC: Jonathan, anything to add?

25 MR. BISHOP: Well, I guess I have two things to
26 add, first is that, you know, we took it upon our direction

1 to move forward with this to essentially look to the CAISO
2 for the grid reliability needs, and to use their expertise
3 on that, and as you can see, it is not always on the time
4 frame that we would like. Their schedule does not always
5 meet with when we would like to have information, but that
6 is the way it is. The other is that, you know, the schedule
7 says as soon as possible, but no later than that date, so if
8 things change in the interim year, there is no reason why
9 the regional board cannot say, "Well, it is no longer needed
10 because of the CAISO's report," and they have made that
11 determination that "as soon as possible" reduces that time
12 frame. I would caution that, you know, we have set this
13 policy up so that statewide and grid reliability, local and
14 statewide reliability, are in your purview. And we want to
15 retain that. So there is a little bit of a conflict there
16 of the regional board doing something earlier; but if, given
17 what we just heard from CAISO, that over the next year in
18 2010 they will be looking at the need further in 2011 and
19 2012, that would give the opportunity if it is determined it
20 is not needed for the regional board to move forward.

21 MS. DODUC: Well, to argue on the flip side of
22 that, we have also built into the policy plenty of
23 opportunities for CAISO and the energy agencies to come back
24 to the Board and say, "Ooops, we need to change a deadline
25 and we have determined that this will impact grid," and so
26 on and so forth --

1 MR. BISHOP: Of course.

2 MS. DODUC: So I would argue that, based on what
3 we have heard, and based on CAISO's own information, that
4 the Board could move the date up to the end of 2010, and
5 CAISO would still have the opportunity to come back to the
6 Board if it is determined that they need beyond that time.

7 MR. BISHOP: Yes.

8 MS. DODUC: Okay. And I certainly would be
9 supporting that change.

10 CHAIR HOPPIN: Mr. Peters, while we have you here,
11 certainly an important part of our statewide grid comes from
12 hydroelectric power, which is not static in its
13 availability, if you will, given the drought situations we
14 have from time to time in different parts of the state. Is
15 there a possibility that, in your calculations, that you
16 could show a diminished need for a plant like the one we are
17 talking about and in a drought situation, come back and say
18 that because of situations beyond your control, we would be
19 recommending the re-operation of these plants for an interim
20 time period? Or would they be closed down and mothballed to
21 the point where they would no longer be functional after a
22 short period of time?

23 MR. PETERS: I appreciate your pointing out the
24 fact that conditions do change each year. There was a
25 comment made of moving targets, you know, there are a lot of
26 moving parts in the electric grid and things change with

1 regard to schedule, water conditions change, and that is why
2 we have to continually study the system and what is needed
3 to ensure reliable electric service to the citizens of
4 California. With regard to the hydro plants, and if you
5 want to make a connection to the South Bay study, the study
6 which I referenced, which was a local reliability area study
7 for the San Diego local reliability area, the hydro plants
8 would not really have much impact there in that it is a
9 transmission constrained unit. And most of the hydro plants
10 are up north.

11 CHAIR HOPPIN: Thank you. Fran?

12 MS. SPIVY-WEBER: So could you be precise about
13 -- if you do your study in 2010, the outcome of that study
14 is going to show either you will continue to need those
15 units in the future or not? Is it going to be that precise,
16 "Yes, we do," "No, we don't?"

17 MR. PETERS: There will be a recommendation made
18 based upon that study, among others, I mean, that we will
19 make a recommendation as to whether those units are required
20 beyond 2010. In fact, what the determination will be in the
21 LCR Studies is what capacity is required in the San Diego
22 area to maintain reliability since it is a transmission
23 constrained area.

24 MS. SPIVY-WEBER: Okay.

25 CHAIR HOPPIN: Thank you, Dennis. I am sure we
26 will get another cut at you later -- or another opportunity

1 to speak with you is what I meant to say.

2 MR. PETERS: Okay, thank you.

3 CHAIR HOPPIN: Thank you. Mike Hertell. Thank
4 you, Laura.

5 DR. HERTELL: Good morning, members of the Board,
6 staff. My name is Mike Hertell. I am Director of Corporate
7 Environmental Policy for Southern California Edison, and we
8 are going to make some comments today about two major
9 points, first, the reliability issue, which we are very
10 appreciative of the fact that the Board and the staff has
11 been very responsive to being concerned that we not adopt a
12 policy that would threaten reliability; and then, secondly,
13 I have asked Paul Singarella, our counsel, to address what
14 we have commented on as to the Board's obligations and
15 responsibilities under the law. There has been some
16 discussion and debate about this, largely legal, so that is
17 why I brought legal counsel along, so he will address at
18 that point.

19 On the reliability issue, I think the intent of
20 the Board and the staff and their policy is quite clear.
21 You are really suggesting that you are going to rely on the
22 expertise of the energy agencies to determine, as we just
23 heard in this discussion about South Bay, which plants are
24 needed, and for how long. And implicit in that is
25 recognition that this Board does not have either the
26 expertise or, in fact, the responsibility and accountability

1 for ensuring reliability in the state, but you are
2 supporting that policy through your intent, and that is
3 clear throughout Section 1 of the document, and even in the
4 revisions that have been made. However, we do not think
5 that that intent is actually implemented in the revised
6 policy, and we would ask that you change the policy so that
7 it is. And I want to try to be a little bit specific about
8 that. In Section 2(B)(2) where this is covered in the
9 revised version, we would suggest words to the effect where
10 it begins, "To maintain the reliability of the electric
11 system as annually determined by the CAISO CEC or CPUC, the
12 State Water Board after public hearing..." this would be a
13 kind of suggested change we would request, "...shall make
14 modifications to the implementation schedule consistent with
15 the reliability determinations of the energy agencies, to
16 assure that the schedule can be implemented without threat
17 to the electric system reliability." And that, we think, is
18 necessary because, unless this Board actually makes a full
19 commitment that they are actually going to change the policy
20 consistent with those recommendations, it is an open-ended
21 thing, more open ended than the studies that we talked about
22 just a little bit earlier. We think that to do less would
23 put you in the position of assuming the full responsibility
24 for the reliability of the electric supply system of the
25 state, and if you are going to do that, then we would
26 request that we be given time to supply you with suggested

1 language, so that that is absolutely clear and you are
2 taking on that responsibility. We do not think that is the
3 intent of the Board or the staff, and we think that this
4 change keeps you in charge of the policy, but fully
5 implements your intent to have reliance on the advice of the
6 energy agencies. So let me -- I know there may be questions
7 about that and I am happy to talk about it right now, but I
8 would like to give Paul a chance to address some of the
9 other more important issues that we have raised.

10 CHAIR HOPPIN: Mr. Hertell, before you step away,
11 though, I do have a question.

12 DR. HERTELL: Sure.

13 CHAIR HOPPIN: When we rely on this advisory group
14 and the energy agencies, you know, we could potentially get
15 into a situation where there is not necessarily harmony
16 between all of the agencies. How would you suggest
17 resolving an impasse if one did come before us in that
18 situation?

19 DR. HERTELL: Excellent question. That is why we
20 chose the phrase "consist with." In our view, that language
21 implies that the Board retains discretion, but announces its
22 intention to rely on the advice that you are given. Now,
23 let us just suppose that this South Bay issue came up and
24 people want the date advanced, and then CAISO does its
25 studies and comes back to you with, just suppose, a piece of
26 advice that says, "No, we need that plant beyond 2010, that

1 unit, those two units." If this Board decides in its wisdom
2 not to rely on that advice, then obviously you are taking on
3 the responsibility and accountability for what happens as a
4 result of that. We think, however, your intention in the
5 policy is quite clear, you are not intending to do that, you
6 are intending to rely on the advice of the CAISO and CPUC
7 and CEC, and perhaps the LADWP Board in their case, but you
8 retain the functional ability to say, "Even though I have
9 got that expert advice, I am not going to follow it, I am
10 going to go a different direction." So that is why we chose
11 that phrase, "consistent with."

12 MS. DODUC: I have a lot of respect for Dr.
13 Hertell, as he knows, but I have to say that I strongly
14 oppose your recommended language.

15 DR. HERTELL: Understood.

16 MS. DODUC: I think we definitely, as you said,
17 the Board has signaled our clear intent to take into
18 consideration very seriously the recommendations, the
19 concerns that are raised by the Energy agencies including,
20 obviously, CAISO; that is actually what we have done for the
21 last year, year and a half, through Dominic's task force.
22 And the language as it currently has just been added to the
23 policy concerns me enough, as it is, in terms of the Board's
24 commitment to consider suspending the dates until we
25 evaluate the new data that is in, to actually commit and tie
26 a potential future Board action, is something that I am not

1 comfortable doing. You are right, if the Board -- the
2 future Board, or whomever is still left on the Board when
3 that matter comes up to us -- decides to override concerns
4 that are raised by CAISO and the other energy agencies,
5 then, yes, that board, that future board, would be
6 potentially taking good reliability into their own hands,
7 but that is not the situation here today, that is not the
8 situation in the policy. I think the policy is very
9 accommodating, in fact, I believe it is too accommodating in
10 terms of especially the new language that has been added,
11 which I am still not comfortable with, in terms of tying the
12 Board's hands. I fully appreciate that the Board would need
13 to consider very seriously concerns that are raised on grid
14 reliability issues when we conduct any future hearings to
15 consider revising the dates, but we would also have to
16 consider any other comments that may come in with respect to
17 marine impacts, with respect to local community concerns,
18 and to obligate a future decision and tie it to only one set
19 of input is something I am not comfortable with.

20 DR. HERTELL: I know that Board member Doduc
21 understands that I hold her in great respect, as well. I
22 continue to maintain my position for this reason. The
23 problem with consideration is it does put the input of the
24 energy agencies on virtually the same level as every other
25 input. And if your intent is to do that, then you need to
26 be clear about that. And you need to right now, I think,

1 announce to the state that you are taking on the
2 responsibility for reliability of the supply. That is a big
3 responsibility that the Legislature, we believe, has lodged
4 with these other agencies; that is why we have encouraged
5 the very close cooperation that you have shown with those
6 agencies. We are not asking you to tie your hands and say,
7 "I will follow that no matter what," but we are asking that
8 you be clear about your intent to follow it. So I think we
9 have to leave it there, but that is why we have taken this
10 position and we have honestly tried to come up with
11 something that kind of bridged this very difficult area in a
12 way that respected the Board's responsibilities with respect
13 to water quality and also the energy agencies'
14 responsibilities with respect to reliability.

15 MS. DODUC: And if I may make a last response to
16 that comment, I believe that if it were the Board's intent
17 to treat the energy agencies as any other regular
18 stakeholder, we would not have included the advisory
19 committee, we would not have included language that
20 basically commits us to looking at revising the dates upon
21 their concerns that they may raise in the future, but I
22 would argue back that, no, the energy agencies are not being
23 treated as any other stakeholder in this Draft Policy, but I
24 appreciate that we may differ in our opinions.

25 DR. HERTELL: Thank you. Mr. Singarella.

26 CHAIR HOPPIN: Mr. Singarella?

1 MR. SINGARELLA: Thank you, Mike. Paul Singarella
2 of Latham & Watkins here this morning on behalf of Southern
3 California Edison. Good morning, Chair Hoppin and other
4 members of the Board. Let me first say that we have
5 appreciated the opportunity to work with the agency on this
6 very complicated and important subject. I want to start by
7 identifying that which we are requesting of you, and then I
8 will explain our request. Request 1 is the reliability
9 request, and we are asking the agency to commit to a
10 schedule that is based on findings of the energy agencies
11 with respect to grid reliability as opposed to just consider
12 or asking you to commit to their findings on that topic; 2)
13 we are asking you to put back into the policy that which
14 just recently came out, and that is the wholly
15 disproportionate standard; and 3) we are asking you to adopt
16 as best technology available the suite of technologies as
17 proposed by Southern California Edison, instead of the wet
18 cooling tower approach. If I have a minute at the end, I
19 will return to grid reliability, but I want to jump right in
20 to the issue of wholly disproportionate. I never thought I
21 would be standing here today defending wholly
22 disproportionate. The reason for that is I assumed, as I
23 think many in the regulated community have, that wholly
24 disproportionate is really a given, it is part of the fabric
25 of 316(b). Why do I feel that way? Well, 1) EPA has used
26 the wholly disproportionate standard for 30 plus years, it

1 has always been part of the Federal EPA program under
2 316(b), and 2) the Entergy case from earlier this year,
3 where the United States Supreme Court looked at 316(b) and
4 spent a lot of time talking about economics under 316(b)
5 and, in fact, the Supreme Court said that it was fair game,
6 it was fine to consider economics and cost benefit
7 considerations when regulating under 316(b). And the
8 Supreme Court actually identified three different kinds of
9 cost benefit approaches, and the one that it favored the
10 most is wholly disproportionate. It actually wrote into a
11 Supreme Court opinion a full endorsement of the wholly
12 disproportionate standard, including 30 years of EPA
13 statements and lower court decisions, in which it was said
14 basically that if you do not have wholly disproportionate as
15 part of your 316(b) program, you do not have a valid
16 program, your program is per se, unreasonable, your program
17 would be arbitrary and capricious, so you really need to
18 have wholly disproportionate as part of a 316(b) program.
19 Any other approach would be rudderless and without a
20 standard, and we think would be unlawful. We think you have
21 moved into some fairly shaky ground on that at that point,
22 and we urge you to reconsider it and put the wholly
23 disproportionate standard back in.

24 There are three other problems with eliminating
25 wholly disproportionate under the current posture of this
26 matter, number one was your notice, calling this change,

1 this major policy shift clarifying and minor is just not the
2 way to tee up this topic. Number two is a CEQA point, and
3 the CEQA point is this, when you defined the CEQA term
4 project for your Substitute Environmental Document, you
5 defined it with respect to a wholly disproportionate off-
6 ramp. Why wouldn't you? It has always been there, it has
7 been a given for 30 plus years. Now you are proposing to
8 move forward with a policy that does not have that, in
9 essence, you have removed wholly disproportionate from your
10 project description. Well, that puts you at great risk of
11 recirculation, and we think, because of the significant
12 environmental impacts of having to move forward with a
13 policy that does not have that off-ramp, in fact, you are
14 going to have to re-circulate your Substitute Environmental
15 Document and put it out for at least 45 days. And then,
16 finally, the third other problem besides the Federal
17 problems that you have created for yourselves, is that you
18 have created a Porter-Cologne problem. Under Porter-Cologne,
19 you are in fact required to do balancing, balancing of what?
20 The economics on the one hand, with other facts on the other
21 hand. What other factors? Well, water quality benefits.
22 How in the world can you do balancing of economics if you
23 actually take economics out of your policy and, in fact, we
24 do not think you really can. Now, Southern California
25 Edison is particularly troubled by taking out economics. In
26 reliance on the Board's prior versions of this policy, and

1 all that history that I referred to, we went ahead and did
2 an economics study and we submitted it to you. And in that
3 study, it was determined by the economists that the cost of
4 going to closed-cycle cooling towers at SONGS has a ratio of
5 140:1 versus the environmental benefits. That is an
6 unimpeached study that has been presented to you. What
7 should you do in light of receiving a study like that? It
8 seems to us that what you should do is perhaps use that as a
9 case study to show how this very important standard that has
10 been there for all these decades would be applied. But we
11 see today's -- well, I am sorry, not today's move -- but we
12 see the recent draft as signaling that you are going in a
13 different direction. Then, finally, why embrace wet cooling
14 towers as best technology available? We do not think that
15 is required by the Federal Clean Water Act, we think it is
16 plainly infeasible for the two nuclear power plants in this
17 state, and if you do not have off-ramps in this policy, and
18 you do have BTA equaling wet cooling towers, we think that
19 is a recipe for dispute and controversy that is unnecessary.
20 What is the alterative? Well, in the alternative, why not
21 adopt Edison's suite of technologies approach? We think
22 that is plainly within your discretion to do so. And with
23 that, I will be glad to answer any questions.

24 CHAIR HOPPIN: Do we have a question, Mr. Baggett?

25 MR. BAGGETT: I mean, I am missing, Paul, here, I
26 mean Section D on page 7 and 8, I thought it was pretty laid

1 out methodology for doing studies. It says flat out in
2 number 7, "The State Board shall consider the results of
3 special studies, including cost and feasibilities." What am
4 I missing here?

5 MR. SINGARELLA: I think what may be missing --

6 MR. BAGGETT: I mean, unless you are concerned
7 that it will not come out with the same suite that you have
8 already determined, but we are requiring studies, they are
9 including costs and feasibility. What more do you --

10 MR. SINGARELLA: What I am referring to, Mr.
11 Baggett, is the absence, the deletion of a standard of
12 review from this policy. What I am referring to is the
13 elimination of an off-ramp from your Track 1 and Track 2
14 that has been part of this regulatory scheme --

15 MR. BAGGETT: Right, I understand, but you just
16 brought up--

17 MR. SINGARELLA: 30 plus days--

18 MR. BAGGETT: You were talking about SONGS, and
19 this section is dealing specifically with two plants, it is
20 dealing with SONGS.

21 MR. SINGARELLA: It is fantastic that we are being
22 asked to conduct a study in which costs and feasibility will
23 be issues. We have already done that. We have submitted
24 that to you and, instead of actually acting upon it --

25

26 MR. BAGGETT: And so have others, and they disagree.

1 MR. SINGARELLA: I am sorry?

2 MR. BAGGETT: And we also have other studies that
3 have been submitted that reach a different conclusion than
4 yours.

5 MR. SINGARELLA: I look at that language and it is
6 simply asking us to do a study that we have already done, it
7 is not providing us with any relief whatsoever, it is not
8 providing us with a standard to move forward from today into
9 the future. All that does is it says the agency will
10 consider a study, and there could be a chapter in the study
11 that talks about cost, and another with feasibility. I have
12 seen what consideration can mean. I mean, I understand the
13 difference between substantive review and procedural review.
14 When you say you are going to consider something, in essence
15 you say, "We need to say we considered it." That is it.
16 When you say that you are not going to impose a technology
17 on an industry where the costs are wholly disproportionate
18 to the benefits, that is something totally different, and
19 that is what you have taken out of this policy. Thank you
20 very much.

21 CHAIR HOPPIN: Thank you, Mr. Singarella. Susan
22 Damron.

23 MS. DAMRON: Susan Damron, Los Angeles Department
24 of Water and Power. Thank you very much for the opportunity
25 to come and speak today. Just in opening, LADWP supports
26 the goals set forth in the Draft Policy, namely to reduce

1 once-through cooling and to minimize the impacts from once-
2 through cooling on marine life. DWP, over the last 15
3 years, has been engaged in repowering its facilities. To
4 date, we have reduced our once-through cooling units from 14
5 to nine. We have two new projects that should be completed
6 by 2017, that will reduce the once-through cooling units to
7 five. It is DWP's desire to continue repowering its fleet
8 and to decrease once-through cooling usage and to minimize
9 impacts. However, the policy continues to present dilemmas.
10 The first dilemma for us is it will take time to repower and
11 retrofit. The dates listed in the table, the implementation
12 schedule, cannot be met by LADWP without impacting energy
13 supply and reliability for the City of Los Angeles. At the
14 request of the State Board members at the September 16th
15 hearing, DWP did provide dates, and we believe these are
16 extremely aggressive dates. The dates that are in the
17 November 23rd revised policy are unchanged and would continue
18 to pose serious supply and reliability issues. The origin
19 of these dates appears to stem from a conversation that
20 LADWP staff and State Board staff had in May -- May 12th of
21 2009 via conference call. Because none of the energy
22 agencies can advise the State Board staff on dates as they
23 pertain to our facilities, we had this conversation about
24 plausible dates that LADWP could make. And we were asked to
25 provide a schedule in two weeks, which we did on our May 26th
26 letter, and in that letter we had five stipulations

1 associated with our schedule, one is that repowering is
2 sequential for us, no two facilities can be taken out at the
3 same time; the dates that we provided did not have the
4 approval of our Governing Board, they did not have the
5 backing of any engineering or financial analysis, and they
6 assumed that all permits, licenses, and approvals could be
7 obtained. Just as an example, in this letter we provided
8 that Haynes could meet a 2013 date with only a 50 percent
9 flow reduction, so 50 percent flow reduction could be
10 achieved by 2013. Or, a second scenario would be, we could
11 achieve a 72 percent reduction by 2015. Well, those dates
12 were taken and put into the policy, but neither of those
13 flow reduction percentages get anywhere near the Track 1 and
14 Track 2 percentages that you are seeking. So, my point is
15 that the dates that we gave staff back in May are not valid
16 and they are not accurate, unless you are going to take into
17 consideration all of the stipulations and the percentages
18 that we need. So our request is to modify the dates in the
19 table to reflect the aggressive dates that we provided in
20 our September 30th comment letter.

21 MS. SPIVY-WEBER: And for the purposes of the
22 record, why don't you just state what those are?

23 MS. DAMRON: For the Harbor Generating Station, we
24 asked for five years after the adoption of the policy, we
25 did not provide dates, but we assumed that the policy,
26 whenever it was adopted, we needed five years; for our

1 Haynes generating station, that was nine years after policy
2 adoption; and for Scattergood Generating Station, that was
3 12 years after policy adoption, that is actually the most
4 challenging engineering-wise, that is why it needs the
5 longest date.

6 Our second concern, as has been raised today, has
7 to do with the advisory committee composition. We need to
8 reiterate that neither the PUC, the CEC, or the CAISO have
9 the authority or the responsibility to ensure or maintain
10 energy supply and reliability for the City of Los Angeles.
11 Those determinations and those responsibilities lie
12 exclusively with the Board of Water and Power Commissioners
13 of the City of Los Angeles. Therefore, any advice given to
14 the State Board regarding LADWP facilities must come from
15 the Board of Water and Power Commissioners and not the
16 advisory committee. At a minimum, the advisory committee
17 should forward verbatim, without any edits, additions, or
18 deletions, any implementation advice relative to LADWP
19 facilities that comes from the Board of Water and Power
20 Commissioners to the State Water Board. So our request
21 would be to modify the policy to require that the Board of
22 Water and Power Commissioners provide advice to the State
23 Water Board on the implementation of the policy relative to
24 the LADWP facilities.

25 Next has to do with the Track 2 compliance. The
26 policy must provide a viable Track 2 compliance pathway.

1 The November 23rd version makes it clear that compliance with
2 the policy is determined by measured reductions in
3 entrainment pursuant to Section 4(B), so it links monitoring
4 with compliance. Entrainment reductions for any aquatic
5 life organism that is 200 microns in size is not attainable.
6 No facility within the United States is operating an
7 entrainment reduction technology that is below 500 microns
8 in size. Therefore, neither monitoring nor entrainment
9 compliance reductions should address any aquatic organism
10 that is less than 500 microns. I know that it was mentioned
11 earlier that the size had to do with sampling nets, and I
12 would like to address that. As far as I know, all of the
13 sampling nets that were used were at a minimum pretty much
14 standardized in the scientific community at 333 microns, so
15 the sampling nets are larger than 200 microns. And I would
16 also like to reiterate that you have linked monitoring now
17 with compliance, and therefore, why would we be monitoring
18 for smaller organisms if we cannot use those organisms for
19 compliance purposes? The monitoring provisions that are in
20 Section 13267(B)(1) require that any monitoring bear a
21 reasonable relationship to the need for that monitoring, and
22 the benefits to be obtained. Our suggestion would be that
23 entrainment impact reductions should focus on fish and
24 shellfish, eggs and larvae, which I think is kind of what
25 Dominic had, he had crabs and lobster, the shellfish, and
26 should not talk about zooplankton and meroplankton, and

1 should remove any reference to size -- organism size. And
2 lastly, my comment is with regard to the wholly
3 disproportionate, the policy goes to great lengths to
4 indicate that it will ensure energy supply and reliability
5 of the state's electrical system. Previously, the Draft
6 Policy provided a mechanism whereby, if Track 1 was
7 infeasible, Track 2 could be pursued with the installation
8 of best performing control technology, and mitigating for
9 the difference between the performance level of the
10 technology and the Track 2 standard. At the September 16th
11 hearing, staff indicated that it believed three facilities
12 qualified for the wholly disproportionate demonstration as
13 of the date of that policy, two of which are LADWP
14 facilities. It is important to note that these repowered
15 units still use a level of once-through cooled water,
16 however, with the current version under Track 2, if the
17 performance level of the best performing control technology
18 cannot be achieved, these modernized, highly efficient
19 units, would have to be shut down. This would represent to
20 us 800 megawatts. If Track 2 is infeasible, and a facility
21 cannot fully meet Track 2 standard, its only recourse would
22 be to shut down. Is this what the policy intended? Our
23 request would be to reinstate the wholly disproportionate
24 demonstration for all facilities. And just one comment, Mr.
25 Baggett, to your comment about cost, you know, if it is in
26 the核airs, but it is not going to be in for all of the

1 other facilities that are not -- non-nuclear, the ability to
2 incorporate cost in any kind of feasibility studies. And it
3 also had the three facilities -- staff indicated that they
4 had moved and incorporated those provisions into the other
5 areas, but it only would benefit facilities that had
6 undergone repowering as of the date of the adoption. What
7 about the two facilities, the two units, the two sets of
8 units that we will repower in the future? They will not be
9 able to take advantage of any of that language that has been
10 moved over. Thank you.

11 CHAIR HOPPIN: Thank you, Ms. Damron. Katherine
12 Rubin.

13 MS. DODUC: If I may ask staff some questions?
14 First of all, is there anything in the Draft Policy that
15 would prohibit LADWP Board from providing information,
16 recommendations, directly to the Board or to the advisory
17 committee should they anticipate a problem?

18 MR. GREGORIO: There is nothing that would prevent
19 that from happening.

20 MS. DODUC: Okay, second question. I think there
21 might have been a misunderstanding. It is my recollection
22 what staff said at the workshop was not that three plants
23 would -- have been determined to have a wholly
24 disproportionate impact, but that three would be eligible to
25 go through the demonstration process. Is that correct?

26 MR. GREGORIO: That is correct.

1 MS. DODUC: Okay. And --

2 MR. BISHOP: Excuse me, we should be clear, that
3 is three plants that are non-nuclear.

4 MS. DODUC: That are non-nuclear. And the Draft
5 Policy, again, the wholly disproportionate component that
6 was removed, only includes the two nukes and those three
7 plants, and was not inclusive of any other plants addressed
8 in the policy.

9 MR. GREGORIO: It was staff's intention that it
10 would apply to the nuclear plants and to the three plants
11 that have combined cycle units that replaced older steam
12 turbine units. That was the intention.

13 MS. DODUC: So the changes that you have made to
14 the Draft Policy really have not changed the intent of the
15 wholly disproportionate section?

16 MR. GREGORIO: It has not changed it, except that
17 we would avoid going through what we consider probably a
18 problematic review of cost benefit that the regional boards
19 would have had to perform. This was a lot simpler, we
20 thought, more straightforward.

21 MS. DODUC: Thanks, Dominic.

22 MS. SPIVY-WEBER: And to make changes in the
23 schedule, which I -- you received the letters from DWP
24 suggesting that having to do two in one time period, which
25 were Harbor and Scattergood, in 2017, it seems to me that
26 that is not staggered, you know, like we are expecting in

1 other areas, and so is there any problem with making the
2 changes that were recommended of having Harbor first,
3 instead of Haynes? By having Haynes second and then later
4 on having Scattergood? Is there any problem with that?

5 MR. GREGORIO: I cannot think of any right off
6 hand, but I think what it would take is for staff to go back
7 and take a harder look at that and report back to you. I
8 just cannot think of anything off hand, though.

9 MR. BISHOP: We would, of course, listen to the
10 recommendation of the Board if you would like us to consider
11 the dates proposed there, we would be happy to do that.

12 MS. SPIVY-WEBER: Because we are looking to the
13 power companies, all the others, and it just seems to me if
14 the power company for this particular important geographic
15 area thinks that this is not anchored enough, then we should
16 make some --

17 MR. BISHOP: We have a slightly different
18 situation that I am sure you are aware of, but I will just
19 remind you, in the other cases we have the energy agencies
20 that are not the actual producer and discharger, and in this
21 instance, the Commission is the owner and operator of the
22 plant, which puts us in a little bit awkward position, but I
23 do acknowledge that they have given us a set of dates now
24 that are -- which they believe would put them in the ability
25 to come into compliance with the policy; what we received
26 earlier was a set of dates, but with inability to actually

1 meet compliance, we understood that, but we were in somewhat
2 of a bind.

3 MS. SPIVY-WEBER: Well, if they were completely
4 different from the general trend of the other
5 recommendations, it would cause me pause, as well; but since
6 it is fairly close to at least particularly for the first
7 two, the other recommendations, it seems to me quite
8 reasonable, and so I do hope -- I do want us to look at
9 that.

10 MS. DODUC: Actually one other question for
11 Dominic. Could you address the concerns regarding the
12 sampling nets.

13 MR. GREGORIO: Definitely. So there was a couple
14 of inaccuracies, no offense to Ms. Damron, but there were a
15 couple inaccuracies. One of them had to do with
16 standardized nets. The nets that were used for previous
17 studies were decided upon with the intention of collecting
18 fish larvae, there is nothing standard, necessarily, about
19 that. So when we used the measurement of 200 microns, that
20 catches the shellfish larvae and the fish larvae, both, so
21 that you could make a determination of what species are
22 being entrained. If you used a higher or a larger mesh
23 size, you would not get the shellfish larvae. In terms of
24 another slight inaccuracy is the reference to shellfish
25 larvae that could be included in the definition, without
26 using the term "meroplankton," that is not correct because

1 shellfish larvae are meroplankton, that is a standard
2 oceanographic term, and they are a component of the
3 zooplankton, but there are many many other species of
4 zooplankton that are larger than 200 microns, that would not
5 be considered -- would not have to be assessed or analyzed
6 in their study, so they could disregard things like -- and I
7 know I am getting kind of technical here, but things like
8 copepods, those would not be something that they would need
9 to consider, those are very numerous organisms, and we do
10 not think there is an effect on those organisms. But they
11 would be caught in the 200 micron mesh size net, but a
12 consultant would not have to count them up because we are
13 specifically talking about the invertebrate larvae that grow
14 up to be benthic organisms, in other words, grow up to be
15 shellfish.

16 MS. DAMRON: We did capture, Dominic, with our
17 nets crab and lobster larvae.

18 CHAIR HOPPIN: Thank you, Ms. Damron. Ms. Rubin.
19 And I will remind you all that -- I do not know why Ms.
20 Damron reminded me of it, but we have a time schedule we
21 need to try and keep here. It will be my intention after
22 Ms. Rubin to take a ten-minute break, and then we will do
23 our best to complete this workshop as soon after the lunch
24 hour as we possibly can, considering that some of us have
25 planes to catch this afternoon. With that, Ms. Rubin, would
26 you please identify yourself and proceed?

1 MS. RUBIN: Sure. Good morning, Chairman Hoppin
2 and members of the Board, and State Board staff. My name is
3 Katherine Rubin, I am with the Los Angeles Department of
4 Water and Power, the Environmental Affairs Section. And I
5 have just a few more comments for you regarding the
6 definition of feasibility, the interim mitigation, and if
7 time permits, some of the definitions. We do intend to
8 submit written comments and they will be in our written
9 comments. So, to start with the definition of
10 "feasibility," over the next 10 years, LADWP estimates it
11 will have to expend approximately \$11 billion for climate
12 change compliance, purchasing and developing renewable
13 energy resources, transmission upgrades for renewable
14 integration, power plant repowering, and the 316(B)
15 compliance. Secondly, the EPA and the Second Circuit Court
16 decision affirmed that cost should be considered and whether
17 the industry could reasonably bear the cost. As of right
18 now in the revised policy, and the definition of
19 feasibility, they have taken the cost out, that we cannot
20 use cost. And so we are requesting that the feasibility
21 definition should consider cost and cost be put back in
22 there. Regarding the interim mitigation, the policy
23 requires both interim mitigation and mitigation to close the
24 gap between the performance level of the best performing
25 control technology and the Track 2 standard. Mitigation is
26 a permanent measure, it cannot be initiated on an interim

1 basis, and then withdrawn at a subsequent date once in
2 compliance. Therefore, LADWP recommends that we apply some
3 sort of scaling factor to account for the time period in
4 which interim mitigation would be needed, and that you apply
5 the mitigation performed towards any final mitigation
6 requirement, if any. So we are requesting that the policy
7 be modified to scale the interim mitigation and apply it to
8 any final mitigation that may be required. I think I just
9 repeated myself. This comes from the position of LADWP and
10 our General Manager, and he believes that the benefits to be
11 achieved from the adoption of this policy as currently
12 written have not been fully identified and characterized
13 when contrasted with the impacts to both the environment and
14 the state's electrical supply and reliability, and that the
15 environmental benefits to be gained do not outweigh the
16 negative environmental impacts and the costs, making this an
17 inefficient policy for reducing the once-through cooling
18 impacts. And what is being requested is that the State
19 Board staff should be directed to take some additional time
20 to fully evaluate all the comments, and modify the SED and a
21 policy accordingly. And to go on, if I have a few more
22 minutes, I think I have two more minutes here, just to get
23 into the definitions since we have some time, for the closed
24 cycle wet cooling, there is not any water associated with
25 the boiler blow-down with the closed cycle wet cooling, so
26 we suggest that you delete the reference to wastewater

1 associated with the blow-down, with the boiler water. And
2 the definition for combined cycle power generating units,
3 you need to delete the word "several" so that it reads -- it
4 refers to units. And power generating activities, once
5 more, this definition needs to be fixed to include the use
6 of being able to run your pumps for biofouling, etc. As
7 written, it only allows for critical maintenance activities
8 for those facilities regulated by the Nuclear Regulatory
9 Commission, and so this would not include the plants for
10 LADWP. That concludes my comments.

11 CHAIR HOPPIN: Any questions for Ms. Rubin?

12 MS. DODUC: Actually, a quick question for staff.
13 If you could refresh my memory, where in the previous draft
14 was cost included as part of the feasibility determination?

15 MR. BISHOP: It never was.

16 MS. DODUC: That is what I thought. Thank you.

17 CHAIR HOPPIN: Thank you. And with that, we will
18 take a ten-minute break. The next, when we resume, the
19 first two speakers will be Francisco Estrada and Rob Dunlan.
20 We will see you all here at a little after 11:10.

21 (Off the record.)

22 (Back on the record.)

23 CHAIR HOPPIN: We will resume. Francisco Estrada?
24 Mr. Estrada, in the interest of time, I will apologize to
25 you on your way up. Generally, we provide special deference
26 and consideration to legislative members and their staff,

1 and I did not notice your card until a few moments ago, so
2 if you would accept my apology for taking you out of order,
3 I would appreciate it.

4 MR. ESTRADA: No need to apologize.

5 CHAIR HOPPIN: With that, you do not get more than
6 five minutes, so --

7 MR. ESTRADA: I will only take 15. My name is
8 Francisco Estrada. I represent Assembly Member Mary Salas.
9 I am here today to deliver and to put into the record two
10 letters, one from the City of Chula Vista, and one on
11 Congressman Bob Filner's letterhead, which demonstrates
12 something that is kind of rare now days, and that is
13 unanimous bipartisan opposition to the continued operations
14 of the South Bay Power Plant. We believe, and I speak for
15 all of them, that the South Bay Power Plant should be
16 decommissioned as quickly as possible because it is old,
17 obsolete technology, fails to use best practices available,
18 has extraordinary impacts to our bay because it draws water
19 in and discharges into a very shallow bay, with very limited
20 flushing action. Now, in 2004, the plant was given a NPDES
21 Permit for five years, and there was little opposition to
22 the permit at that time, and the reason for that is because
23 we were all under the impression that it would be the last
24 permit that would be issued for this plant, and that this
25 plant would be decommissioned at the end of that permit. We
26 have found now that there has been some changes. We

1 believe, still, that the plant is no longer necessary, and
2 under the previous permit that was granted, there was very
3 limited mitigation, very limited investments in trying to
4 upgrade the plant because we all realized at the time that
5 it was for a very short term, it would be operating for a
6 very short term and would really not warrant the kinds of
7 investments that are needed. Now, things have changed, and
8 I think your policy that is before you in this workshop
9 today gives it a very long period of time for the South Bay
10 Power Plant to come into compliance, and so, on behalf of
11 the City of Chula Vista, Congressman Filner, State Senator
12 Denise Ducheney, Assembly Member Marty Block, the County
13 Supervisor for the area, Greg Cox, and Assembly Member Mary
14 Salas, I am here to urge you on their behalf to really
15 change your policy, really a minor change, but a very
16 parochial change, in our instance, but to make sure that
17 this plant comes into compliance within one year from
18 approval of your new policy, as is the same for several
19 other plants in California. Thank you very much.

20 CHAIR HOPPIN: Thank you, Mr. Estrada. Rob
21 Dunlan.

22 MR. DUNLAN: Chairman Hoppin, members of the
23 Board, my name is Robert Dunlan. I am an attorney with the
24 law firm of Ellis, Schneider and Harris here in Sacramento.
25 I am representing RRI Energy in this proceeding, they own
26 and operate two facilities in Southern California that are

1 affected by this policy. Mr. Hoppin, I wanted to observe
2 that it is my wife's birthday today, not to incur any favor
3 with you, but -- and her wish when I left this morning --

4 CHAIR HOPPIN: I am going to bet you right here
5 and now that mine is a little bit older than yours.

6 MR. DUNLAN: There is a zero at the end of this
7 one though, so it is a big deal. In any case, we wanted to
8 start off by thanking staff for their hard work and efforts
9 on this policy. I think everybody recognizes that there are
10 significant and complex issues, and significant competing
11 interests, and staff has done a good job of trying to
12 recognize and balance those interests. With that said, we
13 do share the comments and concerns that were expressed
14 earlier by Southern California Edison, and in particular the
15 comments about the appropriate best technology available
16 standard, the wholly disproportionate standard, and
17 specifically the process for dealing with reliability. And
18 we are concerned that the latest revision to the staff's
19 policy does not adequately address those issues.

20 Our comments today are focused on the third point,
21 and that is reliability. And what we would like to say
22 about the Draft Policy is that we think it took a step in
23 the right direction in more clearly stating and confirming
24 the fact that reliability is an issue, that the replacement
25 power needed to implement this policy is uncertain, the time
26 lines are uncertain, and that the schedule likely will

1 change in order to accommodate that uncertainty. So there
2 is really no question about, you know, uncertainty. I think
3 the main issue for this Board is how to grapple with the
4 best mechanism to deal with that uncertainty. And in this
5 respect, there are two key issues, who is going to make the
6 decision about reliability, and what is the process for
7 adjusting the schedule in the policy in order to accommodate
8 reliability issues. And we fear that staff has reached the
9 wrong conclusion in the current draft. Primarily, we are
10 concerned that they are taking on -- the State Water Board
11 would be taking on responsibility for making reliability
12 determinations. Notwithstanding, the expectation that the
13 energy agencies' recommendations would be considered, as
14 drafted, the policy puts the burden on the State Water Board
15 to make that finding. The other problem that we see with
16 the policy, as currently proposed is that it necessitates an
17 onerous administrative process, environmental review, every
18 time the calendar needs to be adjusted in order to
19 accommodate reliability issues. You will need to go through
20 a regulatory process to amend the policy, not unlike what
21 you have gone through over the last three or four years to
22 implement this policy, and you will need to do that for
23 every permit, every time a calendar needs to change.

24 RRI's comments, which we submitted earlier, and
25 hopefully you have before you, are narrowly tailored to
26 address those two issues. On the first point, RRI would

1 propose to have CAISO and LADWP in its jurisdictional area
2 solely responsible for making determinations about
3 reliability and whether there is adequate replacement
4 infrastructure. Those determinations would be communicated
5 to the State Water Board on an annual basis or more
6 frequently, as the policy directs. And at that point, the
7 State Water Board would implement a schedule in an
8 individual NPDES Permit. The other major change that we
9 would propose to staff's proposed policy is that we would
10 make the schedule advisory and not binding until such time
11 that CAISO or LADWP makes a finding on reliability, such
12 that a facility owner could decide whether to comply with a
13 policy, or allow the facility to be retired. At that point,
14 when the determination is made, RRI's proposal would be to
15 require the State Water Board to implement a schedule and
16 individual permit on a going forward basis.

17 MR. BAGGETT: Rob, excuse me, did you pass -- did
18 we get those? Okay, got it.

19 MS. DODUC: Can we start asking questions now?

20 MR. BAGGETT: Are you finished? I just wanted to
21 make sure I had it.

22 MR. DUNLAN: I just wanted to make one additional
23 observation, and harking back to RRI's comments on the prior
24 version of the proposed policy in the supplemental or the
25 Substitute Environmental Document, we expressed significant
26 concerns about the adequacy of the environmental document.

1 RRI's proposal, we think, would help mitigate one of the
2 deficiencies with the environmental document, and that is
3 that it did not look at reasonably foreseeable environmental
4 impacts of implementation of this policy at a facility
5 level. And by implementing the schedule at the same time,
6 the determinations are being made about replacement
7 infrastructure on a more narrow and contemporaneous
8 timeline, we think that you will probably avoid some of the
9 issues that you have with the environmental document.

10 CHAIR HOPPIN: Thank you. Tam, questions?

11 MS. DODUC: Yes, having just very quickly looked
12 through the RRI proposal, I just want to get some
13 clarification. So you are suggesting that all the due
14 dates, the current due dates in the Draft Policy, be turned
15 into non-enforceable targets, and that, instead, on an
16 annual basis, CAISO would submit determination of
17 reliability dates, and then those would somehow serve as
18 compliance date until the next time it is changed?

19 MR. DUNLAN: I am not sure I followed the last
20 part about the next time it is changed. What we are
21 proposing is that we allow CAISO or LADWP to perform the
22 functions that they are performing right now, and that is
23 assessing the adequacy of grid reliability. And on an
24 annual basis, or a six-month basis, or a two-year basis,
25 whatever the Board's desire is, they would report back to
26 the State Water Board and say, "Looking into the future, we

1 see adequate replacement infrastructure to ensure that this
2 facility can either come off line or they can comply with
3 the policy, but in either case, we are not going to have a
4 reliability issue." And at that point, our proposal is to
5 insert a schedule into that individual NPDES Permit, it is a
6 five-year look, so you are looking out on the horizon, we
7 are not saying that the replacement infrastructure needs to
8 be in place, we are saying that it is sufficiently along in
9 the planning stages that CAISO or LADWP can make that
10 determination, and then, the trigger is reached, and when
11 they make that determination, and the schedule goes into the
12 individual NPDES permit, the policy is implemented when you
13 adopt it, and so all of the mitigation, the interim
14 measures, will go into place on Day 1.

15 MS. DODUC: But without a compliance date per your
16 compliance stage.

17 MR. DUNLAN: Without a hard schedule as to when
18 the facility needs to comply with Track 1 or Track 2.

19 MS. DODUC: And you would consider the current
20 dates hard, even though there are provisions in there for
21 the advisory committee, for CAISO, for all the energy
22 agencies to provide update to the Board on a basis as
23 frequently as needed if they determine that grid reliability
24 is an issue?

25 MR. DUNLAN: Well, yes, it is hard because it is
26 saying, "By this year, this facility needs to comply." So

1 for planning purposes --

2 MS. DODUC: Except if the energy agencies
3 determine that there is a grid reliability issue, and bring
4 that to the Board's attention, and then we would make
5 considerations as necessary to revise the dates.

6 MR. DUNLAN: Yes, like I was saying, for planning
7 purposes, having a hard schedule in there changes the
8 equation for many of these facilities.

9 MS. DODUC: I appreciate that. I hope you
10 appreciate that, also, from the Board's -- I should say from
11 my perspective -- having some compliance dates in there also
12 changes the picture in terms of, shall we say, motivating
13 the changes and the retrofits that are necessary for us to
14 achieve the habitat protection that we seek, keeping in
15 mind, of course, that there is flexibility built in to
16 consider any concerns that CAISO and energy agencies may
17 raise as we implement this policy.

18 MR. DUNLAN: Well, we think it is harder to unwind
19 something that you have adopted and to go through the
20 process to amend the policy, to amend an individual NPDES
21 Permit, to perform environmental review, than it will be to
22 look out in the future and maybe the schedule holds, and
23 maybe it does not. But you are still performing all of the
24 same functions, the policy is being implemented exactly as
25 you intended to, we are trying to remove a procedural
26 obstacle of having to amend this policy every time the

1 schedule needs to change.

2 MS. SPIVY-WEBER: And I would like a response from
3 staff as to -- if that is what you envisioned, that if CAISO
4 and the advisory committee come in and make a recommendation
5 that X facility now, instead of being 2017, should be 2018,
6 do we then hold a full blown hearing process to make that
7 change?

8 MR. BISHOP: Well, what we would expect is that
9 you would hold a modification to your policy, so you would
10 have a hearing, we would follow the procedures that are
11 required to modify a policy, it would not be a review of the
12 whole policy, it would be a review of that change. So you
13 are talking about a very narrow amendment to an existing
14 policy. But it would require our noticing, our 45 days, it
15 would require us to go through the procedural issues
16 associated with it, but it is a lot different scope than to
17 re-open the policy every time. What we are talking about is
18 a modification to the policy.

19 MR. DUNLAN: And the only thing I would add to
20 what Mr. Bishop said is it is 45 days for any CEQA review
21 associated with that modification, it is 60 days under the
22 Porter-Cologne Act to notify and provide the notice of a
23 public hearing on a state policy for a water quality control
24 amendment.

25 MR. BAGGETT: Right, but -- well, I guess a couple
26 questions, but then, Michael, I assume you would be open to

1 the anti-backsliding argument, right? Because this is a
2 policy in place, and if we changed it by a year, extended it
3 a year, and we already made this determination --

4 MR.LAUFFER: It would not so much be an anti-
5 backsliding issue, that is an actual permitting issue, and
6 this Board would not be doing permitting, they would be
7 going through -- you would be going through an anti-
8 degradation analysis to amend the policy potentially. But
9 also, the underlying substantive standard at that point will
10 never have been attained, and the Board will be providing a
11 compliance for that. I mean, the anti-degradation analysis
12 that would be attendant to that kind of amendment is -- I
13 will not say trivial -- but in many respects, I view it as
14 trivial.

15 MR. BAGGETT: I suspect we might have some
16 disagreement among some people in the audience on that
17 argument. But --

18 MR. LAUFFER: Again, I think the core issue is you
19 would not be -- to the extent impingement and entrainment is
20 even subject to an anti-degradation analysis, the idea is
21 the Board would not be authorizing a reduction in water
22 quality. Instead, the Board would be providing, based on a
23 policy that you have already established, an opportunity for
24 deferred compliance for an individual facility based on the
25 showing of energy reliability, and through the entire
26 advisory council, or advisory process.

1 MR. BAGGETT: So I am trying to understand how
2 this would work, I do not know, Rob, so you are proposing
3 not that the Board shall adopt, but that the Board
4 refinements and modifications, as appropriate, so the Board
5 would be required to consider those modifications based on
6 ISO's determination?

7 MR. DUNLAN: No, we are proposing that a schedule
8 does not go into an individual permit until CAISO or LADWP
9 has determined, certified, and conveyed to the State Water
10 Board, that there is sufficient replacement infrastructure,
11 or the facility will come into compliance, and at that
12 point, a five-year calendar begins.

13 MR. BAGGETT: But that we shall implement whatever
14 they --

15 MR. DUNLAN: Yes. I acknowledge and respect the
16 conversation that occurred previously, and I will not go
17 through all the points, but in our humble opinion, we think
18 that it would be wise to err on the side of grid reliability
19 and to defer those decisions to the agencies that have the
20 expertise, the resources, and the staff to deal with those.
21 We heard earlier those are complex issues. We also
22 understand that the State Water Board likely would implement
23 the recommendations, but we heard some disagreement about
24 whether that would actually occur. So we are trying to
25 remove that, we think there is a benefit to the State Water
26 Board and that you are no longer the target for that issue,

1 you are just receiving a determination which becomes a
2 trigger for a permit condition.

3 MR. BAGGETT: I guess I do not read it that way,
4 what you have got here, but that is the intent, is that ISO
5 sends us a list and we have to implement whatever they say.

6 MR. DUNLAN: I will refer you to paragraph 1(i) --

7 MR. BAGGETT: But if that is the intent, then I am
8 sure that is how one would construe this.

9 MR. DUNLAN: It states -- and this draft does not
10 accommodate LADWP's unique issue, but RRI would propose that
11 the language be expanded to incorporate their jurisdiction
12 -- but our language says on page 2, paragraph 1(i), "The
13 CAISO will notify the Water Boards and the Advisory
14 Committee of its determinations regarding facility
15 reliability dates for specific facilities and of any
16 adjustments to the preliminary estimated targets that it
17 finds necessary pursuant to this paragraph. Facility
18 reliability dates, when determined by CAISO and LADWP, shall
19 be incorporated into NPDES Permits as set forth in this
20 policy."

21 MR. BAGGETT: I mean, the only challenge I have,
22 when it says "shall," there is absolutely no incentive for
23 the ISO to even read the policy.

24 MR. DUNLAN: We are focusing on --

25 MR. BAGGETT: I mean, why do we have it if we
26 actually totally defer to them? Then why do we have a

1 policy? They just make a grid reliability and end of story.
2 They do not have to try to send us something that this Board
3 will likely consider or agree with, but there is absolutely
4 no reason for them to read it, or to comply with it, they
5 can just say, "We find this unreliable, the Board has to put
6 that in their permit, so end of story." Right?

7 MR. DUNLAN: Well, that is one view. As we heard
8 about the South Bay facility, clearly they are making these
9 determinations.

10 MR. BAGGETT: No, I understand, but there is no
11 tension. If it says the Board shall consider, I mean, I
12 think this Board is pretty clear in all their language, it
13 will give a lot of deference to these agencies, we are not
14 about -- at least, the current Board does not want to shut
15 the grid down. I do not know, maybe a future Board does,
16 but this one certainly does not, and I cannot imagine really
17 any Board that would, as long as the Board stays in its
18 configuration appointed by an Administration. We would give
19 great deference. But to say that it is automatic, then I
20 guess it sort of negates the purpose of having a policy.

21 MR. DUNLAN: Well, it certainly does, and the
22 policy goes into place immediately, and when that
23 determination is made, and we have no reason to believe that
24 CAISO or LADWP would not be discharging their obligations to
25 assess grid reliability on an ongoing basis, and to
26 communicate that to the State Water Board. Mr. Hoppin

1 earlier today suggested an MOU; that may be a place to flesh
2 out a bit some of the parameters around their analysis.
3 But, again, what we are trying to focus on is moving the
4 State Water Board away from being the final arbiter. You
5 are raising good questions about, you know, pushing that
6 over to CAISO, but somebody has got to make a decision, we
7 think it should be with the agencies, with the expertise and
8 the resources to make those decisions.

9 CHAIR HOPPIN: Thank you, Mr. Dunlan. Audra
10 Hartman.

11 MS. HARTMAN: Good morning. My name is Audra
12 Hartman. I am representing Dynergy, and I will try to be
13 brief and not discuss any comments that have already been
14 talked about. But I wanted to thank you for the efforts to
15 address concerns that were raised on the version of the OTC
16 Draft Policy released earlier this year; unfortunately, the
17 version of the policy that was released last week still
18 contained several significant flaws. The removal of the
19 wholly disproportionate section of the policy is a huge step
20 back, in our opinion. And the current draft on page four in
21 track 2 attempts to provide credit to generators for
22 reductions from combined cycle units put into service prior
23 to this policy. While we appreciate this effort, the
24 language as currently drafted does not include Moss Landing
25 because of the unique circumstances surrounding the
26 facility. It is my understanding, and correct me if I am

1 wrong here, that the Board meant to include all of the new
2 combined cycles in the language, and that these facilities
3 would be automatically eligible for Track 2 without having
4 to prove that Track 1 was infeasible. We would like to work
5 with you to draft language that recognizes the investments
6 that have already been made at the combined cycle
7 facilities, and the environmental benefits that have
8 occurred because of these new investments. We would also
9 like the Board to clarify that the combined cycle facilities
10 are automatically eligible for Track 2, and do not have to
11 make a finding that Track 1 is infeasible. These changes
12 are needed to recognize the significant investments in
13 infrastructure and habitat enhancement that Dynergy has
14 already made at Moss Landing based on the California Energy
15 Commission and the Central Coast Regional Water Board. The
16 CEC and Regional Water Board found the absence of
17 significant adverse environmental impact from OTC at Moss
18 Landing. These findings were reached after extensive site-
19 specific evidentiary hearings and upon the recommendation of
20 a technical working group comprised of many of the same
21 neutral experts relied upon by the Board in this proceeding.
22 Additionally, we would like to see the Board add in a
23 provision that allows for costs to be considered in Track 2
24 compliance options. Costs were a part of the wholly
25 disproportionate language and we would like it to be
26 considered in the combined cycle Track 2 provisions. If

1 these changes are unacceptable to the Board, we prefer the
2 Board reinstate the wholly disproportionate language and
3 clarify the wholly disproportionate provision applies to all
4 units at an OTC plant that has a facility-wide heat rate of
5 8,500 Btu's per kilowatt hour, or less. I would like to
6 also note that the Draft Policy does not sufficiently
7 address grid reliability issues. We agree with some of the
8 concerns expressed by Edison and RRI. We think the policy
9 should be revised so that compliance dates are determined by
10 the ISO to ensure reliability, and we have some of the same
11 concerns about the NPDES permits and what was addressed
12 about the modification -- I did not bring my notes up -- but
13 the modification addressed by Jonathan earlier. We would
14 like to think that NPDES Permits can be amended by the
15 Regional Water Boards as necessary, without amending the
16 Water Board policy. In conclusion, the Draft Policy and
17 Draft Substitute Environmental Document still contains
18 environmental flaws that need to be addressed. Dynergy
19 would like to work with you to draft language within the
20 next few weeks that address these concerns. Thank you.

21 CHAIR HOPPIN: Thank you, Ms. Hartman.

22 MR. BAGGETT: Do you have any language for Track
23 2? I mean, it is my understanding that was the intent of
24 these combined cycles, right, Dominic? That was the intent,
25 so do you have language that would cure that problem? That
26 is all we need.

1 MS. HARTMAN: We discussed it internally this
2 morning, very early this morning, and we are working on
3 draft language this afternoon and tomorrow, and hopefully we
4 can firm it up and give you a copy.

5 MR. BAGGETT: Does that --

6 MR. GREGORIO: Yeah, we could definitely consider
7 any proposal that they have.

8 MR. BISHOP: So I just want to be clear that what
9 -- when we are done with the testimony, if the Board would
10 like us to exempt the combined cycles from Track 1, because
11 that is what they are asking, what we did was give them
12 credit under Track 2, but we did not exempt them from the
13 requirement of seeing if Track 1 was feasible. So if it was
14 feasible under Track 1 for them to go to cooling towers,
15 then we would consider that to be an acceptable alternative
16 for these facilities. If it is determined it is not
17 feasible, and they are in Track 2, they get credit for the
18 work that they have already done. So I just want to make it
19 clear that those are slightly different issues and we are
20 happy to work towards that, but they are different.

21 MR. BAGGETT: So the question is how did the
22 wholly disproportionate language alter that? Or did it?

23 MR. BISHOP: The wholly disproportionate allowed
24 them to make a showing that, if the cost were wholly
25 disproportionate to the benefit that they could then do --
26 they could be relieved of their requirements under Track 1

1 and Track 2, and do whatever the Regional Board thought was
2 the best available technology. That is what wholly
3 disproportionate, the way it was --

4 MR. BAGGETT: And the intent of the redraft was to
5 say that they would automatically go into Track 2, but still
6 have to comply -- do a feasibility study under Track 1? Is
7 that right, Dominic?

8 MR. GREGORIO: The intention was actually to allow
9 those plants to get credit if they were in Track 2. I think
10 what Jon said a little bit earlier was correct, that we
11 would require them to make sure that it was not feasible to
12 meet Track 1, and therefore they would then go into Track 2,
13 and they would get the credit for their reductions of
14 entrainment and impingement, as a result of installing the
15 combined cycle technology. But if we are getting directed
16 by the Board to consider the language that might be
17 submitted, we could definitely look at that. I think it is
18 really a question -- I think Jon captured it -- it is a
19 question of whether we are being directed to do it.

20 CHAIR HOPPIN: You know, this case is kind of
21 after the fact, they have already installed a significant
22 amount of combined --

23 MR. BISHOP: Right. Remember that what they
24 installed was a new generating facility at that plant, that
25 increases their efficiency and increases their
26 profitability, reduces the amount of water that they need to

1 take in, so they have done this for a business reason. What
2 we were trying to do was acknowledge that in Track 2, but if
3 they were still able to meet Track 1, if they were able to
4 feasibly put in cooling towers, those cooling towers are
5 going to be smaller than what would be needed for a boiler
6 type because they are using less water, that is the
7 assumption here.

8 MS. SPIVY-WEBER: It is also that it is facility-
9 wide. Track 2 is for the whole facility, not just unit by
10 unit, so that has an effect, as well, does it not?

11 MR. GREGORIO: Yeah, because, for example, Moss
12 Landing only has combined cycle on some of its units, not
13 all of its units, so that would also factor in.

14 MS. HARTMAN: Our concern with the change from the
15 wholly disproportionate is that it did consider cost. You
16 had the opportunity to prove that Track 1 and Track 2, the
17 costs you were applying were wholly disproportionate to the
18 benefits. You have removed all of that by putting us into
19 Track 2 and only giving us credit for the difference between
20 your environmental impacts from the steam units to the
21 combined cycle, at least, that is the way I interpret it.
22 And that is a big problem for us. That is why we are asking
23 for some of these changes.

24 MS. SPIVY-WEBER: I had a question on that,
25 particularly because Moss Landing is a little -- kind of an
26 odd duck, if you will, in that they came in with their

1 combined cycle after a period when the former units that
2 were owned by somebody else were not in use, so if they were
3 calculating their reduction, would they use the design flow
4 of the former units as what they are offsetting, even though
5 they -- they have kind of a completely different system?

6 MR. GREGORIO: Yeah, it would be -- as the policy
7 is currently drafted, it would be the design flow, that is
8 what we --

9 MS. SPIVY-WEBER: Of the former?

10 MR. GREGORIO: Yes, of the former units.

11 MS. SPIVY-WEBER: Not what they inherited, but
12 what it should have been.

13 MR. GREGORIO: That is correct. It would be the
14 design flow for the former units.

15 MS. HARTMAN: And that language does not work for
16 us and, you know, if I could defer to my colleague, Chris,
17 maybe, if I do not have the particulars, he is more familiar
18 with the details than I am, but I understand that we had to
19 increase the water permit so that there is no reduction in
20 water usage from the old units to the new, because there is
21 such a time lapse between the operation of the units.

22 MR. BISHOP: Excuse me, but I think you maybe
23 misunderstood what staff said, which was that reduction
24 would be based on design. So are you saying that the new
25 combined cycle units use more water than the design of the
26 original boiler plants?

1 MR. ELLISON: Members of the Board, staff, Chris
2 Ellison, Ellison, Schneider & Harris, on behalf of Dynergy.
3 I represented Dynergy in the Regional Water Board and Energy
4 Commission permitting proceedings on Moss that we are
5 discussing, and I will attempt to answer some of these
6 questions. My understanding, subject to check, is that the
7 design capacity did not increase, the plant does operate
8 more because it is more efficient, and I think that is the
9 distinction. I would like to also clarify, though, that
10 this is a fairly recent -- unlike many of the other permits
11 that you are looking at, this is a fairly recent within the
12 last decade decision of the Regional Board and the Energy
13 Commission, after very very extensive site-specific
14 hearings, and a technical working group that included many
15 of the experts that you are relying upon here, that came to
16 the conclusion that once-through cooling with habitat
17 enhancement was the most preferable cooling system
18 technology for that plant in that specific case, and it did
19 look at closed cycle cooling, it did look at all the
20 alternatives, you know, air cooling condensers, all of that.
21 In reliance upon that decision, Dynergy has invested close
22 to a billion dollars and that investment is not just
23 building a new combined cycle, but it is also fundamental
24 changes in the cooling system, moving the intake, for
25 example, from where it was previously in Elk Horn Slough,
26 habitat enhancement for Elk Horn Slough, all of those sorts

1 of things. So I think one of the things that sets Moss
2 Landing apart is the fact that you do have this recent
3 decision that a company has relied upon with a very
4 substantial investment and made, you know, important
5 investments, not just for business reasons, but also to
6 address the Water Board policies and direction, Regional
7 Water Board policies and direction, that were given to it
8 after a very lengthy proceeding.

9 MR. BAGGET: I would suggest we wait and see what
10 language they come back with some language and consider it.
11 That is -

12 MR. HOPPIN: you will be forthcoming with some language very
13 shortly, Ms. Hartman?

14 MS. HARTMAN: Yes, we will.

15 MR. HOPPIN: Thank you.

16 CHAIR HOPPIN: Any other questions? Tam.

17 MS. DODUC: Not for Audra, but for staff. I think
18 at some point, perhaps at the end of the testimony, Jon, you
19 were not in my briefing with staff yesterday, we had a
20 discussion regarding the wholly disproportionate section
21 that was formerly in the draft, the earlier draft, and what
22 that meant, or what was staff's intent, and we came to the
23 conclusion that there was a really significant, perhaps
24 misunderstanding of that issue, and I think at some point it
25 may behoove Dominic, Joanna, Marleigh, one of you, bringing
26 that up because I can see, based on the discussion we had

1 yesterday, why some of the folks are seeing this as such a
2 significant change, whereas, based on my understanding, and
3 based on staff's intent, it really is not that big of a
4 change. So at some point, I would like you to discuss that,
5 and then a heads up for you that the whole feasibility
6 determination aspect has always, and still continues to
7 trouble me, as you know. So at some point, I would like to
8 have the opportunity to discuss why there needs to be a
9 feasibility determination, why couldn't we just set a Track
10 1 and Track 2, have them both at the same reduction level,
11 and allow whichever track to make sense to go forth without
12 having to do a feasibility determination. So I know you
13 have tried to explain it to me, I still have not fully
14 understood it, so this is an area that I would like to
15 pursue with you perhaps later today.

16 MR. GREGORIO: So, if you would, I would just give
17 a quick answer to your first request, and that is when we
18 originally considered including the wholly disproportionate
19 demonstration or determination in our earlier draft, we were
20 doing that with the combined -- for the fossil fuel plants,
21 now -- we were doing that with the combined cycle plants in
22 mind. We had done an initial analysis of water usage and,
23 after the installation of the combined cycle technology,
24 they actually -- and this has nothing -- well, it is related
25 to power generation, but they do use less water in their
26 operations per year after they have installed the combined

1 cycle technology, and so that is why we initially thought
2 about giving them the wholly disproportionate determination.
3 That does not mean that they would get that determination,
4 but they would be eligible to try to get it, and so after
5 listening to the comments we received, we determined that,
6 if the combined cycle units really are that much better than
7 not combined cycle, and that they have expended considerable
8 funds and energy and permit conditions have been applied to
9 them by the Regional Boards, that we would give them credit
10 for that in Track 2. That is the reason why we just
11 directly included them in this new draft in Track 2, because
12 we were trying to give them credit for that. And so that
13 was the rationale behind that. Nowhere did we ever say in
14 the first draft that they would automatically get that
15 wholly disproportionate determination, that they would be
16 successful in that. All we were saying is they would be
17 eligible to try to get it. So, actually, by giving them the
18 credit in Track 2, we thought that was more straightforward,
19 it got the Regional Boards out of a very complex
20 determination, having to go through that effort, for the
21 State Board to give guidance along those lines, and so we
22 just thought it was more efficient to do it this way with
23 the understanding that they actually do entrain less
24 organisms because they are putting less water through their
25 system.

26 MS. DODUC: Was it staff's intention with the

1 earlier draft that, if someone were to successfully
2 demonstrate wholly disproportionate impacts, that they would
3 not have to comply with either Track 1 or Track 2, but could
4 just continue as is?

5 MR. GREGORIO: No. And, in fact, what we did say
6 in the earlier -- that wholly disproportionate section,
7 Section 4, is that they would still have to apply certain
8 control technologies, they were not necessarily spelled out,
9 but they just would not have to meet the full level of Track
10 1 or Track 2.

11 MS. DODUC: But it was not a get out of jail free
12 card?

13 MR. GREGORIO: No, it was not at all. That was
14 never our intention.

15 MS. DODUC: Thanks, Dominic.

16 CHAIR HOPPIN: Jonathan, not to keep beating this
17 to death, but your comment about the construction of the
18 combined cycle was a business decision, I mean, I have to
19 believe, not being familiar intimately with the project,
20 that there was an environmental consideration that went
21 along with that, so I --

22 MR. BISHOP: Excuse me, I was not trying to say
23 that they had no environmental -- that that was not taken
24 into consideration. When they were permitted for that
25 facility to move to combined cycle, they had to meet the
26 environmental requirements of the Regional Board, the

1 Coastal Commission, you know --

2 CHAIR HOPPIN: Thank you. Dennis Peters, would
3 you please come back before us?

4 MR. PETERS: Well, it is before noon, so I guess I
5 can still say good morning, Chair Hoppin and members of the
6 Board again. My name is Dennis Peters, External Affairs
7 Manager for the California Independent System Operator
8 Corporation. We appreciate the opportunity this morning to
9 provide comments on the November 23rd Draft Policy of the
10 California State Water Resources Control Board to implement
11 Sections 316(b) of the Clean Water Act. The November 23rd
12 Draft Policy appropriately acknowledges potential impacts to
13 the reliability of electric system arising from forcing
14 power plants to change their cooling infrastructure. Any
15 adopted policy should ensure there are actionable mechanisms
16 to avoid adverse impacts to the reliability of the electric
17 system, resulting from implementation of the policy. We
18 believe the Board supports the basic principle, and we will
19 strive to inform the Board of areas where negative
20 reliability effects may arise. As part of this
21 collaborative effort, the ISO continues to have significant
22 concerns with proposed policy without several important
23 changes to the current draft.

24 First, a section that has been discussed by
25 previous speakers, Section 2(B)(2) of the Draft Policy,
26 states that the Water Board will hold a hearing to consider

1 suspending the final compliance date for a power plant in
2 response to a communication from the ISO, regarding the need
3 for continued operation of the existing power plant to
4 maintain the reliability of the electric system. During any
5 such process, the policy should provide that the final
6 compliance dates shall be stayed, pending full evaluation of
7 amendments to final compliance dates contained in the
8 policy. We do believe the Board is within its authority to
9 adopt such a procedure as part of this policy. The proposed
10 language would require a stay of the final compliance dates
11 only for so long as it takes the Water Board to evaluate
12 whether to extend the final compliance dates for a specific
13 unit. The Water Board would retain its discretion to set
14 the final compliance dates in the policy, including not
15 extending the final compliance dates. And the ISO is
16 willing to confer with the State Water Board's counsel
17 regarding this procedural issue.

18 Second, the draft, as you have heard from other
19 speakers discussion, removes the wholly disproportionate
20 cost test to determine whether the nuclear units and more
21 efficient combined cycle natural gas units must adhere to
22 the policies compliance tracks. If adopted, we believe this
23 revision creates added uncertainty for these facilities.
24 So, first, Section 3(D) of the Draft Policy directs that
25 Southern California Edison and Pacific Gas & Electric
26 Company conduct special studies to investigate alternatives

1 for the nuclear fueled power plants to meet the requirements
2 of the policy. We think it is important that the Board
3 provide guidance concerning the scope of these studies. At
4 a minimum, the Policy should articulate that any
5 alternatives assessment should consider the following
6 factors: first, the impacts to the electric system
7 reliability from retiring the nuclear units, or taking them
8 off line for an extended period of time, second, it should
9 consider the additional cost to electric ratepayers and the
10 availability of replacement power for the remaining useful
11 life of the nuclear units, or for a period of time to allow
12 development of infrastructure to comply with the policy.
13 And, finally, it should consider the air quality impacts
14 that result from retiring nuclear units, or retrofitting
15 them. The other portion of the wholly disproportionate
16 section with regard to Section 2(A)(2)(D), the Policy, as
17 you have already discussed, attempts to provide some
18 environmental credit related to reduced impingement
19 mortality entrainment under a Track 2 compliance approach
20 resulting from replacement of older steam units with more
21 efficient combined cycle natural gas units. You have
22 already heard from interests representing these units today,
23 and the ISO would encourage the Board to take time to
24 consider their concerns. And to close, let me emphasize the
25 ISO's role is to operate reliably the electricity grid in
26 support of the public safety, health and welfare of

1 California citizens. We believe the Water Board wants to
2 adopt a policy that does not interfere with this public
3 good, and we look forward to continuing our cooperative work
4 together. Thank you.

5 CHAIR HOPPIN: Mr. Peters, can we talk a little
6 bit about CAISO's attitude as far as cooperative working
7 together? I mean, in our advisory groups, certainly there
8 are other energy agencies other than CAISO. Do you view
9 this working together to include all of those agencies as
10 peers? Or do you see some separation in function that would
11 preclude the other agencies in the advisory group from being
12 considered equals? I know that is tough question, but we
13 have got a big policy in front of us here and you folks have
14 a big dog on the leash, so --

15 MR. PETERS: Well, Chair Hoppin, optimistically we
16 do look forward to working with the SACCWIS, the Statewide
17 Task Force, and we would hope that the policy would work in
18 a way that SACCWIS has considered. As you previously noted
19 before the break, there could potentially be problems with
20 agreement among the parties that are part of that SACCWIS,
21 that along with concerns around timing. Someone up here
22 previously noted that in order for you to have some sort of
23 hearing to consider a stay, or reconsider compliance dates
24 based upon a communication from the ISO, could take 45 to 60
25 days, so between the timing and potential disagreement among
26 parties, we felt it was important to include that language

1 in Section 2(B)(2), but that said, we would hope that most
2 of the concerns that we would have could be addressed by
3 being a participating member of the SACCWIS.

4 CHAIR HOPPIN: Thank you, Mr. Peters. Mr.
5 Baggett.

6 MR. BAGGETT: But the language you were -- Section
7 2(B)(2), so that language is language you are comfortable
8 with that is currently in there?

9 MR. PETERS: No, I was suggesting that the Board
10 would stay the dates until such time as which -- yeah, we
11 would require a stay of the final compliance dates only for
12 so long as it takes for the Water Board to evaluate whether
13 to extend the final compliance dates for a specific unit.
14 And this, you know, does not undermine your authority to set
15 those dates.

16 MR. LAUFFER: And if I can, Mr. Hoppin and Mr.
17 Baggett, there is a little bit of a passing of ships in the
18 night here, at least, I think, as I hear Mr. Peters'
19 comments. There is an issue of actually amending the dates,
20 which is going to require the Board to amend this policy,
21 and that is what Mr. Bishop and I were discussing earlier;
22 however, the process here, and the hearing that is
23 contemplated under this particular section, is not a
24 specific amendment to the Water Quality Control Policy, but
25 it is if the energy agencies inform the Board of a
26 reliability issue, the Board then holds a hearing, that is

1 not a hearing that would require 60 days' notice, it is a
2 hearing, you know, we would evaluate based on the comments,
3 and determine it probably requires a 30 day hearing notice,
4 and the Board would then be able to suspend at that point in
5 time the final compliance date, so it operates as a stay.

6 As I understand what Mr. Peters was saying, you would
7 essentially like -- CAISO would like an amendment to this to
8 clarify that, once the energy agencies reach a determination
9 that there is a reliability issue, that that effects a stay
10 until the State Board can act?

11 MR. PETERS: That is correct.

12 MR. LAUFFER: And I guess, from my perspective, as
13 I see this playing out, I would anticipate that the
14 reliability issue would be raised more than 60 or 90 days in
15 advance, and that would allow the Board to schedule a
16 hearing where it could actually consider these issues. And
17 at that time, the Board would then be able to suspend the
18 final compliance dates until such time as the Board took
19 final action to amend the policy.

20 MR. BAGGETT: Right, but we could also -- we could
21 make this tighter -- the Board shall hold a hearing within
22 60 days of notice, or 30 days of notice, so it is not
23 discretionary. Well, it is not discretionary, it says
24 "shall hold a hearing," but the time is wide open. So you
25 could say that the Board shall hold a hearing within 30 days
26 upon notice by the above agencies, and the stay shall take

1 effect until -- or for a minimum of X years, or -- I mean --

2 MR. PETERS: I think it would be fine to include a
3 time frame by which you need to hold a hearing. I guess
4 what we would ask, though, is that the dates are stayed
5 until you do conduct that hearing, at which point you have
6 your own authority to decide to change them or not. You
7 know, our hope is that this is more of a backstop mechanism,
8 that, you know, the majority of the time, 90 percent of the
9 time, you know, we are going to resolve these things through
10 the Statewide Committee, but in the case where there is a
11 timing issue or some other unforeseen circumstance, we would
12 like to have this ability to notify you so that you are
13 aware of a reliability concern.

14 MR. BAGGETT: I guess you could put in the
15 temporary stay requirements, "The Board shall assign a
16 hearing officer, shall hold a TRO hearing within one week,"
17 and then, you know, pending final action by the Board on a
18 full -- you know, like we do on other Water Right issues, or
19 Water Quality issues, I mean.

20 MR. BISHOP: Essentially, that is what we were
21 proposing with this, is that this would be a advocated
22 hearing, a short time frame just to hear, should we suspend
23 this or not. What the CAISO is requesting is that, upon
24 them issuing a letter to you, it is automatically stayed,
25 that it is stayed, and that is the difference between the
26 two.

1 MR. BAGGETT: Pending the final hearing is what I
2 heard.

3 MR. PETERS: Yes, I guess --

4 MR. BAGGETT: Pending the Board's final action, I
5 am just suggesting that maybe we say the Board shall hold an
6 urgency stay, temporary stay, just like we do on other water
7 quality petitions.

8 MR. PETERS: I guess the key word, as Mr. Bishop
9 pointed out, is consider versus automatically staying the
10 dates. But it never takes away your authority to set the
11 final compliance date. And you can do that as soon as --

12 MR. BAGGETT: It does not seem like there is huge
13 disagreements here, it just --

14 MS. DODUC: Actually, I think there is a huge
15 disagreement and I would strongly oppose having -- putting
16 into the Policy, actually authorizing CAISO to automatically
17 suspend a date that the Board puts in our Policy without a
18 hearing to consider other perspective, other opinions, as
19 the Chair asked, and as the speaker answered, there may be
20 differences of opinion in our Advisory Committee. And
21 because there may be differences of opinion, I think it is
22 important to have a hearing to obviously hear CAISO's
23 concern, but also provide other members of the Advisory
24 Committee, and other members of the public, the opportunity
25 before the Board determines whether to suspend a date,
26 rather than an automatic suspension as is being proposed

1 right now. And I think that is a huge difference.

2 MR. BAGGETT: That is not what I am proposing.

3 What I think -- if I can interpret, it seems there the
4 concern is that we would just some day hold a hearing to
5 consider the suspension of compliance, and it might be two
6 months, one year, you know, sometimes it takes us a while to
7 do things. I think if they want an immediate -- an ability
8 that says the Board shall hold a hearing within one week to
9 consider a temporary stay, and a full hearing on the merits
10 within six months, you know, I just want a quick --

11 MR. BAGGETT: I would agree we need at least a
12 Hearing Officer to sit down and take three considerations we
13 have to take on a stay.

14 MR. PETERS: And, to be clear, we are just asking
15 that you consider staying the dates until you make a
16 determination. That time frame during which you decide to
17 have that hearing, it could be a day, it could be a week, it
18 could be month, it is at your discretion how you do that day
19 by day.

20 MR. BAGGETT: Right. Michael, I think you
21 understand what I am trying to get out. They want an
22 immediate -- a very quick --

23 MR. LAUFFER : Well, and let me just say, I
24 understand both where CAISO is coming from, as well as the
25 comment, and I just wanted to make one observation for the
26 benefit of the full Board. I am not sure I would want to

1 draw a parallel to our typical water quality stay because,
2 there, the issue is a need to immediately stay something
3 because this Board has up to 330 days if we get extensions
4 to evaluate a petition. I think if, for example, Mr.
5 Baggett's suggestion is accepted, that there be a commitment
6 by the Board to, within 30 days, hold a hearing on whether
7 or not there should be a suspension. I think that putting
8 on any extra process of saying, "Well, within a week, we'll
9 hold a TRO" does not really get you much because, keep in
10 mind, we are only talking about with respect to the final
11 compliance dates, which are only these dates falling at the
12 end of the year, so we are only talking about if there
13 cannot be -- in a situation where people are not forward-
14 looking enough to realize that, in November, we are going to
15 have a reliability issue come January 1. So I think if we
16 commit to hold a hearing within 30 days, in reality we will
17 address the concerns that CAISO is raising.

18 MR. BAGGETT: That was where we started, at least
19 where I started with, was suggesting 30 days, as I recall.

20 CHAIR HOPPIN: Mr. Peters, to Mr. Lauffer's
21 concerns, the only reason I could see that you would be
22 concerned with his analysis is if you had some unanticipated
23 emergency that was out of the normal channels of a
24 compliance, some just totally unanticipated emergency.
25 Absent that, I would think that the schedules before you
26 would give you time to present your concerns and have it

1 handled in an expedited manner. Is there something there
2 that I am missing?

3 MR. PETERS: No, you are not. You are correct,
4 Chair Hoppin. As I indicated, we are looking forward to an
5 optimistic opportunity of participating in the SACCWIS
6 process. This would really just be an emergency backstop
7 mechanism.

8 CHAIR HOPPIN: Thank you.

9 MR. BAGGETT: Michael, I would just suggest -- we
10 add the language of the 30 days, assuming we do not get in
11 trouble with our own notice requirements by doing that. I
12 think 30 days should be sufficient, Michael? This is an
13 NPDES Permit, right? So I would be comfortable with that.
14 I would assume, also, if there is a true electrical
15 emergency, whoever the Governor is at the time will do some
16 emergency executive order suspending all kinds of things, if
17 it is that kind of a crisis. I think that would be taken
18 care of. Thanks.

19 CHAIR HOPPIN: If I am here, I will assure you of
20 that, Mr. Peters. No, not when I am Governor. God help us
21 all. Thank you, Mr. Peters.

22 MR. PETERS: Thank you.

23 CHAIR HOPPIN: Ladies and gentlemen, we have got
24 probably, if we do not ask questions, which we seem to be
25 doing, more than an hour's worth of cards here. I would
26 suggest that we take a half hour lunch break and return at

1 let's say 12:40 to resume with these proceedings. Thank
2 you.

3 MR. LAUFFER: Chair Hoppin, would members like to
4 have closed session over the lunch break? Or would you --

5 CHAIR HOPPIN: You want to make sure we do not eat
6 anything other than one of those pitiful little salads out
7 of the cafeteria?

8 MR. LAUFFER: I just need to know whether or not -
9 -

10 CHAIR HOPPIN: That would be fine.

11 MR. LAUFFER: So the Board will adjourn to closed
12 session over the lunch break.

13 CHAIR HOPPIN: Yes, thank you.

14 (Off the record.)

15

16 ~~UNIDENTIFIED SPEAKER~~ MR. GEEVER: -- to respond to
17 this kind of stuff in 30 days. We have a vested interest in
18 this thing, so, you know, look, if they cannot meet their
19 deadlines, they should know well ahead of time. There has
20 got to be some kind of solution for making changes to this
21 compliance schedule that do not put the public in this
22 awkward position of having to respond to this change in the
23 schedule within this short 30-day timeline. Thank you very
24 much.

25 CHAIR HOPPIN: Thank you. Any questions?

26 MS. SPIVEY WEBBER: It is a question of Michael or

1 Marleigh. The point about using the word -- not using the
2 word "mitigation" because of its use in another context that
3 is different. Is that --

4 MS. WOOD: I do not see that as being a particular
5 issue because I think the two words have different meanings.
6 I mean, they are related, but "mitigation", to me, speaks to
7 addressing damage that has been done, whereas "restoration
8 measures" is something toward putting it back the way it
9 was. I think the fact that it was used -- or it is used --
10 in Porter-Cologne does not necessarily militate using it or
11 not using it here. I would be in favor of using the word
12 that seems most suited to what we are requiring them to do.

13 MR. GREGORIO: Could I add one thing to that just
14 really quickly? The word "restoration," I also do not have
15 an issue one way or the other, whatever the best term is
16 fine. But I would say that sometimes what we call
17 "mitigation" might be an enhancement project rather than a
18 restoration project, and I will give you the example of what
19 SONGS did out at the reef that they are building. There was
20 no reef there before, so there was no restoration of a reef.
21 It was mitigation, but it was really an enhancement project.
22 They built a reef. And a lot of times Fish & Game will do
23 these kinds of enhancement projects in various places, but
24 they are not really restoration. So I just thought I would
25 throw that in since we were discussing this.

26 CHAIR HOPPIN: Mr. --

1 MR. BAGETT [presumed]GEEVER: Well, if I could
2 comment. It is actually not restoring the habitat. You
3 have killed fish. The restoration -- the restorative
4 measure is an effort to restore the fish that you have
5 killed, you know, you do that through either creating
6 habitat or restoring habitat, but the restoration or
7 restorative measure is arguably to make an attempt to
8 restore the fish. And with new facilities, you cannot do
9 that after the fact, restoration. That is clear from the
10 federal cases that after the fact restoration is not -- is
11 prohibitive in new facilities, and so -- or in existing
12 facilities, for that matter, except for this rare exception
13 that you are making for the interim period.

14 MS. WOOD: I would clarify that restoration or
15 mitigation, either way, is not a technology to meet 316(b),
16 but is in this policy used as an interim measure outside and
17 over and above what we have described as Best Technology
18 Available.

19 MR. BAGETTGEEVER: That is right.

20 CHAIR HOPPIN: Mr. Lauffer, I have to ask you a
21 professional question. When we are sitting on the dais, if
22 we think we are hearing voices, do we need to recuse
23 ourselves?

24 MR. LAUFFFER: And here I thought you were throwing
25 your voice.

26 CHAIR HOPPIN: Rich* [Chris?] [3:44]

1 MR. *LAUFFER: But, seriously, if it is a
2 distraction for the Board members, we can talk to the AV
3 people who I understand are diligently working to try to fix
4 Mr. Fleischli's technical issues --

5 CHAIR HOPPIN: Well, I understood we were in this
6 room, rather than our normal room because they were having
7 electronic malfunctions in our other room.

8 MR. *LAUFFER: Yeah, that is correct.

9 Unfortunately, we have inherited some additional ones here.
10 But, seriously, are the Board members able to hear the
11 speakers adequately?

12 CHAIR HOPPIN: Yeah, I was just being --

13 MS. DODUC: Now that the voices have stopped.

14 MR. GREGORIO: Chair Hoppin, just a quick update.
15 So one of the things we were considering, I was talking to
16 Jeanine and we could possibly print-out Steve Fleischli's
17 presentation, and that way we do not have to rely on the
18 electronics, and possibly she could make copies for you all
19 if that will work.

20 CHAIR HOPPIN: I think he realizes that is
21 probably the better of his two options. Is that not
22 correct? Why don't we go ahead and do that, Dominic, out of
23 consideration. Bob Lucas, would you come forward, please?
24 I am surprised you are here today.

25 MR. LUCAS: Hi. Good afternoon. My name is Bob
26 Lucas. I am here representing the California Council for

1 Environmental and Economic Balance. And I would like to say
2 at the outset that the comments that were made earlier by
3 SEC, by LEDWP, by RRI, by Dynergy, by CAISO on their tolling
4 recommendation, all of those recommendations were designed
5 to help the Board create a policy that not only meets your
6 water resource needs, but also provides a type of protection
7 that these people who work on the grid and provide the power
8 to the grid believe are essential to protect the liability
9 of the grid, so that you can meet both of these objectives
10 at once. As the policy stands right now, as you notice, we
11 have serious concerns that, although you may meet your water
12 quality concerns, the other concerns about grid reliability
13 have still not been met. With regard -- and with due
14 respect to staff -- but we do dispute the claim that the
15 changes that were just made to the Draft Policy are minor
16 and clarifying revisions. We regard the elimination of the
17 wholly disproportionate test as being a profound change.
18 When you couple that with the new definition of not feasible
19 to exclude consideration of cost, we think at that point you
20 have made very significant material changes to this policy,
21 which is why we are reacting to these changes the way we
22 are. As SE pointed out earlier, these changes go in the
23 opposite direction of the 30-year history of U.S. EPA and
24 the implementation of 316(b). We think they are contrary to
25 the U.S. Supreme Court decision that opened up the cost
26 issue, as was previously explained. And we also believe

1 that you have an obligation under California law to balance
2 cost and benefits. Now, interestingly enough, you have done
3 that before in, perhaps, policies just as significant as
4 this one. And I refer to Policy 9249, which is your clean-
5 up and abatement policy. In that policy, you have an
6 explicit consideration of the balancing of technological
7 feasibility and economic feasibility. That policy,
8 incidentally, since it has to do with clean-up of ground
9 water that could be used as drinking water, does have a
10 human health consequence, as well as an ecological
11 consequence. And so, you would think if you were to exclude
12 costs from consideration of a policy, that would be the one
13 that you would consider first, before this one. But, by
14 excluding costs from this one, the impression -- I know you
15 do not want to think that -- that this policy is actually
16 arbitrarily restricting consideration of costs where you
17 have legitimately, and we think in concert with the law,
18 considered it in other policies. And, in fact, you do not
19 even have to create it. Those definitions already exist in
20 that policy, technical feasibility, as well as economic
21 feasibility. Unfortunately, these changes combine to
22 increase the risk to the reliability of the Grid. It makes
23 Tier 1 compliance and Tier 2 compliance even less feasible
24 than before. We think that puts these plants into a
25 situation of either repowering or retiring. That is a very
26 significant choice that needs to be made, and it is being

1 made consciously here by staff. Staff wants to put these
2 plants into that position in making that decision. However,
3 it also increases the risk that those plant owners who may
4 not have the commitment of LADWP to repower all of their
5 units over a finite time, may decide to retire early,
6 outside the control of your policy, outside the control of
7 CAISO. That is a risk that is not yet anticipated in this
8 policy, that that could occur. We also think that there is
9 a risk in this policy of adding these final compliance dates
10 to NPDES permits prior to any determination by CAISO or the
11 L.A. Water and Power Commissioners with regard to
12 determination of grid reliability impacts. Remember, the
13 Clean Water Act, Federal Clean Water Act, has citizen suit
14 provisions, and those citizen suit provisions, we think,
15 could be employed under these circumstances, to enforce
16 those dates in the NPDES Permits, without regard to the
17 adaptive management strategy that you are putting into this
18 policy. And it could be along a claim that, Art, I think
19 you were exploring a little later, or a little earlier, as
20 to whether or not a certain legal challenge could be made.
21 Who knows what the basis of the challenge could be? But it
22 could be a challenge before the SACCWIS meets, it could be a
23 challenge after the SACCWIS meets and the Board makes a
24 determination. So there is another element of risk. We
25 think you should try to avoid all of these pieces of
26 potential risk as much as possible. Finally, with regard to

1 notice, you all know that CCEEB did put a letter in,
2 Charlie, to you, yesterday with regard to our understandings
3 of how notice provisions operate in California. We stand by
4 that letter. I know that staff may differ on interpretation
5 of the points that we make, but we think that these are very
6 serious changes that were made to this policy and three
7 working days to respond to them is insufficient. I
8 understand at the beginning of the meeting, you extended a
9 written comment date to December 8th, okay, now you are
10 taking a three-day notice period and making it an eight-day
11 notice period. We do not think that is sufficient. It is
12 going to be extremely difficult to meet that date. We ask
13 that you give serious consideration to not rushing to
14 judgment, defer your January 5th adoption date, and give us
15 time to put together serious comments with regard to what we
16 believe are the actual impacts associated with the changes
17 that have just been made to the draft policy. And with
18 that, I will stop. Thank you very much.

19 CHAIR HOPPIN: Thank you, Mr. Lucas. Any
20 questions at all? Thank you.

21 MR. FLEISCHLI: Good afternoon, Chair Hoppin,
22 members of the Board. My name is Steve Fleischli. I am an
23 attorney representing Santa Monica Baykeeper today. I
24 appreciate your accommodation for the technical difficulties
25 today and for the presentation that I am about to give.
26 Instead of being a summary of what is going to be said,

1 maybe some of this will be a summary of what was already
2 said, and I will try, though, to focus on unique points that
3 were not touched upon by the others. There was color coding
4 in my presentation, much like last time, to try to show you
5 the red, the green, and the yellow of what is good, bad and
6 ugly in the policy, but I think you will get a sense from my
7 comments what those things are. Track 1, we are still happy
8 with Track 1, which should come as no surprise. Track 2,
9 though, has moved into a category where I think there is
10 some danger in that section that causes us some problems.

11 And Mark Gold talked about some of those, in particular,
12 with regard to compliance determination for impingement and
13 entrainment. A couple other issues I wanted to talk about
14 was, one, the definition of "infeasible." I do have
15 concerns about that definition. I am glad that there is
16 technical infeasibility in there, I think that is
17 reasonable. I am concerned, however, about the
18 infeasibility with regard to getting and obtaining permits
19 and compliance with local ordinances and environmental
20 statutes. To me, for this industry, in particular, it is
21 often hard for them to get permits and to come into
22 compliance with environmental conditions, even when they
23 want to. And my concern is, in this context, this may be an
24 incentive for them not to want to try so hard in terms of
25 obtaining permits to upgrade. And maybe that is not a fair
26 characterization, but from my experience, it certainly has

1 born out. So, for me, you know, permit delay, those sorts
2 of things, I do not think that should render it infeasible
3 in the absence of a more formal showing that, you know,
4 really diligent efforts have been made in that regard to try
5 to accommodate, try to mitigate, and address whatever
6 environmental issues arise in that permitting process.

7 CHAIR HOPPIN: Steve, before you go any further, I
8 mean, you have raised an issue that I have concern with, and
9 I will probably take a little bit different tact, but
10 obviously the diligence is critical and if we create a
11 screen that someone can hide behind and say they were not
12 able to obtain local authority permits and all, that is one
13 thing. But if they, in fact, have done their diligence and
14 they are precluded, then all of a sudden we have a party
15 that is not under our review, or under our reach, if you
16 will, precluding something that everybody would just say
17 fine. I am concerned -- to me, the difference between the
18 way you feel and the way I feel on this is whether someone,
19 in fact, has done their diligence. If you would address
20 that?

21 MR. FLEISCHLI: Right. Well, for me, the question
22 becomes whether or not your obligation is to ensure that
23 these facilities comply with every other law. And I think
24 this actually comes into context of some of the CAISO
25 discussion, as well. This Board's obligation is to make
26 sure that these facilities comply with Best Technology

1 Available under 316(b). I think there is a balance in there
2 on technical feasibility. My concern is that, all of a
3 sudden, this Board is accepting a burden to essentially
4 waive 316(b) Grid reliability, some of these other issues
5 based on what other entities are saying, and, to me, this
6 Board's mandate is compliance with 316(b), and you cannot
7 abdicate that responsibility to any other agency, whether it
8 is CAISO, or whether it is a local zoning board, or whether
9 it is the Coastal Commission. So I think that is where the
10 balance comes in.

11 MR. * [15:28]BAGGETT: Right, but as long as the
12 requirement is the Board shall consider, then that is
13 acceptable.

14 MR. FLEISCHLI: I think if it is considered, it is
15 okay. The problem is, there is no standard for what that
16 means, and it is sort of the flip of what industry has
17 argued in terms of wanting you guys to just defer to these
18 other agencies. You know, you could just as easily put in
19 here if the local zoning commission in some small town says,
20 "This isn't going to fly," you guys are going to have to
21 defer to that. For me, I would prefer not to have anything
22 in there. So, you know, I understand you guys can exercise
23 your diligence on this, but how does it relate to Best
24 Technology Available? And if you are making a finding that
25 it is not available because it does not comply with the
26 local ordinance, that is not consistent to me with the case

1 law in this issue.

2 MR. *[16:27]BAGGETT: If they cannot get permits,
3 then -- is it appealable if they cannot get the necessary
4 permits?

5 MR. FLEISCHLI: Well, the technology itself is
6 available, it exists out there in the world, and that is
7 what that standard is about. It is not saying, "Look, can
8 this one particular facility comply with zoning ordinancing
9 in X location?" It says, "Look, what are the best
10 technologies out there within this industrial category,"
11 which we would argue is either closed cycle or dry cooling,
12 and then they need to move forward and implement that. I
13 think technical feasibility, I think we are willing to
14 accommodate on that because we understand from an
15 engineering standpoint, there may be some difficulties. My
16 concern is, then, we start accommodating on these other
17 levels and what is the standard of review? What are the
18 Regional Boards going to consider when they look at that
19 [quote unquote] "to their satisfaction" that they have gone
20 through that process? Now, do not get me wrong, I think the
21 environmental community has an obligation, as well, to go in
22 front of the Coastal Commission and some of these other
23 agencies and say, "Look, there are important environmental
24 impacts here from once-through cooling, and we need to
25 address those things," and those agencies need to take that
26 into consideration. But this Board cannot abdicate that

1 final responsibility, at the end of the day, to make sure
2 the best technology available is incorporated into these
3 permits. And you cannot say, "Okay, just because you...",
4 essentially what I am saying is they need to comply with all
5 laws, including your laws. They should not be able to get
6 out from under your law if some other agency says they are
7 having difficulty in complying with their law.

8 CHAIR HOPPIN: But in that case, we would be
9 abdicating our authority to another agency.

10 MR. FLEISCHLI: No, because you would be saying
11 your authority is that they must comply with 316(b), and you
12 are holding them to that regardless of what any other agency
13 says.

14 MR. ~~*:~~ BAGGETT: But if they cannot get the
15 permits --

16 CHAIR HOPPIN: We have defaulted to the other
17 agency. Anyway, why don't you go ahead.

18 MR. FLEISCHLIBISHOP: No, that --

19 MS. DODUC: Actually, before Steve continues, if I
20 might ask a follow-up question. Not being a lawyer, to me,
21 what is important is the outcome, the effect of the policy,
22 what we are trying to achieve. And, in my mind, it is
23 reduction in entrainment and impingement.

24 MR. FLEISCHLI: Yes.

25 MS. DODUC: So -- and I know, I have had this
26 discussion back and forth with my staff -- I know that,

1 legally, we are supposed to establish best technology
2 available and that is proposed to be in Track 1. For me,
3 the advantage of Track 2, even though I do not like the 90
4 percent part of it, is that it proposes to accomplish the
5 same outcome, regardless of what technology, what
6 operational measures are being followed. And, to me, that
7 is what is important, the outcome of the policy. And I
8 know, like I said, my staff and I have gone back and forth
9 on this, and I actually have not gone back and forth with
10 Michael on this, but from your comments, I gather the
11 impression that it is your understanding that, legally, the
12 Board is required to, and the regulated community is also
13 required to comply with a technology, and not an outcome?

14 MR. FLEISCHLI: I think the Court decisions have
15 said that the outcome -- in this context, the two track
16 system -- works. The courts have said that the 90 percent
17 or a margin of error is acceptable in determining
18 compliance. You still must achieve that outcome, but you
19 can measure that compliance with a margin of error, so that
20 is where the 90 percent comes from, and that is not my
21 issue. The problem is, under Track 2, I think we lack the
22 confidence in the environmental community that Track 2 is
23 going to achieve the outcome that Track 1 would achieve, and
24 there are a couple reasons for that, one of which are the
25 comments that Dr. Gold raised with regard to how we are
26 measuring compliance. You know, we have got one year here

1 and there where essentially you are looking at -- you are
2 comparing impingement and entrainment, and at the same time
3 you are allowing operational controls, and that is another
4 comment that I want to make, where essentially you are
5 allowed to manipulate flow in a way where maybe you are not
6 achieving the same outcomes. But because you are
7 manipulating the flow, you can make it appear as if you are
8 achieving the same outcomes. And that is my concern with
9 Track 2. And I look at Track 2 and I really do not have
10 confidence that Track 2 is as robust or as protective, or
11 will lead to the same outcomes as Track 1. Track 1, there
12 is sort of no question, if you reduce cooling water intake
13 by 93 percent, with the exception of the per kilowatt hour,
14 per megawatt hour, that Joe was talking about, you know, you
15 should see a comparative reduction in how many fish and
16 larvae are killed because it is flow-based, and you know
17 that is going to happen. If you do not take the water in,
18 nothing is going to die. On the second side, they can still
19 take the water in, they could put Gondar* booms up, or they
20 could try, they could put these other wedge wire screens,
21 other sorts of technologies where, through studies and other
22 ways, allow to manipulate a process to demonstrate to their
23 satisfaction that they have achieved the same outcome,
24 which, to me, I do not have confidence, Dr. Gold and the
25 other biologist, Tom Ford, do not have confidence in this
26 section the same way that they do in Track 1.

1 MS. DODUC: Okay, thank you.

2 MR. FLEISCHLI: So that is the concern. But I
3 agree with you on outcome and sometimes I think it is good
4 that you are not a lawyer.

5 MS. DODUC: Thank you.

6 MR. FLEISCHLI: The other issue I wanted to raise
7 on Track 2, I have already talked about briefly, which is
8 these operational controls where essentially you might be
9 able to manipulate intake. The way I read 316(b), it says
10 that it shall require that the location, design,
11 construction, and capacity of the cooling water intake
12 structures reflect the best technology available -- and Joe
13 Geever talked about this a little -- is operational control
14 the same as a structural control in that definition? To me,
15 it is not, and I agree with the comments of Joe Geever, that
16 you can take bad technology and operate it in a way that
17 makes it appear better, and to steal a horrible phrase from
18 Sara Palin, you can put a lipstick on a pig, but it does not
19 change that it is a pig. So, here, the problem is
20 operational controls are not the same as structural
21 controls, so we are concerned about that, as well. The
22 third issue on Track 2 is one of consistency, and it is
23 really just raised to ensure, because I think that 30 years
24 of litigation over these issues have shown that there will
25 probably be more years of litigation on this issue from
26 somebody, and I think this policy needs to be very

1 consistent internally from a legal drafting standpoint. And
2 there are some problems in Track 2 and there are some
3 problems in some other sections.

4 Track 2 talks about compliance for the facility as
5 a whole in that introductory paragraph, and yet, in the
6 second sentence -- sorry, in the last sentence of that first
7 paragraph, it says that a comparable level is a level that
8 achieves at least 90 percent of the reduction in impingement
9 mortality and entrainment required under Track 1. Now,
10 Track 1 is on a unit by unit basis. Similarly, D is on a
11 unit by unit basis, that Track 2, subparagraph D, is on a
12 unit by unit basis. I think it should be unit by unit, just
13 like Track 1 is, but you have an inconsistency there in
14 terms of how people might interpret it. I would encourage
15 you to fix it so that it is unit by unit. But I want you to
16 be aware of that inconsistency.

17 The next issue goes to grid reliability, and I
18 have eluded to this a little bit. I do have significant
19 concerns that this agency could abdicate its responsibility
20 to CAISO, or any number of other authorities on this issue,
21 so I would reject the comments of Southern California
22 Edison, in particular, that you just wholesale adopt what
23 CAISO recommends on grid reliability, and I would ask that,
24 for consistency purposes in that regard, that on page 7,
25 Paragraph 3B4, that in that paragraph the paragraph read,
26 "The State Board shall consider the SACCWIS' recommendations

1 and may direct staff to make modifications if appropriate
2 for the State Water Board's consideration." To me, that
3 sentence does not really make sense if it reads, "The State
4 Water Board shall consider SACCWIS' recommendations and
5 shall direct staff to make modifications, if appropriate."
6 Just a clarifying point there. And, similarly, on 3C1, I
7 would modify that, if the State Water Board determines --
8 and I would insert some language to say, "Through amendment
9 to this policy," make sure that it is a formal determination
10 by this Board, that a longer compliance schedule is
11 necessary to maintain reliability. I think that would
12 provide more comfort in that regard. And I would like to
13 say for the record that I think that if the Water Board were
14 to defer without consideration of the other factors that
15 Board Member Doduc has talked about today, without comment
16 from the public, on these grid reliability issues, I do
17 think it would be an arbitrary, capricious, and abusive
18 discretion decision and contrary to law. So I would
19 encourage you not to take that route.

20 MR. * [25:58]BAGGETT: What about the degradation
21 argument?

22 MR. FLEISCHLI: I actually did not think -- well,
23 first you said it was anti-backsliding --

24 MR. *—BAGGETT: Right.

25 MR. FLEISCHLI: You know, I cannot predict -- I am
26 going to be a good lawyer here, Art, I cannot predict what

1 is going to happen in some of these permits, so I do not
2 know what -- if there is a compliance date in there,
3 depending on whether it is a compliance schedule, or whether
4 it is in the permit itself, whether or not you are going to
5 see compliance from the environmental community about those
6 dates shifting. I think you have seen from us, not only
7 today, but at the prior hearing, that the compliance
8 schedule is not where we are fighting the hardest. You
9 know, I think there are some exceptions, Potrero, and I
10 think the South Bay, those are some areas where it does not
11 make any sense to extend these compliance schedules beyond
12 what these facilities have already agreed to, essentially.
13 You are not seeing a lot of fight there, you probably will
14 see some fight in Los Angeles with Scattergood and some of
15 these other facilities in L.A. where we think they can do
16 faster, so we are going to preserve our legal arguments.
17 But I do not think you can abdicate that responsibility to
18 someone else -- under the Water Code, you cannot.

19 MR. * [27:02]BAGGETT: No, I was not proposing
20 that. What if they were targets -- the actual hard number
21 would be in the permit, I mean, then you would have
22 something that --

23 MR. FLEISCHLI: If there are targets, I do not
24 really know what the point of this policy is. I mean,
25 essentially you are saying, "Some day we want you to comply
26 with 316(b)," which I will say has sort of been the approach

1 for the last 30 years, unfortunately. So, to me, the
2 targets and actually having something that can hold people
3 accountable, so they can plan, and so they can know that
4 some day, unless they demonstrate to your satisfaction that
5 there is a reason for them to get out from under those
6 targets, that they are actually going to achieve best
7 technology available. I mean, I know I have said it before,
8 this battle literally has been going on since 1972. And
9 when industry sued in '77 to dismiss the EPA Regs, this
10 issue just disappeared essentially until 1993, until we, the
11 Water Keeper organizations, sued EPA to get this thing back
12 on the agenda. So it has really been to their benefit for
13 the last 30 years that there has not been consistency across
14 the country on this issue, and it is really time to have
15 consistency and to hold them accountable -- most
16 importantly, so they can plan and start moving in that
17 direction and know they have to do this some day. They
18 cannot keep wiggling out of this requirement.

19 Another issue I wanted to talk about was the
20 nuclear facilities. To me, regardless of what the review
21 committee decides on the nuclear issues, they still have to
22 comply with best technology available and, again, you cannot
23 abdicate that responsibility. I was a bit troubled by the
24 comments today by Southern California Edison about the cost
25 considerations because I looked at this section and I was
26 concerned because this section now includes cost

1 considerations, and they were complaining that they were not
2 getting the benefit of the wholly disproportionate impact
3 section, and yet now they have a totally open-ended cost
4 consideration that might be interpreted as a cost benefit,
5 it might be interpreted as cost-cost, it might be
6 interpreted as wholly disproportionate benefits. So, to me,
7 I do not like the costs in there for the exact opposite
8 reasons of them because, to me, I mean, anybody can say,
9 "Oh, it is going to cost them \$100 million and that just
10 sounds like a big number to me, so we should not require
11 this of you." And that is certainly not what we want to see
12 as this moves forward. In regard to the economic issues,
13 just the recap on that stuff, we are very happy that you
14 have taken out this wholly disproportionate test and sort of
15 put it in other sections, which was your intent. We do not
16 think there is any valid reason for additional excuses for
17 delay, based on economics. We do think you have considered
18 the costs in this policy. We have not seen the supplemental
19 environmental documents, so we do not know what the benefits
20 are. We thought last time that there was an inaccurate or
21 -- sorry -- inadequate characterization of benefits in the
22 Substitute Environmental Document. If you actually look at
23 the economics section of the document, it goes on for about
24 two pages and there is no mention at all of benefits, and I
25 do think it would be good to see that information in there.
26 Again, the policy already contemplates economics,

1 particularly in your adaptation of Track 1 and Track 2, of
2 wet cooling as opposed to dry cooling. To have that wholly
3 disproportionate test does not achieve the stated goals of
4 trying to relieve the burden on the local agencies and
5 provide consistency across the board with this type of
6 policy. And I think, very importantly, as this Board has
7 pointed out in comment letters to EPA, often times cost
8 benefit analysis are not workable because of the uncertainty
9 of benefits, as well as sometimes the under-valuation of
10 benefits, and sometimes the over-valuation of costs. So,
11 with that, I did want to say one final comment, and I hope
12 it is not construed disrespectfully, but it was really
13 directed towards the Southern California Edison folks, where
14 they were essentially, I thought, disrespecting this Board,
15 and essentially telling you that it was your responsibility
16 if there was a grid failure in California if you adopt this
17 plan and that you need to accept responsibility for any grid
18 reliability issues down the road if you choose not to just
19 adopt wholesale what CAISO does. And I would like to
20 suggest that, instead of taking that approach, again, this
21 Water Board needs to exercise its independent authority
22 under the Porter-Cologne Act, as well as the Clean Water
23 Act, and Southern California Edison and those like them need
24 to expect responsibility for providing energy in a reliable
25 manner that complies with all of our environmental laws, not
26 just the ones that they want to comply with. Thank you.

1 CHAIR HOPPIN: Thank you, Mr. Fleischli. Mark
2 Krausse, would you like to come up, or would you just like
3 to concur with Mr. Fleischli's comments? It is up to you.

4 MR. KRAUSSE: Actually, we do agree. That is a
5 great way to queue it up. Mark Krausse on behalf of Pacific
6 Gas & Electric Company. And it looks like my slide, Dick,
7 might actually make it up. I am sorry, Steve.

8 CHAIR HOPPIN: Maybe you know more about the power
9 grid than some of the previous speakers, I do not know.

10 MR. KRAUSSE: No, no, no, this is SMUD territory,
11 we cannot take responsibility for that. While -- well, I am
12 not even sure if the slide deck can be brought up. You can
13 look at the pool thing, otherwise that is just one slide,
14 you saw it at the last presentation, those of you who were
15 here. We do agree with Mr. Fleischli on one point and that
16 is the lack of a standard is problematic in terms of how
17 costs are to be considered. And let me just back up. I
18 will try to focus all my comments, and folks have covered a
19 number of other areas, on the major amendment to take the
20 variance out in this case, and I know that staff has
21 characterized it as not taking it out, but moving it
22 elsewhere. But when you take six, I believe it is, five or
23 six paragraphs of language out, that is fairly detailed, and
24 by the way, we in our last comments wanted to give even
25 greater detail, and I will cover that in a moment, but when
26 you take those five or six paragraphs out and you replace it

1 with the words, "costs and feasibility", in a section that
2 deals with the study that the Board is empowered to get the
3 nuclear plants to do, there is no if/then in that part of
4 the regulation. Essentially, I guess to try to read it in
5 the context of the policy overall, it is like every other
6 plant, the nuclear plants have a deadline for compliance,
7 and once the study is complete, costs and feasibility will
8 be considered in whether that compliance schedule sticks.

9 Is that -- okay. But the point is, that is not the same
10 thing as a variance process where we come in and prove up,
11 and PG&E is perfectly willing to prove up, that the costs
12 are wholly disproportionate. I mean, we have a study that
13 is posted on your website, so I have heard maybe one or more
14 members had mentioned that the costs are a little vague. In
15 terms of the costs of implementation, anybody is welcome to
16 question those, but we have a study that documents -- oh,
17 here we are -- it is one of the later slides here that I
18 will show you -- where we work through it is not just the
19 cost of putting up cooling towers, there is so much more
20 involved in any one of these retrofits, but, in particular,
21 in the nuclear -- retrofits for the nuclear plants. And I
22 do want to touch on the earlier statement that Dominic made
23 about the plant in Michigan that had been retrofit, you
24 really need to cover these things closely, that was
25 Palisades in Michigan. It was designed for closed cycle wet
26 cooling. So, of course you can retrofit a plant that has

1 been designed for that type of cooling system, it was
2 designed for closed cycle wet cooling; when they began
3 construction, they decided to switch to once-through
4 cooling, and during construction they switched back to
5 closed cycle wet cooling. That is a very different matter
6 than taking a plant that has been built for OTC and try to
7 retrofit it to closed cycle wet cooling. I am not here to
8 tell you it is not possible, we are engineers and the study
9 that, again, is on your website, they do not say it is not
10 possible, they raise some questions about feasibility in
11 some instances, but the biggest issue is cost, and the other
12 environmental impacts that would visit upon the site, and
13 the issue that -- again, I do not want to jump around -- but
14 Mr. Fleischli raised about not, you know, the diligence that
15 a given plant operator might exercise in trying to get a
16 permit. We are not really -- we have a letter Duke was
17 given when they tried to do a repower at Morro Bay, that are
18 regional board said there are not adequate air credits to be
19 able to retrofit to closed cycle wet cooling, and we find
20 that OTC is best available control technology; from an air
21 perspective, once through cooling is the best cooling system
22 you can have. So this is not a conjectural matter of would
23 somebody allow a permit. And while we submit an application
24 for the permit, but in reality we really do not want to get
25 it, I think you are going to have other regulators who will
26 have major problems with the kinds of retrofits, certainly

1 at the nuclear plants that we are talking about. And I do
2 not know, do I have -- let me just step through this as
3 quickly as I can, and it is which button? The wheel?
4 Great. So completion of the variance is a major step back
5 in our estimation, and I want to acknowledge -- I think
6 maybe part of the thinking in deleting the variance was why
7 go through this administrative workload of making a
8 determination here, when maybe we all acknowledge that
9 certain plants are likely to get an out, to get alternative
10 compliance. I guess I am still troubled by the way that it
11 has been moved elsewhere in the policy. There is no clarity
12 on how that is to be handled. I mean, just as Mr. Fleischli
13 is concerned, we are very concerned that it is wide open.
14 There is no standard of review. And, by the way, let's take
15 us back to at least what I have heard Board member Doduc say
16 in the past, what we are looking for, what the Board I
17 understood was looking for in adopting a policy here, was
18 standardization, that the multiple regional boards would
19 have one method of implementing this particular once-through
20 cooling policy. Now, if that -- and I see in some aspects
21 that might be lifted up to the State Board, that certainly
22 will provide standardization, but a standard for how to
23 consider cost benefit, I think, is very important. Simply
24 putting the words "costs and feasibility" in what is to be
25 considered is --

26 MS. SPIVEY-WEBER: Okay, tell me how on earth are

1 you going to figure out -- or how is anyone going to figure
2 out cost benefit now? Aren't you going to have --

3 MR. KRAUSSE: What do you mean by "now?" I am
4 sorry.

5 MS. SPIVEY-WEBER: Well, your deadline -- what is
6 your deadline?

7 MR. KRAUSSE: 2024. And by the way, I --

8 MS. SPIVEY-WEBER: So when are you going to give
9 us your cost benefit twin?

10 MR. KRAUSSE: You have it in there.

11 MS. SPIVEY-WEBER: I know, so today we will look
12 at it and we will decide that, you are absolutely right,
13 your costs are so far exceeding what it is you are being
14 asked to do in 2024. That just seems -- I do not see that
15 is possible.

16 MR. KRAUSSE: I believe it has been explained by
17 your Board staff that we would go through that process every
18 five years, so it is not just now, for 2024, it would be
19 every time we go for an NPDES Permit, that would be re-
20 asked, as I understand it. That was under at least the last
21 policy. So --

22 MS. SPIVEY-WEBER: But right between now and five
23 years from now, you know, I just -- I do not think you can
24 know. I do not think you can know, I do not think we can
25 know.

26 MR. KRAUSSE: The cost side or the benefit side?

1 MS. SPIVEY-WEBER: Maybe even both, but certainly
2 the cost side, because we just simply do not know.

3 MR. KRAUSSE: The costs that we have on a later
4 slide here are derived from a steam generator replacement
5 that we just did --

6 MS. SPIVEY-WEBER: But you are not going to have
7 to do this until 2024. See, maybe I am missing the point --

8 MR. KRAUSSE: Isn't that just a question of
9 relative dollar cost, right?

10 MS. SPIVEY-WEBER: No, no, no, the technology
11 changes every day, practically. And between now and, I
12 would say now and 2015, it is quite likely that there will
13 be changes. I do not know what they are, but if you give me
14 a cost benefit on a 2024 deadline, it is going to make no
15 sense.

16 MR. KRAUSSE: This, though, we are not projecting
17 how much it might cost then, but with regard to how
18 technology might change, I thought that was the beauty of
19 having the NPDES every five year process play out, was that,
20 if technology does change, you might later be found -- we
21 did not like that aspect of it, we wanted a certain answer,
22 but that was, as I understood from staff, the way this would
23 be implemented was the regional boards would every five
24 years treat this like any other NPDES Permit and make that
25 -- the language has been stricken -- make that determination
26 about cost benefit and whether it is wholly

1 disproportionate. So if technology changes, I think it used
2 to accommodate that. I mean, I am open to other approaches,
3 but I do not think an approach that simply says, "Consider
4 costs and feasibility," that is the change, can hardly be
5 described as moving wholly disproportionate. The words
6 "wholly disproportionate" are no longer in the policy, I
7 mean, that I have seen it, anyway. So it is just inaccurate
8 to say it has been moved to another place.

9 MS. DODUC: Could I ask Jon for clarification
10 because that was not my understanding that the regional
11 board would be doing a wholly disproportionate determination
12 every five years, even with the previous draft. I mean,
13 that certainly -- if that is the case, then I would strongly
14 object even harder to the wholly disproportionate
15 determination section.

16 MR. BISHOP: That was not my understanding, that
17 this was a one-time deal to the regional board, it was not
18 meant to be done every five years. But you know, my
19 interpretation of moving this, and I am open to hearing
20 comments and suggestions, was that there was no need to go
21 through the paperwork of saying that it is going to cost a
22 lot of money to do this at the nuclear power plants; we know
23 that, we understand that. But what we need to understand is
24 that what is feasible and what that costs. I am not saying
25 -- and that the way this is written, or the way it was
26 proposed, was that that would then be brought to the Board

1 for them to be able to consider an independent look at the
2 cost and the feasibility of different actions. Those
3 actions are what can be done. And so what you are saying is
4 -- what you would like, I think, is a variance from having
5 to comply with the policy. Our variance that we had in the
6 wholly disproportionate just meant that you might not have
7 to comply with what is in Phase 1 and Track 1 and Track 2,
8 but then you would have to go to the regional board and get
9 the best deal you could get, essentially. You would have to
10 do everything possible determined by the regional board. It
11 does not mean you get to just operate the way that you were
12 operating.

13 MR. KRAUSSE: That was clear from the previous --

14 MR. BISHOP: Okay, and so what we are suggesting
15 is, instead of doing that and requiring you to go through
16 that, that you would bring that to the State Board for
17 determination, so we would have as consistent between the
18 two plants in Sacramento.

19 MR. KRAUSSE: Okay. Let me just jump through this
20 as quickly as I can. The first issue is that the variance
21 did, for the first time, acknowledge that the nuclear plants
22 deserved a different treatment. As Jonathan has pointed
23 out, that is now moved to the words "costs and feasibility,"
24 are moved to a section that is about the study -- and purely
25 about the study, it does not say "once the study is
26 complete," it appears to be that the Board would treat that,

1 again, like other data points for other plants in
2 determining whether the compliance date should change. I
3 think the important points that we have tried to point out
4 in the past is that the nuclear plants -- and I thought this
5 was acknowledged in the previous sort of threshold for
6 whether or not you were eligible for the variance -- nuclear
7 plants are not able to repower like the gas plants, they get
8 only dirtier, so to speak, in a retrofit regime; so, in
9 other words, they produce less net power that has to be made
10 up somewhere, and contrary to what a gentleman said, base
11 load power is not going to be solar or wind. So, you know,
12 in terms of replacing the nuclear plant production, that is
13 important. And then, of course, the particulate matter that
14 is produced, that is all new. It is not like with the gas
15 plants, there might be some reductions, there may be some
16 air benefits, but with the nuclear plants, it is different.
17 So, you know, we maybe intuited why the threshold for
18 entrance to the variance, but we were willing to prove that
19 up -- as opposed to, Jonathan, I guess what I am
20 understanding this to be is, since we know you are not going
21 -- since we know costs will so heavily outweigh benefits, it
22 is an exemption. I do not know that we are comfortable
23 being exempt, we are trying to prove that we are deserving
24 of a variance, and trying to make our case. So the way I
25 interpreted the variance, I thought it accommodated changing
26 technologies, but it does not sound like it did previously.

1 Now, with regard to -- so we talked about other
2 issues. Let me just jump forward. These were the issues we
3 wanted to see included in the variance and, again, I raise
4 it, even if you are not of a mind to replace the variance,
5 or to reinsert the variance, at least to provide some
6 guidance. So one of the issues is to simply say consider
7 cost, how are you going to consider it? Is it a cost
8 benefit weighing? It does not say that currently. When we
9 thought it was a cost benefit weighing and the measure was
10 wholly disproportionate, we were proposing that some ratio
11 be put in, so we were not looking for a more lax policy, we
12 were looking for a more proscribed policy that would give
13 the Board more certainty so that, really, the administrative
14 burdensomeness would be minimized, so that it is more a
15 checklist of, "Did you meet this particular ratio?" That
16 kind of thing. It is our job, as I understand it, to prove
17 up the costs, and you can question those, I guess that is
18 what we proposed earlier, was you have some peer review of
19 our studies; that would minimize some of the costs and time
20 in producing new studies. And if that peer review felt that
21 they were not adequate, they could recommend fully new
22 studies, but I think that would save some time.

23 So in terms of other -- monetizing the benefits,
24 get an agreed-to method, another place where we agree with
25 Mr. Geever, that the habitat protection foregone is not
26 ideal, is that it is very ill-defined. If you were going to

1 use it or any other standard, we would like to see it
2 included in the policy, laid out in the policy, whatever
3 methodology you want to use. We are perfectly comfortable
4 with that. And there are really two issues for that, there
5 is habitat protection foregone, or some other model, and in
6 my estimation, it is both to monetize the benefit, and there
7 may be other things beyond just habitat, there are certainly
8 other benefits that need to be counted, but also to arrive
9 at some appropriate mitigation restoration. What is
10 appropriate to try to right this wrong? So in that regard
11 we also think that some trust fund, something to make sure
12 that money actually goes to some restoration efforts would
13 be helpful, so we had provided most of this in our last
14 comments. We are now making comments on something that is
15 out of the policy, but that is in general of where we were
16 at. Now, this is a rendering of the retrofit and it is not
17 to try to really shock anybody, it is more a matter of --
18 and, by the way, Steve asked about the plume there -- it is
19 not an issue with Diablo Canyon that there are any roadways
20 or anything to be obstructed by that, that is actually a
21 plume from an operating nuclear plant that they simply took
22 one cell and reproduced it across the cells here, so that is
23 not an artist's rendition, that is a photograph that has
24 been overlaid in there. It is a sizeable retrofit, as I
25 think I mentioned to many of you, it would require an
26 offshore diffuser to discharge the saltier, warmer

1 discharge; there are just a number of reasons that we think
2 you should be looking at more than cost and feasibility,
3 environmental impacts, other things that were in the old
4 variance language, by the way. It took account of other
5 environmental impacts, including air impacts. And on that
6 point, member Spivey-Weber had mentioned having the Regional
7 Boards involved, this goes back to Mr. Fleischli's comment
8 about, you know, how diligent you are about pursuing your
9 permit. I think that is why the Regional Air Pollution
10 Control Districts need to be involved in the SACCWIS, at
11 least on a plant-by-plant basis, because they are the ones
12 who can tell you if they have a real problem, not if PG&E is
13 not pursuing it with all diligence, but where they will
14 really come out on that, because in some ways you need a
15 pre-determination. I am not sure a policy works to have to
16 have you go through that entire process first. If you could
17 consult with the permitting agency, that would be helpful.
18 And I will just try to move through the rest of this.

19 These are the environmental impacts we have talked
20 about. It is a 7-10 million ton per year GHG cost just for
21 the down time that we have in having to retrofit. So it is
22 a 17-month down time estimate, it is 12-15 million metric
23 tons of GHG. And as I have done for you in the past, the
24 electric sector reduction under AB 32 is about 34 million
25 metric tons if we were just given a proportionate reduction
26 to our contribution, so it is meaningful. This is huge.

1 Someone in the audience made a comment when the staff
2 remarked that they had moved the implementation deadline to
3 2024, reflecting our recaptured license period, someone made
4 the comment that, well, it will be underwater by then
5 anyway. That kind of glib reference misses the fact that
6 the nuclear plants are part of the contribution to keeping
7 it from being underwater, and that if these plants, as I
8 guess Mr. Fleischli was saying, if you cannot get a permit,
9 apparently that means you shut down. If you are not able to
10 get permitted for air or other impacts, compliance is no
11 longer operated. Well, it is different for the nuclear
12 plants, I keep trying to make this point. The nuclear
13 plants should be treated differently.

14 Salt drift, I think we have covered all the rest
15 of this. And in terms of cost, you will notice that cooling
16 towers are the fifth item down there, it is the site prep,
17 it is so much more of what has to be done at Diablo Canyon,
18 at least. We have a very large site surrounded mostly by
19 Indian burial grounds on the north, and some other issues
20 that cause us to have to work pretty much within our current
21 industrial zoned area, so we would have to tear out most of
22 the buildings that are already there, we would have to level
23 that ground down to plant level so that the condenser, you
24 know, the water pressure basically, is appropriate. Trust
25 me, there is, as I say, a study on your site and I have
26 copies here if anybody is interested in it, some 50 pages

1 without the appendices, that describes in detail this could
2 be done. I mean, engineers have said it could be done for
3 \$4.5 billion. And that number, again, was estimated based
4 on our \$800 million steam generator replacement, which was a
5 like-kind replacement where we literally took it apart out
6 of the plant and replaced it with the same part, and that is
7 the kind of money that cost. There is nuclear adder, but
8 none of these things are cheap, for sure.

9 This, finally, is our big point on why a variance
10 is appropriate, and that is people are quick to think, well,
11 the nuclear plants are the biggest circulators of water, so
12 they have to be the biggest entrainers and impingers. Well,
13 this is Diablo Canyon, and this is right out of your
14 substitute environmental document, it is not PG&E's data.
15 Twenty-two percent of the water that goes through OTC plants
16 in California goes through Diablo Canyon, accounting for one
17 percent of the impingement, and eight percent of the
18 entrainment. So, I mean, that is why we think -- call it
19 what you like, a variance, whatever it is, we would like to
20 see more detail about how cost and benefits are to be
21 weighed, and then, once you do that, at what level you are
22 found to have an alternative compliance, and then let's also
23 say what that alternative compliance is, what is appropriate
24 mitigation. That is what we would like to see.

25 CHAIR HOPPIN: Thank you, Mr. Krausse. Any
26 questions? Michael Jaske?

1 DR. JASKE: Good afternoon. Michael Jaske
2 representing the California Energy Commission. The energy
3 agencies put a joint letter together and gave that to you on
4 September 14th, we each testified at your September 16th
5 hearing. In particular, the Energy Commission said it
6 supports the imposition of an OTC Policy, we understand this
7 policy to largely mean the retirement of these old fossil
8 power plants. Everyone is fighting against that. The
9 handwriting is on the wall for these plants. The Energy
10 Commission has had a retirement policy for these power
11 plants for several years. The essence of the joint agency
12 proposal that is included in your substitute environmental
13 document as an attachment or an appendix lays out a schedule
14 that we believe is a realistic step through of each of the
15 mechanisms that have to be considered in order to bring
16 infrastructure that will replace these plants on line. The
17 staff has accepted that proposition as the basis for the
18 schedule that is in the actual policy, itself. There are
19 plenty of uncertainties about whether that specific schedule
20 can be realized for each of the 19 some plants and all their
21 many units. Built into the policy is this every two-year
22 update of the schedule, a review of it, and as Mr. Bishop
23 said earlier in response to a question, an expedited hearing
24 process that would have you amend the policy in some regard,
25 maybe two, or three, or four of those plants, or a subset of
26 the units in those plants might have to have their schedule

1 tweaked a few years. That is the nature of the update that
2 you should expect. A lot of the changes in the current
3 draft of the policy are a sort of spelling out on paper
4 about the implicit discussions, the things that were
5 implicit earlier, and have been the subject of the task
6 force that was convened and has been operating for a year
7 and a half. We all understand that what is going on here is
8 the eventual replacement of most of these plants. Some of
9 them will be repowered in place, some of them will be
10 retired entirely and their capacity will no longer appear in
11 that location. It will be converted to some other higher
12 use and the power that the system needs will come from some
13 other source. It will come from renewables in the state,
14 out of state, some other gas plant built in some other
15 location, and there may need to be a transmission line built
16 that will allow that particular local area to have reliable
17 service, using more remote plants relative to the load.
18 That all takes time. I think we have communicated to the
19 staff that that takes time, they have understood that it
20 takes time, there are conditions under which our current
21 expectations about how much that will take may change, it is
22 already in your policy that we are going to revisit and
23 update that as needed. So essentially, the industry is
24 attempting to think of this rule in the manner in which they
25 are independent stand-alone industrial facilities, they are
26 not; they are power plants that are connected to an

1 electricity grid that operates as a system. We are taking a
2 system approach to try to figure out how to replace them in
3 a manner that assures reliability through time and so the
4 whole essence of this policy has to be different than it is
5 in an ordinary industrial facility that might deal with
6 through some other means.

7 So let me just close by saying, it should be
8 obvious through the review of the policy and the periodic
9 updating of the schedule, and all of the comments that have
10 been made today, that the energy agencies and this Board are
11 going to be working together until the last one of these
12 plants is replaced. That may take 10 years, as it currently
13 calls for in this policy, it may take 12, it may take 15,
14 but that is what this is all about, and our agencies are
15 going to be figuring out how to make this happen in a way
16 that will eventually lead to the vast reduction, if not
17 elimination of OTC, and have a reliable power system all
18 along the way. Thank you. Are there any questions?

19 CHAIR HOPPIN: Thank you, Mr. Jaske. Are there
20 any questions? Thank you very much. Angela Kellyey.

21 MS. KELLY: Hi. Thank you for the opportunity to
22 speak today. I am Angela Kellyey, program director for
23 California Coast Keeper Alliance, and I have to say we are
24 very encouraged that we are this close to finally adopting a
25 policy for once-through cooling, it has been a long time
26 coming and over 30 years just -- I guess I have not been

1 working on it for over 30 years, but I have been working on
2 it for quite some time, so we are very excited that we are
3 close. We submitted extensive written comments on September
4 30th and I know we have not quite received responses back,
5 but I want to focus today on the changes that were made to
6 the policy, but before I do that, there is just one issue
7 that we submitted comments on, that has not been explicitly
8 covered by my colleagues today that I just wanted to
9 mention. That is in regard to Track 2. So currently the
10 phrasing of the policy suggests that a plant, if it were to
11 fall under Track 2, would have to achieve 90 percent
12 reduction that could be achieved under Track 1. So this is
13 90 percent of 93 percent, which if my math is correct, is
14 around 83 percent reduction. We urge the State Board to
15 require that all plants reduce entrainment and impingement
16 consistent with the Track 1 standard. We think this is
17 consistent with the River Keeper decisions. I would like to
18 read you a quote from one of those decisions. The Second
19 Circuit Court noted -- and this is a direct quote -- "A
20 facility must aim for 100 percent, and if it falls short
21 within 10 percent, that will be acceptable. It may not,
22 however, aim for 90 percent and achieve only an 89 percent
23 reduction in impingement and entrainment." So we look
24 forward to receiving the response back from staff on our
25 written comments.

26 With regard to the proposed changes, we strongly

1 support removing the wholly disproportionate exemption.
2 Many of my colleagues have spoken in detail about that
3 today, so I will not go into too much detail, but just want
4 to underscore that there is no reason for the State Board to
5 provide more excuses for the continued harm to our
6 waterways, and the Supreme Court requires. And you have
7 heard today the Supreme Court clearly stated that cost
8 benefit could be used to determine best technology
9 available, but it certainly does not have to. And,
10 furthermore, California has the right and a long history of
11 responsibility to go above the federal minimum standard when
12 it comes to environmental protection. Further, the draft
13 SED properly notes that this exemption is not required and,
14 at the state level, cost-benefit approach is not a common
15 practice, and I would direct you to page 79 of your own SED
16 for a discussion of that. Further, the policy already
17 contemplates economic considerations in choosing wet cycle
18 wet cooling over dry cooling, and you heard that in detail
19 from Mr. Fleischli.

20 With regard to grid reliability and timelines, the
21 staff has done a really commendable job working with the
22 CEC, CAISO, PUC to develop a timeline for compliance that
23 will not disrupt the grid. And as Mr. Jaske just testified,
24 we agree with Mr. Jaske's testimony and that there is
25 adequate opportunity in this policy as written for continued
26 looking and modification should that become necessary, and

1 we do not feel that any further modification needs to be put
2 into the policy, and further, we do not believe that any
3 deference to other agencies is necessary, and that it would
4 potentially undermine the State Board's authority to enforce
5 the Clean Water Act.

6 Finally, my last comment is in regard to the
7 nuclear plants. These plants do withdraw a significant
8 portion of the total water used for once-through cooling in
9 the State of California. We strongly support the inclusion
10 of these plants in a policy, and we also support the peer
11 review of special studies, the special studies that you
12 required, and we hope that members of the environmental
13 community will be included on that review panel, as is
14 stated in the policy. Thank you.

15 MS. SPIVEY-WEBER: I guess this is for Marleigh.
16 The point that was just made that using 100 percent --

17 MS. WOOD: You mean the 90 percent or the 10
18 percent differential?

19 MS. SPIVEY-WEBER: A hundred percent, and then you
20 could have a 10 percent differential, it goes from 90 -- we
21 are starting at 93 -- what is the reason?

22 MS. WOOD: The reason for 93 percent reduction,
23 actually Dominic could better explain where that number
24 comes from, but --

25 MS. SPIVEY-WEBER: I am interested in the legal.
26 MS. WOOD: You are interested in the 10 percent

1 that is in Track 2 --

2 MS. SPIVEY-WEBER: Is she legally right, that we
3 should be aiming at 100 percent? And so 90 is where we
4 should be going? Or can we start at 93?

5 MS. WOOD: Aiming at 93 is Track 1, the attempt to
6 reduce flows that would be commensurate with closed cycle
7 cooling. What I understood the issue she was raising was
8 the extra 10 percent that would allow compliance with Track
9 2. And that 10 percent differential, that did come from
10 Phase 1 and that was discussed in the first River Keeper
11 decision, the idea being that there were two ways to get
12 there, and that these were different technologies and
13 different sites where they were being used, and all these
14 different variables, that you wanted to give a margin of
15 error between this method of compliance and that method of
16 compliance, and they found 10 percent to be a reasonable
17 differential.

18 MS. SPIVEY-WEBER: But 10 percent from 100? Or
19 93?

20 MS. WOOD: From 93.

21 MR. BISHOP: Let me try to explain. What we are
22 -- the difference is that we are not saying that Track 1 and
23 Track 2 have to do 100 percent reduction in impingement and
24 entrainment, we are saying Track 1, you need to get at least
25 93 percent reduction because that is what it would take for
26 closed cycle wet cooling. What we have then said is that

1 Track 2 needs to be comparable to Track 1, and we are using
2 a 10 percent margin of error. That does not mean that they
3 shoot for 83 percent, they are shooting for getting a
4 comparable amount of what they would get if they did the
5 whole plant as cooling towers. Now, you can debate if that
6 is what you want them to do, but that is the way we set it
7 up. It is not that we are shooting for 10 percent lower, we
8 are shooting for the same equivalence, but we are using a
9 margin of error because we are doing different technologies.
10 If you say you have to meet exactly what you would meet in
11 Track 1, they you are setting everyone up for this
12 discussion about, are you in compliance, all the time with
13 that. If you have got this margin of error, then they can
14 shoot for that and if they are in that range, they are okay.
15 I would agree with you that, if they shoot for 83 percent,
16 we are going to be in exactly the same position that we
17 would be if we said it has got to be exactly there, because
18 you have got to have this ability to move around.

19 MS. DODUC: And I think that is my concern, and
20 this is something that staff and I have gone back and forth
21 on, and I am not still satisfied with the answer, and that
22 is the way Track 2 is phrased right now, regardless of
23 staff's intent, or maybe even the Board's intent, I would
24 bet that most folks would shoot for the 83 percent because
25 that is the minimum that is required in Track 2. And I have
26 tossed back and forth with staff's various idea about making

1 Track 1 and Track 2 the same level, and obviously the
2 Regional Boards always has enforcement questions when it
3 comes to non-compliance issues, but I am concerned that, by
4 putting language in Track 2 the way it is, we are setting a
5 de facto standard of 83 percent for Track 2.

6 CHAIR HOPPIN: On your car, do you run your tires
7 until they are bald and explode? Or do you have a margin of
8 error on them?

9 MS. DODUC: I have someone take care of my car.

10 CHAIR HOPPIN: They have got people too, you know.

11 MR. BISHOP: But I would say that it is clearly
12 within the Board's discretion to define how we set that
13 margin, you know, we proposed something, but it is really in
14 the Board's discretion to say that, no, we want them to
15 shoot for 100 percent and have that 10 percent be down to
16 90.

17 MR. BAGGETT: We could have another hearing.

18 CHAIR HOPPIN: You can tell he is getting ready to
19 leave. Joe Dillon. Joe, you heard me tell a representative
20 of one of the Legislature that we normally defer to them and
21 have them go fast? It is just a coincidence that you are
22 going dead last and you happen to represent a federal fish
23 agency. I do not want you to think that this is part of our
24 policy here. I want to clarify that for the record.

25 MR. DILLON: I do not mind at all. The discussion
26 has been fascinating and has given me a lot to think about.

1 My name is Joe Dillon. I am the Water Quality Coordinator
2 for National Marine Fishery Service, Southwest Region. I
3 feel underprepared having sat here all day because our local
4 school districts canceled school last week for budget
5 regions, and so I took the week off and played with the
6 kids. And I did not pick this up, really, until yesterday.
7 But I do want to -- I did note that the Response to Comments
8 documents is not out yet, and I hope it will be out soon. I
9 am curious to see the reasoning that some of our comments in
10 the last round did not appear to be adopted into this round,
11 but I will defer that until I see the Response to Comments
12 document. I want to express that, taking a long-term view,
13 we still support this policy. This policy, though it may
14 have some warts, will lead to increased protection of
15 beneficial uses, most notably, marine resources. And I
16 agree with Ms. Doduc, it is the outcome of the policy that
17 counts, the dance steps in between may be -- there is some
18 room for wiggle.

19 I want to praise the staff for keeping going on
20 this, I hope you will keep going here as the holidays come
21 up. I want to praise the Board for continuing the touch
22 debate, embracing your regulatory authorities, and frankly,
23 backfilling the gap that we, the federal government, have
24 left in this arena. It is long overdue. So I hope you will
25 not delay this process unduly and get this policy across the
26 goal line.

1 A couple of things I heard today that I just want
2 to mention. In case there is any confusion, most of these
3 old fossil fuel plants, they are going to repower. It is
4 not that we are talking about making them add a cooling
5 tower to their existing facility, their generation units are
6 40-50 years old. I have visions of duct tape and bubble
7 gum, I do not know how accurate that is. The majority of
8 the costs that they will incur comes from the repowering
9 when they tear these places down to the studs, they order
10 the brand new generators from GE, or whomever, and then the
11 additional expense of putting in cooling towers or air
12 cooling is a smaller percentage of the overall project.
13 There are examples you could pull up of repower projects off
14 the CEC website to get an idea of what we are talking about.
15 You know, is it 2 percent of total project cost? Ten
16 percent of total project cost? I am sure it is variable
17 based on what you have to do and where you have to do it.
18 The other phrase that I heard several times today, that I do
19 not really agree with, is that these are peaker plants.
20 They are not peaker plants, they are run as peaker plants
21 because they are inefficient. They burn more gas per unit
22 of energy that is put up in the newer units. They could be
23 replaced with real peaker plants, either a small air-cooled
24 facility, or, as we are seeing in some places in the Central
25 Valley, a small unit that is hooked up to a wastewater
26 treatment plant, that only comes on when ISO says we need

1 some local grid reliability. They were not designed to be
2 peakers. That is all I really have to say. I look forward
3 to the Response to Comments document. I am trying to turn
4 that around real quick for you.

5 CHAIR HOPPIN: Thank you, Joe. Mr. Baggett has
6 had one foot out the door for the last half hour. I can
7 tell from the positioning that the Southern California
8 Edison folks either think there are cupcakes up here, or
9 they want to say something else. I suspect it is the latter
10 because we do not have cupcakes, we do have granola bars.
11 But I am going to let Mr. Baggett make some comments before
12 he leaves, and then we will --

13 MR. BAGGETT: Thank you. You know, I look forward
14 to written comments. I am glad we have allotted some more
15 time, particularly for the plants that have just spent
16 hundreds and hundreds of millions retrofitting, I understand
17 that was staff's intent, to see what language Moss Landing
18 and some of the plants come up with, and look forward to
19 reading that. In terms of the ISO issue, I think it is
20 pretty tight right now. I think if you put the 30-day clock
21 so that we cannot just -- so we shall consider, but we take
22 five years, I mean, I can understand some concern from ISO
23 that we put some time frame -- 30 days is reasonable, come
24 up with the number or we can talk about it later, but some
25 reasonable time that we will take into account their
26 concerns. I still need to go back and understand better how

1 that relates to the time frame, the overall time frames laid
2 out in the policy, if that is a one-year extension, or open-
3 ended. I need to think about that one some more. I need to
4 look more at some of the other language-related ISO.

5 Otherwise, I think we are a lot closer than we were a few
6 months ago to getting something done. We could have more
7 hearings, but I think at some point we have got to make some
8 decisions, so I would hope we can get this done in January.

9 That is all. Thank you.

10 CHAIR HOPPIN: Thank you.

11 MR. BAGGETT: Now I am going to go study
12 desalination and water quality.

13 CHAIR HOPPIN: Thank you for taking my
14 participation on that. Tam, would you like to start with
15 comments? Oh, excuse me.

16 MR. SINGARELLA: Thank you, Chair Hoppin. Paul
17 Singarella for Edison. We had no intent coming in here
18 today to try and get the last word, but there has been a
19 mischaracterization of what we are suggesting to the Board,
20 and I do not think there is anybody better than our own
21 selves to explain to you what we are suggesting, and Dr.
22 Hertell would appreciate a moment to address the forum and
23 clear the air a little bit. Thank you very much.

24 DR. HERTELL: Thank you, Mr. Chairman, members of
25 the Board. I just think that Mr. Fleischli mischaracterized
26 our position, and I cannot leave it on the record the way it

1 is. We did not suggest a wholesale deferral and
2 incorporation of whatever the agency agencies say. We did
3 suggest that you use a phrase something like "consistent
4 with" to indicate your intention to follow those pieces of
5 advice, but clearly you are taking on that responsibility,
6 and that is not disrespectful. Trying to serve the needs of
7 14 million people with a safe and reliable supply of
8 electricity is something like an obligation that we feel
9 very very hard about, we take that very very seriously. So
10 I know the Board accepts the comments that we are offering
11 and have made over the last two and a half years in a
12 respectful way. I think the notion that San Onofre, which
13 has spent more than \$500 million in in-plant technology
14 protection, mitigation, and offsetting all of the impacts at
15 that site under supervision of your sister regulatory
16 agency, the Coastal Commission, to suggest that that is a
17 disregard for the marine protection that we also feel very
18 strongly, is in itself disrespectful, and I cannot leave
19 that on the record either. So thank you for that
20 opportunity to just clear the air a little bit.

21 CHAIR HOPPIN: Thank you, Dr. Hertell. Tam.
22 MS. DODUC: Thank you, Mr. Chair, and thank you to
23 everyone who has participated in this effort. I want to
24 especially do our shout-out and thank Mr. Jaske from the
25 Energy Commission. Sir, I think you made the most mature
26 comments of all the comments I heard today, and that is it

1 is the Board's intent and it has been reflected in
2 everything the staff has done, to work with the energy
3 agencies, to accomplish both of our goals in a responsible
4 manner, that also serves the public, as well as the marine
5 environment that we are charged with protecting. I have
6 appreciated the opportunity to get to know more of the
7 energy folks during this process and I am fully confident
8 that we will continue to work in partnership to accomplish
9 these goals. So I really appreciate, in particular, your
10 comment, Mr. Jaske. And as someone, obviously as one Board
11 member who has been tremendously engaged in this effort,
12 especially after the former Vice Chair Jerry Secundy
13 abandoned me to go work for CCEEB, I can tell you that I
14 personally have a lot of confidence in the staff, in the
15 partners that we have formed, and I feel that this policy,
16 while it may not be everything I personally would like it to
17 be, is a darn good policy. It sets a darn good foundation
18 for us to go forward and achieve the reductions that we need
19 to achieve, but, again, to do so in partnership with energy
20 agencies and to do so in a responsible manner. That having
21 been said, there are still a couple areas that I will like
22 to suggest, and we will continue the discussion with staff
23 on this area, and I have no idea where the rest of my Board
24 is on this, but here are some of the things that I would
25 like to further explore.

26 As I said earlier today with respect to the South

1 Bay plant, you know, we have heard from CAISO, we received a
2 lot of paperwork that, as of right now, or as of I guess
3 what all those documentations were provided, they do not
4 anticipate needing that plant after 2010. Now, obviously
5 that could change, it could change for any of the 19 plants
6 in this policy, so I would like to see that date be moved
7 from 2012 to one year from the effective date of the policy,
8 and that, I think, will make it consistent with some of the
9 other -- well, at least with the Potrero plants, anyway, in
10 terms of compliance dates. With respect to the issue of
11 NPDES Permits, I would like staff to propose some language
12 in the introduction section, perhaps a new "M" or something,
13 that clearly specifies that this policy -- I know it does,
14 but let's be very specific in it -- that this policy
15 addresses intake, and the Regional Boards have the full
16 authority and discretion to take steps that are needed in
17 order to address the discharge component from these power
18 plants. I think there are concerns from some of the
19 communities that somehow our once-through cooling policy
20 will hamper the Regional Water Board's effort with respect
21 to the water quality discharge side of the house, and I want
22 it to be very clearly understood that that is not the case.
23 With respect to Track 2, I am still uncomfortable with that
24 83 percent gap that we have now created. I am still
25 uncomfortable with potential inconsistencies in determining
26 feasibility. I do not have a specific solution, so I look

1 forward to any additional comments that may be submitted,
2 and I certainly will also review very carefully the
3 suggestions with regard to generational flow rates and how
4 perhaps that could be a better reflection of achievement for
5 Track 2. With respect to the new language that was added in
6 Section B2, that commits the Board to holding a hearing,
7 when I first saw it, I was opposed to it, you know, I think
8 it is an additional step that does not need to be specified
9 in the policy. I gather from the discussion today that most
10 of my colleagues support that policy. I would like to -- I
11 am not comfortable with the idea of the board suspending a
12 date, but I am willing to leave it open, depending on the
13 information that was presented to us in making that
14 consideration. I will say that I strongly oppose any change
15 that would lead to the automatic suspension of a date based
16 on input, just based on a determination from CAISO, LAPWD,
17 or any other agency. That decision needs to come back
18 before the Board to make. I appreciate that it might need
19 to be on an expedited basis, but let's keep in mind, also,
20 Mr. Geever's comment that public members also need to have
21 the opportunity to provide input. I think one of the
22 concerns I have in terms of additional hearings and
23 additional workshops on this matter is, you know, for a lot
24 of community groups and NGO's, it is not something they can
25 continue to travel and participate in; it is an important
26 issue for them, obviously, they have participated in all the

1 efforts all these years, so let's make sure that their voice
2 continues to be heard on this issue by not rushing any
3 process. And then, finally, with respect to what has turned
4 out to be a somewhat controversial matter regarding "wholly
5 disproportionate" determination, as I said at the previous
6 hearing, I was very concerned about that section because of
7 the tremendous potential for inconsistent application by the
8 regional boards. I support the elimination of that section
9 and basically for the nuclear plants, bringing that
10 determination back to the State Board, and so I would be
11 strongly opposed to staff reinserting the wholly
12 disproportionate section, and then, finally, I absolutely
13 agree with the Vice Chair's concerns that we need to engage
14 other agencies, besides the energy agency that we have
15 worked with, obviously. The discussion about permits and
16 the ability to get permits is an important one. On the one
17 hand, you know, it is easy to say, "Nah, those permits are
18 not within our purviews, and therefore we should not
19 consider them," but, to be fair, we are asking somebody to
20 do something and they legally cannot do it. That is
21 something that we need to take into account. However, how
22 we engage the AQMDs into this process, I am not sure. I am
23 not suggesting that we make them a member of the committee,
24 the advisory committee, but I do believe that they need to
25 have a role. I myself have made several attempts to
26 contact, for example, the South Coast AQMDs, or at least the

1 Air Pollution Control Officer, to try to engage them in this
2 issue. And now I am going to move on to, I think, a couple
3 board members. But it is challenging and --

4 CHAIR HOPPIN: In other words, they ignored you
5 when you made a couple attempts?

6 MS. DODUC: Exactly. Well, they have, you know,
7 they claim, other priorities. But it is an important issue.
8 I do not mean to minimize the permitting aspect of this, but
9 I also do not want this policy to be waylaid because of our
10 need to accommodate another agency's procedures or process.
11 So it is a difficult one, I do not have the solution, but I
12 certainly want to support Fran in her comment that we need
13 to have these other agencies actively engaged, or, at a
14 minimum, identify obstacles as soon as possible when it
15 comes to permitting issues.

16 CHAIR HOPPIN: Thank you. Frances?

17 MS. SPIVEY-WEBER: I will not add to what Tam just
18 said about the Regional Air Quality agencies and LADWP, I
19 stated what I think we -- I think we should include them in
20 some way, not necessarily as part of the statutory group, I
21 do not think they actually want that, but when issues that
22 they have control over are before that advisory group, they
23 should be invited to attend and encouraged to attend, and if
24 we need to get help from other parts of our family to get
25 them there, I think that would be appropriate, as well.
26 Secondly, it seems to me that we should at least in the

1 start-up of this policy, we should be -- this group should
2 be meeting at least annually and reporting back at least
3 annually, rather than every two years. Two years seems
4 awfully long to me. And maybe as we go along, and this
5 actually raises a question, as I said to folks earlier, 2020
6 and 2024 are a long way off, and we are establishing a
7 policy now, and we have incorporated into it ways of
8 adjusting compliance dates, but there may be new
9 technologies that come along, that make a lot of sense. And
10 certainly there could be things that would happen where
11 people cannot get something done, and so there may be some
12 problems, but on the other hand, there could be things that
13 come along that could actually make an enormous amount of
14 sense, and I would hate for this policy to hold back that
15 that kind of opportunity -- I do not think it is going to
16 happen in the next five years, so I am not too worried about
17 it -- and so my question is to the attorneys, is future
18 Boards, what options might they have vis a vis this policy
19 if in the future there are significant changes that they
20 would want to re-visit this policy? Do they just start all
21 over from scratch, more or less as we did? I would like to
22 know that.

23 MR. *-[85:16]LAUFER - Ms. Spivey-Weber, in
24 general, I think all of you recognize, when we do a policy
25 like this, it is an organic document. This particular
26 policy is a little bit unique because we have so much built

1 in so that it could be periodically revisited. But these
2 are living, breathing documents, and as the suites of
3 technology change over time, it is an issue that this Board
4 can revisit. I think the one sensitivity that future Boards
5 will have is that you went through a fairly detailed, multi-
6 year process to develop this policy, and as you have heard
7 today, some of these facilities have already expended
8 significant amounts of money based on an understanding of
9 the regulatory scheme. And what your future Board members,
10 your brother in the future, and sister in the future, will
11 look at is the fact that there will be commitments based on
12 that, and that will obviously factor into the kinds of
13 decisions that they make. However, you know, this is an
14 issue that has faced the industry and the regulated
15 community for 30 years, and the environmental community, and
16 we have not seen a silver bullet come in those 30 years. If
17 one comes in the next five or six years, the State Water
18 Resources Control Board, U.S. EPA, they will be able to look
19 at those issues and look to incorporate that newer
20 technology. And I think, especially if it is an effective
21 and a cost-effective technology, I think you will see the
22 power community willing to embrace it. But the short answer
23 is, just because you are making a determination when the
24 Board ultimately adopts -- considers and votes on this
25 policy as to what the best technology available is, it will
26 not literally hamstring the boards in the future, however,

1 it will certainly give the boards and the future board pause
2 because of commitments that will have been made based on
3 this determination.

4 MS. SPIVEY-WEBER: Okay, thank you. I appreciate
5 that. I thought that was the answer, but I was not
6 absolutely positive. In terms of -- I do think we should
7 include a sentence somewhere, and I thought of it right
8 before the Track 1/Track 2 discussion, that acknowledges dry
9 cooling as a viable option for these power plants, but that
10 if a agency is going to use wet cooling, this is the policy
11 that we have for wet cooling. You know, I do not think it
12 would be misinterpreted, but dry cooling does impinge and
13 entrain less, like zero. And so it just -- it seems logical
14 that we should say something, and then -- but, for those
15 that are using wet cooling, this is how we are going to go.
16 I think we should explore the choice between using monthly
17 flow and the entrainment impingement measures, and I would
18 be particularly interested in the industry's perspective on
19 this, as well, because they are the ones who will have to be
20 doing the monitoring, and so I would like to see that as
21 kind of a comparison option. Either we could do one, or the
22 other, or both. And I cannot figure out what exactly to do
23 about that right now. I think this habitat foregone element
24 that you have added sounds like you could enhance that, and
25 not use that particular term, perhaps, but make it -- it
26 sounds like it is kind of old-fashioned and that there is

1 some newer language having to do with restorative areas, I
2 do not know, but if you could just address that as we move
3 forward. I thought the point of having a third party
4 certification of interim measures, whether they be called
5 restorative or mitigation, was a good one. And as I think
6 you could -- oh, and on LADWP, I think we should look at
7 their recommendation that 2015 be the date for Harbor, not
8 Haynes, and that 2017 be the date for Haynes, and then have
9 Scattergood in 2020 more or less along the lines of everyone
10 else.

11 MR. BISHOP: Excuse me, just trying to be clear,
12 that is not what they proposed. They proposed --

13 MS. SPIVEY-WEBER: They had dates, but those --

14 MR. BISHOP: They propose 2015, 2019, and 2022.

15 MS. SPIVEY-WEBER: Okay, well, that seems -- then
16 we should look at that, but I do think -- but by 2020, there
17 should be a phase-out, or these actions should have happened
18 by 2020. And if DWP wants to come in with some additional
19 dates or new dates that would be phasing -- I take your
20 point on phasing, absolutely you cannot have two plants out
21 at one time -- so tell us what you need, but 2020 really is,
22 I think, reasonable. Everyone else is doing it, so it seems
23 like DWP can do it, as well. And thank you, though,
24 Jonathan, I had missed that point. Definitely, as I think
25 many of you could see, I really think it is -- we are unable
26 -- the regional boards are unable, and quite frankly, I

1 think the industry is unable to do a disproportionate cost
2 analysis now. I just do not see it. So I do not want to
3 put that back in. And on the section about combined cycle,
4 about closing down for bio fouling, I think that is
5 something that should be taken into account. The per
6 kilowatt hour for intake flow makes sense to me, but I would
7 like to hear. And I think we need to make clear that we are
8 not expecting -- well, again, when we look at whether to do
9 the monthly flow or, or and/or, the entrainment and
10 impingement measures, you know, let's look at it in the
11 context of mesh size for screens and make sure that it makes
12 sense, or that we are clear that if we are using this 200
13 micron for just a dip net, well, then say it because it
14 looks like you are expecting that these would be kept out of
15 the system and they might not be. And they would not be
16 because they cannot be. And I think that is all that I
17 wrote down. And thank you. Really, as I think everyone has
18 said, it has been pretty difficult for lots of people, but I
19 agree with Tam, I think it was very refreshing to hear from
20 the Energy Commission their commitment, and from the CAISO,
21 their commitment, and from the National Marine Fishery
22 Service, their commitment to work with us as we move through
23 the next 10 years of making this policy work, because it is
24 going to be a long haul, this is just the beginning. And I
25 am fairly sure that, over time, it will be -- we will see a
26 lot of change on the coast, and probably very few, if any,

1 old power plants.

2 CHAIR HOPPIN: Walt.

3 MR. PETTIT-[Presumed]: Thank you, Mr. Chairman.

4 I will not try and comment on all the issues that my
5 colleagues have raised, but a few of them I have jotted down
6 and I would like to go over again. The first one I will
7 mention is reliability and, despite my 10 year absence, I
8 suspect I will probably still be as protective of this
9 Board's prerogatives, as I have been for the last 30 or 40
10 years. However, with respect to reliability, I think we
11 have already established that we do not understand all the
12 nuances of the electric generation industry, and I for one
13 would be very cautious about the flying in the face of any
14 definitive statement we got from ISO, so I am going to
15 probably be considering their concerns pretty seriously.

16 With respect to dates, we received some pretty definitive
17 input. With respect to the South Bay plant, I think that
18 needs to be looked at again, my first reaction was that
19 maybe that is appropriate with respect to all the other
20 issues we got, I am not sure how important it is; with
21 respect to the timeframe we are looking at, which is, as far
22 as I can see, is 1972 to 2020, a year or so in the South Bay
23 plant is something we may need to look at, I am not sure how
24 big an issue it is. With respect to the Department of Water
25 and Power's schedule, I agree with Ms. Spivey-Weber that we
26 need to look at that, and I do not have any fixed conclusion

1 on it, but I think it does bear a little review. The
2 monitoring with respect to compliance and the possible
3 alternative of using a flow issue struck me, and maybe that
4 is because when I looked at the "habitat protection
5 foregone" provisions without having a biologist's insight
6 into it, I had some doubts and wrote them off to the fact
7 that I am not a biologist, so I was quite interested today
8 in hearing a couple of recommendations that there may be a
9 better way to do that. And I will be interested in looking
10 at that possibility. With respect to Track 2, I am not sure
11 whether I have a big problem with the 90 percent provision
12 because, as I read it, we do not get into Track 2 unless
13 Track 1 is not feasible, which to my mind means that you
14 cannot meet the objectives of Track 1, so there has to be
15 some fallback objective. I do not know if it needs to be 90
16 percent, but if we cannot meet Track 1, we have to give some
17 definition of what is going to be adequate for Track 2, so I
18 think that is something we need to consider further. And,
19 as I say, I will not try to go through the laundry list of
20 other things, which I largely agree with my colleagues on.
21 Thank you.

22 CHAIR HOPPIN: Thank you, Walt. I will have to
23 acknowledge the staff that, when I first came on the Board,
24 I really did not believe we would be this far, this soon.
25 And I realize there are those out there that can say we
26 should have been here a long time ago, and shame on you, but

1 given the magnitude of this task, I certainly commend you.

2 We do have a very aggressive schedule that gets us from

3 today to the proposed Board meeting in January, we will see

4 how all of that works out given holidays, furlough days, and

5 New Years hangovers, but we are going to do everything we

6 can to accommodate that. But I genuinely want to thank you.

7 I, like Walt, am not going to go through a list of all of

8 the things that I agree with my colleagues on because it is

9 late in the day. I would say, as pertains to South Bay, we

10 have heard consistently legitimate concerns about this plant

11 and, when we look at the overall environmental impacts from

12 South Bay, they may not be the greatest player in the game,

13 but I think anything that we can do to accelerate the

14 proposed schedule would help indicate to all concerned the

15 intent of this Board, of not just following rigid schedules,

16 but accomplishing goals as soon as we possibly can. So

17 anything that you can do, staff, in the near future to give

18 us more ammunition on that, I would appreciate. I have a

19 concern, a continuing concern, and I do not expect to have

20 it answered in the next few moments, about consistency. You

21 know, we have an enormous amount of responsibility here as

22 far as, number one, maintaining -- or, maybe number two,

23 maintaining grid reliability, number one, addressing our

24 environmental concerns, on an issue that clearly is a threat

25 to the environment. But how we are consistent in our

26 administration of the policies that are put forward, there

1 are still elusive parts to be -- Jonathan -- Dominic, I have
2 called you Jonathan four times, now I will get over it here
3 before too long -- you know, you talked about the regional
4 issues on grid and how they are not necessarily statewide
5 issues, I am not convinced in my own mind that they
6 necessarily follow the borders of regional boards, if you
7 will. Certainly when we were dealing with two nuclear
8 facilities, we were dealing with two regional boards that
9 have shown in the past that they are very autonomous and
10 very independent, and I would like to discuss more at length
11 with staff the interaction in the intentions of this policy
12 as they pertain to our authority and our delegation of
13 authority to regional boards. I was pleased, as my
14 colleagues were, that it was clarified, the regional boards'
15 continuing responsibility for discharges. But I still have
16 some concerns. You know, we do not always administer things
17 perfectly, we would like to say we do and we know we do not,
18 but at least if we do things wrong, we do it consistently
19 wrong. That probably was not the most professional
20 statement I have made all day, Mr. Lauffer, you can roll
21 your eyes in the back of your head now. But you all know
22 what I mean, I mean, given the magnitude, particularly of
23 some of the larger plants, I need more comfort than I have
24 right this moment as to regional responsibilities and State
25 Board responsibilities. So I am sure we will be talking
26 before very long. Jonathan, do you need one more pen?

1 Okay. With that, I would like to thank you all for being
2 here. It is always refreshing to me when people can have
3 differences of opinion and treat each other in a civil way,
4 and you have heard me say that before on other issues, but
5 it makes this job certainly much more bearable, and it makes
6 me feel like I am part of a professional process. So, with
7 that, we will adjourn for the day -- but not before we hear
8 from Mr. Bishop.

9 MR. BISHOP: Thank you. I just want to make sure
10 that we are all on the same page and a reality check. I
11 have close to two pages of areas that the staff is going to
12 consider for changes and modifications. Given that we are
13 heading into the holiday season, and given that this means a
14 fairly significant number of changes --

15 CHAIR HOPPIN: You want to cancel the holidays?

16 MR. BISHOP: I want to cancel Christmas and New
17 Years, yes -- and the furloughs in between. I think it is
18 unrealistic for us to expect to put something out in a
19 week's time, which is what we were considering at the
20 beginning of this hearing, and to be able to make the
21 January 5th meeting. I am not saying that to be
22 disappointing, but I think we should be prepared more likely
23 for a hearing on this in February so that we have time to
24 put this out near the end of the month.

25 MS. DODUC: I withdraw all my comments. Just
26 kidding.

1 MR. BISHOP: So I just want to let you know, I
2 think that we need to be able to give staff enough time to
3 review the written comments next week and then make the
4 changes consistent with what we have heard today and with
5 the written comments, and then give the public a reasonable
6 amount of time to review those changes before we have the
7 hearing. And so I think we are really more likely looking
8 at the meeting in February.

9 CHAIR HOPPIN: Jonathan, considering someone like
10 Angela Kelly, as young as she is, that has been working on
11 this policy for nearly 30 years -- I think part of it was in
12 vitro -- I am not as concerned about a hard date as I am
13 about doing a good job with what we have in front of us, and
14 that is not to say that I am indifferent to the dates. When
15 I was hearing the comments I was hearing today, all of which
16 or most of which I thought had a great deal of validity in
17 trying to calculate in furlough days and holidays, and a
18 January 5th time schedule, I was not sure how you were going
19 to make it work. I have a feeling former Chair Doduc has
20 the answer to that question, so I will remain open-minded
21 until I hear from her.

22 MS. DODUC: Actually, I do not have the answer. I
23 was going to raise a concern that I will look to probably
24 Michael to help address. My concern is -- I mean, obviously
25 the Board is very careful to have, you know, open processes,
26 to ensure adequate opportunity for public comment, but I do

1 not want us to get into this do loop of comment, review,
2 revise, comment, review, revise, and so on and so forth.
3 And we try very hard, I know staff does and the Chair, to
4 his credit, does as well, to keep saying that any additional
5 comments are only on the revisions, but as we have seen
6 today, and it was across the board, the power plants, as
7 well as the enviro's, we keep going back to things that --
8 so, in other words, changes -- the comments are not focused
9 on just the changes that have been made, we are revisiting
10 comments as to why certain things were not changed, and so I
11 do not know if there is a way to make that balance because
12 my concern is you are going to end up with another 400 --
13 excuse me, let me -- another 400 or so, you know, sets of
14 comments, and then we will have another revision now, and we
15 will have another comment period, so is there a way to help
16 us better manage the commenting process so that we are not
17 revisiting old grounds every time?

18 CHAIR HOPPIN: You were stricter than I was, you
19 could be Chair again if you --

20 MS. DODUC: Oh, no thank you.

21 MR. LAUFFER[Michael]* [105:49]: I think part of
22 the issue, Ms. Doduc, is what you have identified. I mean,
23 we do -- when we provide the notices, and when we provide
24 the notice for a meeting like this, we do indicate that the
25 comments are to be limited, and we certainly -- both from a
26 staff level in looking at written comments can, with the

1 notice of appropriately crafted, disregard comments that are
2 beyond the scope of the notice, in other words, beyond just
3 changes. And that is something I would expect that, as we
4 go forward, if in the event that staff, after looking at the
5 issues that you all have identified, and having an
6 opportunity to confer with the Executive Director and the
7 Chief Deputy, and really kind of sit back, look at the
8 comments we have received, look at the Board member
9 comments, because many of you did not say make the change,
10 you said, "I want you to look at this particular issue and
11 come forward with your recommendation." Jon is giving you a
12 very conservative estimate, that given the fact that staff
13 is still working on Response to Comments, and trying to
14 complete the SED to incorporate the changes necessary, that
15 the issues you have raised may require additional changes to
16 the policy. And that is something that Ms. Wood and I will
17 look at once the staff has come up with the recommendations,
18 and we will have to figure out, okay, does this really have
19 to go out for further comment? Or, it could be that staff
20 changes, based on everything you have raised today -- and
21 there are a lot of issues, and that is what causes Jon some
22 concern in terms of how the staff will get through all
23 those, so they can give you and the public meaningful
24 answers to those questions, it could be that the Response to
25 Comments will address those, and there will be no changes.
26 And if there are not really any additional changes to the

1 policy based on what staff determines is necessary, based on
2 today's Board meeting and workshop, and the Board members'
3 comments, it could be that we will not even need to take
4 additional comments. We will still try to get it out early
5 so that everyone can see what the final policy that is being
6 proposed by staff looks like, but it could be that there are
7 not a lot of changes requiring any comments. If there are
8 changes requiring comments, I think we will take what you
9 have said to heart, and really try to tighten up in the
10 notice to make it clear, we are only interested in receiving
11 and will only consider the comments that go to the changes
12 that have been addressed. I think, in all fairness to the
13 commenters, a lot of these issues interlock, though, and it
14 is sometimes tough to identify where a new issue begins and
15 ends.

16 MS. DODUC: Well, I have one other question.
17 Several commenters today asked about the Response to
18 Comments and I am of conflicted opinions regarding that. On
19 the one hand, I believe it is only fair when people submit
20 comments that they get a response in terms of, you know,
21 what was incorporated, what was not, and why. And I
22 appreciate that they want to see that, but on the other
23 hand, my concern is then we will get comments on the
24 responses to comment and, again, we will get into this
25 infinite do loop, and I do not know, I raise it as an issue.
26 I do not have a solution, but I think we have heard from

1 enough commenters today that they are waiting for the
2 Response to Comments, and I do not want them to go away
3 thinking that they are going to get a Response to Comments
4 next week, and then have the opportunity to comment on that,
5 as well. So what is staff's plan with respect to the
6 Response to Comments?

7 MR. GREGORIO: So it is staff's position,
8 generally, that when we do our Response to Comments, it is
9 really intended for the Board to explain why we did what we
10 did in the final draft policy and the final draft SED. But
11 we always -- I agree with you -- we always try to release
12 that with ample time before the final adoption hearing for
13 the public to be able to see what our responses were. And
14 we do intend to do that now, and I think with giving us the
15 extra time, which I am very thankful for, if you all agree
16 to do that, we should be able to get the Response to
17 Comments out with probably a couple week period before the
18 hearing.

19 MS. DODUC: Good. What about the whole responding
20 to Response to Comments?

21 MS. BROWNWOOD: There is no requirement to respond
22 to responses that respond to comments. It is part of our
23 support for what the Board adopts, but there is no
24 reciprocal requirement to go back and respond to responses
25 to responses.

26 MR. *[110:18]LAUFLER: Yeah, and just as a matter

1 of law, I mean, Ms. Wood is dead on with that. I mean, this
2 is not designed to be a, "Okay, here is another bite at the
3 apple because we do not like --

4 MS. DODUC: Sometimes it feels like it, Michael.

5 MR. *:—LAUFFER: Yes, I recognize that. And, in
6 fact, I think this Board and most of the regional boards
7 have actually been very good with responses to comments. As
8 Dominic indicated, they are largely designed to educate the
9 Board, but they are also designed to educate the public.
10 And, in fact, most of the laws only require that there be a
11 responsive document prepared, not prior to the actual
12 adoption of the regulation at issue. I mean, under the
13 Federal participation requirements, it can come out after
14 the fact. And so I think we are, as a Board system,
15 generally much more protective in terms of trying to get
16 those out early because it does have an educative function,
17 and I think it helps people recognize that the Board staff
18 and the Board members did carefully consider their comments.

19 MR. BISHOP: And, in general, a comment that comes
20 out based on our response to a comment is just noted, and
21 not responded to by staff.

22 CHAIR HOPPIN: Ms. Townsend, as a point of order
23 and housekeeping, did I adjourn the regular Board meeting
24 before we went into this? Okay, thank you. With that, we
25 will adjourn the workshop. Thank you all.

26 (Whereupon, at __:__ p.m., the hearing was adjourned.)

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